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Folder Title:
Elian Gonzalez Legislation: Notes

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Row:

97

Section:

7

Shelf:

8

Position:

1

Elián González - 1/20

Maria - WH
Susan Jacobs - State

James
Patty & POS

Cathy - NS

Miles NSC

May de Rosa WH Counsel

Joel Winton WH

Justice

2 bills introduced in House + Senate

- Citizenship

- LPR Menendez, Toricelli (Have copy)

Senate bill not a private bill

House Rule - need UC in house ^{judicial}

Private bill must exhaust all remedies

Rule 14 use it to ~~clear~~ get to the Senate

Introduce bills on Monday

House - Quorum call on Thurs. but House not in - nothing ~~there~~

So far this week don't internal debate as to whether to bring up quickly or wait more.

Senate Dodd would object to UC on any bill.

more likely message amendment

(Unclear who will go first)

- Daschle will not want to slow things down procedurally b/c not sure if they were on cloture motion.

- Polling people now

Robert Useful to discuss disaggregated questions - Up or Down

Vote Custody = Physicality

Support citizenship who takes a ~~strong~~ position on custody

Eg.

- ① Grant citizenship ^{or LPR} - FL court - custody issue still pending
Great uncle filed a temporary custody for sister's nephew
Need to do research & need by Monday.

- ② Democratic Amendments - Parity + State Amnesty, ~~not~~
message opportunity - don't want a negative vote
Need to coordinate strategy.
2 messages - ~~Don't let it be a problem~~ <sup>American families embedded to
return kids abroad</sup>
House Amendment out all

- ③ Administ. Issues about bill, don't want to endanger it

- ④ Patriotism - Countering this
Chris Smith Member - President's shot - we need to think hard &
long when further carrying. don't want to send back east country

What's our position?

Need research

Where are they.

By Mon. - take a ~~decision~~ position

Don't want to vote

Veto threat - what ~~the~~ does this mean - DOJ

- ③ ~~Adding~~ the criteria
~~Best~~ Best interest of the child - ~~Bob~~ Bob Graham - She
Patty will speak to him.

- Cancellation Restoration bill - Let the Ct decide
~~that~~ rhetorically could be raised.

- ⑤ (3) Polling for leadership

E.G. Legislation - 1/29/00

maria

DOJ

State ^{was}

NSC

OPL

Leg Aff.

INS

Senate

Sen. Mack introduced leg today w/ 3 Dems ^{Robb} ~~Graham~~ Torrelli

Vote next week Lott - Daskle

Senate may need a cloture vote .. no plans yet. Dems don't want to push. Dodd wants to delay

House

- Next week

- Rule Change/hearing - to bypass Lamar Smith.

- MC Cullom bill - identical to Mack

⊛ Language review legislation by tomorrow.

orc (Lundy Moss)

- Pulmonary - no constitutional impediment to conferring citizenship but could argue not a great idea. Consent not a good argument 1940 Puerto Rico - automatically made USC despite their opposition

- Dodd Rep. STL - meeting w/ the grandmother here tomorrow

- ~~Polling~~ Amendments / Polling

Possible ~~Bill~~ Amendments - Senate

- Patient Bill of Rights - other - Minimum Wage
- Reed (RI) - Librarian TPS

- No clear sense of polling
~~Hagel~~ Hagel

- Advocacy Groups - Amendments

- Rangel bill -

Lamar

① Maria - Lott nothing will be done, ^{minimum wage, private bill of rights} privacy & late unity, etc.

- ^{mark} Disaggregate question of citizenship & custody

- Unclear what DS want to ~~to~~ do.

- Oppose ~~the~~ citizenship legislation

- families abroad / reciprocity
- family reunification

1 page SAP

(don't need a SAP until we know what we are proposing to do.)

- OPED - DORIS - Mary Ryan

② Non-gov't / OP Ede

• Dear Colleague - Rep. STL

• Senate DPC - USA Today

• Court Filing will have info

• ^{Response to} Letter to Senator Kennedy pursuant to question today
here are styles - INS & Mary Ryan - COB tomorrow

• 1 page of these points - ME - SLL -

Position: Opposing ~~but~~ ^{concept of ending citizenship +} - but not necessarily veto - we need to see what gets passed.

AMENDMENTS

- Organizations met and decided that they publically pursue a strategy to get amendments on the bill b/c
 - Possibility that some may stick
 - Demonstrate the disparities – hypocrisy
 - Slow down the legislative process to allow the courts to decide case
- Possible Amendments include:
 - Parity
 - Registry Date
 - Liberians
 - PIP (allows immediate relatives to come to US from VN, Laos, Cambodia)
 - Restoration of welfare benefits
 - Delay EG's citizenship until the naturalization backlog is eliminated
- They will meet with Senate staff ^{soon} ~~next week~~ to discuss amendment strategy to make sure they will not endanger the bills. However, they indicated they are not concerned about losing a vote b/c in the past, even when they have negative votes, they were able to succeed later. (Eg. Leahy expedited removal amendment succeeded after it was defeated the week before).
- They agree that by amending the bills it could appear that they are endorsing the bill.

GROUPS POSITION

- Immigration organizations do not want to take a position on the bill for various reasons but the main ones are:
 - Too politicized
 - Don't want to jeopardize their relationship with Miami Republicans
 - See it as an opportunity to help other immigrant groups.
 - Do not want to be in a position where one group is pitted against another. For example when Cubans and Nicaraguans got more relief under NACARA, they do not condemn Cubans and Nicaraguans but use that legislative action to get something for the other groups.

~~Rumor is the~~ NCLR may be supporting legislation.

LULAC Resolution

USC
① Biological Parents Law put
② Immigration Fed sit. ct. - is political in nature
③ Inst of Law
④ Public opinion
⑤ Vote
⑥ Equity
⑦
What to do in future
1/25/00
257/520

President -

Inclined to sign or veto bill - have not decided what to do but not rule it out.
Grandmother
Politicized process

Done best to provide to politicize
INS

Case play out in court
Who is best for the child

This could happen again

Do we have the tools involved to determine best interest of the child

Many spoke people

Where in discussion - Q + A - strongly oppose effort
Should vote? but to not say vote. pretty
know vote counts b/c it looks extremely if vote
overwhelming to give USC + LPR.

Need to see legal arguments
State Dept - preparing letter + t.p.
DOJ/INS - preparing letter

Senate Doing vote counts

60-70 votes in favor

DPC held on Wed.

(2)

House Rep. Stue Kergent } ^{outlyers} - signed onto Longel Resolution -
La hood } boy should be automatically
Jim Davis } reunited

May be a veto proof?

DOJ is briefing a

Talking - in Am for John Podesta for House ^{Caucus} briefing
Pointe

State - International Parental Kidnapping btl's -
↓
Mandela
Kosa
Members statements.
• Did a hearing recently

Fernstein - endorses DOJ/INS position

Jack Reed -

Dodd = amendment - wait till 18 yrs. = looking for something
change on a man to vote for

Samuel Castelli

If USC citizen

Analyses = Fed Law suit - go away / dissent

of the bill
+ custody
fed, state +
mtl

= State Court - difficult to predict - need to look at

FL jurisdiction, what would judge do - Pandj

= Int'l Law - State Dept. Lawyers/OCC - will look further - raise
question but not from email

What want to
Paragraphs

(3)

Legal analysis FRLPR - pending
= Fed Law -

Q + A - Q + A for President for tomorrow.

Leahy ~~Wash~~ - bill is mockery of the system

~~INS~~ ^{Rep. STL, Suwan}
Grandmothers Met grand at grandmothers at 6 pm
INS Order Letter - on condition of parole that family provide ^{defects we have involved} ~~them~~ ^{for} a visit for 4 pm Wed.
- if they don't comply, enjoin

(*) NGDs

Washington line - letter from mom. - Brothers & re
rescue

Michael + Angie
Kuloo

(4)

Position on Amendment Strategy - Public Strategy

~~Pub~~
Major immigrant organization ^{met} No position & did not
want to take position

- Some Angel would shake
- Disparity / Hypocrisy / irony
- slow down process...

Position on Bill

NCLR maybe support - BTTA will check

NIF - lots of calls but none - due process - asylum - refugee

US Catholic Bishop - individually support INS decision &
oppose legislation

Archbishop ^{minor} however, - no position - ~~change~~ ^{change} to his church

Cuban Bishops have pushed to take a position

Respect his ~~position~~ - Minors' deci

NIF Position

(lots of calls)

- highly partisan - ~~emotion~~
- Not want to alienate either side
- NACARA - groups did not condemn Nixon, Carter -
- Use this to bring other groups up - rather than taking a group down

Leaky status down Expedited removal

Lay out all the damage if get a bad vote

Amphol it... Spin it... procedural vote

NIF

Could look like we are endorsing bill, if get the
amendment passed

Bipartisan on either position

Hoon - Committee hearing in Judiciary b/c nervous ~~that's the one~~

(5)

Senator who are intended would break down

Possible Amendments

- Parity
- Registry - Harry Reid
- Liberals - Jack Reed
- PIP
- Delay ~~with~~ citizenship until babies delivered
- Restriction of citizenship benefits

- Dodd introducing Rangel resolution
- Leahy + Dodd - Albright - Boxer + ~~Boxer~~
- Will probably meet with groups. Senate staff

Largent

Albright

Goodman

La Hood

Viter (PLA)

Lamar Smith

Hagel

Fitzgerald

Senate

Senate out Th + Fri, will read twice
motion to proceed, cloture vote on Wed.

House

Growing restlessness + not have votes - possible hrg in Judiciary
Comm.

Others

Groups = Religious organizations, Family,

④

Conference Call

~~Democrat House~~

Follow up
on Democratic
Lunch

Democrats - veto proof in Senate

- Klobb accidentally
- Hobbys
- Leahy
- Dodd + Feinstein - Republ. Senator
- Liberman on the fence
- Dostle

No can't message of going

~~Hagel~~

Hagel + Fitzgerald would likely oppose legislation

Industry question - Why not just send him home if low authority.

House
side not
caucus

Meeting tomorrow

Letter - ~~INS~~ INS letter - get this out by FRI
State - today

(*) O-Ped need to be educated. fully international
law - this not too politicized. write 3 paragraphs
broader issue. Organ has so much work what
Ange

to DOJ ^{sup} filing - Interview note - 1 page

congress Rally in Miami on Sat. & return Elan

⑦

Grandmothers at airport

LPR analysis

Largel + Suman - grandmothers at SOTU.

Roll-Call putty pressure on Largel

UNACCOMPANIED MINORS

#138/00

Ken Lubecker – Social worker – 202-305-2051.

No distinction between children & adults under immigration law treated the same way. This needs to be raised. Maybe do it in the court system - represent the kid – guardian ad litem – where not competent counsel.

Lawyers in cases for kids in INS must be pro bono – competent counsel

Legal services can't serve immigrants

Asylum & refugee law for kids – certain don't fit for abuse kids b/c of law.

Special Immigrant Juvenile status – AG can exercise to provide protection.

Asylum case

Policy decision after expedited removal instituted, when there were unaccompanied they go through asylum process. In custody of the INS. They have a network of shelter for these minors and they look for the find appropriate relatives here in the US. Sponsorship application is filled out by relative. INS relinquishes custody sponsorship. INS deportation makes decision to released or not. Change of venue processed. Never went to shelter and parents want to him back.

24k cases in 1990 – only a handful of cases where parents want their kids back.

Chinese kids international smuggler

Sri Lankin – bound to Toronto

Haitian kids

Street kids – Hondurans, Mexican,

18-20 days INS custody except for Chinese kids.

Shelters licensed under child welfare laws – catholic charities.

Cuban kids – Boystown Camp for unaccompanied minors – started in the 60s.

If there is a family member in Miami, INS visits with the family.

5,000 cases/ year

Hague Convention

4

EG Leg. 2/2/00

Letters

- Hold b/c so far we've won -
- INS
- DOS
- State

Lawyers says only pursue leg. only if lose in ct.

★

Dishall argument

7 + 8 points - Internal ~~Talk~~ Talking
- points

★

~~that correlate~~ $\equiv$ to merge

Fed Ct -

2/22 Standing + Prescription

3/6

Rest of case

EG Leg. 1/28/00

LPK

Letter
T.P.
mtg

Slowing down of legislative effort.

Patty confirmed - division State + Home Republican Caucus

House - regular ~~House~~ order. Lamar Smith must decide
2/3 support ~~not~~ in to Subcommit. would need
2 Dems -

~~What if~~ - What if they ask us to stay uninvolved
b/c private ~~bill~~ bill protocol. ME - analyze
~~now~~ now

① Letter = get them done = Mon. or Tues.
- INS ~~done~~ done in the next hour.

② Letter to meet w/ ~~grandmother~~ ^{with} grandmother = Leg Affairs respond.
Process - not a good, politicizing w/ either side.
Grandmothers are being tomorrow

- Non meeting = support Sen. Mark legislation
Miami: Bud Edgar - ~~unhappy~~ ^{Nat'l church} unhappy w/ Cuban Govt
- ~~unhappy~~ unhappy. No longer dealing w/ grandmother
w/ Cuban Indus. sector.
- Transmitted again if left Miami.

③ LPK - Allen E.

• Call on Wed.

- after letter cleared, DOS + State
develop list.

- See. of State soon -

44 4/4/00

ELIAN GONZALEZ

Background

On November 25, 1999, the Coast Guard intercepted two fishermen who had rescued (then) five-year-old Elian Gonzalez from the Atlantic Ocean off the coast of Florida. His mother had perished during the ill-fated voyage from Cuba to the United States. The Coast Guard transported Elian to the hospital, where the Border Patrol (a part of INS) gave him a temporary "parole" into the care of his great-uncle, Lazaro Gonzalez. Elian's father, Juan Gonzalez, who had begun gathering birth certificates and other papers the day after Elian was found, soon requested his son's return through the Cuban government. Elian's Miami relatives, however, refused to return him, alleged that his father was under duress in Cuba, and filed an asylum claim in his behalf.

On January 5, INS, after interviewing Elian's relatives in Miami and his father twice in Cuba, determined that Juan was Elian's father, that he had a close and loving relationship with the boy, and that he was expressing his true wish that Elian be returned to him (regardless of allegations that he actually wanted to come to the United States himself). Applying the basic principle that parents speak and make decisions for their children, INS accepted Juan's request that the asylum application not be considered, rejected it on that ground, ruled that Elian should be reunited with his father, and called upon the family to effectuate the transfer cooperatively. The Miami relatives appealed to the Attorney General, who upheld the INS's decision on January 12.

Just prior to the Attorney General's January 12 decision, the Miami relatives obtained an order from a Miami-Dade family court purporting to give Lazaro temporary interim custody of Elian, and the authority to file immigration applications for him. A controversy erupted upon discovery that the Miami family's publicist Armando Gutierrez had worked on the family court judge's judicial election campaign. The judge, Rosa Rodriguez, later recused herself from the case. The Attorney General's January 12 decision stated that "the question of who may speak for a six-year-old child in applying for admission or asylum is a matter of federal immigration law," and that the "Florida court's order has no force or effect insofar as INS's administration of the immigration laws is concerned."

The Miami relatives filed a complaint in the U.S. District Court in Miami, seeking to force the INS to adjudicate the asylum application filed by Lazaro, and to enjoin Elian's return to his father. The district court dismissed the complaint on March 21, upholding the Attorney General's decision that the asylum application was not properly before the INS in view of Juan's objection to it. The court observed that "each passing day is another day lost between Juan Gonzalez and his son." The Miami relatives have appealed the decision, but have not sought an injunction pending appeal. The Department is thus free to carry out its decision under the immigration laws.

Because the Court of Appeals has set an expedited briefing schedule, with oral argument the

week of May 8, the INS has been willing to entertain the Miami family's request for continuing Elian's present care arrangements through the appeal. In return, the Department has asked for assurances that the child will be turned over cooperatively if the Miami relatives' appeal is unsuccessful. The family has not been willing to give these assurances, and the INS has indicated that without them it will revoke Elian's parole. Tense negotiations took place during the week of March 27, and the parole revocation date was twice extended. It is now set for 9:00 a.m. on April 4, with further talks set for April 3.

On March 29, Fidel Castro announced that he would allow Juan Gonzalez, his common law wife and child in Cuba, and an entourage of relatives, schoolmates, teachers, and medical professionals to travel to the United States to retrieve Elian. [Discussions are in progress with Juan's attorney, Greg Craig, regarding arrangements for a possible trip by Juan and others to the United States. On camera, all that should be said on this score is that the Department has been in contact with Mr. Craig.]

Talking Points

- **The ability of parents to speak and make decisions for their children is one of the most basic principles in our legal system.**
- **The dispute over Elian boils down to this: Certain relatives are preventing Elian from returning home to his father, simply because the father has the misfortune of living in a country whose government we do not like. That simply cannot be a basis for separating children from their parents. Even parents in communist countries are entitled to raise their children. (If they were not, every child in China and lots of other countries whose systems of government we oppose should be separated from their parents, too.)**
- Elian is not being deported or removed from the United States. His father is his sole surviving parent and has asked that the child be returned to him. In contemplation of law, Elian is returning voluntarily to Cuba, and is being prevented from doing so by his Miami relatives.
- The INS decision in this case, which the Attorney General subsequently ratified and a federal district court has now upheld, made two essential determinations:
 - First, a six-year old child is too young to make decisions for himself on matters of immigration law.
 - Secondly, the only person who can speak for this child on immigration matters is his sole surviving parent—his father, with whom Elian has had a close relationship for the first six years of his life.
- The Miami relatives claim that, instead of allowing the child's father to speak for him, Elian "deserves his own day in court." But, obviously, it is not Elian himself who is directing the court

litigation. It is adults who are purporting to speak for him, and these adults—unlike Elian’s father—are people who had scarcely (or never) even met Elian before four months ago.

- This boy is not an orphan. He has a father who loves him. You can see that he is a bright, precocious, and well-adjusted child. The evidence, carefully gathered by the INS, indicates that Elian lived with his father for part of every week up until the time he left Cuba, and had an extremely close and loving relationship with him.
- The relatives’ recent claim that Elian is “afraid” to return to his father is not relevant. And I would add that no one claimed he was afraid of his father at the beginning of his stay with the relatives.
- At the beginning of the case, the Miami relatives said that Juan Gonzalez was being held in Cuba and couldn’t speak for himself. Now, when he says he’s coming here, they claim he’s a bad father, something they didn’t say at the beginning.
- The INS is willing to hold up enforcement of its decision voluntarily for the duration of the appeal if the Miami relatives promise to turn the boy over as required by law if the appeal is unsuccessful. [This arrangement would be displaced, obviously, if the father actually comes to America in the interim.] This is not an onerous requirement. INS is not asking the Miami relatives to do anything more than what is already required by federal law. People who are given temporary care of a minor, like Elian, who has been paroled into this country must agree upon request to produce the child when ordered to do so by INS.

Court Actions and Legal Standards

- As noted above, the Commissioner’s and Attorney General’s decisions in this case were based on a determination of who speaks for a child who is too young to speak for himself on immigration matters. The Attorney General concluded that, “under universally accepted norms,” the person who can speak for this child is his sole surviving parent. Although the legal principle that upholds parental authority over children of tender years does not expressly incorporate a “best interests of the child” analysis, the fact that our laws uphold the parent-child bond and make it difficult to deprive parents of custody over such children surely reflects a judgment that it is in the best interest of children to grow up under the care of their natural parents. [N.B., however, the penultimate bullet below, to the effect that “best interests of the child” analysis does not even figure in the state court proceeding.]
- When these decisions were challenged in federal district court, Lazaro Gonzalez argued that the Commissioner and Attorney General had violated the law when they honored the father’s decision that Elian did not want to apply for asylum and therefore declined to adjudicate the asylum application that other adults had submitted to the INS, purportedly on Elian’s behalf. The federal judge concluded that Congress has delegated broad authority and discretion to the Attorney General to administer the immigration laws and that her decision that the father speaks

for this child reflected a reasonable interpretation of the immigration law and must be upheld.

- The federal judge who dismissed the Miami relatives' case said that "[e]ven this well-intentioned litigation has the capacity to bring about unintended harm." He also pointed out the "reality that each passing day is another day lost between Juan Gonzalez and his son."

- This case is a matter of federal immigration law. It does not belong in the state courts. An unaccompanied minor has arrived on our shores, and his sole surviving parent has asked that he be returned. The father's wish should be carried out, as it is in hundreds of other cases.

- The Miami relatives would not get a "best interests of the child" determination even in the state court. That test is used when you have a parent against a parent. If it's a parent against anyone else, the parent wins, unless the parent is proven to be unfit. And that requires a very serious level of proof. Parental rights are among the most fundamental rights recognized in law.

- With regard to the bills in Congress, I do not believe the United States should be in the business of conferring U.S. citizenship or residency on people who do not want to be U.S. citizens or residents. These benefits are precious, and sought by many as the achievement of a lifetime. They should not be forced upon people who want only to go home and resume their lives. And they should not be used for political ends.

EG Case - 4/4

Senate is doing a ~~series~~ of Senate Resolution not a free standing bill

Calibrate the water + control -- we won't preceptuate anything but we are moving very carefully but need to move this forward.

Put this ~~back~~ in the case - mtl ~~dis~~ dispute this has been extremely affected.

- Speak for short amount of time

- Q&A

- Discussions on case - some on the press - last week focused on getting their agent after appeal on how we shifted now that after is coming on fully terms of the transfer more ~~con~~ conversations this afternoon.

~~Started~~ Race -
12 year old

- GC will attend

- Project that we are doing surely we can in an orderly fashion involve principles meet Am. kids, sanctity of the bond, balance the desire to reunite. Can't use appeal process to drag out this case. The family needs to -VP

State Ct is not relevant but PL is most stringent case
on family law - don't get to the issue of
best of interest of child ~~until~~ until proven

IF no other permanent resident

EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
Legislative Reference Division

April 6, 2000

To: Irene Bueno
DPC
Fax: 6-5581
From: Lisa Macecevic *lym*
RE: State letter on Elian Gonzalez
Total Pages: 2

Attached are comments from Justice on the State letter. I thought I'd send them to you first. I'm not sure why they're making more comments on the letter now.

Lisa J. Macecevic
Legislative Analyst
Phone: (202) 395-1092
Fax: (202) 395-3109
Email: Lisa.Macecevic@omb.eop.gov

April 6, 2000

Note for Lisa Macecevic, OMB

From: Greg Jones, DOJ

Greg

Re: State letter on Elian Gonzalez

This is a good general statement of the problems that would result from a denial of Elian's return to his father's custody. We suggest that consideration be given to taking a position on the pending legislation. Also, some further elaboration of the Hague Convention reference might be appropriate for the information of readers not familiar with it. They should note that it doesn't specifically apply to this case, because Cuba is not a signatory (otherwise readers are likely to wonder why the referenced procedures for prompt return don't directly control), and delete "by one parent." As we read the Convention it applies to any situation in which a child is removed or retained in breach of rights of custody, not just custody disputes between parents, and the current draft could be read to imply wrongful action by Elian's mother -- which may or may not be the case, but should not be the focus of the case as it has developed.

For accuracy's sake, it should be noted that there should be accent marks placed over the "a's" in "Elian" and "Gonzalez". Also, "Gonzalez" is misspelled.



4/3/00

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Majority Leader:

our opposition

The purpose of this letter is to state ~~the~~ views of the Department of Justice on pending legislation that would declare Elián González to be a naturalized citizen of the United States, or that would make Elián González and/or relatives of Elián González who are nationals and residents of Cuba, aliens lawfully admitted for permanent residence in the United States.

Elián González is a six-year-old child who has lost his mother. He is too young to make legal decisions for himself. Our decision that Elián's father and sole surviving parent, Juan González, has the legal authority to speak for him in immigration matters is consistent with INS practice and with the fundamental legal principle that parents speak for their children in matters of legal significance. This decision was upheld by the U.S. District Court for the Southern District of Florida in its recent opinion. Juan González has made it clear that he wants Elián to be returned to him, and that he desires to withdraw Elián's application for admission to the United States. The proposed private relief bills have neither been requested nor are supported by any beneficiary of the bills.

We address first the Elián González naturalization legislation. Due to the facts stated above, such a grant of citizenship would be the involuntary naturalization of an individual. Conferring involuntary citizenship on a child who does not meet the statutory requirements for naturalization, and whose sole surviving parent does not request U.S. citizenship for his child, would be an unprecedented and unwise use of Congress' power under Article I, section 8 of the U.S. Constitution to "establish an uniform Rule of Naturalization." Therefore, the Department opposes the pending legislation and recommends that it not be enacted into law.

In the past, private relief bills providing U.S. citizenship to individuals who did not meet the requirements for naturalization have from time to time been enacted, but such measures have been rare. They have been particularly unusual since the 1960s, when several changes to immigration and nationality law led to dramatic reductions in the numbers of such bills. For example, a frequent subject of private relief bills was restoring U.S. citizenship to individuals who had unknowingly expatriated themselves by such actions as voting in foreign elections, but this equitable basis for relief was mooted by new requirements that expatriation can only occur as a result of a voluntary act of renunciation evidencing a specific intention to relinquish U.S. citizenship.

In general, this country does not use the precious privilege of U.S. citizenship for honorary or political ends, or waive generally applicable citizenship requirements in order to provide a private benefit. Policy G of the Rules of Procedure and Statement of Policy for Private Immigration Bills of the Subcommittee on Immigration and Claims of the Committee on the Judiciary of the U.S. House of Representatives accurately states our national policy with respect to private citizenship bills:

The Subcommittee will require that any bill expediting naturalization be accompanied by evidence indicating that such action would be in the national interest, as opposed to personal interest. There are few precedents for favorable action on bills waiving any naturalization requirements or granting posthumous or honorary citizenship. It is the Subcommittee's intent generally to view unfavorably legislation of this type. More appropriate mechanisms for rewarding individuals may be in the form of medals, awards, or ceremonies.

We are unaware of any precedent for legislatively conferring the rights and obligations of citizenship upon a specific living individual who has not sought that benefit. The House Immigration Subcommittee's rules recognize how important it is that the beneficiaries of private relief bills actively seek the benefit by requiring, in Rule of Procedure 1(i), that the author of the bill submit "[a] signed statement by each beneficiary, or the beneficiary's guardian, that he or she desires the relief sought by the bill."

Requiring voluntary assent to private immigration relief is consistent with the naturalization provisions of the Immigration and Nationality Act (INA). Although, by definition, private immigration bills create exceptions to the uniform rules applicable to other individuals, the greater a private bill's

departure from the normal requirements of the law, the more questionable it is as a sound and supportable action. Section 337 of the INA requires persons who have applied for naturalization to take the oath of allegiance. By taking this oath, new citizens publicly undertake the obligations of U.S. citizenship, including the obligation to bear allegiance to the Constitution and laws of the United States, to renounce allegiance to any other nation, and to bear arms or perform other national service when required by law. The oath acts as the new citizen's voluntary assumption of these obligations.

Under the INA, the acquisition of U.S. citizenship by a child who is not born a U.S. citizen depends upon the actions of his or her parents. The child may acquire U.S. citizenship derivatively through the naturalization of his or her parent, or a U.S. citizen parent may apply for naturalization on behalf of his or her child born abroad. In neither case may an alien child become a U.S. citizen without his or her parent's active involvement. Naturalizing a child without the consent of the child's only parent would be an extreme departure from current law, and one which greatly exceeds the type of waiver typical of private immigration relief legislation. An individual's citizenship is a fundamental attribute of his or her identity, and to confer it on a child without the parent's consent would fundamentally interfere in the relationship between parent and child.

With the exception of good moral character, Elián does not meet the normal requirements for either adult or child naturalization. He has suffered a terrible loss under unimaginable circumstances. The best thing this nation can do is return Elián to a loving parent as soon as possible. A grant of involuntary citizenship to this child, contrary to the wishes of his sole surviving parent and with a view toward preventing -- or even just further delaying -- the child's return to that parent in Cuba, is not the proper course of action.

Since lawful permanent resident alien status does not change an individual's nationality, and does not involve the taking of an oath or an assumption of obligations to the same degree as does citizenship, a grant of that status to an alien who does not request it is not as objectionable as is involuntary naturalization. We believe, however, that the lawful permanent residence legislation would similarly be an unwise use of Congressional authority, for the same reasons of voluntariness discussed above with respect to citizenship. House Immigration Subcommittee Rule of Procedure 1(i), cited above, does not distinguish between naturalization and other forms of immigration relief when it requires a written statement from the beneficiary of a private bill that he or she desires the relief, and the

policy concerns that underlie this rule of voluntariness are similar in either case.

Thank you for considering our views in this matter.

Sincerely,

Robert Raben
Assistant Attorney General

4/3/00

DRAFT-Not for Release

United States Department of State

Washington, D.C. 20520

I am writing to bring to your attention the implications for the Department of State's ability to successfully pursue international parental child abduction cases, should Elian Gonzales Brotons not be returned to his father's custody and his place of habitual residence.

Failure to implement the Immigration and Naturalization (INS) decision *as affirmed by Fed. Dist Ct.* could seriously prejudice the ability of the United States Government to help parents in the United States recover their children taken to foreign countries. The Department of State would expect a foreign government to return an American child in similar circumstances as Elian Gonzales.

The rights of parents are recognized internationally and have long been a central premise of our work on behalf of Americans. It is a basic precept of our work that the parents of American citizen children, not the Department of State or the United States Government, should decide what is best for their children. We are also party to the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"), which establishes procedures to "secure the prompt return of children" to their place of habitual residence when they have been "wrongfully removed...or retained" by one parent.

Were a U.S. citizen minor child found in a foreign country in the circumstances of Elian Gonzales, we would expect the government of that country immediately to seek the child's surviving parent, if any, and to contact U.S. consular officials for assistance in doing so if necessary. We would then expect the government promptly to return the child to the parent. We would ensure that the foreign government was aware of the parent's wishes and would not expect our representations in that regard to be questioned. We would not expect the surviving parent to have to participate in a foreign court's custody proceedings to establish his or her right to assume responsibility for the child. We would object strongly if a foreign government declined to return an American child to its only surviving parent because other relatives sought custody of the child or because of a judgment that the child would be better off in the country in which the child was found. We also would take vigorous exception to a foreign government or court that sought to substitute its view of the "best interests of the child" for those expressed by a parent, absent a previous finding that the parent was unfit.

The United States is at the forefront in its advocacy on behalf of parents seeking the return of their children. Our credibility and effectiveness depend upon our ability to adhere to the principles we espouse. If the United States fails to act in accordance with such principles, we jeopardize our ability to insist on adherence by other countries. Consistency between principles and practice is particularly important in matters of foreign relations, where enforcement of rights so often depends upon reciprocity, diplomatic negotiations, and cooperation. Over the years, hundreds of children have been returned to their parents in the United States because other

DRAFT–Not for Release

countries have been willing to respect basic principles of international law and custom and, when applicable, relevant treaty obligations. Not returning Elian to his father would be perceived as a decision that the fundamental parent-child relationship can be ignored, even when there is no evidence of unfitness. A failure to enforce the INS decision would be inconsistent with the principles we advocate and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizen children taken to foreign countries.

I hope this information will be of use to you. Please do not hesitate to contact me if there is any further information that I can provide to you.

Sincerely

Mary A. Ryan
Assistant Secretary for Consular Affairs

FAX

To: Irene Bueno
From: Lisa Macecevic
Re: DoJ Elian Gonzalez letter

Irene,

I'm faxing you all of the comments that have recently come in on the DoJ Elian letter. I'm sorry it's taken me so long to get this moving again, I'm covering for another analyst all week, so things are a bit crazy. Let me know if these changes don't look correct before I email them to Justice. Thanks.

Lisa

- 6 pages -

FEB-01-2000 17:15



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20510

DRAFT

Dear Mr. Majority Leader:

The purpose of this letter is to state the views of the Department of Justice on pending legislation that would declare Elián González to be a naturalized citizen of the United States.

On November 26, 1999, Cuban national arrived in the United States without any parent

and his only surviving parent is his father, Juan Gonzalez who lives in Cuba.

~~Elián González is a six-year-old child who has lost his mother. He is too young to make legal decisions for himself.~~
Our decision that Elián's father and sole surviving parent, Juan González, has the legal authority to speak for him in immigration matters is consistent with INS practice and with the legal principle that the parent is the person most able to represent the child's best interests. When an unaccompanied minor alien, such as Elián, arrives in the United States without proper entry documents, the INS routinely attempts to contact a parent, either in the United States or in another country, regarding the child's whereabouts and inadmissibility. Here, after Elián's inspection was deferred, the INS met with his father who clearly articulated his desire that Elián withdraw his application for admission and return to Cuba.

in Cuba

In deciding whether to give effect to the father's wishes, the INS carefully examined whether there was any reason that the father could not be relied upon to represent the child's interests. Specifically, the INS considered allegations that the father was under coercion such that he was not able to express his wishes for the child or was not able to assess properly whether the child was at risk of persecution or torture upon his return to Cuba. On both counts, after interviewing the father and the Miami relatives, as well as examining other available information, including the asylum application tendered on Elián's behalf, the INS found no reason to question the father's decision not to assert an asylum claim and to request Elián's return to him in Cuba.

DRAFT

The Honorable Trent Lott
Page Two

There is no question that Mr. González is Elián's father and that he has the legal authority to represent his son in immigration matters. Mr. González expressed no desire to the INS that Elián be naturalized as a U.S. citizen, and made no statements that were even remotely consistent with such an objective. Therefore, we do not believe that the proposed citizenship legislation is at the request of, or has the consent or support of, Elián's father, who has the sole legal right to speak on behalf of Elián on such matters.

As a result, such a grant of citizenship could only be construed as the involuntary naturalization of an individual. Conferring involuntary citizenship on a child who does not meet the statutory requirements for naturalization, and whose sole surviving parent does not request U.S. citizenship for his child, would be an unprecedented and unwise use of Congress' power under Article I, section 8 of the U.S. Constitution to "establish a uniform Rule of Naturalization." Therefore, the Department opposes the pending legislation and recommends that it not be enacted into law.

In the past, private relief bills providing U.S. citizenship to individuals who did not meet the requirements for naturalization have from time to time been enacted, but such measures have been rare. They have been particularly unusual since the 1960s, when several changes to immigration and nationality law led to dramatic reductions in the numbers of such bills. For example, a frequent subject of private relief bills was restoring U.S. citizenship to individuals who had unknowingly expatriated themselves by such actions as voting in foreign elections, but this equitable basis for relief was mooted by new requirements that ~~expatriation must be voluntary~~.

In extremely unusual cases citizenship has been conferred on an honorary basis upon living individuals, such as Winston Churchill, in recognition of a full lifetime of extraordinary distinction. In general, this country does not use the precious privilege of U.S. citizenship for honorary or political ends, or waive generally applicable citizenship requirements in order to provide a private benefit. Policy G of the Rules of Procedure and Statement of Policy for Private Immigration Bills of the Subcommittee on Immigration and Claims of the Committee on the Judiciary of the U.S. House of Representatives accurately states our national policy with respect to private citizenship

the act, in addition
to being voluntary must
be accompanied by an
application to
the INS for citizenship

DRAFT

The Honorable Trent Lott
Page Four

become a U.S. citizen without his or her parent's active involvement. Naturalizing a child without the consent of the child's only parent would be an extreme departure from current law, and one which vastly exceeds the type of waiver typical of private immigration relief legislation (for example, waiving an otherwise applicable residence requirement in the case of an adult applicant who knowingly and voluntarily seeks the waiver and the immigration status resulting from it).

With the exception of good moral character, Elián does not meet the normal requirements for either adult or child naturalization. He has suffered a terrible loss under unimaginable circumstances. The best thing this nation can do is return Elián to a loving parent as soon as possible. A grant of involuntary citizenship to this child, contrary to the wishes of his sole surviving parent and with a view toward preventing the child's return to that parent in Cuba, is not the proper course of action.

Thank you for considering our views in this matter.

Sincerely,

Robert Raben
Assistant Attorney General

Lisa -- I have one suggested change to the DOJ letter. I would delete the last phrase of the third to last paragraph (from "and one which vastly exceeds....status resulting from it.") The sentence is much stronger if it simply states that naturalizing a child w/o his parent's consent is an extreme departure from current law.

add
this
see
email

State comments

2. second para, change "Our decision that E's father . . . has the legal authority to speak for him in immigration matters is consistent with INS practice and with the legal principle that the parent is the person most able to represent the child's best interests" to "is consistent with INS practice and with the fundamental legal principle that parents speak for their minor children on matters of legal significance." Or something else that gets away from the question "is able to" and toward "is authorized to".

2 bis. second para., before last sentence, add "Once a parent with custodial rights is located, we do not expect or ask that parent to establish his or her right to custody in domestic U.S. court proceedings."

3. second para., final sentence, at end, change "and return to Cuba" to "and return to Cuba to be reunited with his father. This is the kind of information on which INS routinely acts, without any intervening family court proceeding."

4. third para., first and second sentences, delete everything from "examined" through "INS", so that it reads "the INS carefully considered allegations that the father was under coercion" Then delete "or was not able to assess properly whether the child was at risk of persecution or torture upon his return to Cuba." Put a period after "his wishes for the child." Then add a new sentence, "INS also considered whether there was objective evidence that Elian would be persecuted or tortured if returned to Cuba." Last clause, change to "the INS found no reason not to honor the father's request that Elian be returned to him in Cuba."

page two, first para, add after first sentence "(In fact, Mr. Gonzalez provided INS with substantial evidence that he had a sustained relationship with Elian and was involved in his education and medical care.)"

second para., before last sentence, add something like, "The involuntary conferral of citizenship under these circumstances would also be regarded as inconsistent with the international law and practice."

third and fourth para., and page three – things start getting repetitive and confused here, as it jumps from conferral of real citizenship by private bills to conferral of honorary (not real) citizenship and back. I would delete the reference to honorary citizenship or move it, so that the sequence would be (1) private bills are rare, esp. since 1960s; (2) House rules are sound (2) no precedent for conferring on someone who hasn't asked

page three-four. I would work in the point that citizenship is a fundamental attribute – it defines who we are, the country to which we owe allegiance, etc. To confer it on a child without the parent's consent would interfere fundamentally in the parent-child relationship and alter the child's status in a way that should not happen without the parent's consent. This could be worked into the carry-over paragraph.

page four – last para, last sentence, change to "with a view toward preventing – or even just further delaying – the child's return to that parent in Cuba, is not the proper course of action."

DPC Comments:

DoJ does not comment on legislation that would make Elian a lawful permanent resident. DoJ needs to add this issue to the letter.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20510

DRAFT

Dear Mr. Majority Leader:

The purpose of this letter is to state the views of the Department of Justice on pending legislation that would declare Elián González to be a naturalized citizen of the United States.

Elián González is a six-year-old child who has lost his mother. He is too young to make legal decisions for himself. Our decision that Elián's father and sole surviving parent, Juan González, has the legal authority to speak for him in immigration matters is consistent with INS practice and with the legal principle that the parent is the person most able to represent the child's best interests. When an unaccompanied minor alien, such as Elián, arrives in the United States without proper entry documents, the INS routinely attempts to contact a parent, either in the United States or in another country, regarding the child's whereabouts and inadmissibility. Here, after Elián's inspection was deferred, the INS met with his father who clearly articulated his desire that Elián withdraw his application for admission and return to Cuba.

Cuban national arrived in United States on November 26, 1999

In deciding whether to give effect to the father's wishes, the INS carefully examined whether there was any reason that the father could not be relied upon to represent the child's interests. Specifically, the INS considered allegations that the father was under coercion such that he was not able to express his wishes for the child or was not able to assess properly whether the child was at risk of persecution or torture upon his return to Cuba. On both counts, after interviewing the father and the Miami relatives, as well as examining other available information, including the asylum application tendered on Elián's behalf, the INS found no reason to question the father's decision not to assert an asylum claim and to request Elián's return to him in Cuba.

DRAFT

The Honorable Trent Lott
Page Two

There is no question that Mr. González is Elián's father and that he has the legal authority to represent his son in immigration matters. Mr. González expressed no desire to the INS that Elián be naturalized as a U.S. citizen, and made no statements that were even remotely consistent with such an objective. Therefore, we do not believe that the proposed citizenship legislation is at the request of, or has the consent or support of, Elián's father, who has the sole legal right to speak on behalf of Elián on such matters.

As a result, such a grant of citizenship could only be construed as the involuntary naturalization of an individual. Conferring involuntary citizenship on a child who does not meet the statutory requirements for naturalization, and whose sole surviving parent does not request U.S. citizenship for his child, would be an unprecedented and unwise use of Congress' power under Article I, section 8 of the U.S. Constitution to "establish an uniform Rule of Naturalization." Therefore, the Department oppose the pending legislation and recommend that it not be enacted into law.

In the past, private relief bills providing U.S. citizenship to individuals who did not meet the requirements for naturalization have from time to time been enacted, but such measures have been rare. They have been particularly unusual since the 1960s, when several changes to immigration and nationality law led to dramatic reductions in the numbers of such bills. For example, a frequent subject of private relief bills was restoring U.S. citizenship to individuals who had unknowingly expatriated themselves by such actions as voting in foreign elections, but this equitable basis for relief was mooted by new requirements that expatriation must be voluntary.

In extremely unusual cases citizenship has been conferred on an honorary basis upon living individuals, such as Winston Churchill, in recognition of a full lifetime of extraordinary distinction. In general, this country does not use the precious privilege of U.S. citizenship for honorary or political ends, or waive generally applicable citizenship requirements in order to provide a private benefit. Policy G of the Rules of Procedure and Statement of Policy for Private Immigration Bills of the Subcommittee on Immigration and Claims of the Committee on the Judiciary of the U.S. House of Representatives accurately states our national policy with respect to private citizenship

DRAFT

The Honorable Trent Lott
Page Three

bills:

The Subcommittee will require that any bill expediting naturalization be accompanied by evidence indicating that such action would be in the national interest, as opposed to personal interest. There are few precedents for favorable action on bills waiving any naturalization requirements or granting posthumous or honorary citizenship. It is the Subcommittee's intent generally to view unfavorably legislation of this type. More appropriate mechanisms for rewarding individuals may be in the form of medals, awards, or ceremonies.

We are unaware of any precedent for legislatively conferring citizenship upon a specific living individual who has not sought that benefit. The House Immigration Subcommittee's rules recognize how important it is that the beneficiaries of private relief bills actively seek the benefit by requiring, in Rule of Procedure 1(i), that the author of the bill submit "[a] signed statement by each beneficiary, or the beneficiary's guardian, that he or she desires the relief sought by the bill."

Requiring voluntary assent to private immigration relief is consistent with the naturalization provisions of the Immigration and Nationality Act (INA). Although, by definition, private immigration bills create exceptions to the uniform rules applicable to other individuals, the greater a private bill's departure from the normal requirements of the law, the more questionable it is as a sound and supportable action. Section 337 of the INA requires persons who have applied for naturalization to take the oath of allegiance. By taking this oath, new citizens publicly undertake the obligations of U.S. citizenship, including the obligation to bear allegiance to the Constitution and laws of the United States, to renounce allegiance to any other nation, and to bear arms or perform other national service when required by law. The oath acts as the new citizen's voluntary assumption of these obligations.

Under the INA, the acquisition of U.S. citizenship by a child who is not born a U.S. citizen depends upon the actions of his or her parents. The child may acquire U.S. citizenship derivatively through the naturalization of his or her parent, or a U.S. citizen parent may apply for naturalization on behalf of his or her child born abroad. In neither case may an alien child

DRAFT

The Honorable Trent Lott
Page Four

become a U.S. citizen without his or her parent's active involvement. Naturalizing a child without the consent of the child's only parent would be an extreme departure from current law, and one which vastly exceeds the type of waiver typical of private immigration relief legislation (for example, waiving an otherwise applicable residence requirement in the case of an adult applicant who knowingly and voluntarily seeks the waiver and the immigration status resulting from it).

With the exception of good moral character, Elián does not meet the normal requirements for either adult or child naturalization. He has suffered a terrible loss under unimaginable circumstances. The best thing this nation can do is return Elián to a loving parent as soon as possible. A grant of involuntary citizenship to this child, contrary to the wishes of his sole surviving parent and with a view toward preventing the child's return to that parent in Cuba, is not the proper course of action.

Thank you for considering our views in this matter.

Sincerely,

Robert Raben
Assistant Attorney General

THE WHITE HOUSE
WASHINGTON

FAX COVER SHEET

TO: Maria Echaveste ⁶⁻¹⁹⁰⁷ Lisa M 5-3109
Wendy Patten-69140
Fax:

**FROM: Irene B. Bueno, Special Assistant to the President
for Domestic Policy**
217 Old Executive Office Building
Washington, DC 20502
Phone: 202-456-6558 Fax: 202-456-5581
E-mail: irene_bueno@opd.eop.gov

DATE: 2/1/00

PAGES: 4 **INCLUDING COVER**

- ☒ Per my e-mail or voice mail.
☐ For your information or review.
☐ Per your request.

COMMENTS:

005 Letter



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEET

DATE: 2/1/2000

TO:

Irene Bueno

PHONE NO.

FAX NO.

456-5581

FROM:

PATTY FIRST

PHONE NO.:

202/514-4810

FAX NO.

202/514-9149

NO. OF PAGES:

4 (EXCLUDING COVER)

COMMENTS:

Sans constitutional argument.

Irene Bueno
02/15/2000 02:36:05 PM

Record Type: Record

To: lisa.j.macecevic/omb/eop@eop
cc:
bcc: Irene Bueno/OPD/EOP
Subject: Re: DoJ letter on Elian 

The other major comment I have on the DOJ letter is that it does not comment on legislation that would make Elian a lawful permanent resident. DOJ needs to add this issue to this letter.

Please send me the revised drafts of the State Dept and DOJ letter. Thanks.

Irene Bueno

Irene Bueno
02/15/2000 02:26:25 PM

Record Type: Record

To: Lisa J. Macecevic/OMB/EOP@EOP
cc:
bcc: Irene Bueno/OPD/EOP
Subject: Re: DoJ letter on Elian 

Based on Mark's comments, I suggest rewriting the first two sentences of the second paragraph as follows:

"On November 26, 1999, Elian Gonzalez, a six-year-old Cuban national, arrived in the United States without any parents. Elian lost his mother and his only surviving parent is his father, Juan Gonzalez, who lives in Cuba."

Let me know if DOJ is okay with this.

Are you waiting for any other comments? I would like to have these letters ready to go if necessary. Please let me know. Thanks.

From: Lisa J. Macecevic on 02/02/2000 03:20:36 PM

From: Lisa J. Macecevic on 02/02/2000 03:20:36 PM
Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: DoJ letter on Elian

Hello again,

I wanted to pass along comments before your conference call

--from Mark Magana on this INS letter....

he suggests giving a little more background in the second paragraph.

So instead of just saying "Elian...is a six-year-old child who has lost his mother."

Say something like... "On November 26th, 1999, Elian Gonzales was found...and his mother died..."

and to add he is a Cuban child.

Also, he wasn't sure if INS had the power to label Elian's father as the "custodial" parent--if so, this would be helpful later when/if custody was the main issue.

--From me...do we know the correct spelling of Elian's last name...State spells it "Gonzales" and INS says "Gonzalez" I would assume they are not interchangeable.

Comments on State letter on Elian Gonzales-Brotons

From OMB/LRD February 1, 2000 2:14 P.M.

Department of Justice: Request to tone down the voice of the letter; replace "kidnaping," for example, with "wrongful retention." (They referred to Mary Ryan's "declaration" for the lawsuit as good words to use.)

Domestic Policy Council: See marks on attached draft.

National Security Council: See marks on attached draft. NSC's edits reflect their view that the letter's central message—that failure to return Elian to his father in Cuba would harm U.S. efforts to secure the return of U.S. citizen children abroad—is lost in excessive detail both on the legal framework and on consular functions.

To: Irene Bueno
From: Lisa Macecic

Irene: Here's all the comments (including those typed above) that I am going to send to State. I wanted to give you a chance to run them by Maria once before I send them off.

Let me know when it's clear to send them... they're a bit hairy!

Lisa

NSC

Comments

202 647 2782

STATE LEG AFF.

United States Department of State

DRAFT

Washington, D.C. 20520



I am writing to bring to your attention the implications for ~~consular operations, and specifically~~ the Department of State's ability to successfully pursue pending and future international parental child abduction cases, should Elian Gonzales Brotons not be returned to his father's custody and his place of habitual residence.

more this sentence as required by other sentence.

as Elian Gonzales

~~Earlier this week, I provided a declaration to the Department of Justice in support of the decision made by the Commissioner of the Immigration and Naturalization Service (INS), and ratified by the Attorney General, that Elian Gonzalez Brotons should be returned to his father in Cuba. I did so because the Department of State would expect a foreign government to make the same decision with respect to an American child in similar circumstances. The INS decision is consistent with the principles that the Department of State would seek to have followed in such cases. Failure to implement the INS decision could seriously prejudice the ability of the United States Government to help parents in the United States recover their children taken to foreign countries.~~

~~The State Department's Office of Children's Issues in the Bureau of Consular Affairs serves as the United States Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"). It is responsible for cooperating with the Central Authorities in other countries to "secure the prompt return of children" to their place of habitual residence under the Hague Convention when they have been "wrongfully removed... or retained" by one parent, and to achieve the other objectives of the Hague Convention.~~

Insert as edited at an next page

~~The role of consular officers in protecting children is recognized in the 1963 Vienna Convention on Consular Relations ("VCCR"), which largely codified customary international law and which now, with over 160 countries as parties, sets forth well-established and generally recognized principles. Article 5(h) of the VCCR specifically provides that consular functions include, "safeguarding the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons."~~

Protect children

The rights of parents are also recognized internationally and have long been a central premise of our work on behalf of Americans. It is a basic precept of our work that the parents of American citizen children, not the Department of State or the United States Government, should decide what is best for their children. As a general matter, the issuance of passports to and

01/27/00 13:54

B202 847 2762

STATE LEG AFF.

202 333 3103

DRAFT

travel by minor U.S. citizen children is governed, under Department of State regulations and practice, by the wishes of their parents. ~~We are also a party to the Hague Convention, which established procedures to secure...~~

The United States is at the forefront in the ~~provision of consular services to its citizens~~ and in its advocacy on behalf of parents seeking the return of their children. ~~Because other countries scrutinize our practices, our credibility and effectiveness depend upon our ability to adhere to the principles we espouse.~~ If the United States fails to act in accordance with such principles, we jeopardize our ability to insist on adherence by other countries. Consistency between principles and practice is particularly important in matters of foreign relations, where enforcement of rights so often depends upon reciprocity, diplomatic ~~processes and negotiations~~, and cooperation. Over the years, hundreds of children have been returned to their parents in the United States because other countries have been willing to respect basic principles of international law and custom and, when applicable, relevant treaty obligations.

~~When a young child is found in a foreign country, the accepted international practice is to attempt to identify the child's parent or parents, and to return the child to that person whenever possible, often through the assistance of consular officials representing the child's country of origin.~~ Were a U.S. citizen minor child found in a foreign country in the circumstances of Elian Gonzalez ~~actions~~, we would expect the government of that country immediately to seek the child's surviving parent, if any, and to contact U.S. consular officials for assistance in doing so if necessary. We would then expect the government promptly to return the child to the parent, ~~unless the parent expressly asked that other arrangements be made.~~ We would ensure that the foreign government was aware of the parent's wishes and would not expect our representations in that regard to be questioned. We would not expect the surviving parent to have to participate in a foreign court's custody proceedings to establish his or her right to assume responsibility for the child. We would object strongly if a foreign government declined to return an American child to its only surviving parent because other relatives sought custody of the child or because of a judgment that the child would be better off in the country in which the child was found. We also would take vigorous exception to a foreign government or court that sought to substitute its view of the "best interests of the child" for those expressed by a parent, absent a previous finding that the parent was unfit.

Many countries of the world, like Cuba, are not party to the Hague Convention on the Civil Aspects of International Child Abduction. When children are taken from the United States by one parent to such a "non-Hague country," the Department of State typically seeks the cooperation of officials of that country in securing the return of the child to the parent left behind in the

repeats
in more
detail
not

made above at X. — some of this language could be moved into the note at X

DRAFT

United States. If the INS decision is not upheld, our ability to make such requests successfully in the future will surely be impaired. First, such requests appeal to the foreign country involved to respect the rights of the left-behind parent and the importance of the parent-child relationship; the ability of the United States to appeal to these considerations with credibility will be diminished. Second, foreign authorities will have to consider the possibility that their own countrymen will remember our failure to return Elian to his father and react negatively if such authorities return a child to a left-behind parent in the United States.

A failure to enforce the INS decision would also be inconsistent with the principles we advocate and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizen children taken to foreign countries. Not returning Elian to his father would be perceived as a decision that the fundamental parent-child relationship can be ignored, even where there is no evidence of parental unfitness. A decision based on the "independent" views of a six-year-old child would also be a dangerous precedent. Finally, not returning Elian to his father could be perceived as endorsing the right of the country in which a child is found to refuse to return the child to his habitual residence based on a judgment that the habitual residence is not a desirable place to raise a child. A decision not to return Elian Gonzalez Brotons to Cuba could encourage the making of such arguments by abducting parents and their acceptance by foreign authorities.

I hope this information will be of use to you. Please do not hesitate to contact me if there is any further information that I can provide to you.

Sincerely,

Mary A. Ryan

Assistant Secretary for Consular Affairs

DPC

Comments

United States Department of State

DRAFT

Washington, D.C. 20520

I am writing to bring to your attention the implications for
 ✓ ~~consular operations, and specifically the Department of State's~~
 ✓ ~~ability to successfully pursue pending and future international~~
 ✓ ~~parental child abduction cases, should Elian Gonzales Brotons not~~
 ✓ ~~be returned to his father's custody, and his place of habitual~~
 ✓ ~~residence.~~

Earlier this week, I provided a declaration to the
 Department of Justice in support of the decision made by the
 Commissioner of the Immigration and Naturalization Service (INS),
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The United States is at the forefront in the provision of consular services to its citizens and in its advocacy on behalf of parents seeking the return of their children. Because other countries scrutinize our practices, our credibility and effectiveness depend upon our ability to adhere to the principles we espouse. If the United States fails to act in accordance with such principles, we jeopardize our ability to insist on adherence by other countries. Consistency between principles and practice is particularly important in matters of foreign relations, where enforcement of rights so often depends upon reciprocity, diplomatic pressure and negotiations, and cooperation. Over the years, hundreds of children have been returned to their parents in the United States because other countries have been willing to respect basic principles of international law and custom and, when applicable, relevant treaty obligations.

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Sincerely,

Mary A. Ryan

Assistant Secretary for Consular Affairs
~~Dep. Asst. Sec.~~

JAN-28-2000 14:21

OMB/LRD/ESGG

202 395 3189

002/004

P. 02/01

01/27/00

13:53

202 647 2782

STATE LEG AFF.

DOMESTIC POLICY



DRAFT

United States Department of State

Washington, D.C. 20520

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as Elian Gonzales

Irene COT

Irene: make clear that this "right of parents" long becomes part of same party as Hague Conv.

Irene COT also

01/27/00 13:54

202 847 2782

STATE LEG AFF.

DOMESTIC POLICY

DRAFT

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JAN-28-2000 14:22

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STATE LEG AFF.

DOMESTIC POLICY

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Sincerely,

Mary A. Ryan

Assistant Secretary for Consular Affairs

THE WHITE HOUSE
WASHINGTON

FAX COVER SHEET

TO:

~~Maria Echaveste 6-1907~~
~~Wendy Patten 6-9146~~
Fax:

Risa M 5-3109

**FROM: Irene B. Bueno, Special Assistant to the President
for Domestic Policy**

217 Old Executive Office Building

Washington, DC 20502

Phone: 202-456-6558 Fax: 202-456-5581

E-mail: irene_bueno@opd.eop.gov

DATE:

2/2/00

PAGES:

4

INCLUDING COVER

- ☒ Per my e-mail or voice mail.
☐ For your information or review.
☐ Per your request.

COMMENTS:

NSC + DPC comments on State Dept. Letter.
Maria Lac approved.

01/27/00

13:53

202 647 2782

STATE LEG AFF.

DOMESTIC POLICY



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DRAFT

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Washington, D.C. 20520

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One paragraph

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*Move *
to page 2*

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Mary A. Ryan

Assistant Secretary for Consular Affairs

Total Pages: 6

LRM ID: LJM72

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, January 27, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: *Richard E. Green*
Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Lisa J. Macecevic
E-Mail: Lisa_J_Macecevic@omb.eop.gov
PHONE: (202)395-1092 FAX: (202)395-3109

SUBJECT: STATE Report on Elian Gonzales

DEADLINE: Noon Friday, January 28, 2000

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Please send any comments on the attached letter concerning Elian Gonzales by **NOON TOMORROW** so the letter may be transmitted to Congress TOMORROW.

Thank you.

DISTRIBUTION LIST

AGENCIES:

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52-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7760

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Christine J. Lindsey

LRM ID: LJM72 SUBJECT: STATE Report on Elian Gonzales

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO:

Lisa J. Macecevic Phone: 395-1092 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM:

1/28/00 (Date)
Irene Bueno (Name)
DPC (Agency)
6-6558 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur

☐ No Objection

☐ No Comment

☒ See proposed edits on pages _____

☐ Other: _____

4 FAX RETURN of _____ pages, attached to this response sheet

Joseph G. Pipan
Brooke B. Livingston
Elizabeth Gore
Dawn M. Chirwa
Mary B. DeRosa
Rodney G. Bent
Robert D. Kyle
Alexander S. Keenan

**DRAFT**

United States Department of State

Washington, D.C. 20520

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Mary A. Ryan

Assistant Secretary for Consular Affairs

~~Dept of State~~

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

NATIONAL
SECURITY
COUNCIL

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete,
clear transmission? If not,
please call:

(202) 456-9141

From: Wendy Patten

To: Irene Bueno

Fax Number: 6-5581

Date/Time: 1-28-00

No. of pages to follow: 3

Message: ~~our~~ comments on Ryan letter

my

— still not
cleared by NSC (Mera) —
but for your info
— wld



DRAFT

United States Department of State

Washington, D.C. 20520

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Insert as edited at 1/27 on next page.
~~The role of consular officers in protecting children is recognized in the 1963 Vienna Convention on Consular Relations ("VCCR"), which largely codified customary international law and which now, with over 160 countries as parties, sets forth well-established and generally recognized principles. Article 5(h) of the VCCR specifically provides that consular functions include, "safeguarding... the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons."~~

Don't file this
The rights of parents are also recognized internationally and have long been a central premise of our work on behalf of Americans. It is a basic precept of our work that the parents of American citizen children, not the Department of State or the United States Government, should decide what is best for their children. As a general matter, the issuance of passports to and

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travel by minor U.S. citizen children is governed, under Department of State regulations and practice, by the wishes of their parents. We are also a party to the Hague Convention..., which established procedures to secure....

The United States is at the forefront in the provision of consular services to its citizens and in its advocacy on behalf of parents seeking the return of their children. Because other countries scrutinize our practices, our credibility and effectiveness depend upon our ability to adhere to the principles we espouse. If the United States fails to act in accordance with such principles, we jeopardize our ability to insist on adherence by other countries. Consistency between principles and practice is particularly important in matters of foreign relations, where enforcement of rights so often depends upon reciprocity, diplomatic pressure and negotiations, and cooperation. Over the years, hundreds of children have been returned to their parents in the United States because other countries have been willing to respect basic principles of international law and custom and, when applicable, relevant treaty obligations.

When a young child is found in a foreign country, the accepted international practice is to attempt to identify the child's parent or parents, and to return the child to that person whenever possible, often through the assistance of consular officials representing the child's country of origin. Were a U.S. citizen minor child found in a foreign country in the circumstances of Elian Gonzalez ~~brothers~~, we would expect the government of that country immediately to seek the child's surviving parent, if any, and to contact U.S. consular officials for assistance in doing so if necessary. We would then expect the government promptly to return the child to the parent, unless the parent expressly asked that other arrangements be made. We would ensure that the foreign government was aware of the parent's wishes and would not expect our representations in that regard to be questioned. We would not expect the surviving parent to have to participate in a foreign court's custody proceedings to establish his or her right to assume responsibility for the child. We would object strongly if a foreign government declined to return an American child to its only surviving parent because other relatives sought custody of the child or because of a judgment that the child would be better off in the country in which the child was found. We also would take vigorous exception to a foreign government or court that sought to substitute its view of the "best interests of the child" for those expressed by a parent, absent a previous finding that the parent was unfit.

Many countries of the world, like Cuba, are not party to the Hague Convention on the Civil Aspects of International Child Abduction. When children are taken from the United States by one parent to such a "non-Hague country," the Department of State typically seeks the cooperation of officials of that country in securing the return of the child to the parent left behind in the

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detail

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United States. If the INS decision is not upheld, our ability to make such requests successfully in the future will surely be impaired. First, such requests appeal to the foreign country involved to respect the rights of the left-behind parent and the importance of the parent-child relationship; the ability of the United States to appeal to these considerations with credibility will be diminished. Second, foreign authorities will have to consider the possibility that their own countrymen will remember our failure to return Elian to his father and react negatively if such authorities return a child to a left-behind parent in the United States.

Don't file this

A failure to enforce the INS decision would also be inconsistent with the principles we advocate and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizen children taken to foreign countries. Not returning Elian to his father would be perceived as a decision that the fundamental parent-child relationship can be ignored, even where there is no evidence of parental unfitness. A decision based on the "independent" views of a six-year-old child would also be a dangerous precedent. Finally, not returning Elian to his father could be perceived as endorsing the right of the country in which a child is found to refuse to return the child to his habitual residence based on a judgment that the habitual residence is not a desirable place to raise a child. A decision not to return Elian Gonzalez Brotons to Cuba could encourage the making of such arguments by abducting parents and their acceptance by foreign authorities.

I hope this information will be of use to you. Please do not hesitate to contact me if there is any further information that I can provide to you.

Sincerely,

Mary A. Ryan

Assistant Secretary for Consular Affairs



U.S. Department of State

Office of The Counselor

Room 7509

Tel: 202 647-5529

Fax: 202 647-0247

Date: 1/1/01
Total Pages (including FAX sheet): 5



United States Department of State
The Counselor

To:

Nara Rudman

FAX Number:

456-9460

From:

Wendy Shuman

Telephone Number:

Subject:

As discussed, Cong. TP's. and Q & A.

Irene Bero

→ 6-5881

~~Wendy Shuman~~
Wendy Patten

Acknowledge Receipt -- Yes: ☐ No: ☐

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ELIAN GONZALEZ LEGISLATIVE PROPOSALS CONGRESSIONAL BRIEFING POINTS

US Citizenship

- The State Department is deeply concerned that Congress is considering trying to divest INS of jurisdiction over the case of Elian Gonzalez and forcing this matter into the state courts of Florida.
- The right of a child to grow up with a parent, and of a parent to raise his child, is one of the most fundamental and widely respected human rights.
- Legislation divesting INS of jurisdiction will be seen as imposing obstacles to the ability of Elian and Juan Gonzales to enjoy this right.
- International family law experts do not recognize a legitimate custody question for the state courts of Florida.
- Juan Gonzalez is Elian's father, he provided for Elian, he has a close and loving relationship with Elian, and he has not abandoned him – he immediately asked appropriate officials to return Elian to him.
- *Based on the facts*
It is clear that Juan Gonzalez, as Elian's father, is legally entitled to custody of Elian and to act for Elian.
- If Elian and his father were protected by our Constitution, there would be no constitutionally sustainable basis for governmental interference with the father's decision to take Elian to Cuba. Our Supreme Court has set a very high standard that the government must meet before it can interfere with or terminate parental rights. Termination requires clear and convincing evidence of parental unfitness.
- It would be a dangerous international precedent to invite a domestic family court to second-guess a foreign parent's decision to continue raising his child in the child's home country, or to suggest that a domestic court should decide what is best for a foreign child when there is a parent who can do this.
- Imposing citizenship on Elian Gonzalez would be inconsistent with international law. Other countries could and likely would refuse to recognize Elian as an American.
- The United States has historically taken the position that the involuntary conferral of citizenship violates international law except in very limited situations not applicable here.
- Elian's father asked for Elian's return almost as soon as Elian arrived here. Elian had none of the ties to the United States that international law would expect a person to have before being made a citizen.

Review +
check DOS

Elian Gonzalez – Congressional Briefing Points
Draft of January 25, 2000

- Citizenship fundamentally defines who a person is, and imposes obligations as well as rights. In the case of a six-year-old child in Elian's circumstances, international law would recognize the right of the father to decide whether his child should be made a citizen of a foreign country.

Lawful Permanent Residents

- Making Elian a permanent resident of the United States over his father's objection would also raise serious questions under international law.
- It would also be seen as interfering with the father's parental rights to decide his son's status and the right of Elian and his father to be reunited promptly.
- The very concept – "permanent resident" – could be used to imply that we are interfering with Elian's right to leave the United States and return to his home and his father in Cuba.

International Implications

- How Congress acts will have far reaching international implications. The Department of State is deeply concerned that not returning Elian to his father will damage our ability to obtain the return of American children to their American parents.
- International law and practice are clear that a child in Elian's circumstances should be returned to his surviving parent.
 - If this were an American child, we would insist on his immediate return to his father and would object strongly if the father were forced to appear in a foreign court to establish custody or to defend a decision to bring the child back to the United States.
- In international custody disputes between two parents, we ^{would not} push for children to be returned promptly to their "habitual residence." This is the rule we follow under the Hague Convention on parental child abduction. We also ^{would not} push non-Hague countries to follow it, for the benefit of American parents. Elian's habitual residence is Cuba.
- If Elian were an American child, we would also object to making a decision based on Elian's purported views. We would say that he is too young to have a view, and that it is too easy for those with immediate physical custody to influence what he says. This principle is reflected in the Hague Convention.
- Our standing as a country that respects fundamental human rights will surely be damaged – involving the state courts of Florida will be seen as cruelly prolonging the separation of the father and son for political purposes.
- The international community will use imposing US citizenship on Elian Gonzalez or making him a permanent resident of the United States as an example of the United States disregarding fundamental international legal principles.

Elián Gonzalez – Congressional Briefing Points
Draft of January 25, 2000

CONTINGENCY POINTS

Q. ARE YOU SAYING THAT INTERNATIONAL LAW REQUIRES THAT ELIAN BE RETURNED TO CUBA?

- Yes. There is no basis under international law for not returning Elian to his father.
- There ^{also} is no basis under international law for not returning Elian to Cuba at his father's request. There is no legal basis on which the United States could credibly insist that the father and son be reunited somewhere else.

- There is no remotely credible allegation that Elian would be persecuted under the Refugee Convention or tortured under the Torture Convention. These would be the only legal bars to reuniting a father and son with a proven parental relationship in the country designated by the father.

leads like a ruling on asylum or make a claim. If agree

DOJ must clear (Katherine Brown-Skeel laugh)

Q. ARE YOU SAYING THERE IS NO APPROPRIATE ROLE FOR CONGRESS?

- It would be best if Congress stayed out of this. It certainly should not do anything that divests INS of jurisdiction.

matter because international law is clear.

Q. CONGRESS WON'T STAY OUT, SO WHAT DO YOU RECOMMEND WE DO?

- We would be less concerned if Congress acted to make it possible for the father to come, if he wishes to, without being embroiled in highly questionable litigation.

- Congress should not force the father to come here, or force the father or Elian to stay here over the father's objections.

- We would not object to giving Elian the right to return to the United States in the future, but only if INS maintains jurisdiction and Elian is first reunited with his father in Cuba.

Q. WHAT ABOUT THE MOTHER'S WISHES FOR ELIAN?

- We have no way of knowing what she would have wanted.

- The fact that she set out from Cuba with him doesn't mean she would want him here without her.

- Her own mother says that she would have wanted Elian returned to his family in Cuba.

- In any event, the law provides for return of a child to the sole surviving parent in these circumstances, and the father has clearly expressed his desire for that result.

Report President's statement (see NSC 01/17)

-- The father's request cannot be denied based on speculation that the father's expressed wishes are not his true wishes, or on speculation about what the mother would have wanted.

Q. SHOULDN'T THE FATHER HAVE TO EXPRESS HIS VIEWS HERE. IN A FREE ENVIRONMENT?

-- We would not agree that an American parent in a similar situation should have to travel to a foreign country and participate in a court proceeding to reclaim his or her child from distant relatives.

-- INS made a reasonable decision that the father is expressing his true wishes. Those who have met with him privately -- as an INS officer and State Department witness did twice -- are in the best position to judge this.

-- The father's concerns about having to travel to Miami are entirely understandable.

-- He should not have to become embroiled in unfounded litigation.

-- He should not have to travel to a place that he may genuinely consider hostile or unsafe.

-- He has publicly expressed concern about the media coverage of his son and may legitimately not want to be swept up into it.

-- If this were an American parent, we would be sympathetic to a request that we seek to arrange for the child's return without the parent having to travel.

Immigration and Naturalization Service[TEXT ONLY](#)[WHAT'S NEW](#)[FAQs](#)[HOW DO I...?](#)[WHERE IS...?](#)[GLOSSARY](#)[FEEDBACK](#)[THE HOME](#)

Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT

January 5, 2000

INS Decision in the Elian Gonzalez Case

Doris Meissner
Commissioner
Immigration and Naturalization Service

The case of Elian Gonzalez has been a difficult one for several reasons. Elian Gonzalez is a six-year-old boy, too young to make legal decisions for himself. In this circumstance, the U.S. Immigration and Naturalization Service (INS) had to decide who could legally speak for him on immigration issues. This task was complicated by the fact that several people other than Elian's father—a great uncle as well as three lawyers—claimed to represent him. As a result, INS met with the father in Cuba, and separately, with the great uncle and the lawyers in Miami. After careful evaluation of the relevant facts, INS has determined that Mr. Juan Gonzalez of Cuba has the sole legal authority to speak on behalf of his son, Elian, regarding Elian's immigration status in the United States.

There is no question that Mr. Gonzalez is Elian's father. Moreover, Mr. Gonzalez has had a close and continuous parental relationship with his son. During INS' interviews with Elian's father, he provided vivid details about his parental relationship with his son and about the nature of the bond they share as father and son. He provided extensive documentation about Elian's schooling and his medical and health histories, as well as photographs depicting the activities in which he and his other family members frequently participated with Elian. This scope of information and level of detail Mr. Gonzalez provided helped inform INS as to the nature and closeness of the relationship Mr. Gonzalez shared with his son Elian. INS has not uncovered any information that might call into question Mr. Gonzalez's parental and legal rights with regard to Elian's immigration status.

During INS' two meetings with Mr. Gonzalez, his wishes for Elian were discussed at some length. He made it very clear during both of these meetings that he wants Elian returned to him as soon as possible. Based on these meetings, INS believes that he is expressing his true wishes, and therefore we have determined that Elian should be reunited with his father, Mr. Gonzalez.

INS has advised both Mr. Gonzalez and Elian's great uncle in Miami of this decision, and is prepared to work with all the parties involved to make the appropriate arrangements for Elian's return to his father by January 14, 2000.

Having reached a decision, INS believes there are several ways this decision can be implemented. The United States has discussed with the Government of Cuba their consideration of allowing Mr. Gonzalez, Elian's father, to travel to the United States to

accompany Elian home. INS also has offered Elian's great uncle in Miami and any member of his Miami family an opportunity to escort Elian back to Cuba. In addition, third parties have offered to assist in facilitating Elian's return to his father. INS is ready to work with the family and others to make appropriate arrangement for Elian to be reunited with his father. We believe this decision can be carried out without INS' taking charge of Elian.

This decision has been based on the facts and the law. Both U.S. and international law recognize the unique relationship between parent and child, and family reunification has long been a cornerstone of both American immigration law and INS practice.

It is our hope that with the knowledge of today's decision, the Miami relatives will agree to cooperate and work together, with either Elian's father or a third party, to facilitate Elian's return to his father. This little boy, who has been through so much, belongs with his father. We urge everyone involved to understand, respect and uphold the bond between parent and child and the laws of the United States.

– INS –



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447.2762

PODESTA talking points

CUBAN BOY
January 26, 2000

CONTEXT: *Sen. Mack has introduced a bill to confer citizenship on Elian Gonzalez, and Rep. McCollum introduced companion legislation in the House. Rep. Rangel is sponsoring a sense of Congress resolution saying that Congress should not interfere in this case and that INS should carry out its decision to return the boy to his father, and Rep. Menendez has introduced legislation to make the child a lawful permanent resident. Action by Congress to confer citizenship or residency on the child would effectively divest INS of jurisdiction over the matter, leaving a Florida state court to resolve a custody case filed by the boy's great uncle against the boy's father in Cuba.*

On January 22, Elian Gonzalez's grandmothers, accompanied by representatives of the National Council of Churches, met with the Attorney General and INS Commissioner to express their concerns. They asked for assistance in arranging to see their grandson, which INS attempted to pursue quietly. When efforts to reach agreement on a location for the meeting failed, INS directed the child's great uncle to make him available for a private meeting with his grandmothers today at 4:00 at the Miami Beach home of a nun who is the president of a Catholic college.

- INS determined that Elian's father, Juan Gonzalez, has sole authority to speak on his son's behalf regarding his immigration status in this case. Mr. Gonzalez has asked that his son be returned to Cuba. ✓
- INS very carefully assessed the law and the facts. We believe they handled this case in the appropriate manner and we support their decision. ✓
- White House officials did not seek to, nor did they, influence the outcome of this decision, which, let me reiterate, was made solely by the responsible authorities following the law and INS rules and procedures. But we want to see it carried out.
- As the President has said, we hope the challenge to the INS decision will be resolved in court, not in the Congress, and we strongly oppose legislation to confer citizenship on the child. ✓
- *Substantive point*
We've tried from the beginning not to politicize this case. We want this to be resolved through the legal process, not through politics. But if Congress jumps in and interferes with the case, it becomes inherently political.
- We strongly oppose the bill because it would interfere with the bond between a parent and child and would impose citizenship and all its attendant obligations on someone who has not consented to those obligations.

- Another major concern is that this legislation would seriously undermine our efforts to assist American parents in bringing home U.S. citizen children who have been kidnapped abroad. Many of you have been involved in such cases involving your constituents, and you know the pain those families go through.
- It would also raise serious and legitimate questions about the fairness of our immigration law. A number of other communities have asked whether a child from a different country would be automatically granted citizenship. This bill has much broader implications than just this specific case.
- The President has not made a decision on whether he would veto a citizenship bill, but he would not rule out a veto.

CUBAN BOY
January 26, 2000

CONTEXT: *On January 21, Elian Gonzalez's grandmothers traveled to the U.S. to appeal for their grandson's return to his family in Cuba. On January 22, the grandmothers, accompanied by representatives of the National Council of Churches, met with the Attorney General and INS Commissioner to express their concerns. They asked for assistance in arranging to see their grandson, which INS attempted to pursue quietly. When efforts to reach agreement on a location for the meeting failed, INS directed the child's great uncle to make him available for a private meeting with his grandmothers today at 4:00 at the Miami Beach home of a nun who is the president of a Catholic college.*

Sen. Mack has introduced a bill to confer citizenship on the boy, and Rep. McCollum introduced companion legislation in the House. Rep. Rangel is sponsoring a sense of Congress resolution saying that Congress should not interfere in this case and that INS should carry out its decision to return the boy to his father, and Rep. Menendez has introduced legislation to make the child a lawful permanent resident. Action by Congress to confer citizenship or residency on the child would effectively divest INS of jurisdiction over the matter, leaving a Florida state court to resolve a custody case filed by the boy's great uncle against the boy's father in Cuba.

What is the INS decision in the Elian Gonzalez case? Do you support it?

- INS determined that Elian's father, Juan Gonzalez, has sole authority to speak on his son's behalf regarding his immigration status in this case. Mr. Gonzalez has asked that his son be returned to Cuba.
- INS very carefully assessed the law and the facts. We believe they handled this case in the appropriate manner and we support their decision.

Congress is seeking to pass legislation that confers citizenship or permanent resident status on Elian Gonzalez. What's your stance on these bills?

- As the President has said, we hope the challenge to the INS decision will be resolved in court, not in the Congress, and we strongly oppose legislation to confer citizenship on the child.

Will you veto such a bill?

- As the President has said, he has not made a decision on this question, but would not rule out a veto.

What's your reaction to the grandmothers' visit to the U.S.?

- We have said from the beginning that we believe that the presence of Elian's father or family members would be helpful, but that any decision to come here would be up to them. We continue to hope that the family will be able to get together while the grandmothers are here.

[IF ASKED] What is the purpose of today's meeting between Elian Gonzalez and his grandmothers? Is INS planning to remove the boy from his Miami relatives and allow his grandmothers to take him home to Cuba?

- No. INS has made clear to everyone involved that this is just a visit -- a visit that the grandmothers requested -- and that the meeting will not change the child's present placement in the care of his great uncle.

What is the next step in this case? What happens next in the federal lawsuit filed by attorneys for Elian's great uncle?

- Any questions on next steps for the grandmothers should be directed to them. As to the legal proceedings, this is a matter for the Justice Department to handle, and in keeping with normal policy, we cannot comment on pending litigation.

Does the White House support the Attorney General's view that the state courts don't have jurisdiction over the boy from Cuba?

- As we have said before, this matter is appropriately in the hands of the INS and the Department of Justice.

Were the political implications of the decision discussed at the senior levels?

- White House officials did not seek to, nor did they, influence the outcome of this decision, which, let me reiterate, was made solely by the responsible authorities following the law and INS rules and procedures. But we want to see it carried out.

What about Dan Burton's subpoena?

- INS and the Attorney General are involved in dealing with all the related legal developments in this case.

[IF ASKED] Are you concerned that Cuban officials are controlling the grandmothers' actions during their visit?

- All the officials from the Department of Justice and INS who have met with the grandmothers have been profoundly impressed by the genuineness of their desire to see Elian and to have him return to his home in Cuba.

Irene Bueno

01/20/2000 06:41:41 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP

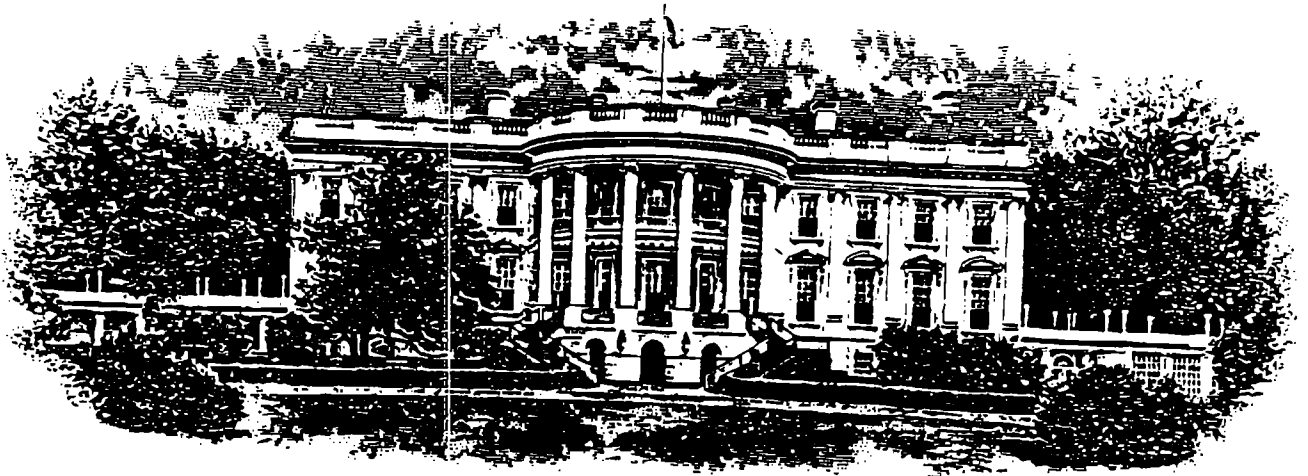
cc: Anna Richter/OPD/EOP

Subject: Legislation on Elian Gonzalez

Here's an quick up on where we are on the legislation. We understand that at least two different bills will be offered on when Congress returns. One to provide US citizenship and the other to provide lawful permanent residence (LPR). DOJ is reviewing what the effect of passage of either of this legislation does with regard to the custody question. DOJ is expected to provide us that analysis by Monday. We have heard that Sen. Bob Graham who is trying to find some middle ground may introduce legislation that requires INS to consider "the best interest of the child" in determining who speaks for the child in similar cases. We also have heard that Senators who are in support of the Administration's Central American immigration and late amnesty/registry date legislation are considering using the opportunity on the debate on the Gonzalez legislation to discuss the need for passage of these two pieces of legislation. It is expected that the Senate will take this up first since the House is not scheduled for quorum call until Thursday. I will elaborate further in the team leaders meeting or call me if you would like to discuss further. Thanks.

THE WHITE HOUSE

Office of the Press Secretary



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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 25, 2000

STATEMENT BY THE PRESIDENT

The Briefing Room

12:10 P.M. EST

THE PRESIDENT: Hello. I think it's just afternoon. I'm glad you all got here; I thought school was cancelled today. (Laughter.)

Seven years ago when I came to Washington, our nation was burdened with a \$290-billion deficit, and our national debt had quadrupled in 12 years. Interest rates were high and growth was low. Vice President Gore and I set a new path of fiscal responsibility, opening markets, investing in our people and new technologies. We passed strong deficit reduction packages in both 1993 and in 1997, and made tough choices in each and every budget. This put the nation on a course of fiscal discipline, while continuing to invest in our people and our future.

Last year, I asked the Congress to use every single dollar of our Social Security surplus to pay down the debt, and to use the interest savings from that debt reduction to lengthen the life of Social Security.

Now we see the results of the last seven years: the first back-to-back budget surpluses in 42 years; last year's surplus of \$124 billion the largest in our history. The latest numbers from the Treasury indicate the surplus for this year will be even larger. In just the last two years, we've already paid down \$140 billion of the national debt. Through unprecedented debt buy-backs in the last few weeks, we're able to finance the debt on the most favorable possible terms.

Over the last two years, there have been repeated efforts to push us off the path of fiscal discipline, with large and irresponsible tax cuts. Because we've resisted these efforts, our debt is \$1.7 trillion less this year than it was projected to be back in 1993. Now is not the time to let up on a strategy that is plainly working.

MORE

- 2 -

Today I am announcing that because of the choices we have made, the budget I will submit for 2001 accelerates the date that we will be able to pay off our debt to 2013 -- two years earlier than we had originally planned. We will do this by protecting Social Security funds, and dedicating the interest savings to Social Security, allowing us, in addition to paying off the debt, to extend the solvency of the Social Security trust fund to 2050.

We will also be able to make Medicare secure now, through 2025. And we will be debt-free for the first time since 1835, when our nation just had 24 states and fewer than 15 million people. Our children and their children will not inherit the crippling burden of interest payments that we faced seven years ago.

What does this mean for Americans in their daily lives? Already, the debt reduction means that American families pay, on average, \$2,000 less per year on their home mortgages, \$200 less on a loan for school or for a car. This new initiative will help even more with loans and credit card payments. Debt reduction helps everyone by getting the government out of competition for loans, which makes interest rates lower overall. More investment, more jobs, higher wages for Americans result.

It makes us much more competitive in the global economy, and less vulnerable to shocks elsewhere. It helps other nations which really need to borrow the money to get their economies going, and, in turn, they will be better trade partners with us.

All of this is good news. But as I have said over and over again, there is no room for complacency. We got here by making hard choices and sticking to a strategy that works -- that builds opportunity and reinforces responsibility.

I remain committed to that strategy. I ask the Republican majority in Congress to put politics aside and join me. We've got so much work to do in the weeks ahead to make sure that we seize this historic opportunity.

I also, before I take your questions, and because of the remarkable weather you can see outside, would like to say just a word about relief for the thousands of families that are struggling with increased heating bills and cold this winter. We've been monitoring the situation daily, and based on the most recent data it is clear that a release of emergency funds from the Low-Income Home Energy Assistance Program is warranted.

MORE

- 3 -

Therefore, today I am directing the Secretary of Health and Human Services to expedite the release of LIHEAP funds to Alaska and states in the Northeast which have experienced the greatest hardship. These funds will help keep more American families safe and warm this winter, and we'll get them out there just as quickly as we possibly can.

Q How much?

THE PRESIDENT: I don't know yet. We're working on it. We'll put it out as quick as we know.

Q Mr. President, why isn't it right for the next President and the next Congress to put forward such a long-term plan as you're doing today?

THE PRESIDENT: Why isn't it right?

Q Yes, why shouldn't -- Senator Lott says it ought to be for the next President and the next Congress to do programs like this. This is a very long-term initiative that you're putting forward today.

THE PRESIDENT: You mean the debt relief?

Q That's exactly right.

THE PRESIDENT: Well, I think they ought to follow it. But you've got to understand, even if we commit to this path, since every year the Congress will meet, they'll have to recommit to it. But it will be much easier -- what we could do is derail them. If we had adopted, for example, the tax cut last year, we would have stopped that.

What we're doing, by taking this position, is maximizing the choices that the next Congress and the next President will have. Except -- on the Social Security thing, on debt relief. On Social Security, what I propose will take Social Security from 2034 to 2050. That is well beyond the life of most baby boomers. I would like to take it out 75 years. But I presume, based on what happened last year, that we won't be able to get enough bipartisan agreement to do that. So there will be plenty for the next President and the next Congress to do.

And they will have to do that, because the life expectancy is going to go up so exponentially. And we've already gotten Medicare out 25 years -- keep in mind, Medicare was projected to go broke last year, when I took office. Now we've

MORE

- 4 -

got it out to 2025. I think that it is appropriate to add the voluntary prescription drug benefit, and to take it out a little further by taking some of the reforms that all of us apparently agree on, based on the Medicare Commission that had heavy involvement by Senate Republicans and Democrats. And the Finance Committee's going to take that up. So there will be plenty for America to do next year and the years beyond. There always will be.

Q Mr. President, what do you -- what's your read on the results from Iowa? Were you surprised by the margins on both the Democratic and the Republican side? Can you give us your take?

THE PRESIDENT: Well, I think the Republican race was about as I thought it would be, and I think that the Vice President had a terrific victory last night in Iowa, and I think all the more impressive because he and Senator Bradley, I thought, both ran very substantive campaigns, very idea oriented campaigns, and had that whole series of debates, which I think served the people very well. And I think he should be very proud of that, his strong effort. And I was very pleased to see that. But I don't have any real analysis of what happened in the insides of either one of the campaigns because I didn't follow it that closely.

Q Well, you've been through this. I mean, as they go into New Hampshire, how does it affect the dynamic there?

THE PRESIDENT: I think it's a plus, but I agree with what the Vice President said last night, it's important not to over-read it. The people of New Hampshire are very independent. They want to make a good choice. They understand that to some extent the choice they make affects the choices that the country has after the New Hampshire primary. And I think that you'll see all the candidates there really bearing down and trying to reach the voters, which is what they ought to do.

Q Mr. President, are you inclined to sign or veto any possible bill out of Congress that would grant Elian Gonzalez U.S. citizenship? And do you think it was a good idea for the two grandmothers to come here to meet with Congress, or are you concerned that might further politicize the process as you --

THE PRESIDENT: Well, first, I have done my best, as all of you know, to handle this in a non-political way and to make the judgments for which the law provides. The judgment that the law provides for the INS to make is whether the father can

MORE

- 5 -

properly be declared the guardian of the child, since the mother was, unfortunately, killed.

And the case is now in court, and I would like to see -- at a minimum, I would like to see this court case played out before the Congress takes action. I think we ought to try to let the legal system take its course.

I understand that the strong feelings that exist in this country about the Castro government complicates this. And I know that that little boy has some relatives in this country who feel very strongly about that. And I guess his grandmothers, in coming up here, were reacting to what they thought about the extent to which the case had already been politicized.

More than anything else, I wish that somehow -- I mean, no one can really know for sure, I suppose, what terrible and probably not fully conscious burdens that child has already sustained because he lost his mother and because now he's being competed for in a way that is unusual for a six-year-old child. And I know that -- maybe it's just because I'm not running for anything, but I just somehow wish that whatever is best for this child could be done. And I know there are people who genuinely disagree about that, because plainly he would have more economic opportunity in this country. But all the evidence indicates that his father genuinely loved him and spent a great deal of time with him back in Cuba.

So I think that -- you know, what I have tried to do is to set up a circumstance where the people who were in a position to know the most and be the least influenced by whatever the political considerations are would at least have the maximum opportunity to wind up doing what was right for the child. I hope that somehow we can still find a way to do that.

Q If I could follow up, for better or worse, though, politics is a reality in this situation --

THE PRESIDENT: Yes, it is.

Q Could you possibly veto any bill that would grant Elian Gonzalez U.S. citizenship?

THE PRESIDENT: I have not decided what to do and I wouldn't rule that out. I just haven't decided what to do.

Let me just say for the moment, if you take it out of the combustible, emotional nature of our relationship with Cuba

MORE

- 6 -

and particularly the Cuban American community in South Florida's relationship with Cuba, and you think about the issue, one of the things that I think we all need to think about is this could happen again. I mean, this sort of thing could happen again because you have so many people coming to our shores from all these different countries, and then shifting governments, shifting policies within countries. And what we do need is an analysis of whether we have the tools to maximize the chance that the kids involved and the families involved will be treated fairly, based on the merits of, particularly, the best interests of the child.

And I think, again -- I'm happy to talk to anybody about this and really try to think this through. I'm just trying to minimize the politics of it, because I think if you take this one decision out of context, it's not just Cuba and it's not just this little boy, there are likely to be a lot of these things in the future as immigration flows increases, upheavals increase elsewhere, and as we know more and more about what goes on in other countries.

This is something that ought to be thought about. But in my -- I suppose I have tended to think of this child more from a point of view of a parent than anything else, and I wish I knew more about the facts even than I do, because I just -- this poor kid has already lost his mother, and whatever happens, I'm sure he's going to carry certain burdens into his early adolescence that most of us did not carry. And somehow, whatever happens, I just hope it turns out to be best for him. He's a beautiful child.

Q Mr. President, in his victory statement yesterday, Governor Bush seemed to be throwing down the gauntlet against you. He seemed to be kicking off his major campaign against you. What do you have to say about that, and do you have a rebuttal? Are you going to do anything about it?

THE PRESIDENT: Well, I have, I guess, two responses. One is, this campaign is between the candidates and the American people, and they will evaluate all claims and charges, and they usually get it right. That's why we're all still around here, after 224 years. They almost always get it right. And so I'm going to leave most of that to them.

Now, it is an unusual claim that we ought to somehow reject an approach that has given us the longest economic expansion in history and the lowest unemployment, welfare and crime rolls in 30 years, not to mention the benefits of the

MORE

- 7 -

Family and Medical Leave law and the Brady law, which were vetoed in the previous administration. And I agree that the tax program he's proposed might well undo a lot of that, and he can make the claim that that's the basis on which the campaign ought to proceed. But I don't really want to get into an argument with him. He ought to -- I think that ought to be something between him and the other candidates and the American people.

But I do think it's an unusual thing to say that what we really ought to do is change what has given us an unprecedented level not just of economic prosperity, but of social progress and social cohesion, restored credibility of government, proved that ideas really can matter to move the people forward. I think that that's a pretty hard argument to make.

Q Mr. President, what's your projected surplus for the new budget, and doesn't that allow room for at least a modest tax cut?

THE PRESIDENT: Well, yes. First of all, I'm not -- you will see -- I think the Congressional Budget Office, I believe, when they're going to propose what they think, I think they will show you what the difficulty here is, because my understanding is, they're going to give you options. They will show you -- that is, they'll show you -- like every projected surplus, it depends on what you think the so-called baseline is.

We believe that there has been greater growth, and there will be a larger surplus than we thought. But we believe -- and I intend to propose, as I did last time, a set of tax cuts that I think are targeted to the middle class, targeted to sustain our economic growth, targeted to help lower-income people and areas move into the middle class, that will keep America's economic expansion going.

But I think the most important thing -- I will say again, the most important thing is to keep our fiscal discipline -- to keep paying down the debt, to get the country out of debt, to keep the interest rates down. Keep in mind, this is saving the average family \$2,000 a year on home mortgage costs. We're -- next month, we'll have the longest economic expansion in history, and long-term interest rates are lower now than they were in the bad economy of 1991 -- I mean, 1992. They're lower.

So, yes we can have tax cuts. And yes, every year, and including next year, when I'm not here, and the years ahead, we can evaluate what the situation is. But I do not believe we

MORE

- 8 -

should have very big tax cuts that will explode in the second five years of a 10-year period, and that ignore what the real investment needs of the country will be.

And that's what I mean by this so-called baseline. You know, to use the '97 baseline and spending caps, when they were totally shredded last year, as a basis for estimating how you should spend everything else on a tax cut, means you're going to get back in deficit problems -- just for example.

So, yes, we can have a tax cut. It ought to be modest; it ought to be targeted; it ought to be in the context of fiscal discipline. It ought not to explode in the second five years in a much bigger trajectory than it takes in the first five years.

And again I say -- one of you mentioned about decisions that could be made in the years ahead -- you can always make those decisions -- if things keep getting better, then you can do more. But you should always do it with an eye, in my judgment, toward conservative economic policies, and toward always understanding that those things are easy to do, but they're difficult to undo when times get tough.

Yes?

Q Mr. President, do you now have reason to believe that the Pakistani government may have been involved in that airplane hijacking?

THE PRESIDENT: No, we don't. We do not, no. I guess the simplest thing I can tell you is that we do not have evidence that the Pakistani government was in any way involved in that hijacking; we don't.

Q Mr. President, on the State of the Union, we know how pumped up you get for the State of the Union, and I was wondering, considering that this is your last one, whether there's also a sense of bittersweet, that it's a bittersweet moment, too.

THE PRESIDENT: No, it's not bittersweet, it's nostalgic. One of the wonderful Navy stewards who works for me said this morning, he said, I can't believe we've been doing this for seven years. And the time flies when it's a busy time, and you're absorbed -- excuse me -- absorbed in what you're doing.

I don't feel bittersweet; I do feel some nostalgia. And I think it's something I'm very much trying to fight off,

MORE

- 9 -

because I think the important thing is to keep the attention of the country focused on the future, and to keep my attention and the attention of the administration focused on the future, and the energy level very high. So I am working with that in mind, and I've worked very hard on the speech and I'm still working on it.

Q Mr. President, you have a long list of things that you'd like to do. You've been rolling them out for the last couple weeks. There are things that weren't done last year. Realistically, what are the chances of any real bipartisan agreements with the Republican Congress?

THE PRESIDENT: I think that we have some significant chance of getting some of the substantive issues through -- the patients' bill of rights, the minimum wage, the gun reforms, the Brady background checks at the gun shows. I think that there is a better than 50-50 chance that a lot of the investments I have recommended will eventually prevail. And I am immensely hopeful about the New Markets Initiative, which is more than twice as big in this budget as it was last time, largely because there is a lot of bipartisan support for it, beginning with the Speaker of the House. So I'm very, very hopeful.

You know, there's a part of that that has a special initiative for the Mississippi Delta I believe Senator Lott will support. So I'm hopeful. I'm going to do everything I can to get as much done as I can for the American people and I'm quite hopeful.

Q Mr. President, we think we know how the Vice President feels, but what's your pick for the Super Bowl and why? (Laughter.)

THE PRESIDENT: He can say and get in no trouble, can't he, because he's from Tennessee. I'm not going to pick one. But I'll tell you this -- I've followed it this year very closely. There were two great games last Sunday. And what I thought was going to happen two weeks ago I'm no longer so sure will.

Q Can you say what?

THE PRESIDENT: I don't think you can tell which one of them will win. You've got one that's a very powerful defensive team, Tennessee, with a capacity for real offense. And then you've got the most powerful offensive team playing against them, that was stymied last Sunday and played better defense than I thought they could. So I don't think you can predict which one

MORE

- 10 -

of them is going to win this race.

Q Will you send a play to one of the coaches?
(Laughter.)

THE PRESIDENT: Would I what?

Q Send a play to one of the coaches?

THE PRESIDENT: No, I think they're perfectly capable of doing that without me. That's kind of like this campaign -- you all want to get me involved in it, but I think the Vice President, Senator Bradley, Governor Bush and Senator McCain, they can all do this without me. They're doing fine.

Q Is your wife going to win?

THE PRESIDENT: I think so. I think she's done a good job with this and she's getting into it. I certainly hope she does. I think it will be a good thing for New York and a good thing for our country.

Q Mr. President, in regards to the Colombian aid package, are you worried at all about sending arms down to a country who is now in a civil war and there's no real guarantee about who will be in power even in the next three, four years?

THE PRESIDENT: Well, I wouldn't go that far. I think, for one thing, we want to try to preserve and strengthen democracy in Colombia. It's a very old democracy that's under the greatest stress perhaps in its history. And there's always a risk when you go out on a limb to try to save a neighbor and help people to help themselves that it won't work.

But I think that -- I believe the risks and the investment is something that we ought to do. And, again, I believe that there will be significant bipartisan support here. I'd be surprised if we don't have large numbers of Republicans and Democrats supporting this. And I think we're going into this with our eyes wide open.

One of the things that we have to do is to try to help them gain some measure of control over their own country again. And if you look at Colombia, in the sort of the intersection of the narco-traffickers and the political rebels, you see a picture of what you might see much more of in the 21st century world, with sort of the enemies of nation states forming networks of support across national borders and across otherwise discrete

MORE

- 11 -

interests, like narco-traffickers, organized criminals and political terrorists, weapons dealers.

So this will be an interesting test run for what I predict to you not only our nation, but others in our position will have to face over the next two decades. And it is something, again, I'm going to work very hard to build a bipartisan consensus on this and take this out of politics, because I believe that this is not only something we should do for our friend and neighbor in the country that is either the production or transit point for about 80 percent of the cocaine that gets dumped in this country; but also, if you will, a test run for the kind of challenges that my successors and our people will face in the years ahead.

Thank you.

Q Did you miss being in Iowa? I'll bet you did.

THE PRESIDENT: A little bit. I did. I love it there. They've been good to me. But I was interested in it. It's interesting to me to watch it unfold and watch how the decisions they make -- which is why I don't want you guys to get me into it. This is will be their campaigns and they should make the decisions. And we should trust the people -- they'll get it right. They always do.

Thank you.

END

12:35 P.M. EST

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE
Miami, Florida 33138



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STATEMENT

January 25, 2000

The Miami relatives of Elian Gonzalez have agreed to make Elian available for a visit with his two grandmothers at the Miami Beach residence of Sister Jeanne O'Laughlin on Wednesday, January 26 at 4:00 pm. The meeting between Elian and his two grandmothers will be a private visit in which they will be able to spend some time alone.

Elian's grandmothers are under no expectation that they will be able to leave with the child at this time. They understand this is an opportunity to spend some time alone with their grandson who they have not seen in over two months.

INS has assured the Gonzalez relatives that the sole purpose of the meeting is to facilitate a private visit between Elian and his grandmothers and the meeting will not change Elian's present placement in the care of Lazaro Gonzalez.

-INS-

Anel

January 26, 2000

To: Bruce Reed
Eric Liu

From: Irene Bueno

RE: Elian Gonzalez

I. INTRODUCTION

This memo provides background on the Elian Gonzalez case and an analysis of the pending legislation. For reasons stated below, I recommend that the Administration should strongly oppose legislation to confer United States Citizenship or Lawful Permanent Resident status to Elian and at the appropriate time (i.e. when the legislation is going to the floor), the President should issue a veto threat. Also, the Administration should support a strategy to amend the legislation to raise our other immigration priorities. There is support for this strategy from Departments of Justice and State and also NSC and Maria. Please let me know if you would like to discuss further.

II. BACKGROUND

Under the Cuban Adjustment Act and agreements with Cuba (wet feet – dry feet policy), when a Cuban is interdicted on the high seas, they must be returned to Cuba. However, when a Cuban sets foot on American soil, the Cuban is eligible to be paroled in the US for one year and after that is eligible to become a legal permanent resident (LPR) and after 5 years can apply for US citizenship (USC).

In this case, Elian Gonzalez (EG) was found on the high seas by fisherman and brought to the US but without his mother who perished. If EG were an adult or arrived in the US with this mother, he would be paroled in the US, become a LPR and later a USC. EG's case is complicated one because he is an "unaccompanied minor" and has a parent in Cuba.

Generally, in cases of "unaccompanied minors", the INS looks for the next of kin to place and to care for the child until his immigration status is determined. In this case, INS found that EG had a great-uncle in Miami. Later, they learned that EG had a father in Cuba, Juan Gonzalez (JB), who divorced his mother and did not know that his mother was taking EG to the US.

The issue that was presented to INS was who **legally can speak for the child** with regard to immigration status – return to Cuba or apply for adjustment of status under the Cuban Adjustment Act or apply for asylum. In this case, the great-uncle asserts that he speaks for the child and on EG's behalf and are seeking to keep EG in the US. However, EG's father in Cuba,

who claims to have been very close to his son and is capable of caring for this son asserts that he speaks for his son and should be returned to Cuba.

After interviews with the father, the INS determined on January 5, 2000, that EG's father speaks for his son. INS stated, "The INS based their decision on the facts and the law. Both US and international law recognize the unique relationship between parent and child, and family reunification has long been a cornerstone of both American law and INS practice." Since the father did not want EG to stay in the US, INS determined that EG would return to Cuba by January 14, 2000. The United States Government (USG) had discussed options with Cuba to return the EG to Cuba. INS did not want to forcibly take the child from the uncle and had hoped that he could be returned without INS intervention.

Following the INS decision, Rep. Burton issued a subpoena for EG to testify before his hearing in February and shortly thereafter, the Florida State Supreme Court granted temporary custody to EG's uncle. As a result, the Attorney General concluded that EG's return would be delayed. Also, the uncles applied for asylum in Federal Court and DOJ expects that the Federal Court will uphold its earlier decision. DOJ is expected to file their briefs today that will contain much more information about their decision. *Fed Ct Mrg 2/22.*

Last weekend, EG's grandmothers came to the US to appeal to the DOJ, INS, Congress, the family in Miami and to the public that EG has a loving family in Cuba and should return. On January 25, 2000, INS issued a letter demanding, as a condition of EG's parole status that the uncles agree to allow a visit with the grandmothers today January 26, 2000.

The President has stated that he supports the INS decision and is very troubled about separating a child from a fit biological parent. On January 25, the President indicated his opposition to Congress passing legislation to grant citizenship but has left open the question of whether he would veto the legislation. The Justice and State Departments strongly recommends that the Administration oppose this legislation and is preparing letters that state their objections (this letter will be cleared before it is sent).

III. NEXT STEPS

A. Federal Court

As mentioned above, this case is pending in Federal Court and briefs will be filed soon. DOJ is hoping for an expeditious and favorable decision in support of the INS decision that EG should be returned to his father in Cuba. Even if the federal court rules in favor of the INS, there is potential that the great-uncle could appeal this case.

B. Pending Legislation

There are several bills pending in Congress that addresses this matter.

1. U.S. Citizenship

Senators Lott, Helms, Mack and Representatives McCullom, Diaz-Balart, Ros-Lehtinen and others have introduced legislation to confer U.S. Citizenship and they expect to move this legislation expeditiously. While there is some bipartisan support – Senators Torricelli, and Bob Graham, many Democratic Senators oppose this legislation including Senators Daschle, Feinstein, and Leahy and there is some opposition among Republicans. According to DOJ, this legislation would have the effect of divesting the INS of jurisdiction over this case and leaving only the custody issue that would be decided by Florida State court.

2. Lawful Permanent Resident Status (LPR)

Representative Menendez has introduced to declare EG as a lawful permanent resident. If EG were to leave the US, under this legislation he could return to the US at anytime to claim this status. Representative Menendez introduced this legislation with the hope that he could garner more support than the citizenship legislation.

3. Sense of the House Resolution Return Elian to Cuba

Lastly, Representative Rangel has introduced a Sense of Congress that EG should be returned to his father in Cuba immediately. Senators Dodd, Leahy, and Feinstein plan to introduce this resolution in the Senate.

IV. ANALYSIS

A. U.S. Citizenship Legislation

Congressional action to confer USC would divest INS jurisdiction over EG's case, leaving a Florida state court to resolve the custody case filed by the EG's great uncle. This would require the father to come to the U.S. to fight for custody of EG in Florida state court. There are number of domestic and international concerns with Congress conferring USC.

1. DOMESTIC CONCERS

a. Contrary to American Policy on Biological Parents in Custody Matters

Granting USC to EG would be contrary to our long-standing policy to give preference to biological parents unless there is clear and convincing evidence that the parent is unfit. In this case, INS has met with the father and has determined that he has a close relationship with his son and is a fit father. If EG is granted USC, this would require the father to come to the U.S. to fight for custody of EG in Florida State Court – possibly a protracted legal battle. Also, given that the Florida State Court has granted temporary custody to the great-uncle, it may grant permanent custody as well.

b. Contrary to American Immigration Policy on Family Reunification

U.S. immigration law is based on family unity, labor needs, and humanitarian relief. Based on this policy, the Attorney General and INS determined that based on the facts of the case the father speaks for the child and should be reunited with the father.

c. Legislation Granting USC is Unusual

Passing legislation to grant USC to an individual has only been done in a few limited cases in extraordinary situations. In fact, this Republican Congress has opposed such private relief legislation. It is particularly unusual to grant USC to an individual who is not requesting it. USC was conferred upon people without their consent in the case of Puerto Ricans.

d. Fairness to other Immigrant Children and Groups

There are hundreds of unaccompanied minors who come to the U.S. every year from countries all over the world including from countries that have unstable governments or communist governments, and have very poor living conditions. Last year, most of these children were returned to their country of origin without the benefit of the legislation that has been introduced in this case.

Also, there are cases of many immigrants who have been waiting for opportunity to adjust their immigration status because of INS wrongly interpreted legislation (late amnesty class/registry date) or Congress passed legislation treating Cuban and Nicaraguans more favorably than Haitians and other Central Americans (Central American Parity Legislation). However, Congress has not yet acted on legislation to help these groups despite their compelling cases.

2. INTERNATIONAL LAW CONCERNS

The State Department strongly opposes this legislation for a variety of reasons as summarized below.

a. Violates Human Rights Principles and International Laws

The right of a child to reside with a parent is one of the most fundamental and widely respected human rights. Legislation to divest INS of jurisdiction is an obstacle to the ability of father and son of enjoying this right. By imposing USC or LPR status, the US would be seen by the international community as disregarding fundamental international and human rights principles.

International law family experts do not think that the Florida State Court should have any jurisdiction in this matter. In international custody disputes between two parents, the Hague Convention on parental child abduction requires that the child be promptly returned to their "habitual residents". USG is a signatory to this convention and encourages other countries to comply in cases involving American parents. In this case, EG's habitual residence is in Cuba and his father has clearly expressed his desire to be with his son. The only legal bars under international law are the Refugee Convention or Torture Convention. In this case, there is no remotely credible allegation that EG would be persecuted under these Conventions.

b. Reciprocity/ Bad Precedent

The State Department is involved in cases to return U.S. citizen children to American parents and they are very concerned that if this legislation passes and it will undermine our ability to obtain the return of American children to their American parents. If this were an American child, we would insist on his immediate return and would object strongly if the father were forced to appear in a foreign court to establish custody or to defend a decision to bring the child back to the U.S.

Furthermore, it would be a dangerous international precedent to invite a domestic family court to second-guess a foreign parent's decision to continue raising his child in the child's home country, or to suggest that a domestic court should decide what is best for a foreign child when there is a surviving parent who can decide this question.

c. Contrary to U.S. Position to Involuntarily Confer Citizenship

The USG has historically taken the position that involuntary conferral of citizenship violates international law except in very limited situations not applicable in EG's case. Citizenship not only provides rights but also imposes obligations. In this case, the father of the child should decide whether his child should be made a citizen of a foreign country with all its attendant obligations and not Congress.

B. Legislation to Confer Lawful Permanent Resident (LPR) status

The legislation to confer LPR status to EG would effectively divest INS's jurisdiction over this case and raises similar issues as above. Conferring this status would still interfere with the father's parental rights and would imply that we are interfering with EG's right to return to his home and father in Cuba. The only jurisdiction that INS would maintain is the general jurisdiction it maintains over all LPRs. For example, if Elian violates immigration law (i.e. commits a felony) INS could deport him.

IV. IMMIGRATION AMENDMENTS

Democratic Senators and immigration groups are considering a strategy to amend the legislation with immigration bills that have been pending. If these amendments are successful, they could extract some agreement for consideration later this year. I support this strategy because we have had great difficulty in drawing attention to our immigration priorities including the Central American Parity legislation and Registry Date legislation to help late amnesty class. Discussing these bills in this context would raise the profile of these issues. However, I would want to make sure that our support for this strategy in no way is interpreted as the Administration supporting the underlying bill and that amendments will not be voted on if it will risk the

consideration of the bill at a later time. I would like to discuss this strategy further with WH legislative staff and the Hill but they seem to be supportive.