

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Counsel Office

Series/Staff Member: General Files

Subseries:

OA/ID Number: 20840

FolderID:

Folder Title:

#2: Elian Gonzalez

Stack:

S

Row:

117

Section:

4

Shelf:

2

Position:

1



James E. Kennedy

04/25/2000 04:04:09 PM

Record Type: Record

To: Beth Nolan/WHO/EOP@EOP

cc:

Subject: FW: Tribe piece in NY Times

This has more cogent legal argument than mine, although it is too long. One question is whether we should have one letter (maybe signed by Holder), or two (Holder and Podesta).

----- Forwarded by James E. Kennedy/WHO/EOP on 04/25/2000 04:03 PM -----



"Florman, Carole" <Carole.Florman@usdoj.gov>

04/25/2000 04:55:25 PM

Record Type: Record

To: James E. Kennedy/WHO/EOP

cc:

Subject: FW: Tribe piece in NY Times

-----Original Message-----

From: David Ogden

Sent: Tuesday, April 25, 2000 1:27 PM

To: Harkins, Ann M; Glassman, Bradford; Florman, Carole; Lee, Dexter;
Kneedler, Edwin S; Castello, James E; Marlin, Myron L; Kline, David;
Maher, Patricia

Subject: Tribe piece in NY Times

Importance: High

All: Prof. Tribe's piece in the Times today needs an immediate response I think (he says we did not have a lawful basis for the search and seizure of Elian, and has it all wrong). Given the need for a fast response and the fact others have had lots to do, I have drafted something for discussion. I don't know who it should be signed by -- probably Myron, I guess. And I'm sure it can be shortened and otherwise greatly improved. But I hope we can get something out today.

I'd suggest that Myron take over the pen and field comments, unless he or others have a better idea.

David



To the editors:

Laurence H. Tribe, writing in today's edition of the *Times*, gets it embarrassingly wrong when he asserts that in the Justice Department's recovery of Elian Gonzalez from his great uncle's home in Florida "no judge or neutral magistrate had issued the type of warrant or other authority needed for the executive branch to break into the home to seize the child." Justice Taken Too Far, April 25, 2000, page A-31. Professor Tribe goes on to state, just as incorrectly, that "the agents who stormed the Miami home were armed . . . with a search warrant, . . . not a warrant to seize the child."

Professor Tribe makes these erroneous assertions in an effort to answer what he calls "a vital question: Where did the attorney general derive the legal authority to invade that Miami home in order to seize the child?" Had the good professor or the editors of the *Times* bothered to ask that question of the Department before printing their allegations, however, they would have discovered that before entering the premises on the morning of April 22, 2000, the Department had obtained a warrant, issued by United States Magistrate Judge _____, authorizing the Department to search "the residence of Lazaro Gonzalez, located at 2319 N.W. 2nd Street, Miami," and to seize "the person of Elian Gonzalez, date of birth December 6, 1993, a native and citizen of Cuba." Thus, contrary to Professor Tribe's assertion, the Department had obtained precisely "the type of warrant . . . needed . . . to break into the home and seize the child."

The magistrate was correct to issue that warrant. As was explained in the memorandum of law submitted by the Department of Justice in support of its application, the warrant was authorized by Federal Rule of Criminal Procedure 41(b), which has long provided that a warrant "may be issued . . . to search for and seize any . . . person . . . who is unlawfully restrained." This rule is designed to permit just the type of action taken here -- entry to recover a child or other person being held without legal justification.

As is well known, Elian was "unlawfully restrained" by his great uncle because on April 12, 2000, the INS had revoked Elian's parole, terminated his great uncle's right to temporary custody, and directed his great uncle to return Elian to the INS so that he could be reunited with his father, Juan Miguel Gonzalez. Elian was also "unlawfully restrained" because the great uncle's retention of Elian was contrary to Juan Miguel's clearly expressed wish to have custody of his own son. The great uncle had steadfastly refused for nine full days to surrender his illegal retention of Elian. The Department's entry and recovery of Elian, therefore, was pursuant to a warrant and unambiguously lawful.

One may legitimately disagree with the judgments that led to the recovery of Elian Gonzalez last Friday, although we believe the Department of Justice had no choice. But there can be no dispute about the legal bases for those actions. This paper and Professor Tribe owe the Department an apology for claiming otherwise.

Dear Mr. Ray:

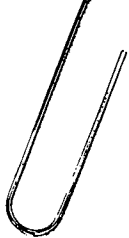
I am writing in the hopes that our two offices can find a mutually satisfactory way to work together as you conduct your investigation. I understand the significance and importance of your work, and I am committed to providing assistance to your office, but I am deeply concerned with the manner in which your office has been communicating with ours. Over the past several weeks, Jay Apperson, Deputy Independent Counsel, has had numerous telephone conversations with Dimitri Nionakis, Associate Counsel to the President. Mr. Nionakis is an experienced litigator who has been assigned responsibility to handle this matter, and Mr. Apperson has told me that he has great respect for the way Mr. Nionakis has dealt with him.

Nonetheless, I have noted a disturbing pattern in which, from Mr. Nionakis's perspective, Mr. Nionakis and Mr. Apperson appear to have a satisfactory telephone conversation, often about the subject of one of Mr. Apperson's letters. In those conversations, Mr. Apperson does not raise particular objections, but he then follows up with a letter to me, as if he had had no conversation with Mr. Nionakis, implying that I have been nonresponsive or uncooperative.

I have been trying to be sure I understand the history of this Office's dealings with your Office before I responded to some of Mr. Apperson's suggestions, which have been, frankly, surprising to me.

Among these is his contention that a keyword search for e-mail is not adequate to respond to a subpoena. The ARMS database alone contains over __ million e-mails. Mr. Apperson appears to suggest that whenever we receive a subpoena, we are required to read every page of every one of those _____ e-mails, without making a preliminary assessment whether it could be responsive. Our practice, in contrast, is to use broad keyword search terms, so that we find potentially responsive e-mails and then review them manually to determine if they are in fact responsive. Because we use broad terms, we end up reviewing manually many nonresponsive documents, but we do not review every single e-mail ever produced. This practice is well known to those conducting investigations. Critically, in nearly six years of dealing with your office, I am not aware that anyone has objected before to our keyword-search approach, although members of your office were aware of our practice. The suggestion at this late date that this practice is unacceptable—

John Whitman



NATACHA SEIJAS MILLÁN
COMMISSIONER
District 13



5069674

January 5, 2000

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I vehemently support the case of Elián González to be appealed in the family court system where the children's rights are uniquely addressed.

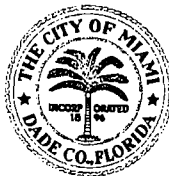
Thank you for your attention and support of this important issue.

Sincerely

Natacha Seijas Millán
Miami-Dade County Commissioner
District 13

JAN 11 2000

City of Miami



WIFREDO (WILLY) GORT
COMMISSIONER

P.O. BOX 330708
MIAMI, FLORIDA 33233-0708
(305) 250-5430
FAX (305) 250-5456

January 6, 2000



The Honorable William Jefferson Clinton
The President
The White House
Washington, D.C. 20500

Dear President Clinton:

I am writing to express my strong opposition to the decision made by your administration in the Elian Gonzalez Case. This child has suffered the loss of his mother and has gone through a very traumatic situation in his life. The decision made by INS does not take into consideration the "grave risk" of physical or psychological harm that can be added to Elian by returning him to Cuba. By not providing him, his attorneys, and family members in the United States with a full and fair hearing on his asylum request it is not possible for INS to determine what is in Elian's best interest. It is extremely important to analyze and look into all the facts involved in this matter prior to taking unilateral action as your administration has done.

I strongly urge you and your administration to take whatever action is necessary to intervene in this decision so that Elian is not returned to Cuba. The standard of "what is in the best interest of the child" was not met in this case and therefore Elian must remain with his family and loved ones in the United States.

Sincerely,

Wilfredo (Willy) Gort

WG/ms
LETTER/PRESIDENT CLINTON

C.c.: The Honorable Albert (Al) Gore, Vice-President of the United States
The Honorable Janet Reno, United States Attorney
The Honorable Bob Graham, United States Senator
The Honorable Connie Mack, United States Senator
The Honorable Ileana Ros-Lehtinen, United States Representative
The Honorable Lincoln Diaz-Balart, United States Representative

JAN 10 2000

John Williams

5068878

City of Sweetwater



January 5, 2000

The Honorable William Jefferson Clinton
President of the United States of America
The White House
Washington, D.C. 20500

Dear Mr. President:

Enclosed please find copy of Resolution No. 2751 passed and adopted by the Sweetwater City Commission at their meeting on January 3, 2000.

If you have any questions please do not hesitate to contact me.

Respectfully yours,

Marie O. Schmidt

Marie O. Schmidt
City Clerk

MOS/ntm

Enclosure



408758

RESOLUTION NO. 2751

A RESOLUTION OF THE MAYOR AND COMMISSION OF THE CITY OF SWEETWATER, FLORIDA, URGING PRESIDENT CLINTON TO TAKE WHATEVER STEPS ARE NECESSARY TO ALLOW ELIAN GONZALEZ TO REMAIN IN THE UNITED STATES; PROVIDING FOR TRANSMITTALS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on Thanksgiving Day, 1999, a small child was rescued from a certain death in the blue waters of the Atlantic Ocean; and,

WHEREAS, this child lost his mother in her attempt to achieve freedom for herself and her child from the tyrannical oppression of the Cuban dictator, Fidel Castro; and,

WHEREAS, Elian Gonzalez now resides with relatives in Miami, Florida who have indicated they wish him to remain with them; and,

WHEREAS, Elian's father in Cuba is asserting his rights to have little Elian returned to the communist island of Cuba; and,

WHEREAS, if Elian is returned to Cuba he will not enjoy the rights and freedom he deserves and that his mother died trying to secure for him and herself; and,

WHEREAS, sending this child back to his father in Cuba will set a precedent and endanger the freedom of other children who have arrived in this country with only one parent; and,

WHEREAS, the United States Government must decide whether Elian remains or is returned back to Castro and Cuba:

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION OF THE CITY OF SWEETWATER, FLORIDA AS FOLLOWS:

SECTION 1. That President Clinton is requested and urged to grant asylum to Elian Gonzalez and allow him to remain in the United States with his family in Miami.

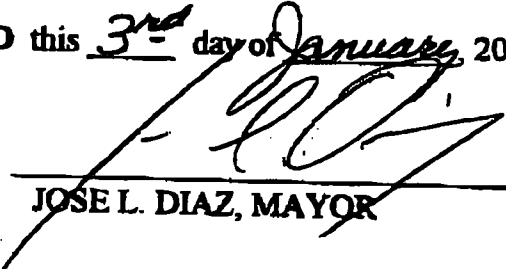
SECTION 2. That President Clinton stop any attempt to return Elian Gonzalez to the communist island of Cuba.

JAN 10 2000

SECTION 3. That copies of this resolution be transmitted to The Honorable William Jefferson Clinton, President of the United States, Honorable Janet Reno, Attorney General, Honorable Bob Torricelli, U.S. Senator, Honorable U.S. Representatives Ileana Ros-Lehtinen and Lincoln Diaz-Balart.

SECTION 4. That this resolution shall become effective upon its adoption by the City Commission and approval by the Mayor or if vetoed, upon its reenactment by the City Commission as provided by the Charter of the City of Sweetwater.

PASSED AND ADOPTED this 3rd day of January, 2000.



JOSE L. DIAZ, MAYOR



MANUEL L. MARONO, COMMISSION PRESIDENT

ATTEST:



MARIE O. SCHMIDT, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



RAMON IRIZARRA, CITY ATTORNEY

VOTE UPON ADOPTION:

MANUEL L. MARONO, COMMISSION PRESIDENT
PRISCA BARRETO, COMMISSION VICE PRESIDENT
ARIEL ABELAIRAS
MANUEL DUASSO
MANOLO FERNANDEZ
JESUS MESA
LUIS M. RODRIGUEZ

YES
YES
YES
YES
YES
YES
YES

THIS RESOLUTION WAS SPONSORED BY COMMISSIONERS RODRIGUEZ AND DUASSO..

CITY OF WEST MIAMI



408905

Rebeca Sosa
MAYOR

January 7th, 2000

The Honorable William Jefferson Clinton
The President
The White House
Washington, DC 20500

RE: Elian Gonzalez

Dear President Clinton:

This letter shall serve to express my strong opposition to the decision made by Immigration and Naturalization to return Elian Gonzalez back to Cuba. This decision, as made, will forever change the life of Elian Gonzalez, his Miami family and the Cuban community. It is my opinion that Elian Gonzalez should have been given the opportunity of due process. This process is a privilege given to every human being who sets foot in this great nation. Due process the true meaning of democracy.

As an elected official, a mother and an educator I realize that Elian Gonzalez has suffered tremendously throughout his short life, but he should be given an opportunity to be heard. Given the situation between the United States and Cuba and the dictatorship that exists 90 miles away from Miami we will never know whether it is in the best interest to return this young boy back to his father who may have been coerced into making statements by the Castro Communist Government

You are the only person that has the ability to change Elian's fate by allowing him, his family and natural father a day in our court system. This case needs a thorough review for the sake of Elian Gonzalez.

I implore you to consider my request on behalf of the West Miami community to reverse the decision taken by your administration and allow due process to determine the future of Elian Gonzalez.

Sincerely,

Rebeca Sosa
Rebeca Sosa,
Mayor

cc: The Honorable Albert (Al) Gore,
Vice President of the United States
The Honorable Janet Reno, U.S. Attorney
The Honorable Bob Graham, U.S. Senator
The Honorable Connie Mack, U.S. Senator
The Honorable Ileana Ros-Lehtinen, U.S. Congresswoman
The Honorable Lincoln Diaz-Balart, U.S. Congressman

JAN 11 2000

5069676

City of Miami, Florida



TOMAS REGALADO
COMMISSIONER

P.O. BOX 330708
MIAMI, FLORIDA 33233-0708
(305) 250-5420
FAX (305) 856-5230

January 7, 2000



The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, Northwest
Washington, D.C. 20500

Dear President Clinton,

I am writing to appeal to you on behalf of many in the South Florida community who are distressed about the Immigration and Naturalization Service's failure to provide Elian Gonzalez with due process. Many citizens are passionately concerned about the welfare of this child. Elian's father has not been permitted to visit Elian here in the United States, and consequently this may have an effect on his ability to express his true point of view. Mr. President, this is an important issue, and any consideration that you give towards the reexamination of this matter would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script, reading "Tomas Regalado", is written over the typed name.

Tomas Regalado
City of Miami Commissioner
District 4

JAN 11 2000

STATE OF FLORIDA

Office of the Governor

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-0001

JEB BUSH
GOVERNOR

January 6, 2000

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

Ms. Doris Meissner, Commissioner of Immigration and Naturalization Service, announced yesterday that Elian Gonzalez would be returned to his father's custody in Cuba. Today, Attorney General Janet Reno announced she would not reverse the Commissioner's decision. This unilateral decision by INS came before Elian's scheduled asylum hearing with INS, and ignores its previously stated commitment to protect the needs of refugee children such as Elian. INS's order sadly makes no mention of the fact that Elian's mother sacrificed her own life so that Elian might live in freedom and liberty in the United States.

Many in the South Florida community are incensed by the failure of INS to afford Elian any hearing or appropriate due process, and are justifiably concerned about the welfare of this child. Elian's father has not been permitted to leave Cuba to visit his son here, and may not have been permitted to speak freely while in Cuba. Thus, his statements to the INS expressing a desire to remain in Cuba are suspect. Fidel Castro has made Elian a poster child for his communist dictatorship, and has turned what should be a determination as to the child's best interests into a way to advance his own political tyranny. As a result of this arbitrary and unilateral decision to return Elian to Cuba, civil protests in Miami have already commenced.

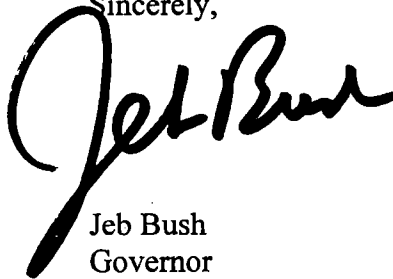
JAN 10 2000

The Honorable William J. Clinton
January 6, 2000
Page Two

The actions of the Commissioner and the Attorney General to date have been insensitive and contrary to the fundamental constitutional rights enjoyed by all. I ask that you, as President, review and reverse the decision of the Commissioner and Attorney General to return Elian Gonzalez to Cuba. The issue of Elian's legal custody should be determined not by INS unilaterally, but by a hearing in our own state judicial system. Your administration initially realized the fundamental fairness of a state-court resolution before allowing INS to interfere with Elian Gonzalez's life. Our state courts are impartial, and have a history of fairly resolving custody issues. Moreover, our state courts can, and will, assure that Elian and his father receive the due process to which they are entitled. A court, not INS, should resolve this issue under applicable law, so that the final decision on Elian's custody and residency is made in the best interests of the child.

Finally, given INS' decision to return Elian to Cuba no later than January 14, 2000, your attention to this matter is required immediately. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline that extends under the word "Bush".

Jeb Bush
Governor

IN THE CIRCUIT COURT FOR THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO: 00-00479 FC 29

LAZARO GONZALEZ, as Custodian of
ELIAN GONZALEZ, a Minor,

Petitioner,

vs.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent.

TEMPORARY PROTECTIVE ORDER

This cause having come before the Court upon Petitioner's Verified Emergency Ex-Parte Petition for Interim Order ("Petition for Interim Order"), and the Court having reviewed said Petition, and having carefully studied this matter, makes the following findings of facts and conclusions of law:

FACTS

Petitioner has filed a Verified Petition for Temporary Custody and Other Relief ("Petition for Temporary Custody") under Fla. Stat. §§ 751.01, et seq.¹ seeking

¹ That statute was enacted to "[p]rovide for the welfare of minor children who are living with extended family. . . . At present, such family members are unable to give complete care to the child in their custody because they lack a legal document that explains and defines their relationship to the child, and they are unable effectively to consent to the care of the children by third parties." Fla. Stat. § 751.01(2).

temporary custody of the minor child, Elian Gonzalez ("Elian") and invoking the jurisdiction of this Court under Fla. Stat. §§ 61.1308(1)(c) and (d). Through this Petition for Interim Order, Petitioner seeks interim custody of Elian pending a full evidentiary hearing on the Petition for Temporary Custody.

Elian is a six year-old child, born December 6, 1993, who is a citizen of the Republic of Cuba ("Cuba"). Elian lived in Cuba his entire life before coming to Florida in November, 1999. There is no other "state"², other than Florida, in which Elian or his parents have significant connections.

Elian and his mother, along with twelve others, fled Cuba in November, 1999, on a small boat, apparently intending to reach the state of Florida. Elian's mother and the twelve others tragically were lost at sea, but Elian miraculously survived the journey. He was rescued by two fishermen who found him alone, clinging to a tire inner tube off the coast of Florida. Following a brief stay in a local hospital, Elian was placed in the physical custody of Petitioner, his great-uncle, by the Immigration and Naturalization Service ("INS").

Thereafter, an application for admission to the United States, along with two petitions for asylum were filed on Elian's behalf with the INS. One petition was signed

² The Republic of Cuba is not a state within the meaning of the Uniform Child Custody Jurisdiction Act "UCCJA," which defines state as "any state, territory, or possession of the United States; the Commonwealth of Puerto Rico; or the District of Columbia." Fla. Stat. 61.1306(10). However, Fla. Stat. 61.1348, which must be read in conjunction with Fla. Stat. 61.1306(1)(d), applies the general policies of the UCCJA to the international area and provides that a decree of a foreign nation may be recognized by Florida courts if the foreign tribunal accorded minimum due process to all affected persons prior to entering the decree. See Kallman v. Kallman, 623 So. 2d 1213 (Fla. 3rd DCA 1993).

by Petitioner, and one was "signed" by Elian.

Following the filing of the application and petitions, INS interviewed Respondent and determined that he is Elian's biological father, and that as such, he has the right to represent Elian in all legal transactions. INS then withdrew Elian's application for admission to the United States at Respondent's request. INS did so based upon its determination that the request made by Respondent during interviews with INS representatives were in fact his "true wishes."

Additionally, INS determined that Petitioner did not have authority to act on behalf of Elian in immigration matters or to authorize representation in "direct opposition to the express wishes of the child's custodial parent." Based upon that determination, INS rejected the asylum petitions filed on Elian's behalf. Petitioner's counsel was advised by INS of its decisions in a letter dated January 5, 2000. INS then announced its intention to return Elian to Cuba by January 14, 2000.

Thereafter, on January 7, 2000, Petitioner filed a Verified Petition for Temporary Custody and Other Relief, along with a Verified Emergency Ex-Parte Petition for Interim Order, alleging that if Elian is returned to Cuba he faces the threat of mistreatment or abuse, including the loss of any due process rights he may have under United States immigration law, as well as harm to his physical and mental health and emotional well-being. Respondent was given telephonic notice of the filing of the Verified Emergency Ex-Parte Petition for Interim Order.

CONCLUSIONS OF LAW

The threshold question before the Court is whether this Court has jurisdiction

over this matter. Petitioner attempts to invoke the Court's jurisdiction pursuant to Fla. Stat. §§ 61.1308(c) and (d). In support of his invocation of jurisdiction, Petitioner alleges that the threatened return of Elian to Cuba, and the ensuing harm if he is returned, creates an emergency which requires the Court to exercise its jurisdiction for Elian's protection. Additionally, Petitioner alleges that no other state would have jurisdiction under prerequisites substantially in accordance with Fla. Stat. §§ 61.1308(1)(a), (b), or (c) and that it is in Elian's best interest that this Court assume jurisdiction. The Court finds that the facts alleged by Petitioner establish a *prima facie* basis for this Court's assumption of jurisdiction of this matter under Fla. Stat. §§ 61.1308(1)(c) and (d).³ Independent of the jurisdiction conferred under Fla. Stat. §§ 61.1308(1)(c) and (d), this Court clearly has limited jurisdiction to address the Petition for Interim Order. This Court is not powerless to act when confronted with a Petition, as the one pending before this Court, alleging that the minor child may be subject to serious and unnecessary emotional harm in returning the child to the custodial parent. Under compelling circumstances, recognized by Florida law, this Court may grant such temporary judicial relief as is necessary to protect the best interest of the child – this Court's primary concern. Based upon its independent review of Florida law, this Court is persuaded that it has the authority to grant emergency, ex-parte relief and that the relief requested by Petitioner should be granted.

³ A final determination regarding this Court's jurisdiction to address the Verified Petition for Temporary Custody and Other Relief will be made following service of process and a full evidentiary hearing.

Under Florida law, where a Florida Court, even one which may otherwise lack jurisdiction over a visiting child, is presented with allegations of imminent harm or physical or emotional danger to a child, it is empowered, under the doctrine of *parens patriae*, to issue a temporary protective order which will preserve the status quo pending a full hearing on a petition to alter temporary or permanent custody. See Rohlf v. Rohlf, 666 So.2d 568 (Fla. 3d DCA 1996); Kennedy v. Kennedy, 559 So.2d 713 (Fla. 5th DCA 1990); Nelson v. Nelson, 433 So. 2d 1015, 1019 (Fla. 3rd DCA 1983); Sommer v. Sommer, 508 So. 2d 773 (Fla. 5th DCA 1987).

Here, the Petition for Interim Order, as well as in the Petition for Temporary Custody, contains sufficient verified allegations that, if emergency relief is not granted and Elian is returned to Cuba, he would be subjected to imminent and irreparable harm, including loss of due process rights and harm to his physical and mental health and emotional well-being. Those verified allegations and the limited factual record presented clearly confer upon this Court, at a minimum, limited jurisdiction to grant emergency temporary relief to preserve the status quo pending a full hearing on the Petition for Temporary Custody. Id. The Court finds that Petitioner has established a *prima facie* case that Elian may be subject to imminent harm if emergency relief is not granted. Accordingly, it is hereby

ORDERED and ADJUDGED as follows:

⁴ "Parens patriae" refers traditionally to the role of the state as sovereign and guardian of persons under legal disability, such as juveniles or the insane, and in child custody determinations, when acting on behalf of the state to protect the interests of the child.

1. The Court finds that Petitioner has established a *prima facie* case that Elian may be subject to imminent harm if temporary relief is not granted.
2. The status quo shall be preserved until such time as a full hearing on the Verified Petition for Temporary Custody and Other Relief is held.
3. The minor child, Elian Gonzalez, shall not be removed from this jurisdiction pending a full hearing on the Verified Petition for Temporary Custody and Other Relief.
4. In furtherance of this Court's exercise of emergency authority and in order to effectuate the requirements of this Court's Order, Petitioner is granted such limited legal authority as is necessary to preserve the status quo and prevent the child's removal from this jurisdiction, including, but not limited to, the authority to assert and protect such rights as the child may have under United States immigration law and to retain counsel to assert and protect such rights.
5. Pursuant to Fla. Stat. § 61.403, a guardian ad litem for the minor child shall be appointed by separate order, to act as next friend of the child, evaluator and investigator, with such powers, privileges and responsibilities as are necessary to advance the best interest of the child.

DONE and ORDERED in open Court at Miami, Miami-Dade County, Florida, this
10th day of January, 2000.


ROSA M. RODRIGUEZ
CIRCUIT JUDGE

Jan-10-00 05:57P

01/10/00 17:29 FAX SUB 313 1333

CLERK COURT FAMILIA

P. 04

NO. 074 P. 179

JAN. 11. 2000 6:27AM

IN THE CIRCUIT COURT FOR THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO: 00-00479 FC 29

LAZARO GONZALEZ, as Custodian of
ELIAN GONZALEZ, a Minor,

Petitioner,

vs.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent.

**ORDER SETTING HEARING ON VERIFIED
PETITION FOR TEMPORARY CUSTODY**

This cause having come before the Court upon Petitioner's Verified Petition for Temporary Custody and Other Relief, and the Court having reviewed said Petition, and being otherwise advised in the premises, it is hereupon

ORDERED and ADJUDGED as follows:

1. An evidentiary hearing on Petitioner's Verified Petition for Temporary Custody and Other Relief shall be held March 6, 2000. In selecting this date, the Court has taken into consideration, and allowed for, the time required to provide proper and sufficient notice to Respondent, the time allowed under the Rules of Civil Procedure for Respondent to file an answer, and the time required for Respondent to make travel arrangements for himself and any witnesses to appear at said hearing. It is

Jan-10-00 05:58P

01/10/00 11:30 PM 202 514 6897

CHIEF JUDGE FORTNA

P. 05

JAN. 11. 2000 5:27AM

NO. 074

P. 2/3

the intention of this Court to ensure that Respondent be properly served and notified of these proceedings and be afford a meaningful opportunity to appear and present evidence before this Court. To that end, the Court will consider expediting or delaying the evidentiary hearing upon written application by either party.

2. Petitioner shall immediately serve Respondent with copies of all Orders of this Court and all pleadings filed herein, including but not limited to (i) a Notice of Hearing of the evidentiary hearing on the Verified Petition for Temporary Custody and Other Relief, which notice shall include a statement, pursuant to Fla. Stat. § 61.1324(2), directing that Respondent appear personally and that his failure to appear may result in a decision adverse to his interest, (ii) Petitioner's Verified Emergency Ex-Parte Petition for Interim Order, (iii) Petitioner's Verified Petition for Temporary Custody and Other Relief, (iv) the Court's January 10, 2000 Temporary Protective Order, and (v) this Order Setting Hearing on Verified Petition for Temporary Custody. Said service shall be made by the means set forth in Fla. Stat. § 61.1312, Fla. Stat. § 761, or in any international convention addressing service of process on individuals in foreign countries, or by private courier service. Additionally, Petitioner may seek the assistance of the Immigration and Naturalization Service which, as indicated by its January 5, 2000 letter, has the ability to communicate and meet with Respondent.

3. Petitioner shall provide proof of said service to the Court. If service has not been completed by January 24, 2000, Petitioner shall on that date provided the Court with a report on the status of his efforts to serve Respondent.

4. The parties shall advise the Court in writing, within 10 days following

JAN-11-2000 6:29AM

service on Respondent, of their respective positions regarding whether a social investigation, pursuant to Fla. Stat. § 61.20, should be ordered in this matter.

DONE and ORDERED in open Court at Miami, Miami-Dade County, Florida, this 10th day of January, 2000.


ROSA I. RODRIGUEZ
CIRCUIT JUDGE

Charles Donovan Associates

Professional Plaza Building
1569 Medical Drive
Pottstown, Pennsylvania 19464-0180

Distribution Consultants:

Traffic and Transportation
Private Trucking Operations
Vehicle Leasing
Computer Applications and Studies

January 6, 2000

Ms. Beth Nolan
Counsel to the President
The White House
Washington, DC 20500

Re. Harrison A. Williams, Jr. -
Application for Executive Clemency

Dear Ms. Nolan:

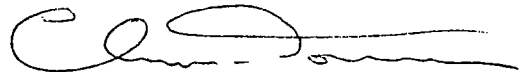
Thank you for your response to my letter to John Podesta on behalf of former Senator Williams. I much appreciate the information you provided.

I have since talked to Kathleen Hatton, an attorney in the Office of the Pardon Attorney, who added further direction and forwarded to me the formal application form. While Ms. Hatton said the process can take five or six years, I cautioned that Senator Williams and I are of the age when five years may be far beyond the horizon. My goal is a decision in President Clinton's final year.

Senator Williams is carefully preparing the application. He will make every effort to comply.

Best wishes to John Podesta and you.

Cordially yours,



Charles M. Donovan



Office of the Attorney General
Washington, D. C. 20530

January 12, 2000

Linda Osberg-Braun, Esq.
Roger A. Bernstein, Esq.
Hackley, Bernstein & Osberg-Braun, P.L.
Turnberry Plaza
2875 NE 191st Street
Penthouse 1B
Aventura, Florida 33180

Spencer Eig, Esq.
420 Lincoln Road
Suite 379
Miami Beach, Florida 33139

Dear Messrs. Eig and Bernstein and Ms. Osberg-Braun:

I have reviewed your letter of January 5 concerning the case of Elian Gonzalez, as well as the issues that Mr. Bernstein raised when he and others met with me on the evening of January 7, including the fact that you have filed a custody action on behalf of Lazaro Gonzalez in the Miami-Dade County Circuit Court. I understand that court has granted a temporary protective order to Lazaro Gonzalez. While I am always open to considering new information that might arise, I am not currently aware of any basis for reversing Commissioner Meissner's decision that Juan Gonzalez--Elian's father--has the sole authority to speak for his son on immigration matters.

As you know, the United States is not a party to the action you have filed in Florida court, nor is it named in the temporary protective order that the Florida Circuit Judge issued January 10. Indeed, 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. Nothing in the temporary protective order changes the government's determination that Juan Gonzalez can withdraw applications for admission and asylum relating to Elian and that he has done so. In the Department's judgment, the Florida court's order has no force or effect insofar as INS's administration of the immigration laws is concerned.

In our meeting last Friday evening, Mr. Bernstein said that the INS itself had originally announced that state courts could resolve Elian's status in the United States. I think it is important to clarify, therefore, this Department's views about

Letter to Spencer Eig, Esq., et al.

Page 2

the possible role of state courts in a case such as this. In the first few days after Elian's arrival in the United States, when it was suggested that INS's placement of Elian in the care of his great-uncle amounted to a grant of custody, INS indicated that it could not grant custody and that such a request would have to be put before the state courts. As the case evolved, it became clear that Elian's father, who was still in Cuba, was asserting a parental relationship with Elian and had adequately expressed his wish, under the immigration laws, for Elian's petition for admission to this country to be withdrawn. In these circumstances, INS was obliged to determine whether the father was the appropriate person to speak for Elian on immigration issues. That question, as I have said, remains one of federal, not state, law. The Commissioner's resolution of that question--as well as of other immigration matters--may be challenged, if at all, only in federal court. We are prepared to litigate in that forum. Accordingly, Commissioner Meissner has determined that the January 14 date should be extended to accommodate any federal court proceedings. This little boy has been through so much, and it is therefore imperative that all of us do what we can to resolve his case as soon as possible.

With respect to the issues raised in your January 5 letter, I would make the following observations. Elian Gonzalez is a six-year-old child who has lost his mother. As a general matter, when dealing with a child this young, the immigration law, like other areas of law, looks to the wishes of the surviving parent. One circuit court case indicated that a twelve-year-old child may apply for asylum over the wishes of his parents in some circumstances. See *Polovchak v. Meese*, 774 F.2d 731, 736 (7th Cir. 1985). That case also makes it clear, however, that a twelve-year-old child is "near the lower end of an age range in which a minor may be mature enough to assert certain individual rights that equal or override those of his parents." Commissioner Meissner has determined that, under applicable law, Elian is too young to make legal decisions for himself, and that his father has the legal authority to speak for him in immigration matters.

Commissioner Meissner reached her decision through a careful and thorough process. All of the available information was considered, including the reports from two lengthy and private interviews with Elian's father, Juan Gonzalez, and the report from the December 20 meeting with Elian's great uncle and cousin and each of you. Commissioner Meissner also carefully considered the allegation that Juan Gonzalez was under some form of coercion, and is confident, based on her representative's direct contact with Juan Gonzalez, the father's very close relationship

Letter to Spencer Eig, Esq., et al.

Page 3

with Elian, and the other evidence provided, that the father has expressed his true wishes in asking that his son be returned to him.

The INS does not rule out the possibility of a case in which an asylum application would be accepted from a young child against the wishes of a parent. In that regard, the INS Guidelines for Children's Asylum Claims provide a useful framework. In particular, they provide for a review of the objective circumstances relating to possible torture or persecution in the child's home country in cases where a child is too young to express a competent view on these matters. The INS reviewed the asylum application you sought to file on Elian's behalf, considered all other relevant available information, and found no objective basis for overriding the father's wishes for his son. In particular, the INS found no credible information indicating that the child would be at risk of torture or persecution if returned to his father, and thus concluded that it had no reason to question the father's decision not to assert an asylum claim.

The specific language you cite from the INS Inspector's Field Manual is not applicable here. It is designed to protect an unaccompanied minor who arrives here illegally, has no parent to speak for him, and is also capable of speaking for himself. In those circumstances, if the child indicates a wish to return voluntarily to his country of origin, he would normally be allowed to withdraw the application for admission and be sent home, rather than being placed into removal proceedings. If the child expresses a fear of persecution, however, the Field Manual provides that the child should be placed not in expedited removal proceedings, but rather in conventional removal proceedings before an immigration judge.

Nothing in the field guidance suggests that a father's wishes regarding his six-year-old child should be overridden. On the contrary, in a related provision you do not cite, the Field Manual makes it clear that the first responsibility of the INS when confronted with an unaccompanied minor is to attempt to remedy the situation by finding the child's parent or legal guardian, even if that person is outside the United States. It is only when that effort is unsuccessful that the Field Manual provisions you cite even come into play.

Even if it were applicable in this situation, the provision you cite would not answer the basic question presented by this case: Who speaks for the child? If Elian is not competent to "indicate[] a fear of persecution or intention to apply for

Letter to Spencer Eig, Esq., et al.

Page 4

asylum," then someone would have to decide in his behalf whether to do so. That someone, under universally accepted legal norms, is his father. And his father has stated, in no uncertain terms, that he does not wish for Elian to make an asylum claim. As noted above, the INS considered relevant information, including the statements of Elian's Miami relatives and information in the asylum application, and determined that there is no objective basis for a valid asylum claim. Consequently, it found no conflict between Elian and his father. Under these circumstances, the appropriate course of action was to honor the desires of the father regarding Elian's applications for admission and asylum. It is not appropriate to commence removal proceedings against this six-year-old boy. The Field Manual does not suggest otherwise.

Once again, it is my strong hope that we can work together to resolve this child's status as soon as possible.

Sincerely,



Janet Reno

Q&As

INS Decision on Elian Gonzalez

1. Why is INS returning Elian Gonzalez to Cuba?

INS has determined that Elian's father, Juan Gonzalez, has sole authority to speak on Elian's behalf regarding the immigration issues involved in this case. Mr. Gonzalez has asked that his son be returned to Cuba.

2. What about Elian's request for asylum?

The only person with legal standing to file an asylum request on Elian's behalf is Elian's father. He has not filed any asylum request for Elian and in fact has stated that he doesn't want such an application made. Applications filed by any other persons will not be considered since those persons have no legal standing to represent Elian or to speak on his behalf regarding immigration issues.

3. What facts and what law led to this decision?

Answer to be provided by General Counsel

4. Who had the final word on this decision? Was the White House involved? Was the Justice Department involved? The Attorney General? The State Department?

This was an INS decision made in consultation with the Justice Department, including the Attorney General. The White House and the State Department were advised of the decision but were not involved in the decision-making process.

5. Will you release the reports of your meetings with Elian's father or other documents from this case?

Answer to be provided by GC

6. Didn't INS say the issue of custody would be decided in state court?

The INS decision was not a custody decision. It was a decision on who has the legal authority to speak on Elian's behalf in immigration matters. What we have said is that the custody issue may ultimately end up in the courts but that is separate from the decision INS had to make about who could legally speak on Elian's behalf regarding the immigration issues involved in his case.

7. Doesn't this decision deny Elian the right to due process and a hearing?

Why don't you let an immigration judge decide?

There is no issue to take before an immigration judge. Mr. Gonzalez, who speaks for the child, has asked that he be returned to Cuba. Mr. Gonzalez is not asking for a hearing; he is withdrawing his application for admission to the United States.

8. Why are you denying Elian the chance to apply for permanent residency under the Cuban Adjustment Act?

INS has determined that Mr. Juan Gonzalez has the sole authority to speak for Elian regarding immigration issues. Only he can apply for immigration relief for Elian. He has not filed any such applications and in fact has stated that he doesn't want such an application made. In addition, the Cuban Adjustment Act of 1966 allows Cubans to apply for permanent residency one year after being inspected and admitted or paroled. Since Elian has not been in the U.S. for one year, he is not eligible to apply for adjustment in any case.

9. Isn't it wrong to send a child back to live in a country that is a communist dictatorship?

INS has tried very hard throughout this process not to politicize the issue. We are aware that it is a very emotional one for many people, but INS' decision is based on the facts and the law. This is about a father who has a legal right to speak for his child regarding the immigration issues in this case, and who has said he would like his child returned to him.

10. Why didn't INS insist Juan Gonzalez come to the U.S. to be interviewed?

It is not appropriate to require a parent to travel to another country in order to express his wish that his child be returned.

11. How do you know Juan Gonzalez was speaking for himself and not for Castro?

INS took steps to ensure that Mr. Gonzalez was expressing his opinions freely. Our personnel who conduct these kinds of interviews are trained and experienced professionals. INS is confident that Mr. Gonzalez was expressing his true wishes and was doing so of his own accord. INS personnel initially spoke to Mr. Gonzalez in his own home, and then in a neutral location.

12. What about the allegations that Juan Gonzalez applied to come to the U.S.?

The State Department has no indication that Mr. Gonzalez ever applied for a visa or for immigrant status in the U.S.

13. Did the INS and the U.S. bow to pressure from Cuba?

Absolutely not. This decision was made based solely on the facts and the law.

14. When and how will the child be returned?

Those details are still being worked out. INS hopes Elian's uncle and the father, will work out amongst themselves, or with a possible third party, a way to facilitate Elian's return to his father.

15. Have Elian's relatives in Florida and his father in Cuba been told of the decision?

Yes.

16. What will you do if the family in Florida refuses to surrender Elian?

We believe that everyone's concerns in this case have been for the well being of Elian. We have seen, by the way they have embraced Elian, that the Miami relatives understand the importance of family unity, and it is our hope that they also understand that a parent should be with his child. We are confident that everyone will respect the lawful decisions made in this matter.

17. The family in Florida says it will seek relief in the courts. Will that stop INS from returning Elian to Cuba?

INS' decision has been regarding who can legally speak for Elian on the immigration issues surrounding his case. Whatever relief the Miami family seeks in the courts has no bearing on INS' decision. INS' decision is solely linked to the immigration matters in this case -- it is not a custody decision. INS cannot speculate on what additional actions may be taken by the courts.

18. Except for criminals, INS never returns Cubans to Cuba. Why is Elian being treated like a criminal?

(New answer coming from OGC.)

19. Was sending Elian back part of the deal in which Castro took back the Cuban criminals holding hostages in Louisiana?

Absolutely not. The two situations are totally unrelated.

20. Does this decision signal a change in U.S. policy toward Cuba?

No.

21. Are you concerned about the possibility of riots by the Cuban-American community in Miami because of this decision?

We understand that for many this is an emotional issue, but it is our hope that the Miami community will remain peaceful in order to allow the legal process to work its course in this matter.

22. Why has this decision taken so long?

This was a complex and unusual case in which INS had to determine amongst several different parties who were voicing their opinions regarding Elian, who had the legal authority to speak on his behalf regarding the immigration issue. INS held meetings with Elian's father in Cuba, and separately with Elian's great uncle. After carefully evaluating the facts in this case, INS made its determination as quickly as possible.

- 23. Were you pressured from Congress to put off a decision until they can introduce a private bill offering Elian US citizenship? Would you support such a bill?**

Congress' statements had no bearing on the INS decision. We do not comment on private bills that may or have been introduced by members of Congress.

- 24. Why was the letter signed by Mr. Pearson and not the Commissioner?**

Although this was a decision made strictly by the facts and law, and was made by INS officials at INS headquarters, including Commissioner Meissner, the implementation of the decision is an operational matter. Mr. Pearson is the Executive Associate Commissioner for INS Field Operations and as such has responsibility and jurisdiction for operational matters.

- 25. Why wasn't this decision made by the District office in Miami as is the norm?**

It is not unusual in complex cases for cases to be reviewed and decided by INS headquarters. This was a case that involved many issues, including legal and others that needed to be looked at by INS officials at the Headquarters level.

- 26. Did you delay the decision until after the holidays to minimize the anger in the Cuban-American community?**

No. We have tried throughout this process to shield this case from political pressures from all sides. The decision was based on the facts and the law and INS made its decision as quickly as it could after carefully evaluating all the facts in this case.

HACKLEY, BERNSTEIN & OSBERG-BRAUN, P.L.

ATTORNEYS AT LAW

Tumberry Plaza
2875 NE 191st Street - Penthouse 1B •ventura, FL 33180
Miami-Dade (305) 692-8888 • Broward (954) 349-4994
Facsimile (305) 692-8838 • www.visaattorneys.com

M. Keil Hackley*
Roger A. Bernstein**
Linda Osberg-Braun***

*Md. & D.C. Bars
**Florida Bar
***Florida & Pa. Bars

The Honorable Janet Reno
Attorney General of the United States
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

January 5, 2000

Dear Attorney General Reno:

We write to you on Elian Gonzalez' behalf, to ask you to review and reverse the decision announced today by INS Commissioner Doris Meissner. That decision strips Elian of legal representation, and denies him a hearing on his request for political asylum. It is unfair and unconstitutional, and was reached without according Elian any due process of law. This leaves him alone and unprotected by the laws of our nation.

Elian Gonzalez has a constitutionally protected right to apply for political asylum regardless of his age or his father's statements. The decision appears to be an arbitrary one, based largely on secret interviews conducted with Juan Miguel Gonzalez in Cuba. It seems to be predicated on the untested view that Gonzalez is free from duress in Fidel Castro's Cuba, and addresses only Elian's father's best interests, not Elian's. It also contradicts the Commissioner's own policy, directives and regular practices.¹

A decision of this importance should be reached by the highest officials of this country, not by a lower official, even one as distinguished as Commissioner Meissner, and in accordance with due process of law. We ask that you review the process and merits of this decision, and that you consult with the President of the United States.

We look forward to working with you to assure Elian due process of law.

Sincerely,



LINDA OSBERG-BRAUN

Hackley, Bernstein & Osberg-Braun, P.L.



ROGER A. BERNSTEIN



SPENCER EIG
Attorney-at-Law

cc: The Counsel to the President of the United States

¹ HQINS 50/5.12 96 Act054 of August 21, 1997 states: "When deciding whether to permit the minor to withdraw his or her application for admission, officers must also make every effort to determine whether the minor has a fear of persecution or return to his or her country. If the minor indicates a fear of persecution or intention to apply for asylum, or if there is any doubt, especially in the case of countries with known human rights abuses or where turmoil exists, the minor should be placed in removal proceedings under section 240 of the Act...."



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

January 6, 2000

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

Ms. Doris Meissner, Commissioner of Immigration and Naturalization Service, announced yesterday that Elian Gonzalez would be returned to his father's custody in Cuba. Today, Attorney General Janet Reno announced she would not reverse the Commissioner's decision. This unilateral decision by INS came before Elian's scheduled asylum hearing with INS, and ignores its previously stated commitment to protect the needs of refugee children such as Elian. INS's order sadly makes no mention of the fact that Elian's mother sacrificed her own life so that Elian might live in freedom and liberty in the United States.

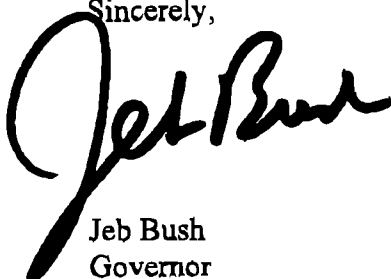
Many in the South Florida community are incensed by the failure of INS to afford Elian any hearing or appropriate due process, and are justifiably concerned about the welfare of this child. Elian's father has not been permitted to leave Cuba to visit his son here, and may not have been permitted to speak freely while in Cuba. Thus, his statements to the INS expressing a desire to remain in Cuba are suspect. Fidel Castro has made Elian a poster child for his communist dictatorship, and has turned what should be a determination as to the child's best interests into a way to advance his own political tyranny. As a result of this arbitrary and unilateral decision to return Elian to Cuba, civil protests in Miami have already commenced.

The Honorable William J. Clinton
January 6, 2000
Page Two

The actions of the Commissioner and the Attorney General to date have been insensitive and contrary to the fundamental constitutional rights enjoyed by all. I ask that you, as President, review and reverse the decision of the Commissioner and Attorney General to return Elian Gonzalez to Cuba. The issue of Elian's legal custody should be determined not by INS unilaterally, but by a hearing in our own state judicial system. Your administration initially realized the fundamental fairness of a state-court resolution before allowing INS to interfere with Elian Gonzalez's life. Our state courts are impartial, and have a history of fairly resolving custody issues. Moreover, our state courts can, and will, assure that Elian and his father receive the due process to which they are entitled. A court, not INS, should resolve this issue under applicable law, so that the final decision on Elian's custody and residency is made in the best interests of the child.

Finally, given INS' decision to return Elian to Cuba no later than January 14, 2000, your attention to this matter is required immediately. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush". The signature is fluid and cursive, with the first name "Jeb" being more prominent and stylized than the last name "Bush".

Jeb Bush
Governor



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

FAX COVER SHEET

Date: 1/6/2000

Please deliver the following 3 pages (including cover sheet)

To: NAME: The President

~~FAX NUMBER:~~ c/o John Podesta
Chief of Staff

From: Governor Jeb Bush

Phone: (850): 488-5603

Fax: (850) 922-4292 _____

Message: _____

Cuban Boy
January 5, 2000

Context: Elian Gonzalez, a six-year-old Cuban national, was rescued off the coast of Florida on November 25 after the boat in which he and 10 others were traveling capsized. His mother drowned in the incident, and INS released the child into the custody of his paternal relatives in Miami. INS will announce its decision in this case today at a 12:00 press conference. INS has determined that Elian Gonzalez's father has the sole legal authority to speak for Elian regarding Elian's immigration status, and that Elian should be reunited with his father. The father in Cuba, the family in Miami, and the attorneys will be informed by INS of its decision today at 11:00. The Cuban government will be notified immediately thereafter. INS will then begin outreach to interested parties, including the Hill, the Miami area mayors, religious and community groups, and the Florida Governor's Office.

Both yesterday and today's Washington Post report that INS is very near a decision to return Elian Gonzalez to his father in Cuba. CNN reports this morning that INS has made a decision and will announce it today at 11:00 a.m.

What did the INS decide today in the Elian Gonzalez case?

- The Immigration and Naturalization Service announced its decision today at noon. 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.

Has the family been informed of the decision?

- INS informed the child's father and his relatives in Miami of its decision.

Has the father agreed to come to the United States to pick him up/has Castro agreed to let him come?

- Mr. Gonzalez has been advised that the United States would facilitate his traveling to the United States if he wished to do so. It is not necessary that he travel to the United States with regard to the resolution of his son's case, but it

could be helpful. The Cuban government would have to issue him the necessary travel documents to make such a trip.

Has the father applied for a visa to come to the United States?

- The State Department can answer questions about that.

Why did it take so long to make a decision in this case?

- This was a complex and unusual case. INS tried to reach a decision as quickly as possible but it was important that it take the time necessary to gather all the relevant information and review all the facts.

Who had the final word in this decision? Was the White House involved?

- This was an INS decision made in consultation with the Justice Department, including the Attorney General. The White House was advised of the decision, but did not play any role in the ultimate decision in the case.

How will the boy's return to Cuba be handled?

- This is an INS issue and I refer you to them for details.

Isn't it wrong to send a child back to live in a country that is a communist dictatorship?

- INS tried very hard not to politicize this issue. We are aware that this is a very emotional one for many people, but INS' decision is based on the facts and the law. This is about a father who has a legal right to speak for his child regarding his immigration status, and who has said he would like his child returned to him.

How do you know the father was speaking for himself and not for Castro?

- INS took steps to ensure that Mr. Gonzalez was expressing his opinions freely. INS is confident that he was expressing his true wishes and was doing so of his own accord.

Did the INS and the U.S. bow to pressure from Cuba?

- Absolutely not. INS made this decision solely based on the facts and the law.

Are U.S. officials concerned about the reaction of the Cuban American community in Miami?

- This question is unfair to both the Cuban-American community and to the U.S. government. As the President has said, we have attempted to shield this case from political pressure and our hope remains that the decision can be carried out without interference from any quarter.
- We understand that for many this is an emotional issue, but it is our hope that the Miami community will remain peaceful in order to allow the legal process to work its course in this matter.

[IF ASKED] What do you make of the comments by the National Council of Churches' Joan Brown Campbell urging the boy to be returned?

- The Reverend Campbell is in Cuba as a private citizen. Her meetings and comments—however well intentioned—have no bearing on INS' decision in this matter.

01/05/00 WED 17:34 FAX 2024569310

NSCWSS

2023071918 TO 94569140

P.02/07

JAN 05 '00 11:11 FR

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT

1/5/00

Embargoed for 12 noon
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.

01/05/00 WED 17:34 FAX 2024569310

NSCWHSS

2023071918 TO 94569140

P.03/07

JAN 05 '00 11:11 FR

INS Decision in the Elian Gonzalez Case

Page 2

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 -

01/05/00 WED 17:34 FAX 2024569310

NSCWSS

2023071916 TO 94569140

P.04/07

JAN 05 '00 11:11 FR

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

QUESTIONS AND ANSWERS (Internal Use Only)

1/5/00

INS Decision on Elian Gonzalez

1. Is INS returning Elian Gonzalez to Cuba?

This is a six-year old child who is not old enough to make legal decisions for himself. INS has determined that Elian's father, Juan Gonzalez, has sole authority to speak on Elian's behalf regarding the immigration issues involved in this case. Mr. Gonzalez has asked that his son be returned to Cuba.

2. What about Elian's request for asylum?

The only person with legal standing to file an asylum request on Elian's behalf is Elian's father. He has not filed any asylum request for Elian and in fact has stated that he doesn't want such an application made. Applications filed by any other persons will not be accepted since those persons have no legal standing to represent Elian or to speak on his behalf regarding immigration issues.

3. What facts and what law led to this decision?

This case involves a child of such a tender age that he does not have the capacity to make decisions about his immigration interests on his own behalf. A number of parties have claimed to have the lawful authority to represent Elian in immigration matters, and have purported to advance a variety of different claims and requests on the child's behalf. The key issue in this case was to determine who has the authority to make decisions about Elian's immigration interests. After meeting with Elian's father, and, separately, with his great uncle and lawyers who claim to represent Elian, and after carefully considering all relevant facts, the INS determined that Elian's father has the sole legal authority to speak on behalf of his son in immigration matters.

4. Who had the final word on this decision? Was the White House involved? Was the Justice Department involved? The Attorney General? The State Department?

This was an INS decision made in consultation with the Justice Department, including the Attorney General. The White House and the State Department were advised of the decision but were not involved in the decision-making process.

5. Will you release the reports of your meetings with Elian's father or other documents from this case?

To ensure we receive the fullest information possible, interviews of this nature are conducted in confidence. It is generally not our practice to release such documents when we announce our decision.

6. Didn't INS initially say the issue of custody would be decided in state court?

The INS decision was not a custody decision. It was a decision on who has the legal authority to speak on Elian's behalf in immigration matters. Any custody issue is separate from the decision INS had to make about who could legally speak on Elian's behalf regarding the immigration issues involved in his case.

JAN 05 '00 11:12 FR

2023071918 TO 94569140

P.05/07

INS Decision on Elian Gonzalez

Page 2

7. **Doesn't this decision deny Elian the right to due process and a hearing? Why don't you let an immigration judge decide?**

There is no issue to take before an immigration judge. Mr. Gonzalez, who has been determined to speak for the child, has asked that he be returned to Cuba. Mr. Gonzalez is not asking for a hearing; he is withdrawing his son's application for admission to the United States.

8. **Why are you denying Elian the chance to apply for permanent residency under the Cuban Adjustment Act?**

We are talking about a six-year old child who is not old enough to make legal decisions on his own. INS has determined that Mr. Juan Gonzalez has the sole authority to speak for Elian regarding immigration issues. Only he can apply for immigration benefits for Elian. He has not filed any such applications and in fact has stated that he doesn't want such an application made. In addition, the Cuban Adjustment Act of 1966 allows Cubans to apply for permanent residency one year after being inspected and admitted or paroled. Since Elian has not been in the U.S. for one year, he is not eligible to apply for adjustment in any case.

9. **Isn't it wrong to send a child back to live in a country that is a communist dictatorship?**

INS has tried very hard throughout this process not to politicize the issue. We are aware that it is a very emotional one for many people, but INS' decision is based on the facts and the law. This is about a father who has a legal right to speak for his six year old child regarding the immigration issues in this case, and who has said he would like his child returned to him.

10. **Why didn't INS insist Juan Gonzalez come to the U.S. to be interviewed?**

It is not appropriate to require a parent to travel to another country in order to express his wish that his child be returned. However, we have informed Mr. Gonzalez, that should he wish to travel to the U.S., the State Department would be amenable to issuing him a non-immigrant visa so he can come to see his son.

11. **How do you know Juan Gonzalez was speaking for himself and not for Castro?**

INS took steps to ensure that Mr. Gonzalez was expressing his true wishes with respect to Elian. Our personnel who conduct these kinds of interviews are trained and experienced professionals. INS is confident that Mr. Gonzalez was expressing his true wishes and was doing so of his own accord. INS personnel initially spoke to Mr. Gonzalez in his own home, and then in a neutral location.

12. **What about the allegations that Juan Gonzalez previously applied to come to the U.S.?**

The State Department has no indication that Mr. Gonzalez ever applied for a visa or for immigrant status in the U.S.

JAN 05 '00 11:12 FR

2023071918 TO 94569140

P.06/07

INS Decision on Elian Gonzalez

Page 3

13. Did the INS and the U.S. bow to pressure from Cuba?

Absolutely not. This decision was made based solely on the facts and the law as it would have been made had the child been from any other country.

14. When and how will the child be returned?

Those details are still being worked out. INS hopes Elian's relatives, including the father and the great uncle, will work out between themselves, or with a possible third party, a way to facilitate Elian's return to his father.

15. Have Elian's relatives in Florida and his father in Cuba been told of the decision?

Yes. They were notified at the same time.

16. What will you do if the family in Florida refuses to surrender Elian?

We believe that in this case, everyone's concerns are for the well being of Elian. We have seen, by the way they have embraced Elian, that the Miami relatives understand the importance of family unity. We are confident that everyone will respect the legal decisions made in this matter.

17. The family in Florida says it will seek relief in the courts. Will that stop INS from returning Elian to Cuba? Will INS forcefully

INS' decision is regarding who can legally speak for Elian on the immigration issues surrounding his case. Whatever relief the Miami family seeks in the courts has no bearing on INS' decision. INS' decision is solely linked to the immigration matters in this case -- it is not a custody decision. INS cannot speculate on what additional actions may be taken by the courts.

18. Except for criminals, INS never returns Cubans to Cuba. Why is Elian being treated like a criminal?

The INS is not removing Elian from the United States and returning him to Cuba. Rather we are honoring Elian's request, as asserted by his father who has authority to speak on his behalf, to allow him to be reunited with his father and his immediate family in Cuba.

19. Was sending Elian back part of the deal in which Castro took back the Cuban criminals holding hostages in Louisiana?

Absolutely not. The two situations are totally unrelated.

20. Does this decision signal a change in U.S. policy toward Cuba?

Absolutely not. This is a decision based on INS proceedings in a specific case and is not related to U.S. policy towards Cuba.

INS Decision on Elian Gonzalez
Page 4

2023071518 TO 01/05/00

P. 07/187

21. Are you concerned about the negative reactions by the Cuban-American community in Miami because of this decision?

We understand that for many this is an emotional issue, but we are confident that the Miami community will understand and allow the legal process to work its course in this matter.

22. Why has this decision taken so long?

This was a complex and unusual case involving a six year old child who is too young to make legal decisions on his own. As a result, INS had to determine amongst several different parties who were voicing their opinions regarding Elian, who had the legal authority to speak on his behalf regarding the immigration issues. INS held meetings with Elian's father in Cuba, and separately with Elian's great uncle. After carefully evaluating the facts in this case, INS made its determination as quickly as possible

23. Were you pressured by Congress to put off a decision until they can introduce a private bill offering Elian US citizenship? Would you support such a bill?

Congress' statements had no bearing on the INS decision. We do not comment on private bills introduced by members of Congress.

24. Why was the letter signed by Mr. Pearson and not the Commissioner?

Although this was a decision made strictly by the facts and law, and was made by INS officials at INS headquarters, including Commissioner Meissner, the implementation of the decision is an operational matter. Mr. Pearson is the Executive Associate Commissioner for INS Field Operations and as such has responsibility and jurisdiction for operational matters.

25. Why wasn't this decision made by the District office in Miami as is the norm?

It is not unusual in complex cases for cases to be reviewed and decided by INS headquarters. This was a case that involved many issues, including legal decisions and others that needed to be looked at by INS officials at the Headquarters level.

6. Did you delay the decision until after the holidays to minimize the anger in the Cuban-American community?

No. We have tried throughout this process to shield this case from political pressures from all sides. The decision was based on the facts and the law and INS made its decision as quickly as it could after carefully evaluating all the facts in this case.

MAXINE WATERS

MEMBER OF CONGRESS
20TH DISTRICT, CALIFORNIA

CHIEF DEPUTY WHIP

COMMITTEES

BANKING AND FINANCIAL
SERVICES

JUDICIARY

Congress of the United States
House of Representatives
Washington, DC 20515-0535

PLEASE RETURN TO
2344 RIVERSIDE PLAZA OFFICE BUILDING
WASHINGTON, DC 20015 0535
(202) 225-7281
FAX (202) 225-7854
DIRECTOR OFFICE
14124 S. BROADWAY
SUITE 1
LOS ANGELES, CA 90043
(323) 757-6908
FAX (323) 757-6508

January 6, 2000

The Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20050

Dear Mr. President:

We are writing to you to again urge the Administration to assist in expediting the return of Elian Gonzalez to his father in Cuba. We applaud the National Council of Churches of Christ of the USA on the important role they are performing in the Elian Gonzalez immigration case. We support their request to accompany Elian back to Cuba and to turn him over to the Cuban Council of Churches so that he may be reunited with his father, Mr. Juan Gonzalez.

The U.S. Department of Justice Immigration and Naturalization Service's determination that Mr. Juan Gonzalez has the sole legal authority to speak on behalf of his son, regarding Elian's immigration status in the United States speaks not only to U.S. laws but to natural law. We ask that you assist the National Council of Churches of Christ of the USA in their effort to fulfill the father's official request of assistance to reunify his family.

We have been ardent in our efforts to ensure that Elian's situation not be decided based on the politics of the day or the sentiments of anti-Castro Cubans in Florida and the rest of the United States. Rather, it should be based on the interests of the child and the rights that any father would expect to have.

We urge your immediate intervention to resolve this situation and eliminate any further delay in the reunification of this family. Any further delay will ensure Elian's continued traumatic exposure to the ongoing protests in Miami.

Sincerely,

Maxine Waters
Member of Congress

Barbara Lee
Member of Congress

James E. Clyburn
Member of Congress

Jan-06-00 19:01 From

1-876 P.04/04 P-368

Additional Supporters

**Mr. Harold Pope, President
National Bar Association**

**Dr. Joseph Lowery, Chairman
Black Leadership Forum**

**Dr. Dorothy Heigh, President Emerita and Chair
National Council of Negro Women**

**Mr. John Boyd, President
National Black Farmers Association and
Equality International**

**Mr. William Lucy, President
Coalition of Black Trade Unionists**

**The Honorable Roosevelt Coats, President
National Black Caucus of Local Elected Officials**

**Ambassador Andrew Young
GoodWorks International, LLC**

**Ms. Thomasina Cotton, Acting President & CEO
Opportunities, Industrialization Centers of America**

**Ms. Jane Smith, President
National Council of Negro Women**

**Ms. Sullivan Robinson, Executive Director & CEO
Congress of National Black Churches**

**Ms. C. Delores Tucker, Chair
National Political Congress of Black Women**

William Clay
Member of Congress

Sheila Jackson Lee
Member of Congress

Maurice Hinchey
Member of Congress

Sanford Bishop
Member of Congress

Stephanie Tubbs-Jones
Member of Congress

Alcee Hastings
Member of Congress

Jan Schakowsky
Member of Congress

Gregory Meeks
Member of Congress

Julia Carson
Member of Congress

Neil Abercrombie
Member of Congress

Nancy Pelosi
Member of Congress

Elijah Cummings
Member of Congress

Earl Hilliard
Member of Congress

cc: Attorney General Janet Reno
Commissioner Doris Meissner



JEB BUSH
GOVERNOR

Office of the Governor

THE CAPITOL

TALLAHASSEE, FLORIDA 32301

TO: Mickey Spana
Ray Manning
Brian de Vallance

Mr POTUS
should respond,
or leave it to
INS?

Melissa Prober

January 6, 2000

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

Mrs. Doris Meissner, Commissioner of Immigration and Naturalization Service, announced yesterday that Elian Gonzalez would be returned to his father's custody in Cuba. Today, Attorney General Janet Reno announced she would not reverse the Commissioner's decision. This unilateral decision by INS came before Elian's scheduled asylum hearing with INS, and ignores its previously stated commitment to protect the needs of refugee children such as Elian. INS's order sadly makes no mention of the fact that Elian's mother sacrificed her own life so that Elian might live in freedom and liberty in the United States.

Many in the South Florida community are incensed by the failure of INS to afford Elian any hearing or appropriate due process, and are justifiably concerned about the welfare of this child. Elian's father has not been permitted to leave Cuba to visit his son here, and may not have been permitted to speak freely while in Cuba. Thus, his statements to the INS expressing a desire to remain in Cuba are suspect. Fidel Castro has made Elian a poster child for his communist dictatorship, and has turned what should be a determination as to the child's best interests into a way to advance his own political tyranny. As a result of this arbitrary and unilateral decision to return Elian to Cuba, civil protests in Miami have already commenced.

A -
- This should
be referred to
General Counsel
to determine
response w/
Correspondence.
Request copy -

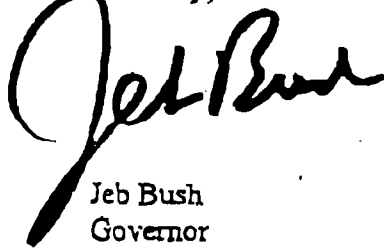
MJ

The Honorable William J. Clinton
January 6, 2000
Page Two

The actions of the Commissioner and the Attorney General to date have been insensitive and contrary to the fundamental constitutional rights enjoyed by all. I ask that you, as President, review and reverse the decision of the Commissioner and Attorney General to return Elian Gonzalez to Cuba. The issue of Elian's legal custody should be determined not by INS unilaterally, but by a hearing in our own state judicial system. Your administration initially realized the fundamental fairness of a state-court resolution before allowing INS to interfere with Elian Gonzalez's life. Our state courts are impartial, and have a history of fairly resolving custody issues. Moreover, our state courts can, and will, assure that Elian and his father receive the due process to which they are entitled. A court, not INS, should resolve this issue under applicable law, so that the final decision on Elian's custody and residency is made in the best interests of the child.

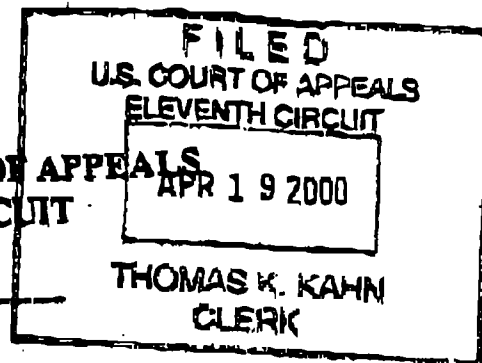
Finally, given INS' decision to return Elian to Cuba no later than January 14, 2000, your attention to this matter is required immediately. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Jeb Bush
Governor

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**



No. 00-11424-D

D. C. Docket No. 00-206-CV-KMM

**ELIAN GONZALEZ, a minor, by and through
LAZARO GONZALEZ, as next friend, or,
alternatively, as temporary legal custodian,**

Plaintiff,

v.

**JANET RENO, Attorney General of the United States;
DORIS MEISSNER, Commissioner, United States
Immigration and Naturalization Service;
ROBERT WALLIS, District Director,
United States Immigration and Naturalization Service;
UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICE; and UNITED
STATES DEPARTMENT OF JUSTICE,**

Defendants.

**Appeal from the United States District Court
for the Southern District of Florida**

Before EDMONDSON, DUBINA and WILSON, Circuit Judges.

BY THE COURT:

Elian Gonzalez ("Plaintiff"), a six-year-old child from Cuba, has made his way to the United States. Plaintiff, as an alien, submitted an application for asylum, pursuant to 8 U.S.C. § 1158(a), to the Immigration and Naturalization Service ("INS").¹ His father asked, in effect, that the application be withdrawn. After an investigation, the INS -- deciding that Plaintiff could not apply for asylum himself and that, under the circumstances, only his father could seek asylum on Plaintiff's behalf -- concluded that there was no reason not to honor the father's request and, accordingly, refused to consider Plaintiff's application. Plaintiff then brought suit in federal district court challenging on several grounds the INS's refusal to consider his application.² The district court rejected Plaintiff's claims.

¹ Several applications for asylum were actually submitted on Plaintiff's behalf. One was signed by Plaintiff himself. The others were signed by Plaintiff's great uncle and temporary custodian (selected by the INS), Lazaro Gonzalez.

² Plaintiff is a minor; Plaintiff's suit was brought by and through Lazaro Gonzalez as next friend. See generally Fed. R. Civ. P. 17(c).

Plaintiff has appealed the district court's decision to this Court.³ His appeal is scheduled to be argued orally next month. Plaintiff, however, now moves for an injunction "to preclude [Plaintiff's] physical removal from the jurisdiction of the United States during the pendency of this appeal."⁴ We conclude that Plaintiff is entitled to such an injunction and grant the motion.

In considering a motion for injunction pending appeal, we examine four factors: (1) whether the movant is likely to prevail on the merits of his appeal; (2) whether, if we do not issue an injunction, the movant will suffer irreparable harm; (3) whether, if we issue an injunction, any other party will suffer

³ This Court, on 27 March 2000, expedited Plaintiff's appeal and scheduled oral argument for the week of 8 May 2000.

⁴ A party must ordinarily first move in the district court for an injunction pending appeal. In this case, Plaintiff came directly to the appellate court. A motion for an injunction pending appeal may be made directly to the court of appeals when a party shows that moving first in the district court would be impracticable. See Fed. R. App. P. 8(a)(2). In this case, we are satisfied that Plaintiff has sufficiently shown that it would have been impracticable to move first in the district court: the time-sensitive nature of the proceedings and the possibility that we could have lost jurisdiction in the absence of an injunction support our exercise of discretion in this case. See also Michael v. INS, 48 F.3d 657, 663 (2d Cir. 1995).

On 13 April 2000, a single-judge emergency order, enjoining Plaintiff's removal from the United States, was issued until a three-judge panel had considered fully Plaintiff's motion for injunction pending appeal. We now have considered fully Plaintiff's motion, and the single-judge emergency order has served its purpose. The single-judge order, accordingly, is replaced by this Order.

substantial harm; and (4) whether an injunction would serve the public interest. See In re Grand Jury Proceedings, 975 F.2d 1488, 1492 (11th Cir. 1992). Although the first factor is generally the most important, the movant need not always show that he probably will succeed on the merits of his appeal. Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986). Instead, where the "balance of the equities weighs heavily in favor of granting the [injunction]," the movant need only show a "substantial case on the merits." Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981); see also Hilton v. Braunskill, 107 S. Ct. 2113, 2120 (1987); United States v. Hamilton, 963 F.2d 322, 323 (11th Cir. 1992); Garcia-Mir, 781 F.2d at 1453.

In this case, the balance of the equities weighs heavily in favor of enjoining the removal of Plaintiff from the United States pending appeal. And Plaintiff has made a "substantial case on the merits" of his appeal.

1. "Balance of the Equities"

The equities, in this case, weigh heavily in favor of issuing an injunction pending appeal. Apart from concerns about what might happen to this child if he is returned to Cuba (which we do not address), if Plaintiff leaves the United

Nor do we believe that an injunction pending appeal in this case would offend the public interest. The INS, in opposition to Plaintiff's motion, invokes the well-established authority of the political branches of government in immigration affairs. We fully recognize the plenary power of Congress over

immigration matters. See Jean v. Nelson, 727 F.2d 957, 965 (11th Cir. 1984) (en banc). But we fail to see how an injunction in this case infringes upon the congressional power; after all, the heart of Plaintiff's appeal is that the INS -- by refusing to consider Plaintiff's asylum application -- has disregarded the command of Congress. And we doubt that protecting a party's day in court, when he has an appeal of arguable merit, is contrary to the public interest. We, therefore, conclude that the equities weigh heavily in favor of granting an injunction pending appeal.⁶

⁶The INS also asserts that, under the equitable doctrine of "unclean hands," Plaintiff is unentitled to seek the equitable remedy of an injunction pending appeal. The INS urges that Lazaro Gonzalez's alleged failure to comply with an INS order, directing that he surrender Elian Gonzalez to the INS at a Miami airport, renders Plaintiff's hands unclean. Whether Lazaro Gonzalez failed to comply with a lawful order of the INS and whether such failure would justify invocation of the unclean hands doctrine in some cases are issues that we need not decide today. Lazaro Gonzalez is not the plaintiff in this case; Plaintiff is Elian Gonzalez. However unclean Lazaro Gonzalez's hands may be, the INS has suggested no misconduct on the part of Plaintiff, Elian Gonzalez, that would justify application of the unclean hands doctrine in this case to him.

2. "Substantial Case on the Merits"

This case is mainly about statutory construction and the proper exercise of executive discretion. Among other things, we must ultimately decide what Congress meant when it said:

Any alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158(a)(1). Plaintiff argues that the INS's refusal even to consider his application violates 8 U.S.C § 1158(a). The INS contends that, because Plaintiff is a six-year-old child, he is incompetent to submit an application on his own behalf and that, on the facts of this case, he must have his father submit the application for him.⁷ Because his father did not do so, the INS contends that Plaintiff never actually applied for asylum and that, therefore, no application exists for its consideration. Even accepting as we do the principles of deference set out in Chevron v. Natural Resources Defense

⁷Although the INS determined that Plaintiff was incompetent to make immigration decisions, it bears repeating that the INS made this determination without having met with Plaintiff or having any evaluations done on his capacity.

Council, Inc., 104 S. Ct. 2778 (1984), we at this time have doubt, in the light of the record and Plaintiff's arguments on appeal, about the correctness of the INS's interpretation of section 1158.

In considering an agency's interpretation of a statute, we first must examine the plain meaning of the pertinent statutory language: "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron, 104 S. Ct. at 2781 (1984). The statute in this case seems pretty clear. Section 1158(a)(1) provides that "[a]ny alien . . . irrespective of such alien's status, may apply for asylum." Plaintiff appears to come within the meaning of "[a]ny alien." See 8 U.S.C. § 1101(a)(3). And the statute plainly says that such an alien "may apply for asylum." We, therefore, question the proposition that, as a matter of law, Plaintiff (unless his father consents) cannot exercise the statutory right to apply for asylum.

Congress's provision for "any alien" is not uncertain in meaning just because it is broad. See Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S.

⁸Congress specifically and expressly excluded three groups of aliens from the meaning of "[a]ny alien." See 8 U.S.C. § 1158(a)(2). School-age children are not among the excluded groups, however. See id.

206, 211 (1998). If Congress had meant to include only some aliens, perhaps Congress would not have used the words "any alien." In addition, although the INS has the authority to issue regulations and procedures governing the submission of asylum applications, see 8 U.S.C. § 1158(d), the INS cannot properly infringe on the plain language of the statute or the clear congressional purpose underlying it. See Shoemaker v. Bowen, 853 F.2d 858, 861 (11th Cir. 1988). Nor can the INS properly narrow the scope of a statute through regulation. See Ellis v. General Motors Acceptance Corp., 160 F.3d 703, 708-09 & n.5 (11th Cir. 1998). At this time, we cannot say that "any alien" excludes Plaintiff: given the plain language of the statute, he might be entitled to apply personally for asylum. Furthermore, it seems unclear that an INS decision to treat Plaintiff's application as a nullity without an adjudication on the merits is a "procedure for the consideration of [Plaintiff's] asylum application." See 8 U.S.C. § 1158(d)(1).

⁹To some people, the idea that a six-year-old child may file for asylum in the United States, contrary to the express wishes of his parents, may seem a strange or even foolish policy. But this Court does not make immigration policy, and we cannot review the wisdom of statutes duly enacted by Congress. If Congress intended — as evidenced by the plain meaning of section 1158 — that a school-age child (such as Plaintiff) be able to file personally an application for asylum, this Court and the INS are bound to honor the policy-decision made by Congress.

Not only does the plain language of the statute seem to support Plaintiff's argument that he, despite his age, is entitled to apply personally for asylum, the present regulatory scheme created by the INS also seems to strengthen Plaintiff's position. The existing INS regulations do envision situations where a minor may act on his own behalf in immigration matters.¹⁰ Moreover, the regulations contemplate that a minor, under some circumstances, may seek asylum against the express wishes of his parents.¹¹ Also, the INS Guidelines for Children's Asylum Claims (Dept. of Justice, December 1998)

¹⁰See 8 C.F.R. § 103.2(a)(2) ("An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old.") (emphasis added); 8 C.F.R. § 236.3(h) ("When a juvenile alien is apprehended, he or she must be given a [Notice of Rights and Disposition Form]. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new [form] shall be given to and signed by the juvenile.").

¹¹See 8 C.F.R. § 236.3(f) ("If a juvenile seeks...any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief"); Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985); cf. Johns v. Dept. of Justice, 624 F.2d 522 (5th Cir. 1980).

("Guidelines") envision that young children will be active and independent participants in the asylum adjudication process.¹²

¹²The Guidelines provide asylum officers with information about how to talk to and interview a young child about his asylum application. The Guidelines repeatedly stress that the kind of questions which should be asked and the kind of answers which should be expected varies according to the age of the applicant and that special care should be taken when interviewing young children. The Guidelines also say that "Asylum Officers should not assume that a child cannot have an asylum claim independent of the parents," and that "[w]hen a parent or parents do not appear to have an approvable claim, an Asylum Officer should routinely make an inquiry into the child's case even though the child may be listed merely as a derivative on a parent's application and may not have filed a separate [] asylum application." See Guidelines at 15. The Guidelines also say that "the age, relative maturity, ability to recall events, and psychological make-up of the child will affect the quality of the answers an Asylum Officer is able to elicit from that child. While the burden of proof remains on the child to establish his or her claim for asylum, an Asylum Officer must take these and other factors into account when assessing the credibility of a claim and must also attempt to gather as much objective evidence as possible to evaluate the child's claim." See Guidelines at 17. Above all, the INS Guidelines say that "[w]hen...it appears that the will of the parents and that of the child are in conflict, the adjudicator 'will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.'" See Guidelines at 20 (citations omitted).

An additional point of interest is that the INS Asylum Officer Corps Training Guidelines for Children's Asylum Claims (INS January 1999) discuss the three age-based developmental stages of children (0-5, 6-12, 13-18 years old) and provide guidance for asylum officers in dealing with children in each category. Notably, the training guidelines provide an example of a statement from a six-year-old child and provide information which can be used to assess statements by children of that age. See id. at 10-18.

The INS has not pointed to (nor have we found) statutory, regulatory or guideline provisions which place an age-based restriction on an alien's ability to apply for asylum. And we have found no preexisting requirement that a minor, in submitting an asylum application, must act through the representative selected by the INS.¹³

Not only does it appear that Plaintiff might be entitled to apply personally for asylum, it appears that he did so. According to the record, Plaintiff -- although a young child -- has expressed a wish that he not be returned to Cuba.¹⁴ He personally signed an application for asylum.¹⁵

¹³The INS Guidelines cite to a number of studies and articles dealing with the ability of children to testify as witnesses in judicial proceedings. See Guidelines, at 13 n.21. At the least, this reference supports the inference that the INS envisioned that the kind of competency required for a minor to apply for asylum is competency to testify, see Maryland v. Craig, 497 U.S. 836 (1990), not legal competency to contract and so on, which is a much different standard.

Caselaw supports the inference that complete legal competency has not been the determinative circumstance for whether a minor may apply for asylum. See Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985)(allowing a 12-year-old minor to apply for asylum).

¹⁴We do not now suggest that the stated intentions of a six-year-old child are dispositive or even entitled to substantial weight in deciding whether the child ultimately receives a grant of asylum. Still, a colorable argument exists that a school-age child's expressed wishes about where he wants to live can trigger the requirement that Plaintiff's claim for asylum be given full and fair consideration. This conclusion may be particularly true where, as here, Plaintiff has indicated to mental health professionals that he does not want to

Plaintiff's cousin, Marisleysis Gonzalez, notified the INS that Plaintiff said he did not want to go back to Cuba. And it appears that never have INS officials attempted to interview Plaintiff about his own wishes.

Even if the INS is correct that Plaintiff needs an adult, legal representative for his asylum application, it is not clear that the INS, in finding Plaintiff's father to be the only proper representative, considered all of the relevant factors -- particularly the child's separate and independent interests in seeking asylum. Cf. Polovchak v. Meese, 774 F.2d 731, 736-7 (7th Cir. 1985); Johns v. Dept. of Justice, 624 F.2d 522, 524 (5th Cir. 1980) (recognizing in the context of a deportation hearing that the mother's interests are not necessarily the same as her four-year-old child's). It does not appear that the INS ever spoke to or interviewed Plaintiff before making this determination. And Lazaro Gonzalez, Plaintiff's great uncle, is no stranger to Plaintiff. The

return to Cuba, and where those mental health professionals have said that he understands what he is saying. These statements might ultimately not be of great weight in determining Plaintiff's application for asylum, but we are not sure that they can be summarily dismissed as having no weight at all.

¹⁵Plaintiff's application was complete. To date, none of Plaintiff's applications were returned by the INS for being incomplete. According to its own regulations, the INS "shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3)." 8 C.F.R. § 208.9(a) (emphasis added).

INS placed Plaintiff in Lazaro's care upon Plaintiff's arrival in this country, and Lazaro is a blood relative. When Lazaro submitted applications for asylum on Plaintiff's behalf, Lazaro was the INS's designated representative to take care of Plaintiff and to ensure his well-being. See 8 C.F.R. § 236.3(b)(4) (stating that where a minor is paroled to someone other than the parent or legal guardian, "such person must execute an agreement to care for the juvenile"). Lazaro's interests, to say the least, are not obviously hostile to Plaintiff's interests. So, for now, we remain unconvinced that the asylum application submitted by Lazaro on behalf of Plaintiff necessarily was ineffectual under the law.

For these reasons and in these circumstances, we believe that Plaintiff has presented a substantial case on the merits.

CONCLUSION

By its nature, this Order sets out more questions than answers. We have not attempted to address every point advanced by both sides, but we have attempted to explain our decision to grant the injunction. No one should feel confident in predicting the eventual result in this case.

The true legal merits of this case will be finally decided in the future. More briefing is expected. We intend to hear oral argument. We need to think more and hard about this case for which no sure and clear answers shine out today. Still, because of the arguments presented as well as the potential inconsistencies of the INS's present position with the plain language of the statute and with the INS's own earlier interpretations of the statute in INS regulations and guidelines, and because of the equities in this case, we conclude that Plaintiff is entitled to an injunction pending appeal.¹⁶

Therefore, it is ordered that:

- (1) Plaintiff, Elian Gonzalez, is ENJOINED from departing or attempting to depart from the United States;

¹⁶The INS, in its response to Plaintiff's motion, said it would consent to an injunction requiring the INS to bar Plaintiff's departure from the United States if this Court also entered an order directing Lazaro Gonzalez to present Plaintiff to the INS, as directed by the INS, for transfer of care to Plaintiff's father. We decline to proceed in that manner.

To decide Plaintiff's motion and to preserve his right to a day in court, we need only address the issue of Plaintiff's removal from the country. We need not decide where or in whose custody Plaintiff should remain while this appeal is pending. This Order only prevents Plaintiff's removal from this country.

- (2) Any and all persons acting for, on behalf of, or in concert with Plaintiff, Elian Gonzalez, are ENJOINED from aiding or assisting, or attempting to aid or assist, in the removal of Plaintiff from the United States;
- (3) All officers, agents, and employees of the United States, including but not limited to officers, agents, and employees of the United States Department of Justice, are ENJOINED to take such reasonable and lawful measures as necessary to prevent the removal of Plaintiff, Elian Gonzalez, from the United States.¹⁷

MOTION GRANTED.

IT IS SO ORDERED.

¹⁷Plaintiff, in his reply brief, requested that this Court order mediation in this case. Although we may direct the parties to participate in mediation, see Fed. R. App. P. 33, we choose not to do so at this time. Nevertheless, we encourage the parties to avail themselves voluntarily of this Court's mediation services.



Office of the Deputy Attorney General
U. S. Department of Justice

Washington, D.C. 20530

FAX COVER SHEET

DATE: 4/19

TO:

Beth Nolan

PHONE NO.

456 - 2632

FAX NO.

456 - 6279

FROM:

JAMES CASTELLO

Associate Deputy Attorney General

PHONE NO.

514-3392

FAX NO.

514-6897

NO. OF PAGES: _____ (EXCLUDING COVER)

COMMENTS:

TENTATIVE TALKING POINTS FOR THE ATTORNEY GENERAL
11th Circuit Court Decision

Good Afternoon.

For the past four months, the case of Elian Gonzalez has touched the hearts of virtually every American.

It is a case about a 6 year old child -- and the sacred bond that exists between a father and his son. It is that simple -- Juan Miguel wants his son.

I believe Elian should be returned to his father. We have said that all along. The order today from the Court of Appeals says that Elian should not be removed from the United States while the appeal remains pending. But it does not disagree with my determination that the boy should be reunited with his father in the United States as soon as possible. In fact, the court said that "we need not decide where or in whose custody Plaintiff should remain while this appeal is pending."

There are two issues here that must be kept separate. One is whether an asylum application can be brought by distant relatives over the objection of a father who is the sole surviving parent. The other issue is who cares for the child while he is in the United States. The appeal deals only with the asylum issue, not the care issue. The court's order does not preclude me from placing Elian in his father's care while he is in the United States.

The immigration laws clearly call for a child to be placed in the care of a parent in preference to a more distant relative while the child's immigration situation is being resolved. Elian's father is here to be reunited with his son, and I intend to see that that happens.

The 11th Circuit's order prevents the child from leaving the country

while the appeal is pending – a condition which both the Justice Department and Juan Miguel Gonzalez had already agreed to once Elian is reunited with his father. We will abide by the court's order.

~~We are still reviewing the court's decision and are considering all the options available to us including the transfer of parole and care of the child within the United States. And we will take the course of action most appropriate under the circumstances.~~

Most Americans understand that we have gone to great lengths to encourage the parties to resolve this matter cooperatively. And because there is a little boy at the center of this case, we have not acted in haste.

After repeated attempts to work out a cooperative transfer, last Thursday we set a 2:00 PM deadline for the relatives to present Elian to the INS for reunification with his father. Contrary to the comments of those who still refuse to release Elian, the deadline carried great significance. When Lazaro Gonzalez did not comply, parole and care was revoked from Lazaro Gonzalez -- and he now no longer has lawful custody of Elian.

I would reemphasize that Lazaro Gonzalez remains in noncompliance with a lawful order that he return Elian to his father. When the INS places an unaccompanied child into the care of an adult, the INS has the authority to require that that person present the child as necessary for immigration purposes. The decision today in no way affects that authority.

We look forward to the opportunity to fully brief and argue this matter before the Court of Appeals. Thank you.



Office of the Deputy Attorney General
U. S. Department of Justice

Washington, D.C. 20530

FAX COVER SHEET

DATE: 4/19

TO:

Beth Nolan

PHONE NO.

456 - 2632

FAX NO.

456 - 6279

FROM:

JAMES CASTELLO

Associate Deputy Attorney General

PHONE NO.

514-3392

FAX NO.

514-6897

NO. OF PAGES: _____ (EXCLUDING COVER)

COMMENTS:

TENTATIVE TALKING POINTS FOR THE ATTORNEY GENERAL
11th Circuit Court Decision

Good Afternoon.

For the past four months, the case of Elian Gonzalez has touched the hearts of virtually every American.

It is a case about a 6 year old child -- and the sacred bond that exists between a father and his son. It is that simple -- Juan Miguel wants his son.

I believe Elian should be returned to his father. We have said that all along. The order today from the Court of Appeals says that Elian should not be removed from the United States while the appeal remains pending. But it does not disagree with my determination that the boy should be reunited with his father in the United States as soon as possible. In fact, the court said that "we need not decide where or in whose custody Plaintiff should remain while this appeal is pending."

There are two issues here that must be kept separate. One is whether an asylum application can be brought by distant relatives over the objection of a father who is the sole surviving parent. The other issue is who cares for the child while he is in the United States. The appeal ~~deals~~ *addresses* only ~~with~~ the asylum issue, not the care issue. The court's order does not preclude me from placing Elian in his father's care while he is in the United States.

The immigration laws clearly call for a child to be placed in the care of a parent in preference to a more distant relative while the child's immigration situation is being resolved. Elian's father is here to be reunited with his son, and I intend to see that that happens *as soon as possible*.

The 11th Circuit's order prevents the child from leaving the country

while the appeal is pending -- a condition which both the Justice Department and Juan Miguel Gonzalez had already agreed to once Elian is reunited with his father. We will abide by the court's order.

We are still reviewing the court's decision and ~~are considering all the options available to us including the transfer of parole and care of the child within the United States.~~ And we will take the course of action most appropriate under the circumstances.

Most Americans understand that we have gone to great lengths to encourage the parties to resolve this matter cooperatively. And because there is a little boy at the center of this case, we have not acted in haste.

After repeated attempts to work out a cooperative transfer, last Thursday we set a 2:00 PM deadline for the relatives to present Elian to the INS for reunification with his father. Contrary to the comments of those who still refuse to release Elian, the deadline carried great significance. When Lazaro Gonzalez did not comply, parole and care was revoked from Lazaro Gonzalez -- and he now no longer has lawful custody of Elian.

I would reemphasize that Lazaro Gonzalez remains in noncompliance with a lawful order that he return Elian to his father. When the INS places an unaccompanied child into the care of an adult, the INS has the authority to require that that person present the child as necessary for immigration purposes. The decision today in no way affects that authority.

~~We look forward to the opportunity to fully brief and argue this matter before the Court of Appeals. Thank you.~~

The Miami relatives now have full assurance that Elian ~~must~~ remain in the U.S. pending the appeal. There is no ~~further~~ justification for continuing to keep Elian from his father.



The Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMISSION COVER SHEET

DATE: 4/19/00

TO: Beth Nolan

OFFICE
PHONE #: _____

FACSIMILE
PHONE #: 456-6279

FROM: Eric H. Holder, Jr.
Deputy Attorney General

Brad Glassman

OFFICE
PHONE #: 202-514-2101

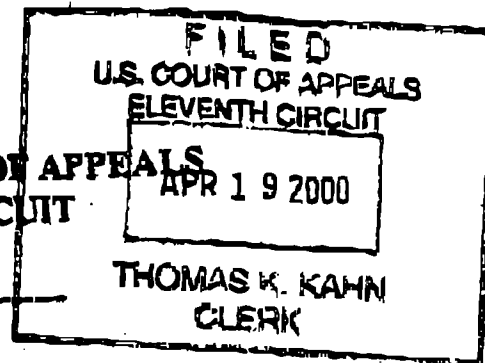
FACSIMILE
PHONE #: 202-514-0467

COVER PLUS 2 PAGES

REMARKS: Elian

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 00-11424-D



D. C. Docket No. 00-206-CV-KMM

**ELIAN GONZALEZ, a minor, by and through
LAZARO GONZALEZ, as next friend, or,
alternatively, as temporary legal custodian,**

Plaintiff,

v.

**JANET RENO, Attorney General of the United States;
DORIS MEISSNER, Commissioner, United States
Immigration and Naturalization Service;
ROBERT WALLIS, District Director,
United States Immigration and Naturalization Service;
UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICE; and UNITED
STATES DEPARTMENT OF JUSTICE,**

Defendants.

**Appeal from the United States District Court
for the Southern District of Florida**

Before EDMONDSON, DUBINA and WILSON, Circuit Judges.

BY THE COURT:

Elian Gonzalez ("Plaintiff"), a six-year-old child from Cuba, has made his way to the United States. Plaintiff, as an alien, submitted an application for asylum, pursuant to 8 U.S.C. § 1158(a), to the Immigration and Naturalization Service ("INS").¹ His father asked, in effect, that the application be withdrawn. After an investigation, the INS -- deciding that Plaintiff could not apply for asylum himself and that, under the circumstances, only his father could seek asylum on Plaintiff's behalf -- concluded that there was no reason not to honor the father's request and, accordingly, refused to consider Plaintiff's application. Plaintiff then brought suit in federal district court challenging on several grounds the INS's refusal to consider his application.² The district court rejected Plaintiff's claims.

¹ Several applications for asylum were actually submitted on Plaintiff's behalf. One was signed by Plaintiff himself. The others were signed by Plaintiff's great uncle and temporary custodian (selected by the INS), Lazaro Gonzalez.

² Plaintiff is a minor; Plaintiff's suit was brought by and through Lazaro Gonzalez as next friend. See generally Fed. R. Civ. P. 17(c).

Plaintiff has appealed the district court's decision to this Court.³ His appeal is scheduled to be argued orally next month. Plaintiff, however, now moves for an injunction "to preclude [Plaintiff's] physical removal from the jurisdiction of the United States during the pendency of this appeal."⁴ We conclude that Plaintiff is entitled to such an injunction and grant the motion.

In considering a motion for injunction pending appeal, we examine four factors: (1) whether the movant is likely to prevail on the merits of his appeal; (2) whether, if we do not issue an injunction, the movant will suffer irreparable harm; (3) whether, if we issue an injunction, any other party will suffer

³ This Court, on 27 March 2000, expedited Plaintiff's appeal and scheduled oral argument for the week of 8 May 2000.

⁴ A party must ordinarily first move in the district court for an injunction pending appeal. In this case, Plaintiff came directly to the appellate court. A motion for an injunction pending appeal may be made directly to the court of appeals when a party shows that moving first in the district court would be impracticable. See Fed. R. App. P. 8(a)(2). In this case, we are satisfied that Plaintiff has sufficiently shown that it would have been impracticable to move first in the district court: the time-sensitive nature of the proceedings and the possibility that we could have lost jurisdiction in the absence of an injunction support our exercise of discretion in this case. See also Michael v. INS, 48 F.3d 657, 663 (2d Cir. 1995).

On 13 April 2000, a single-judge emergency order, enjoining Plaintiff's removal from the United States, was issued until a three-judge panel had considered fully Plaintiff's motion for injunction pending appeal. We now have considered fully Plaintiff's motion, and the single-judge emergency order has served its purpose. The single-judge order, accordingly, is replaced by this Order.

substantial harm; and (4) whether an injunction would serve the public interest. See In re Grand Jury Proceedings, 975 F.2d 1488, 1492 (11th Cir. 1992). Although the first factor is generally the most important, the movant need not always show that he probably will succeed on the merits of his appeal. Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986). Instead, where the "balance of the equities weighs heavily in favor of granting the [injunction]," the movant need only show a "substantial case on the merits." Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981); see also Hilton v. Braunskill, 107 S. Ct. 2113, 2120 (1987); United States v. Hamilton, 963 F.2d 322, 323 (11th Cir. 1992); Garcia-Mir, 781 F.2d at 1453.

In this case, the balance of the equities weighs heavily in favor of enjoining the removal of Plaintiff from the United States pending appeal. And Plaintiff has made a "substantial case on the merits" of his appeal.

1. "Balance of the Equities"

The equities, in this case, weigh heavily in favor of issuing an injunction pending appeal. Apart from concerns about what might happen to this child if he is returned to Cuba (which we do not address), if Plaintiff leaves the United

States during the pendency of his appeal, his case will likely become moot. Our failure to issue an injunction pending appeal, therefore, could strip the Court of jurisdiction over this case and deprive Plaintiff forever of something of great value: his day in a court of law. That circumstance alone presents a significant risk of irreparable harm to Plaintiff. See Michael v. INS, 48 F.3d 657, 664 (2d Cir. 1995).

In addition, we doubt that an injunction would harm the INS.⁵ Plaintiff has been in the United States for nearly five months. The INS refused to consider Plaintiff's application for asylum more than three months ago. The INS, however, has not sought to remove Plaintiff in the meantime from the United States. The suggestion that an injunction pending appeal, prohibiting the removal of Plaintiff from the United States until Plaintiff's expedited appeal is decided on the merits, will harm the INS is not compelling.

Nor do we believe that an injunction pending appeal in this case would offend the public interest. The INS, in opposition to Plaintiff's motion, invokes the well-established authority of the political branches of government in immigration affairs. We fully recognize the plenary power of Congress over

⁵Multiple Defendants are in this case. But we refer to Defendants collectively as the "INS."

immigration matters. See Jean v. Nelson, 727 F.2d 957, 965 (11th Cir. 1984) (en banc). But we fail to see how an injunction in this case infringes upon the congressional power; after all, the heart of Plaintiff's appeal is that the INS -- by refusing to consider Plaintiff's asylum application -- has disregarded the command of Congress. And we doubt that protecting a party's day in court, when he has an appeal of arguable merit, is contrary to the public interest. We, therefore, conclude that the equities weigh heavily in favor of granting an injunction pending appeal.⁶

⁶The INS also asserts that, under the equitable doctrine of "unclean hands," Plaintiff is unentitled to seek the equitable remedy of an injunction pending appeal. The INS urges that Lazaro Gonzalez's alleged failure to comply with an INS order, directing that he surrender Elian Gonzalez to the INS at a Miami airport, renders Plaintiff's hands unclean. Whether Lazaro Gonzalez failed to comply with a lawful order of the INS and whether such failure would justify invocation of the unclean hands doctrine in some cases are issues that we need not decide today. Lazaro Gonzalez is not the plaintiff in this case; Plaintiff is Elian Gonzalez. However unclean Lazaro Gonzalez's hands may be, the INS has suggested no misconduct on the part of Plaintiff, Elian Gonzalez, that would justify application of the unclean hands doctrine in this case to him.

2. "Substantial Case on the Merits"

This case is mainly about statutory construction and the proper exercise of executive discretion. Among other things, we must ultimately decide what Congress meant when it said:

Any alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158(a)(1). Plaintiff argues that the INS's refusal even to consider his application violates 8 U.S.C § 1158(a). The INS contends that, because Plaintiff is a six-year-old child, he is incompetent to submit an application on his own behalf and that, on the facts of this case, he must have his father submit the application for him.⁷ Because his father did not do so, the INS contends that Plaintiff never actually applied for asylum and that, therefore, no application exists for its consideration. Even accepting as we do the principles of deference set out in Chevron v. Natural Resources Defense

⁷Although the INS determined that Plaintiff was incompetent to make immigration decisions, it bears repeating that the INS made this determination without having met with Plaintiff or having any evaluations done on his capacity.

Council, Inc., 104 S. Ct. 2778 (1984), we at this time have doubt, in the light of the record and Plaintiff's arguments on appeal, about the correctness of the INS's interpretation of section 1158.

In considering an agency's interpretation of a statute, we first must examine the plain meaning of the pertinent statutory language: "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron, 104 S. Ct. at 2781 (1984). The statute in this case seems pretty clear. Section 1158(a)(1) provides that "[a]ny alien . . . irrespective of such alien's status, may apply for asylum." Plaintiff appears to come within the meaning of "[a]ny alien." See 8 U.S.C. § 1101(a)(3). And the statute plainly says that such an alien "may apply for asylum." We, therefore, question the proposition that, as a matter of law, Plaintiff (unless his father consents) cannot exercise the statutory right to apply for asylum.

Congress's provision for "any alien" is not uncertain in meaning just because it is broad. See Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S.

⁸Congress specifically and expressly excluded three groups of aliens from the meaning of "[a]ny alien." See 8 U.S.C. § 1158(a)(2). School-age children are not among the excluded groups, however. See id.

206, 211 (1998). If Congress had meant to include only some aliens, perhaps Congress would not have used the words "any alien."⁹ In addition, although the INS has the authority to issue regulations and procedures governing the submission of asylum applications, see 8 U.S.C. § 1158(d), the INS cannot properly infringe on the plain language of the statute or the clear congressional purpose underlying it. See Shoemaker v. Bowen, 853 F.2d 858, 861 (11th Cir. 1988). Nor can the INS properly narrow the scope of a statute through regulation. See Ellis v. General Motors Acceptance Corp., 160 F.3d 703, 708-09 & n.5 (11th Cir. 1998). At this time, we cannot say that "any alien" excludes Plaintiff: given the plain language of the statute, he might be entitled to apply personally for asylum. Furthermore, it seems unclear that an INS decision to treat Plaintiff's application as a nullity without an adjudication on the merits is a "procedure for the consideration of [Plaintiff's] asylum application." See 8 U.S.C. § 1158(d)(1).

⁹To some people, the idea that a six-year-old child may file for asylum in the United States, contrary to the express wishes of his parents, may seem a strange or even foolish policy. But this Court does not make immigration policy, and we cannot review the wisdom of statutes duly enacted by Congress. If Congress intended -- as evidenced by the plain meaning of section 1158 -- that a school-age child (such as Plaintiff) be able to file personally an application for asylum, this Court and the INS are bound to honor the policy-decision made by Congress.

Not only does the plain language of the statute seem to support Plaintiff's argument that he, despite his age, is entitled to apply personally for asylum, the present regulatory scheme created by the INS also seems to strengthen Plaintiff's position. The existing INS regulations do envision situations where a minor may act on his own behalf in immigration matters.¹⁰ Moreover, the regulations contemplate that a minor, under some circumstances, may seek asylum against the express wishes of his parents.¹¹ Also, the INS Guidelines for Children's Asylum Claims (Dept. of Justice, December 1998)

¹⁰See 8 C.F.R. § 103.2(a)(2) ("An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old.") (emphasis added); 8 C.F.R. § 236.3(h) ("When a juvenile alien is apprehended, he or she must be given a [Notice of Rights and Disposition Form]. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new [form] shall be given to and signed by the juvenile.").

¹¹See 8 C.F.R. § 236.3(f) ("If a juvenile seeks...any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief"); Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985); cf. Johns v. Dept. of Justice, 624 F.2d 522 (5th Cir. 1980).

The INS has not pointed to (nor have we found) statutory, regulatory or guideline provisions which place an age-based restriction on an alien's ability to apply for asylum. And we have found no preexisting requirement that a minor, in submitting an asylum application, must act through the representative selected by the INS.¹³

Not only does it appear that Plaintiff might be entitled to apply personally for asylum, it appears that he did so. According to the record, Plaintiff -- although a young child -- has expressed a wish that he not be returned to Cuba.¹⁴ He personally signed an application for asylum.¹⁵

¹³The INS Guidelines cite to a number of studies and articles dealing with the ability of children to testify as witnesses in judicial proceedings. See Guidelines, at 13 n.21. At the least, this reference supports the inference that the INS envisioned that the kind of competency required for a minor to apply for asylum is competency to testify, see Maryland v. Craig, 497 U.S. 836 (1990), not legal competency to contract and so on, which is a much different standard.

Caselaw supports the inference that complete legal competency has not been the determinative circumstance for whether a minor may apply for asylum. See Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985)(allowing a 12-year-old minor to apply for asylum).

¹⁴We do not now suggest that the stated intentions of a six-year-old child are dispositive or even entitled to substantial weight in deciding whether the child ultimately receives a grant of asylum. Still, a colorable argument exists that a school-age child's expressed wishes about where he wants to live can trigger the requirement that Plaintiff's claim for asylum be given full and fair consideration. This conclusion may be particularly true where, as here, Plaintiff has indicated to mental health professionals that he does not want to

Plaintiff's cousin, Marisleysis Gonzalez, notified the INS that Plaintiff said he did not want to go back to Cuba. And it appears that never have INS officials attempted to interview Plaintiff about his own wishes.

Even if the INS is correct that Plaintiff needs an adult, legal representative for his asylum application, it is not clear that the INS, in finding Plaintiff's father to be the only proper representative, considered all of the relevant factors -- particularly the child's separate and independent interests in seeking asylum. Cf. Polovchak v. Meese, 774 F.2d 731, 736-7 (7th Cir. 1985); Johns v. Dept. of Justice, 624 F.2d 522, 524 (5th Cir. 1980) (recognizing in the context of a deportation hearing that the mother's interests are not necessarily the same as her four-year-old child's). It does not appear that the INS ever spoke to or interviewed Plaintiff before making this determination. And Lazaro Gonzalez, Plaintiff's great uncle, is no stranger to Plaintiff. The

return to Cuba, and where those mental health professionals have said that he understands what he is saying. These statements might ultimately not be of great weight in determining Plaintiff's application for asylum, but we are not sure that they can be summarily dismissed as having no weight at all.

¹⁵Plaintiff's application was complete. To date, none of Plaintiff's applications were returned by the INS for being incomplete. According to its own regulations, the INS "shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3)." 8 C.F.R. § 208.9(a) (emphasis added).

INS placed Plaintiff in Lazaro's care upon Plaintiff's arrival in this country, and Lazaro is a blood relative. When Lazaro submitted applications for asylum on Plaintiff's behalf, Lazaro was the INS's designated representative to take care of Plaintiff and to ensure his well-being. See 8 C.F.R. § 236.3(b)(4) (stating that where a minor is paroled to someone other than the parent or legal guardian, "such person must execute an agreement to care for the juvenile"). Lazaro's interests, to say the least, are not obviously hostile to Plaintiff's interests. So, for now, we remain unconvinced that the asylum application submitted by Lazaro on behalf of Plaintiff necessarily was ineffectual under the law.

For these reasons and in these circumstances, we believe that Plaintiff has presented a substantial case on the merits.

CONCLUSION

By its nature, this Order sets out more questions than answers. We have not attempted to address every point advanced by both sides, but we have attempted to explain our decision to grant the injunction. No one should feel confident in predicting the eventual result in this case.

The true legal merits of this case will be finally decided in the future. More briefing is expected. We intend to hear oral argument. We need to think more and hard about this case for which no sure and clear answers shine out today. Still, because of the arguments presented as well as the potential inconsistencies of the INS's present position with the plain language of the statute and with the INS's own earlier interpretations of the statute in INS regulations and guidelines, and because of the equities in this case, we conclude that Plaintiff is entitled to an injunction pending appeal.¹⁶

Therefore, it is ordered that:

- (1) Plaintiff, Elian Gonzalez, is ENJOINED from departing or attempting to depart from the United States;

¹⁶The INS, in its response to Plaintiff's motion, said it would consent to an injunction requiring the INS to bar Plaintiff's departure from the United States if this Court also entered an order directing Lazaro Gonzalez to present Plaintiff to the INS, as directed by the INS, for transfer of care to Plaintiff's father. We decline to proceed in that manner.

To decide Plaintiff's motion and to preserve his right to a day in court, we need only address the issue of Plaintiff's removal from the country. We need not decide where or in whose custody Plaintiff should remain while this appeal is pending. This Order only prevents Plaintiff's removal from this country.

- (2) Any and all persons acting for, on behalf of, or in concert with Plaintiff, Elian Gonzalez, are ENJOINED from aiding or assisting, or attempting to aid or assist, in the removal of Plaintiff from the United States;
- (3) All officers, agents, and employees of the United States, including but not limited to officers, agents, and employees of the United States Department of Justice, are ENJOINED to take such reasonable and lawful measures as necessary to prevent the removal of Plaintiff, Elian Gonzalez, from the United States.¹⁷

MOTION GRANTED.

IT IS SO ORDERED.

¹⁷Plaintiff, in his reply brief, requested that this Court order mediation in this case. Although we may direct the parties to participate in mediation, see Fed. R. App. P. 33, we choose not to do so at this time. Nevertheless, we encourage the parties to avail themselves voluntarily of this Court's mediation services.



Office of the Deputy Attorney General
U. S. Department of Justice

Washington, D.C. 20530

FAX COVER SHEET

DATE: 4/19

TO:

Beth Nolan

PHONE NO.

456 - 2632

FAX NO.

456 - 6279

FROM:

JAMES CASTELLO

Associate Deputy Attorney General

PHONE NO.

514-3392

FAX NO.

514-6897

NO. OF PAGES: _____ (EXCLUDING COVER)

COMMENTS:

04/21/00 TRF 17:01 FAX
ORRIN G. HATCH, UTAH, CHAIRMAN

STROM THURMOND, SOUTH CAROLINA
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
JON KYL, ARIZONA
MIKE DEWINE, OHIO
JOHN ASHCROFT, MISSOURI
SPENCER ABRAHAM, MICHIGAN
JEFF SESSIONS, ALABAMA
BOB SMITH, NEW HAMPSHIRE

PATRICK J. LEAHY, VERMONT
EDWARD M. KENNEDY, MASSACHUSETTS
JOSEPH R. BIDEN, JR., DELAWARE
HERBERT KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
RUSSELL D. FEINGOLD, WISCONSIN
ROBERT G. TORRICELLI, NEW JERSEY
CHARLES E. SCHUMER, NEW YORK

MANUS COONEY, *Chief Counsel and Staff Director*
BRUCE A. COHEN, *Minority Chief Counsel*

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

Counsel

April 21, 2000

The Honorable William Jefferson Clinton
President
The White House
Washington, DC 20500

Dear Mr. President:

With this letter, I am enclosing a copy of a letter which I am sending to Attorney General Reno suggesting a number of judicial remedies before any action is taken to return Elian Gonzales to his father other than through a voluntary turning over of the boy by his Miami relatives.

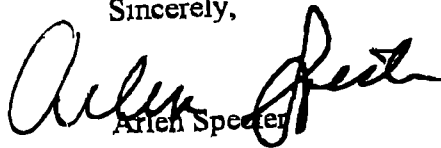
I am writing to you and the Attorney General without being privy to any of the on-going negotiations, but only because of my concern about what happened at Ruby Ridge and Waco which involved incidents where I have been extensively involved in oversight of the Department of Justice by Senate Judiciary Subcommittees.

If there is to be any action taken by Federal law enforcement officials other than a voluntary turning over by the Miami relatives of Elian Gonzales, then I urge you to be personally involved and to consult with experts in the field, in addition to officials at the Department of Justice because of the deeply flawed actions taken by the Department of Justice at Ruby Ridge and Waco and in other law enforcement judgments of the Attorney general.

As noted in my letter to the Attorney General, the hand of the Federal Government can be considerably strengthened by a District Court order authorizing the Department of Justice to take Elian Gonzales from his Miami relatives and returned to his father.

It may well be that taking the potential use of force off the table would materially damage the Government's bargaining position with the Miami Gonzales family; but if force is to be used, it must be used with mature, measured judgment contrary to what was done at Ruby Ridge and Waco.

Sincerely,



Arlen Specter

AS/ds
Enclosure

By Telefax

04/21/00 PM 17:51 FAX 2001

ORRIN G. HATCH, UTAH, CHAIRMAN

STROM THURMOND, SOUTH CAROLINA	PATRICK J. LEAHY, VERMONT
CHARLES E. GRASSLEY, IOWA	EDWARD M. KENNEDY, MASSACHUSETTS
ARLEN SPECTER, PENNSYLVANIA	JOSEPH R. BIDEN, JR., DELAWARE
JON KYL, ARIZONA	HERBERT KOHL, WISCONSIN
MIKE DEWINE, OHIO	DIANNE FEINSTEIN, CALIFORNIA
JOHN ASHCROFT, MISSOURI	RUSSELL D. FEINGOLD, WISCONSIN
SPENCER ABRAHAM, MICHIGAN	ROBERT G. TORRICELLI, NEW JERSEY
JEFF SESSIONS, ALABAMA	CHARLES E. SCHUMER, NEW YORK
BOB SMITH, NEW HAMPSHIRE	

MANUS COONEY, Chief Counsel and Staff Director
BRUCE A. COHEN, Minority Chief Counsel

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 21, 2000

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

I am deeply concerned about reports in today's media that you may initiate action through Federal law enforcement agencies to take Elian Gonzales from the residence of his relatives in Miami and return him to his father. My concern arises from the experience at Ruby Ridge, a subject on which I chaired Judiciary Subcommittee hearings and also on the Waco incident, on which I am now chairing a Judiciary Subcommittee on Department of Justice oversight.

In advance of any such action there are a number of alternatives which could be pursued. For example, the Court of Appeals for the 11th Circuit could be asked to expedite the appeals process. There are many precedents for prompt, expedited Circuit Court action such as that taken by the Court of Appeals for the 2nd Circuit on the Million Man March case in 1998. There, the District Court, by order dated August 26, 1998, allowed the March for September 5 and the Circuit Court heard argument on September 1, 1998 and issued a written opinion the same day.

Another option would be to ask the Court of Appeals for the 11th Circuit to hear the case *en banc* which could be accomplished very promptly.

Yet another option is to ask the Supreme Court of the United States to take the case and hear it on an expedited basis which that Court has the authority to do at any time. The Pentagon Papers were published on June 12, 1971. The District Court issued a decision on June 19, the 2nd Circuit heard the case on June 22 and decided the case on June 23. The Supreme Court heard argument on June 26 and decided the case on June 30, 1971.

In a case involving the Iranian hostages, the Solicitor General asked the Supreme Court for the United States for certification before judgment on June 10, 1981. The Supreme Court granted the request on June 11, ordered briefs within one week, heard argument on June 24 and decided the case on July 2, 1981.

U.S. SENATOR ARLEN SPECTER
711 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-3802



TO:	The President	FAX:	(202) 456-6221
FROM:	Senator Arlen Specter	PHONE:	(202) 224-9014
DATE:	April 21, 2000	PAGES (including cover):	5
NOTES:			



FACSIMILE TRANSMITTAL COVER SHEET

cc: Beth

To: Maria Echaveste
Fax #: (202) 456-6594
From: Irwin Redlener, M.D.
Date: April 17, 2000

The number of pages in this fax (including cover page): 3

If there are any problems with this fax transmission, please call Joan Pierson.

Marge:

As discussed, please forward to Ms. Echaveste.

Thanks.

from the desk of:
Joan Pierson
Executive Assistant to
Irwin Redlener, MD
(212) 535-9707
(212) 535-7488 (fax)

IRWIN REDLENER, M.D.
President



April 17, 2000

United States Attorney General Janet Reno
and Commissioner Doris Meissner, Immigration and Naturalization Service
United States Department of Justice
Tenth Street and Constitution Avenue, NW
Washington, D.C. 20530

Dear Attorney General Reno and Commissioner Meissner:

At the request of Commissioner Meissner, I have been actively engaged in providing strategic guidance regarding management of the Elian Gonzalez case, including the selection of the mental health professional team. This team was charged with establishing guidelines to ensure an orderly and positive transfer of the child to the custody of his father.

I believe this nationally esteemed team of child mental health professionals has been highly effective in providing the needed guidance. As requested, the team focused on recommendations specifically geared toward what the *adults* related to Elian should do in order to ensure the best possible environment for the child's reunification with his father. From the beginning, there was an explicit, prospective agreement that the mental health team would meet with the father and with the custodial family in Miami and *not meet* directly with the little boy. This was because the team was asked to evaluate *not whether* the transfer was being made, but *how* it would be made in the least traumatic way possible.

In recent days the crisis has taken a profound turn for the worse. There are continued, frantic legal maneuverings of the Miami family, a bevy of new, unfounded allegations of paternal abuse raised by the custodial family about the father's former relationship with Elian and the release of a video tape showing this six-year old boy expressing anger and other most unusual behaviors on what appeared to be a coached, homemade recording. All of this has significantly raised the stakes and our level of concern about Elian's immediate well-being, particularly since it is occurring in an environment of radical hysteria, and suggestions of public defiance and potential violence promulgated by the custodial family and their supporters in Miami.

Page 2

Attorney General Janet Reno and Commissioner Doris Meissner

April 17, 2000

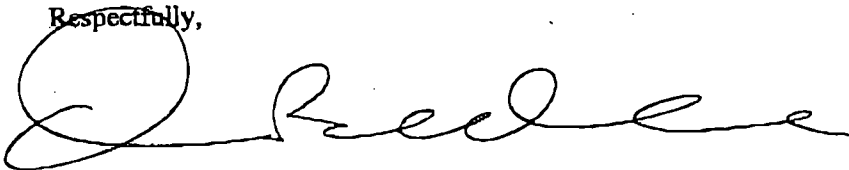
My point is this: *Eliau Gonzalez is now in a state of imminent danger to his physical and emotional well-being in a home that I consider to be psychologically abusive.* In a less politically charged environment, out of the limelight of what has become a media frenzy, appropriate child welfare workers and other public officials would have already been called upon to evaluate the safety of the current environment and, in my view, would have removed Eliau from the custody of the Lazaro Gonzalez.

Therefore, in my professional judgement, the United States government, through its appropriate agencies and under its legally vested rights and responsibilities should:

1. Immediately remove Eliau Gonzalez from the custody of Lazaro Gonzalez. As I indicated above, the current environment and the production of the videotape last week reflect a profoundly disturbing and dangerous environment for this child.
2. Return Eliau to the custody of his biologic father, Juan Miguel Gonzalez as quickly as possible. Every day, indeed every hour of delay in this inevitable and appropriate reunification, is harmful to the boy and is the cause of extreme anguish to a legitimately distressed father. Our country has no reason and no right to continue this unconscionable refutation of a parent's moral right to be with his child.
3. Ask the custodial family to participate in discussions around implementation of reunification recommendations made by your own mental health consulting team. This should happen once Eliau is returned to the custody of his father.

I believe there is no justification whatsoever to wait any longer in carrying out these actions that I believe are legally appropriate and, more importantly, clearly in the best interest of this child who continues to be horrendously exploited in this bizarre and destructive ambience. It has gone on far too long.

Respectfully,



Irwin Redlener, M.D.

President and Director of Community Pediatrics, *The Children's Hospital at Montefiore*

Professor of Pediatrics, The Albert Einstein College of Medicine

President, The Children's Health Fund.

317 East 64th Street
New York, New York
(212) 535-9707

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

ID# 416584
PAGE 1

DATE RECEIVED: 05/08/2000

NAME OF CORRESPONDENT: THE HONORABLE RON PAUL

SUBJECT: REQUESTS THE PRESIDENT TO PROVIDE A DETAILED REPORT OF ALL EXPENSES INCURRED BY THE U.S. GOVERNMENT RELATIVE TO THE REUNITING OF ELIAN GONZALES WITH HIS FATHER

ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION		DISPOSITION		
		ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
LEGISLATIVE AFFAIRS	CHARLES "CHUCK" BRAIN	ORG	2000/05/08			

ACTION COMMENTS

Report of Justice

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

COMMENTS BATCH #416573 cc: *Mary De Rosa, Beth Nolan, Maria Echaveste*

ADDITIONAL CORRESPONDENTS: 0

MEDIA: LETTER

INDIVIDUAL CODES:

REPORT CODES:

USER CODES:

*Ben -
FYI
copy for Beth
-Devan*

ACTION CODES:

A - APPROPRIATE ACTION
C - COMMENT/RECOMMENDATION
D - DRAFT RESPONSE
F - FURNISH FACT SHEET
I - INFO COPY/NO ACT NECESSARY
R - DIRECT REPLY W/ COPY
S - FOR SIGNATURE

DISPOSITION CODES:

A - ANSWERED
B - NON-SEPC-REFERRAL
C - COMPLETED
S - SUSPENDED

OUTGOING CORRESPONDENCE:

TYPE RESP = INITIALS OF SIGNER
CODE = A
COMPLETED = DATE OF OUTGOING

REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT-62590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

RON PAUL
14TH DISTRICT, TEXAS

BANKING AND
FINANCE COMMITTEE

SUBCOMMITTEES:
FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT

DOMESTIC AND INTERNATIONAL
MONETARY POLICY

EDUCATION AND
WORKFORCE COMMITTEE

SUBCOMMITTEES:
WORKFORCE PROTECTIONS

EARLY CHILDHOOD, YOUTH
AND FAMILIES

Congress of the United States

House of Representatives

Washington, DC 20515-4314

May 3, 2000

203 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2831

312 SOUTH MAIN
SUITE 228
VICTORIA, TX 77901
(512) 576-1231

301 GUADALUPE
ROOM 105
SAN MARCOS, TX 78666
(512) 396-1400

200 WEST 2ND STREET
SUITE 210
FREEPORT, TX 77541
(409) 230-0000

MOBILE OFFICE
(512) 753-5553

*Beth -
copies
to Maria,
Mary de Rosa*



416584

William Jefferson Clinton
President
The United States of America
The White House
1600 Pennsylvania Ave NW
Washington, D.C. 20500-0003

Dear President Clinton:

Please provide my office with a detailed report of all expenses incurred by the U.S. government relative to the reuniting of Elian Gonzales with his father, as well as an estimate of any costs reimbursed, and the entity providing such reimbursement.

This should include any costs of transporting Juan Miguel or Elian Gonzales to, or within, this country as well as any housing/room and board costs either on the air force base or at the Wye River Plantation as well as the costs associated with the INS raid and siege of Elian.

Sincerely,

Ron Paul

Ron Paul

#416573

86935

Elian G

CUBAN BOY
June 26, 2000

CONTEXT: Last Friday, the 11th Circuit Court of Appeals in Atlanta unanimously denied a request filed by Elian Gonzalez's Miami relatives for rehearing of its June 1 ruling in this case. The appeals court's June 1 decision therefore stands. In that decision, the court dismissed the challenge to the INS decision filed by Elian's Miami relatives. The court found that the INS had acted within the bounds of its discretion in determining that Elian's father has sole legal authority to speak for his son in immigration matters. In its decision, the appeals court stated that all injunctions in the case will dissolve Wednesday, June 28, at 4:00pm. Elian's Miami relatives have asked the Supreme Court to accept the case, and to issue an injunction to prevent Elian from leaving the United States while they consider the matter. If the Supreme Court does not issue such an injunction, Elian Gonzalez will be free to return home to Cuba as of 4:00pm tomorrow.

When will injunction on Elian's family returning to Cuba be lifted?

- We understand that the injunction will end at 4:00 tomorrow. At that time Elian's family would be free to return home unless the Supreme Court grants the Miami relatives' request for an injunction.
- We refer you to the Justice Department for more details.

What assurances are you seeking from the Cuban government -- should Elian return to Cuba next week -- that he would not be used as propaganda, would not be placed in a special school, and would return to his "normal" life?

FOR WH PRESS

- I would refer you to the State Department.

FOR NSC PRESS:

- From the beginning, we have tried to de-politicize this case, and we have spoken to Cuban officials in Havana, Geneva, and Washington about the need to do so.
- Officials from the State Department have met with representatives of the Cuban Interests Section in Washington and voiced concern on how Elian would be treated in the event he returns to Cuba. These conversations have been constructive. We will continue to discuss with Cuban officials Elian's treatment should he return to Cuba.

[IF ASKED] Isn't it time for the Miami relatives to drop their appeal and let Elian and his family to go to home to Cuba?

- We hope that this matter will reach final resolution soon so that Elian and his family can resume their normal lives.

[IF ASKED] In retrospect, do you think this went on too long? Should your Administration have stepped in more decisively in November?

- As I have said before, I support completely the Justice Department's handling of this matter. The Justice Department followed a deliberate and careful process in order to reunite this child with his father safely and with as little disruption as possible. This was a matter in litigation and it was important to let the judicial process run its course.
- I hope now the matter will reach final resolution. It is important that Elian and his family be able to resume a normal life.