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Folder Title:

Cuba-Elian Gonzalez [3]

Staff Office-Individual:

Inter-American Affairs-Hollis, Caryn

Original OA/ID Number:

2925

Row:	Section:	Shelf:	Position:	Stack:
37	2	11	3	V

Torres, Natly

From: Torres, Natly
Sent: Monday, April 10, 2000 10:36 AM
To: Brownfield, William R; Rodriguez, Lula; Snyder, Susan L.; Arreaga-Rodas, Luis E.; Brown, Catherine W; Lamora, Christopher
Cc: Diaz, Johanna M.; Broe, Patricia A
Subject: Cuba- Elian, 4/10 FOR CLEARANCE

W

Apr 10: Elian.doc

Please clear the attached guidance no later than 11:30-- This language has been cleared and used in the past. Thanks.

-Natly

To: Janelle Jones
Caryn Hollis
Wendy Patten

Fr: Natly Torres
647-5224

2 pages

WHA Press Guidance
April 10, 2000

Cuba: Elian

Background: Juan Miguel Gonzalez met with Attorney General Janet Reno on Friday. INS and DOJ have said that the Miami relatives will have to turn Elian over to his father this week.

Question: Situation update on Elian Gonzalez and Visas?

Answer: **SIX VISAS HAVE BEEN ISSUED, THE REMAINING 22 REMAIN UNDER REVIEW.**

Question: Is a policy review on the larger issue of US-Cuba relations going to take place once the Elian case is resolved?

Answer: **NO. WHAT WE ARE DEALING WITH IS A SIX-YEAR OLD AND THE REQUEST OF HIS ONLY SURVIVING PARENT TO BE REUNITED WITH HIS SON. WITH REGARD TO RELATIONS BETWEEN CUBA AND THE U.S., WE HAVE LONG SAID THAT IF THE GOVERNMENT OF CUBA MAKES FUNDAMENTAL, SYSTEMIC CHANGES, OUR RELATIONS WILL IMPROVE; IF IT DOES NOT, RELATIONS WILL NOT IMPROVE.**

WHA Press Guidance
April 18, 2000

To: Janell Jones Fr: Natly
Caryn Helles
Wendy Patten
1 page
* Please Clear by 5PM
Cuba: Elián and Human Rights
Thanks!

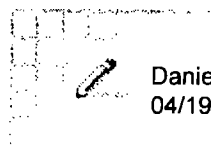
Background: On April 18 the Czech/ Polish sponsored resolution condemning Cuba's human rights situation was passed. We have received inquiries as to why Elián would be sent back to Cuba if we condemn the human rights situation. However, only if the parent wanted the child returned to a country where the child would be persecuted as defined in the Refugee Convention or tortured as defined in the Torture Convention would it be appropriate to refuse that request. The Commissioner and the Attorney General satisfied themselves that there was no objective reason to think that Elián will be persecuted or tortured in Cuba. This is consistent with the fact that not every person who lives in a country where there are human rights violations is himself a victim of persecution or torture. There are many ways in which human rights can be violated without rising to the level of persecution or torture.

Question: Why are you trying to send Elián back to Cuba while at the same time condemning the deplorable human rights conditions in that country?

Answer: The United States is ^a country governed by laws and we must uphold those laws.

Furthermore, the rights of the parents are recognized internationally and have been a central tenet of our work on behalf of Americans abroad. When Elián's mother died there was a surviving parent -- Juan Miguel González -- who was exercising parental rights in Cuba and who asked that Elián be returned to him. Were there a similar case to that of Elián involving an American child abroad, the Department of State would expect the foreign government to return the child to the surviving parent immediately.

In reuniting Elián with his father we are not dismissing the dismal human rights situation in Cuba, far from it. Instead, we and the international democratic community must redouble our efforts to bring democracy and respect for human rights ^{to} that country so that Elián can enjoy the rights and freedoms we all want to see in Cuba.



Daniel F. Feldman
04/19/2000 12:13:50 PM

Record Type: Record

To: Wendy L. Patten/NSC/EOP@EOP

cc:

Subject: Fwd: Eliau Solutions

email copy...

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

> Message-ID: <20000419155008.15892.qmail@hotmail.com>

> From: "Victoria Bass" <basswingo@hotmail.com>

> To: dan_feldman@excite.com

> Subject: Eliau Solutions

> Date: Wed, 19 Apr 2000 11:50:08 EDT

>

> SOLUTIONS TO THE ELIAU CRISIS

>

> The Capitalist's Solution: Sell him on E-Bay. But since Castro is short on hard currency, let him bid in cigars and rum.

>

> The Fly Fisherman's Solution: Throw him back where you found him.

>

> The Solomonic Solution: Saw him in half.

>

> The Draft Dodger's Solution: Give him to the Canadians.

>

> The Major League Baseball Solution: Trade him for two pitchers and a fielder to be named later.

>

> NFL Solution: Coin toss.

>

> NBA Solution: Toss him in the air.

>

> NBC Solution: Ask him what he wants.

>

> BBC Solution: Give him to the Blairs.

>

> NHL Solution: Face off.

>

> Hillary Rodham Clinton's Solution: Let the village raise him.

>

> The NRA Solution: Arm Eliau so he can defend himself against the tyrannical jack booted thugs from the American government. Even six-year-olds have 2nd Amendment Rights.

>

> The PETA Solution: Doesn't matter to us, as long as the puppy doesn't get hurt.

>

> The AFL-CIO Solution: As long as he's not taking a job from an American, let him stay.

- >
- > The Republican Solution: Elian-PAC
- >
- > The New York Liberal Solution: Send him back to Cuba. Visit him while on an "educational tour."
- >
- > The Home Depot Solution: For 20 bucks, buy some two-by-fours, a lawn-mower engine and build him a better raft.
- >
- > The NASDAQ Solution: Elian.com
- >
- > The Biotech Solution: Two Elians.

WHA Press Guidance
April 14, 2000

Cuba: Elián and Cuba's Human Rights Situation

Background: Today the Federal District Court for the District of Columbia is hearing arguments by the Miami relatives' attorneys that Elián should not be sent back to Cuba until the human rights situation in Cuba changes. The family's injunction request is based on the premise that the USG is violating international law by returning Elián to Cuba, a country whose human rights record we consistently criticize. The case relies heavily on the Department's Human Rights Report.

Question: Any comments about the family's request for injunction in the D.C. District Court in which they say that returning Elián to Cuba would be a violation of international law.

Answer: WE ARE AWARE OF THE FILINGS. THIS MATTER IS CURRENTLY IN LITIGATION, AND THE DEPARTMENT OF JUSTICE WILL RESPOND TO THE ARGUMENTS MADE BY THE MIAMI RELATIVES' ATTORNEYS IN COURT.

DRAFT

Cuba: Elián

Background: On April 4, the State Department issued six visas for Elian's father, step-mother, brother, an 11 year-old cousin, his kindergarten teacher and his pediatrician. On April 6, Elian's father, step-mother and brother arrived in Washington. Juan Miguel González met with Attorney General Janet Reno on Friday. INS and DOJ have said that the Miami relatives will have to turn Elián over to his father this week. On April 10, INS hosted a meeting between Elian's Miami relatives and the three experts in child psychiatry and psychology. These experts will advise INS on the most appropriate way to proceed with Elian's reunion with his father.

Question:

Has the State Department concluded its review of the 22 visas requested by Cuban nationals in conjunction with the Elian Gonzalez case?

Answer:

- Six visas have been issued, the remaining 22 remain under review.

Question:

Is a policy review on the larger issue of US-Cuba relations going to take place once the Elián case is resolved?

Answer:

- No. What we are dealing with is a six-year old and the request of his only surviving parent to be reunited with his son.
- With regard to relations between Cuba and the U.S., we have long said that if the government of Cuba makes fundamental, systemic changes, our relations will improve; if it does not, relations will not improve.

Question:

What is the next step?

Answer:

- I understand that three experts in child psychiatry and psychology have met with Elian's father and subsequently with the Miami relatives.
- These experts will consult today with the Immigration and Naturalization Service on the most appropriate way to proceed with Elian's reunion with his father.
- I hope that this reunion will take place very soon.

unmarked
Cuba: Elián

Background: On April 4, the State Department issued six visas for Elián's father, step-mother, half-brother, an 11 year-old cousin, his kindergarten teacher and his pediatrician. On April 6, Elián's father, step-mother and half-brother arrived in Washington. Juan Miguel González met with Attorney General Janet Reno on Friday, April 7. INS and DOJ have said that the Miami relatives will have to turn Elián over to his father this week. On April 10, INS ~~hosted~~ a meeting between Elián's Miami relatives and three mental health professionals chosen by INS as independent experts in child psychiatry and psychology. These experts are advising INS on how to reunite Elián with his father.

Question:

Has the State Department concluded its review of the 22 visas requested by Cuban nationals in conjunction with the Elián Gonzalez case?

Answer:

- Six visas have been issued, the remaining 22 remain under review.

Question:

Is a policy review on the larger issue of US-Cuba relations going to take place once the Elián case is resolved?

Answer:

- No. What we are dealing with is a six-year old and the request of his only surviving parent to be reunited with his son.
- With regard to relations between Cuba and the U.S., we have long said that if the government of Cuba makes fundamental, systemic changes, our relations will improve; if it does not, relations will not improve.



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 12, 2000

Mr. Lazaro Gonzalez
2319 N.W. 2nd Street
Miami, Florida 33125-5207

Dear Mr. Gonzalez:

The goal of the Department of Justice and the Immigration and Naturalization Service is to ensure that Elian's transition to his father's care is as peaceful as possible. We must all do everything in our power to see that the transfer is accomplished in a thoughtful, constructive manner.

We understand from your attorneys and various other representatives that you would like an opportunity to meet with Juan Miguel Gonzalez. We are prepared to accommodate that request as part of an orderly transfer of the care of Elian to his father.

To that end, please present Elian at Opa-Locka Airport, 1500 N.W. 42nd Ave., Opa-Locka, Florida, where you should proceed to the Main Coast Guard Gate at 2 p.m. Thursday, April 13. Rosa R. Urquiola, a bilingual INS official experienced in immigration matters involving children, will be there to accompany you, Elian, your daughter Marisleysis, and an agreed number of other members of your family to Washington, D.C., for this meeting. Before the meeting, Juan Miguel Gonzalez will have an opportunity to meet privately with his son. During the meeting, Elian will remain with Ms. Urquiola, and INS will have custody and care of Elian during that time. After the meeting, care and parole of Elian will be transferred to Juan Miguel Gonzalez. These successive transfers of parole and care are being ordered pursuant to 8 C.F.R. §§ 212.5, 235.2, 236.3 (1999).

If you do not wish to meet with Juan Miguel Gonzalez as described above, District Director Bob Wallis and I hereby instruct you to present Elian at the same time and place, i.e., the Main Coast Guard Gate at Opa-Locka Airport, at 2 p.m. on Thursday, April 13. At that time,

Mr. Lazaro Gonzalez
Page 2

the parole of Elian into your care will be revoked, and care of Elian will be temporarily transferred to Ms. Urquiola, who will bring Elian to Washington, D.C. Once Elian has arrived in Washington, D.C., he will be paroled into the care of his father. These successive transfers of parole and care are being ordered pursuant to 8 C.F.R. §§ 212.5, 235.2, 236.3 (1999).

You and your representatives have frequently stated in the last several weeks that while you did not agree with the Department of Justice's determination in this case or the federal judge's ruling upholding it, you would nevertheless abide by the law. The time has now come to carry through on that commitment, above all for the sake of a boy who deserves to have his reunion with his father take place without any further conflict or stress.

Please contact Mr. Wallis at 305-762-3680 with your response to this letter.

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
for Field Operations

cc: Linda Osberg-Braun, Esq.
Roger A. Bernstein, Esq.
Spencer Big, Esq.
Kendall Coffey, Esq.
Manuel Diaz, Esq.
Barbara Lagoa, Esq.
Jose Garcia Pedrosa, Esq.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

OFFICE OF THE LEGAL ADVISER

MARY DEROSA

Phone: 202/456-9111

FAX: 202/456-9110

Date: 4/14/00

FAX TRANSMITTAL COVER SHEET

TO	PHONE	FAX
Wendy Patten	69141	69140
Caryn Hollis	69131	69130

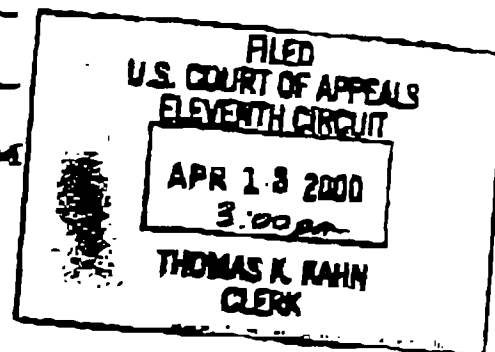
COMMENT: _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-11424-D

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

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



Plaintiffs,

JANET RENO, Attorney General of the United States;
DORIS MEHLNER, 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

ORDER

Plaintiff-Appellant, Elian Gonzalez, by and through his next friend, Lazaro Gonzalez, has filed a motion for an injunction to preclude Plaintiff's physical removal from the jurisdiction of the United States during the pendency of this appeal. In ordinary cases, a motion for injunction pending appeal will not be granted except after consideration by a panel of three judges of this Court. Fed. R. App. P. 8(a)(2)(D). But where time may be short, a single judge of this Court may grant a temporary injunction, preserving the status quo until a panel of three judges can more fully consider the motion for injunction pending appeal. See Fed. R. App. P. 8(a)(2)(D); ~~see also~~ Fed. R. App. P. 27(c); 11th Cir. Local R. 27-1(d)(7).

Consideration of Plaintiff's motion for injunction pending appeal requires examining four factors: (1) whether Plaintiff is likely to succeed on the merits of his appeal; (2) whether Plaintiff

will suffer irreparable injury if the injunction is not granted; (3) whether the injunction, if granted, would substantially harm other parties; and (4) whether the injunction, if granted, would harm the public interest. In re Federal Grand Jury Proceedings, 975 F.2d 1488, 1492 (11th Cir. 1992). Plaintiff, however, need not necessarily show that he probably will succeed on the merits of his appeal; "Instead, [Plaintiff] need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay." Ruiz v. Estelle, 650 F.2d 555, 566 (5th Cir. 1981); see also United States v. Hamilton, 963 F.2d 322, 323 (11th Cir. 1992); Garcia-Mir v. Mesa, 781 F.2d 1450, 1453 (11th Cir. 1986).

I understand that Plaintiff is subject to being placed under the physical control, custody, and care of the Immigration and Naturalization Service at any time after 2 o'clock this afternoon. Because of the possibility that Plaintiff might be removed from this country before the motion for injunction

pending appeal can be determined by a panel of three judges, I have decided to act alone but only until a panel can act. I have considered each of the four elements, particularly irreparable injury and likelihood of success. For now, at least--in the light of Plaintiff's motion and Plaintiff's brief on appeal, already filed with this Court--it seems that Plaintiff probably has demonstrated that he is entitled to an injunction prohibiting his removal from the United States during the pendency of this appeal.

THEREFORE,

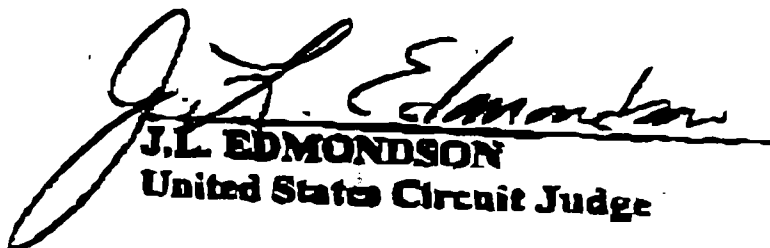
- (1) Plaintiff, Elian Gonzalez, is **ENJOINED** from leaving the United States;
- (2) Any and all persons acting for, on behalf of, or in concert with Plaintiff, Elian Gonzalez, are **ENJOINED** from aiding or assisting the removal of Plaintiff from the United States; and
- (3) All officers and agents of the United States (including, but not limited to, officers and agents of the United States

Department of Justice) are **ENJOINED** to take such
lawful and reasonable precautions and actions as are
necessary to prevent the removal of Plaintiff from the
United States,

until further Order of this Court.

This temporary Order is entered without the Court's having
received a response from Defendants-Appellees. Defendants shall
have until 9:30 a.m. Friday, 14 April, to file a response to Plaintiff's
motion.

IT IS SO ORDERED.


J.L. EDMONDSON
United States Circuit Judge

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

IN RE: THE MATTER OF

CASE NO. 00-00479-FC-28

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

JUAN MIGUEL GONZALEZ-QUINTANA,
Respondent.

Final Order

THIS CASE comes to the Court upon various emergency motions brought by Petitioner seeking expedited discovery and an imminent hearing upon his Petition for temporary custody of the minor child, Elian Gonzalez.

For the reasons stated below, and with concern for those on both sides who feel so passionately about this case, the Court finds that this matter is federally pre-empted and that this court further lacks subject matter jurisdiction, and therefore dismisses this action and terminates the order of January 10, 2000 entered by a predecessor judge.

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Case History

Core facts are not in dispute: this extraordinary case began on an evening on a Cuban beach, when fourteen people, including this child and his mother, fled the island in a small boat. Their destination was the shore of Florida and the United States of America. In rough seas, eleven people perished, including the child's mother. The child survived, alone in the ocean, by clinging to a floating tire. He was found at sea by fishermen who immediately contacted the United States Coast Guard, which transported the child to a local hospital. On November 27, 1999, Elian Gonzalez reached America. As an unaccompanied minor alien, Elian Gonzalez was taken into custody by the United States Immigration and Naturalization Service ("INS") and paroled into the loving arms of his great uncle, Petitioner in this matter. Who would have dreamed that the celebration of this child's survival would have been lost so soon in an international tug of war over him?

The child's father, investigation revealed, remained in Cuba. After two interviews in Cuba, the INS determined that Juan Miguel Gonzalez-Quintana was an active, involved and loving father, who freely and voluntarily requested that his son be returned to his home in Cuba.

In the meantime, in Florida, the Petitioner sought to file political asylum petitions on behalf of the child and by the child directly. After the INS determined that the father had the right to control the child's asylum application and wished it withdrawn, INS rejected the asylum applications filed, and announced in early January that the child would be returned to the father in Cuba.

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INS and the United States Attorney General, who is charged with the executive responsibility for immigration, determined that only the father could speak for the child, that there would be no hearing on the asylum petitions filed by Petitioner, and that the child would be returned to the father by January 14, 2000, four months ago.

Petitioner did not agree with INS and the Attorney General that the child should be returned to his father in Cuba. Petitioner objected to the INS procedure and asserted that INS had violated the child's independent due process rights to an political asylum hearing. He wanted the child to stay in the United States, where he would live in a free country. Recognizing that his control over the child extended only to the extent of the grant of the INS parole, Petitioner filed this action in state court on January 7, seeking temporary custody and a protective order prohibiting action by the INS.

The Petitioner, Lazaro Gonzalez, sought the following:

"Petitioner requests temporary custody of the Minor Child for purposes of providing legal consent to all necessary and reasonable medical care for ELIAN GONZALEZ, including psychological care, and to provide for ELIAN's due process rights to seek political asylum in the United States, and for such other things which are necessary for the care of ELIAN, until such time as there is a final disposition of the aforesaid application for political asylum on behalf of the Minor Child." *Petition at p. 6, paragraph h.*

"Petitioner seeks an evidentiary hearing, an Order awarding temporary custody of ELIAN for a period of time sufficient to adjudicate the application for asylum with INS." *Petition at p. 6, paragraph 14.*

The Petition was predicated upon implied consent from Elian's deceased mother, *see memorandum of law p. 7*, and the argument that the father could not object or consent because he could not freely express his wishes while in Cuba and under the control of Castro.

CASE NO. 00-00479-FC-28

See, memorandum of law at l., page 7. ¹

The Petition further alleges that if JUAN MIGUEL GONZALEZ-QUINTANA objects to Petitioner's custody of the child, that Petitioner asserts he is unfit to provide for the care and control of Elian and that he has abused, abandoned, or neglected Elian based on the argument that: "While it is true that his father...is not responsible for the environment existing in Cuba or the violations of humanitarian rights commonplace in Cuba, by insisting that the boy be placed in the aforesaid environment, the father is engaging in conduct which constitutes abuse or neglect, as referred to in Fla. Stat. § 751.05(3) and as defined in Fla. Stat. Chapter 39." *Memorandum of law p. 11.*

A predecessor judge considered the petition's allegations and the motion for protective order on an emergency ex-parte basis, without a response from the INS or the father. On January 10, 2000, she entered a Temporary Protective Order granting Lazaro Gonzalez temporary custody pending service of process upon the father and a full hearing. The Judge reserved on subject matter jurisdiction. *Order of January 10, 2000, p.4, n.3.* The order also stated that it prohibited the removal of the child from the jurisdiction of the court. *Order of January 10, 2000, p.6 , paragraph 3.*

The ruling of January 10, 2000 was based upon the ex-parte motion, in an effort to act as quickly as possible given the urgent nature of Petitioner's allegations. Jurisdiction was

¹ "...[T]his Court should not and cannot consider any objection of JUAN MIGUEL GONZALEZ-QUINTANA, the child's father, unless he is removed from his coercive environment and appear [sic] in this Court so that he may speak openly concerning the best interests of the Minor Child." *Memorandum of law at p. 9.*

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primarily justified under the theory of *parens patriae*, the theory that the state has the inherent power to protect children within its borders. The essential nature of the Temporary Protective Order was to give Petitioner the opportunity to pursue legal remedies in federal court with regard to his assertions that INS had violated due process and the child's constitutional rights by failing to give him a political asylum hearing. Petitioner did so. The order also permitted Petitioner to secure necessary health, psychological and material care for the child.

Additional research and developments in the case have caused the examination of relevant case law which was not available to the court in January. After receiving the temporary custody order, Petitioner proceeded to federal district court to seek an injunction prohibiting the INS from removing the child from Lazaro Gonzalez and requiring INS to grant the child a political asylum hearing. The federal district court concluded that Lazaro Gonzalez had standing to bring the action in federal court as the child's next friend, *Order of Judge K. Michael Moore in Gonzalez v. Reno*, 2000 WL 289604 (S.D. Fla. March 21, 2000) and did not reach the validity of the state custody order. *Id. at fn. 25*.

Petitioner attempted to serve the summons and petition upon Juan Miguel Gonzalez-Quintana, Elian's father, in Cuba. However, no additional substantive relief was requested in state court until after the Petitioner lost the federal district court case. Last Saturday night, four months after the state court action was commenced, the Petitioner filed a request to take the deposition of the father within three days, and asked for a trial within 10 days. In sum, only after that loss, and during the currently pending appeal to the federal court of appeals for the Eleventh Circuit, and only since the father has arrived in the United States to seek

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implementation of the federal decision, has Petitioner returned to state court to aggressively seek a hearing in an effort to continue to keep the child in Miami. INS and the Attorney General have decided to move forward on reuniting father and son.

In response to Plaintiff's motions, the court requested Petitioner brief the issues of subject matter jurisdiction, federal preemption, standard of law and their motion for default. As the first two jurisdictional issues are dispositive, the court does not reach standard of law or default.

Some may question the court's decision to rule without oral argument from the attorneys. The court decided to rule on this case without additional hearings for the following reasons: first, Petitioner's lawyers submitted an excellent brief which did an exceptionally thorough job of laying out the legal authority under which Petitioner asks this court to proceed. These are exclusively legal issues. Hearings are generally granted so that the court may take evidence. In this matter, evidence cannot be taken until the court can determine whether it has jurisdiction. It is important to understand that the question before the court at this point is not whether it should hear this case, but rather whether it could hear this case. This is not a discretionary call. Let no one conclude that this case was decided on legal technicalities — jurisdiction is ground zero in court. Without it, judges have no power to intervene.

Finally, this case has inflamed the passions of our community to the point that references to potential riots have been made by our leaders. There is no purpose in prolonging the anxiety of this family and other people who feel so strongly about this case when the law is so clear and when the inevitable result would be ever more crushingly disappointing.

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Holding a hearing would only have raised false hopes that somehow this court could legally act and keep Elian Gonzalez here.

General Principles of Jurisdiction

"Jurisdiction is the oxygen of an action. If present, the action is alive and the court may act." Keena v. Keena, 245 So.2d 665 (Fla. 1st DCA 1971). Equally if subject matter is not present, the court may not act.

Jurisdiction over the subject matter in a case refers to a court's power to hear and determine a controversy. Calhoun v. New Hampshire Ins. Co., 354 So.2d 882 (Fla. 1978). Generally, it is tested by the good faith allegations of the pleading, in this case the petition seeking temporary custody. See, Calhoun v. New Hampshire Ins. Co., 354 So.2d 882 (Fla. 1978), cited in Jefferson v. State, 724 So.2d 105 (Fla. 3rd DCA 1998).

"Subject matter jurisdiction arises by virtue of law only; it is conferred by constitution or statute and cannot be created by waiver or acquiescence." [citations omitted] Jesse v. State, 711 So.2d 1179 (Fla. 2nd DCA 1998).

"Subject matter jurisdiction, always essential to the validity of a court's action, can be challenged at any time, and a lack of subject matter jurisdiction should be recognized by a court even if unchallenged; when party or a court's own examination of a case suggests a lack of jurisdiction, the court is duty bound to consider such issue." Walt v. Walt, 574 So.2d 205 (Fla. 1st DCA 1991). This court required the Petitioner to present his position on subject matter jurisdiction because of the independent obligation imposed upon the court to recognize its own limitations; as stated in the briefing order: "Courts are bound to take notice of the

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limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.” Greene v. Greene, 432 So.2d (Fla. 3rd DCA 1983).

The issue of preemption is a question of subject matter jurisdiction. Florida Auto. Dealers Industry Ben. Trust v. Small, 592 So.2d 1179 (Fla. 1st DCA 1992). The issue of standing to sue concerns a question of jurisdiction to hear and decide the case pled by a particular party. Rogers & Ford Constr. Corp. v. Carlandia Corp. 626 So.2d 1350 (Fla. 1993).

Lack of Jurisdiction due to Federal Preemption

Elian Gonzalez’s physical presence in this country is at the discretion of the federal government. The state court cannot, by deciding with whom his custody should lie, subvert the decision to return him to his father and his home in Cuba. This court is prohibited from acting by the Supremacy Clause of the United States Constitution from acting in this case. Const. Art. I, §8.

Federal Preemption is a principle based on the Supremacy Clause of the United States Constitution: Const. Art. I §8. There are different kinds of preemption, two of which are implicated in this case: field preemption and conflict preemption. “Field preemption” arises when Congress has so thoroughly regulated a field or federal interest is so dominating, that an intent for federal law to occupy the field exclusively may be inferred. Pacific Gas & Electric Co. v. Energy Resources Conservation and Dev. Comm’n, 461 U.S. 190, 202, 103 SCT. 1713, 1721, 75 L.Ed 2nd 752 (1983). “Conflict preemption” arises where state and federal laws or orders are in direct conflict, particularly here where the state order is intended to

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"prevent or hinder the [federal agency, here the INS] from operating the way Congress intended it to operate." Id. at 202. Both field and conflict preemption apply in immigration matters. Hines v. Davidowitz, 312 U.S. 52, 61 (1941).

"Power to regulate immigration is unquestionable exclusively a federal power." Decanas v. Bica, 424 U.S.351, 96 S.Ct. 933, 47 L.Ed.2d 43 (1976).; Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399, (1941); Nyquist v. Mauclet, 432 U.S. 1, 97 S.Ct. 2120, 53 L.Ed.2d 63, (1977). The proposition that courts do not have the authority to second-guess the executive branch's decisions regarding permission of immigrants to enter the country is one of long standing, addressed as far back as 1892 in the case of Eiku v. U.S., 142 U.S. 651, 12 S.Ct 336 , 35 L.Ed. 1146 (1892).

"The obvious need for delicate policy judgments has counseled the Judicial Branch to avoid intrusion into this field." [immigration] Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). Nowhere is the "delicacy" of the policy judgment implicated more closely than in connection with Cuba. ²

The Petition presented to this court's predecessor judge sought the opportunity to go to federal court and seek review of the decision of the INS and the Attorney General that the

² Cuba lays 90 miles from our shores. It which has been the subject of an economic embargo for 30 years. We have transmitted both Radio and TV Marti to it people. Our community remains linked to the island with intimate family ties. Federal immigration policy shifts seismically affected this community in the 1980's with the Mariel Boatlift. The question of interdiction of *balseros* at sea remains a difficult issue, and current immigration detente with Cuba was reached only after apparently difficult negotiations. Foreign policy toward Cuba continues to shape local issues.

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father speaks for the child and to pursue a claim of denial of due process, by INS, to the child. She granted Petitioner that opportunity through the Temporary Protective Order. The federal district judge determined that Petitioner could pursue the claim as a "next friend" on behalf of the child under federal procedural rules.³ Petitioner can proceed with his appeal to the Eleventh Circuit based upon the district court's ruling as to his standing to sue on behalf of the child. The status of the state court action no longer affects the federal action or appeal.

The Petitioner went to federal district court, and the district court judge rendered a fifty-page carefully and thoroughly reasoned ruling which addressed the issues. Judge Moore determined that the Attorney General conducted the necessary investigation and did not abuse her discretion in coming to the conclusion that the child had a loving and adequate home waiting for him with his father, who desperately wanted his first-born son back in his arms.

The remedy sought in this court is custody of the child. While the court recognizes the many, many authorities that establish that domestic relations, family law, is an area reserved to the state courts, Petitioner fails to recognize the fundamental nature of his case -- it is an immigration case, not a family case. *See, Jagiella v. Jagiella*, 647 F.2d 561 (5th Cir. 1981): "Recent authority ... seems to favor a broader inquiry into the nature of the claim rather than resolution of the issue by technical appellation" *Id.* at 564.

This case is designed to keep Elian Gonzalez in Miami over the federal government's and his father's objection, and under the name of a custody claim. Petitioner's increased

³The state court order was not the basis of Petitioner's standing to sue in federal court under Federal District Court Judge Moore's analysis..

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level of activity in the state court action correlates with announcements by INS of reunification of the child with his father. The United States through the Attorney General has articulately and bluntly insisted that reunification will occur. The basis for the custody claim is that the child should not live in Cuba, with his father, and is better off here. The Court's ability to reach that decision is derailed by the federal government decision that he must return to Cuba, his homeland, and be with his father. This court cannot second guess the INS. In the end, a determination by this court as to who should have custody of Elian Gonzalez would not prevent his deportation to Cuba and his father, because deportation is exclusively the province of the federal government. "Custody is not a statutory factor in determining deportability." Johns v. Department of Justice, 653 F.2d 884 (5th Cir. 1981).

The cases cited by Petitioner in his brief do not provide guidance under the unique facts of this case. Gao v. Jenifer, 185 F.3d 548 (6th Cir. 1999) deals with a juvenile alien whose status was addressed by the INS prior to an amendment to the federal immigration law which provided that: "...no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction." 8 U.S.C §1101(a)(27)(j) (1999) [dealing with illegal and unaccompanied minors placed in foster care and whether the juvenile court has jurisdiction to declare them dependent.] The Johns case, supra, specifically addressed the lack of control the state court has over deportation issues. Bergstrom v. Bergstrom, 623 F.2d 517 (8th Cir. 1980) involved a U.S. citizen father's attempt to utilize the federal district court to modify a prior custody ruling between him and the U.S. citizen mother

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regarding the U.S. citizen child.

The court finds the reasoning of In Re C.M.K., 552 N.W. 2d 768 (Minn.Ct. App. 1996) of most assistance. In C.M.K., the child was a juvenile Chinese national who was smuggled into the United States. INS found him, and after he was placed with a foster family, moved to deport him. The family filed in state court for dependency. The Minnesota Court of Appeals affirmed the trial court's finding that it was without jurisdiction due to federal immigration preemption, particularly noting that issues of asylum are not subject to state court jurisdiction. Most importantly in that case, the family alleged that the child would be subject to "imprisonment, fines, harassment, and physical assault if he is returned to China." *Id.* at 771. The Court of Appeals found that the family was basing its claim on "... alleged circumstances in another country and therefore, circumstances directly related to the immigration process." *Id.* at 771. "A finding that C.M.K. is in need of protection or services based on circumstances in China would directly conflict with the immigration proceedings and, thus, is preempted by federal law." *Id.* at 771.

Petitioner is not without a remedy to seek delay of the INS action, which has been available to him since March 21, 2000. Federal Rule of Appellate Procedure 8 provides that a party may proceed in federal court to seek a stay of the ruling of the district court which affirmed the authority of the Attorney General and the INS in this matter.

**Lack of Jurisdiction based upon Petitioner's Lack of Standing
to sue under Chapter 751**

The Petitioner sought relief under Florida Statute 751 titled "Temporary_Custody of

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Minor Children by Extended Family.” If the petitioner does not have standing to sue under Fla. Stat. 751, then this court cannot exercise jurisdiction under Fla. Stat. §61.1308 because there is no viable custody claim. The Act’s mission is stated:

The purposes of ss. 751.01-751.05 are to:

(1) Recognize that many minor children in this state live with and are well cared for by members of their extended families. ...Because of the care being provided the children by their extended families, they are not dependent [wards of the state] children.

(2) Provide for the welfare of minor children who are living with an extended family...At present, such family members are unable to give complete care to the child in tier 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 child by third parties

(3) Provide temporary custody of a minor child to a family member or putative father having physical custody of the minor child to enable the custodian to:

(a) Consent to all necessary and reasonable medical and dental care for the child, including non-emergency surgery and psychiatric care;

(b) Secure copies of the child’s records, held by third parties, that are necessary to the care of the child, including , but not limited to:

1. Medical, dental, and psychiatric records;
2. Birth certificates and other records; and
3. Educational records;

(c) Enroll the child in school ...

(d) Do all other things necessary for the care of the child.

Fla. Stat. §751.01

In the definition section of the statute, Fla. Stat. §751.011, The Florida legislature defined the words “Extended family” and “putative father” and stated:

As used in ss. 751.01-751.05, the term:

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(1) "Extended family" is any family composed of the minor child and a relative of the child who is the child's brother, sister, grandparent, aunt, uncle or cousin."

The terms "relative" and "family member" are not defined anywhere in Chapter 751. The term "extended family" is not used in the rest of the statute, even though the definition says "as used in ss. 751.01-751.05".

Fla. Stat. §751.02, "Determination of temporary custody proceedings; jurisdiction" provides: "Any relative of a minor child...with whom the child is presently living, may bring proceedings in the circuit court to determine the temporary custody of the child."

Lazaro Gonzalez's petition seeking temporary custody under Chapter 751 reflects that the Petitioner is "Paternal Great Uncle." *Petition, p.g, paragraph 13 (g)*. Despite the limited list of extended family members who may sue under chapter 751, Petitioner asserts that he is a "relative", and therefore has standing to bring this claim to the child. If the statute's effect is limited by the definition of "extended family", then Petitioner is too remotely related to the child to bring this action under chapter 751 and this court has no jurisdiction.

To determine whether the legislature meant to empower any relative to take a child or whether the legislature sought to limit the remedy to the list of "extended family" members that they took the trouble to define is a question of statutory construction.

The legislative intent in passing the law is the polestar by which the court must be guided. State v. Webb, 398 So.2d 820, 824 (Fla. 1981). The rules of statutory construction exist so that a court may determine the legislature's intent and effect the purpose of the law. Barnett Bank of South Florida v. State Dept. of Rev., 571 So.2d 527, 528 (Fla. 3rd DCA

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1990). The starting point is the clear language of the statute itself; if the language is clear and unambiguous, the court stops there. Barnett Bank, id. at 528. Petitioner argues that the word "relative" used in §751.02 is clear and unambiguous. However, courts must look beyond plain language if applying the literal construction would render other provisions meaningless. Unruh v. State, 669 So.2d 242, 245 (Fla. 1996).

To determine intent, the court must look to other factors in addition to the language used, including the subject matter and the stated purpose of the law. Badaraco v. Suncoast Towers V Assoc., 676 So.2d 502, 503 (Fla. 3rd DCA 1996). The title of the act is important. Carlile v. Game and Fresh Water Comm'n, 354 So.2d 362, (Fla. 1977). The title is deemed to be a "...direct statement by the legislature of its intent." State v. Webb, 398 So.2d 820 (Fla. 1981). The title of this act is "Temporary Custody of Minor Children by **Extended Family**". [emphasis added]

Also of importance is identification of the "evil to be corrected" by the law. Webb, supra. The legislative history reflected in the bill analyses of the Florida House of Representatives and the Florida Senate reflect as follows: the bill summary from the House states: "This bill creates an action for temporary custody of minor children who are currently living with members of their extended family..." Florida House of Representatives, Committee on Judiciary, Final Bill Analysis & Economic Impact Statement CS/HB 1185, 5/3/93. The House's substantive analysis states:

"PRESENT SITUATION: At the present time it has been reported by Florida Legal Services, Inc. that there are minor children living with family members... without an order granting custody. This presents a problem to these family members when a third party

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requires consent to care for or provide services to these children. Currently, the available solution for these families is to initiate a guardianship proceeding in probate court or to initiate a dependency proceeding under Chapter 39, Florida Statutes." Id. at p. 2, "*Substantive Analysis*." The Senate's summary of the "Present Situation" echoes the House staff analysis. Florida Senate, *Senate Staff analysis and Economic Impact Statement*, 2/25/93.

The "Comments" section provides: "This bill would provide a relatively simple procedure for extended families and putative fathers to obtain custody of minor children....At the present time there is statutory authority for an adjudication of the custody of a child in a dissolution proceeding, through a paternity action, adoption, and juvenile dependency. In addition, a guardianship action encompasses custody, but the procedure is cumbersome and results in a family law issue being adjudicated in probate court rather than in a family law court. The dependency proceeding requires the showing of abandonment or unfitness of the natural parent. In addition, it results in the continual involvement of the Department of Health and Rehabilitative Services which is costly and not warranted in the types of situations which this bill addresses." Florida House bill analysis, *supra.*, p. 5, 5/3/93.

The Senate's legislative staff analysis acknowledged the definition issue: "The bill defines 'putative father' and 'extended family' for purposes of its provisions. [emphasis added]. However, the term 'extended family' is used only in the statement of the act's purpose...not..in the substantive provisions of the bill. Therefore, the bill would probably be clarified if the term 'relative' were defined in lieu of, or in addition to the term 'extended family'." Florida Senate staff analysis *supra.*, p. 4, 2/25/93.

The legislature ignored its staff's advice on clarifying the bill, and passed Chapter 751 with the definition of "extended family". However, during the rush of passage, uncles were omitted from the list. The legislature revisited the statute in 1997 to add "an uncle of a minor child" to the definition of extended family. See, Florida House of Representatives Committee on Judiciary, *Final Bill Analysis & Economic Impact Statement CS/HB 1087*, 5/20/96. The Bill analysis again refers to Chapter 751 as providing means to place minor children with extended family members, and notes: "This chapter allows those extended family members to seek temporary custody of the child, without which they could not consent to care of the child by third parties. In the 1993 session, the word "uncle" was inadvertently left out of CS/HB 1185.

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As a result, the definition of extended family does not include the word "uncle". At least two men were denied legal temporary custody because of the current definition of extended family." *Id.* at p. 3. In reviewing the entire legislative history and every staff analysis available, not once does a legislative intent to grant the opportunity to seek custody to any relative outside the extended family definition ever appear.

An additional fundamental rule of construction requires the application of the doctrine of *in pari materia*, which means looking at all the provisions of the chapter together. DeArmas v. Ross, 680 So.2d 1131 Fla. 3rd DCA 1996). Phrases cannot be read in isolation. Instead the phrases at issue must be read in the context of the entire section. Acosta v. Richter, 671 So.2d 149, 154 (Fla. 1994). Whenever possible, a court must adopt a construction of a statute that harmonizes and gives effect to all the provisions within an act, giving effect to the whole statute. Unruh, *supra.*, at 245. Allowing any "relative" to sue for temporary custody under §751.05 would wipe out the definition of extended family in §751.011. Why create a limited list of family members if any relative, no matter how distantly related, can sue? To adopt Petitioner's construction would violate the laws governing the court's obligation in construing the laws passed by the legislature.

"Categorical distinctions between relatives and nonrelatives, and between relatives of varying degree of affinity, have always played a predominant role in determining child custody and in innumerable other aspects of domestic relations." Reno v. Flores, 507 U.S. 292, 113 S.Ct 1439, 123 L.Ed.2d 1 (1993), fn. 6.

Under case law decided prior to the passage of Chapter 751 in 1993, and of which the legislature is presumed to be aware, the "great-uncle " issue was raised. In Kennedy v.

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Kennedy, 559 So.2d 713 (Fla. App. 1990) a great uncle and aunt were denied custody of their great niece/nephew where there was an attempt to show that the mother was unfit. Certainly the legislature could have included relatives within the second degree of consanguinity, meaning great-aunts, great-uncles, and second or third cousins, if they had wished to exercise the choice to do so.

The single application of this statute in a similar case, Glockson v. Manna, 711 So.2d 1332 (Fla. 2nd DCA 1998) states: "Section 751.05(3) specifies that an award of temporary custody to **an extended family member** over the objection of a natural parent may be granted only upon a finding, by clear and convincing evidence, that the parent is unfit, in which case the trial court must make a finding that the parent has abused, abandoned, or neglected the child as defined by chapter 39, Florida Statutes (1997)." [emphasis added by the court]. The Glockson court applied the definition section to the cause of action. *Id.*

In considering all the rules that apply when a court construes a statute, the court must conclude that as a paternal great-uncle, despite how loving, caring and well-motivated he may be, the law of the state of Florida does not permit the Petitioner to sue under this statute for temporary custody of this child.

The Effect Of This Ruling

A black robe is not a license for a judge to intervene in many of society's tragedies. The most difficult aspect of being a judge is watching horrible situations unfold and knowing that despite the awesome power of the judiciary, you are powerless to intervene. This case

- is one of those situations. This case has brought out strong feelings, passions, nowhere

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more visibly than in the streets of the city where this courthouse sits. Along with the people of the world, this court has watched the struggle between a family fighting for love and freedom and a father fighting for love and family. Which is more important? In the end, it depends on every person's individual experience.

Lazaro Gonzalez, and his wife Angela, and his daughter Marisleysis, have sacrificed their home, their health, and their peace of mind for this child. They nursed him through his recovery from his ordeal at sea and the loss of his mother. They are afraid for him, and are striving to do what they think is best for this child. This case has torn apart a once-close family. Although this court is constrained by the law to reach this result, but it must recognize the devotion and selflessness of this family.

This court also recognizes that the decision of this family court will be very difficult for those members of the community who had hoped desperately that the child could stay here. As family judges sitting in downtown Miami, we see case after case where families are separated because of the oppression and tyranny in Cuba. We handle divorce cases where fathers and mothers are divorcing spouses and children left in Cuba, whom they may never see. We see the pain in their faces when as we ask them about their children. In miles, this courthouse is roughly as close to Havana as it is to Orlando. This court knows that many in this community are sons and daughters, mothers and fathers, brothers and sisters of those who suffer the political oppression and tyranny of Cuba from the inside of a Cuban prison. They are angry and they are frustrated and they know exactly what the price of freedom is, and they are very afraid for this child. The experience of this community must be respected.

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Equally worthy of respect are those who have reached the opposite conclusion about where Elian Gonzalez should be. Those who believe that the child should be with his father understand the unbearable pain of the loss of a child. There is nothing to compare with the sorrow of an empty home where a child is missing. There are toys that will not be played with, a bed undisturbed. There is an awful silence that comes with the loss of a child that cannot be filled with any degree of noise other than the sound of that particular child. Every parent who has for a moment imagined their world without their child in it, the total fear and overwhelming emptiness, can empathize with Juan Miguel Gonzalez-Quintana. Some feel the father is selfish by insisting his son be returned to him -- but what parent really believes that anyone else could raise his child with the same degree of love and devotion as he? While we may not agree with Juan Miguel Gonzalez-Quintana's decision to live in Cuba, the freedoms which we stand for here in America require that we respect that decision, which the Attorney General has concluded is genuine and not coerced. Seeing the love and devotion to their Cuban homeland in our exile community, perhaps one can understand why Juan Gonzalez does not want to leave a country which many believe is Paradise lost.

The difference between the United States and Cuba is far wider than the 90 miles of the Florida Straits. Here, we live under a system of laws, not a system of men. The law is established by the representatives of our citizens in our legislature. This court is sworn to uphold the laws and the Constitution of the State of Florida, and is not free to substitute her individual opinions. If the law were what any one powerful person decreed it to be, then the differences between Cuba and America which make this case so difficult would vanish. None

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of us would be free. Our nation, and this state, guarantees the precious right to parent your children, in privacy, without the unfettered intrusion of others. That freedom necessitates this result. Courts must "reconcile ourselves to the idea that there are myriads of problems and troubles which judges are powerless to solve..." quoting United States Supreme Court Justice Warren Burger, in In Re Dubreuil, 603 So.2d 538 (Fla. 4th DCA 1992).

Judges watch television, too. I have watched Elian Gonzalez day after day. This is a beautiful child. He has survived the heart-wrenching loss of a mother and is enmeshed in the terror of a custody fight, and no matter how well-intentioned everyone in this case is, his days are filled with uncertainty. It is axiomatic in family court that six years old is too young to make life-altering decisions. What a lonely place for a six-year old. This is so hard for him. This is so hard for us all.

At this point, this child has become a joke on Letterman and Leno, a skit on Saturday Night Live, and an hourly update on daytime tv. We are losing sight of him as a child and starting to treat him as a thing. We need to stop. We need to turn off the cameras and let him return to the life of a child. The challenge with regard to this court's decision will be the choice of whether Elian Gonzalez will bring out the best in us all, or bring out the worst in us all. He deserves our best.

Orders

For the reasons stated above, this court terminates the effect of the order of January 10, 2000, and determines it does not have subject matter jurisdiction in this case, based

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on federal preemption and standing. This matter is dismissed. No motion for rehearing will be entertained.

Done and ordered in chambers at Miami, Miami-Dade County, Florida, this 13th day of April, 2000 at 12:02 p.m.

Circuit Court Judge Jennifer D. Bailey

Cc:
Service List & U.S. Attorney

FILE No. 313 03/29 '00 22:13 ID:LANIERFAX6500

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J. Dennis Hastert
Fourteenth District
Illinois

(202) 225-0600



Office of the Speaker
United States House of Representatives
Washington, DC 20515

March 29, 2000

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

Dear Mr. President:

It is our understanding that the Department of Justice may soon attempt to forcibly remove Elian Gonzalez from his Miami home and return him to communist Cuba. As this is a matter of urgency, we request that you immediately instruct Attorney General Reno to not take such action.

We continue to demand that you instruct the Attorney General to abide by your Administration's original position that the Florida family court should decide what is in the best interest of Elian. At a minimum, the proceedings before the federal courts should be allowed to run their course. The judicial process is the best way for determining what is in the best interest of this child, just as the courts are called upon thousands of times each day to make the same determination for other children. Nevertheless, the Department is threatening this removal action while Elian's case is pending before the courts, attempting to short-circuit the appeals process undermining fundamental procedural rights protected by our Constitution.

The Department of Justice, above all agencies within the executive branch, should respect the rule of law. While the United States District Court in Miami has ruled in favor of the Department, this decision is now before the federal appellate courts. In fact, in an unusual move, the 11th Circuit Court of Appeals has agreed to review Elian's case on an expedited schedule. It is critically necessary for Attorney General Reno to allow this important matter to receive full judicial review.

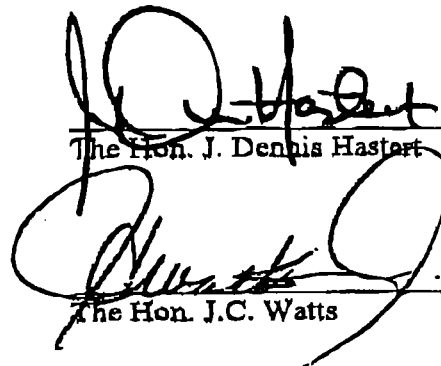
We have attached to this letter a chronology of judicial decisions and Justice Department actions in this case. These facts demonstrate the Department's unwillingness to defer to the judgments of the courts in deciding what is best for Elian. This practice must end.

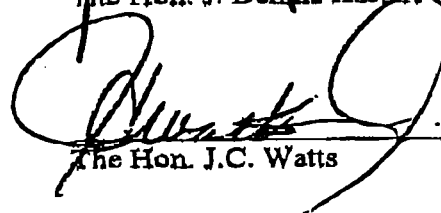
We appreciate your prompt attention to this time sensitive issue.

Respectfully yours,


The Hon. Dick Arney


The Hon. Tom DeLay


The Hon. J. Dennis Hastert


The Hon. J.C. Watts

Addendum attached

J. Dennis Hastert
Fourteenth District
Illinois

(202) 225-0600



Office of the Speaker
United States House of Representatives
Washington, DC 20515

Gonzalez Case: Procedural History

1) On December 1, 1999, after legally paroling Elian Gonzalez into the United States and placing him in the care of his great uncle, Lazaro Gonzalez, the Immigration and Naturalization Service (INS), pursuant to law and established policy and procedure, declared that the issue of the legal custody of Elian Gonzalez must be decided by the Florida Family Court. It further stated that Elian would remain in the United States until the Florida Family Court resolved the issue of his custody.

2) Previously, on December 10, 1998, INS had issued new guidelines in order for children to be able to file claims for political asylum in the U.S. The new INS guidelines stated that asylum procedures for children must recognize that children under the age of 18 may experience persecution differently from adults. The guidelines also established more child-sensitive procedures to help INS asylum officers interact more meaningfully with children. Based on INS guidelines and existing law and procedure, Elian's attorneys filed a petition for political asylum for Elian. The petition was returned by the INS to Elian without an interview or consideration of the merits of said petition.

3) Pursuant to established law, policy and procedure, as well as to the above-referenced INS declaration of December 1, 1999, Lazaro Gonzalez, Elian's great uncle, obtained an order on January 10, 2000 from the Florida Circuit Court for the Eleventh Judicial Circuit, granting him temporary custody of Elian Gonzalez and prohibiting the removal of Elian from Miami-Dade County until the issue of his custody was permanently resolved by the Florida Family Court.

4) After the state court ruling of January 10, 2000 granting Lazaro Gonzalez temporary custody of Elian, a second petition for political asylum for Elian was filed on his behalf by his great uncle Lazaro Gonzalez. INS refused to accept the second petition. INS has consistently espoused the rationale that "only the father can speak for Elian," even though INS' own guidelines do not impose this requirement, and as noted above, INS guidelines recognize that petitions for asylum from children may be appropriate.

5) Despite the INS declaration of December 1, 1999, recognizing that the Florida Family Court must decide the issue of Elian's custody, and despite the well-established principle of American jurisprudence that custody disputes are clearly within the realm of the state courts, as well as the requirement of the 10th Amendment to the United States Constitution that the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the states, Attorney General Reno stated, in a

letter sent on January 12, 2000 to Elian's attorneys, that she refuse to abide by the state court order, and that INS' custody decisions, "may be challenged, if at all, only in Federal court". She further stated that "we are prepared to litigate in that forum" (federal court).

6) Accordingly, Lazaro Gonzalez, on behalf of Elian, filed an action in the United States Court for the Southern District of Florida seeking to force the INS to follow its own guidelines and grant Elian a hearing for political asylum.

7) The Court set a hearing for March 9, 2000 on the issue of whether it had jurisdiction to hear the lawsuit filed on behalf of Elian by Lazaro Gonzalez.

8) Subsequent to the hearing the Court ruled, on March 16, 2000, that it did have jurisdiction, that the plaintiffs have legal standing to sue on Elian's behalf and, without holding either a trial or even a hearing on a motion for summary judgment, the Court ruled against Elian on the merits of the complaint. The Federal Court left intact the State Court Order granting Lazaro Gonzalez temporary custody of Elian, however, and supported "the state court's conclusion that Lazaro is a proper next friend in the instant case".

9) Immediately, Elian's lawyers filed a notice of intent to appeal the case as authorized by law, to the 11th Circuit Court of Appeals in Atlanta.

10) Acting as both judge and party in the pending legal case, the Justice Department demanded, on March 23, 2000, in a written ultimatum to Elian's attorneys, that they radically shorten the time allowed them by law in order to file their appellate arguments, and that they submit to various other conditions sought to be imposed arbitrarily by the Justice Department.

11) Elian's attorneys proceeded to ask the Appellate Court to expedite the procedure in this case, and the Court, on March 27th, issued an expedited timetable for the presentation of legal documents, and scheduled oral arguments for May 8, 2000.

12) On March 27, the Justice Department in effect rejected the Appellate Court's timetable by stating that it would revoke Elian's parole in the United States, with the possible intention of sending Elian back to Castro's Cuba within days.

In summary, the Justice Department, which declared through the INS on December 1, 1999, that, as required by law, Elian's custody would have to be decided by Florida Family Court, refused to obey a Florida Family Court order that stands to this day granting temporary custody of Elian to his great-uncle and prohibiting Elian from being removed from the area of jurisdiction of the state court; insisted on litigating the matter only in the federal courts, thus forcing Elian's lawyers to file suit in federal court; refused to respect the time-frame set by law for the federal appeal, and refused as well to obey the time-frame set by the federal appellate court itself when the Court agreed to expedite Elian's appeal and scheduled oral arguments for May 8, 2000.

FILE No. 313 03/29 '00 22:13 ID:LANIERFAX6500

H. Dennis Hastert
Fourteenth District
Illinois

*Banker*

(202) 225-0500

Office of the Speaker
United States House of Representatives
Washington, DC 20515

FAX COVER LETTER

ATTENTION: *Chuck*

FROM: Policy Office Staff

☐ Ralph Hellmann☒ Bill Inglee☐ Amy Jensen☐ David Thompson☐ Bill Hughes☐ Chris Scheve☐ Tim Kurth☐ Katherine Kless☐ Christin Cummings☐ Jonathan MooreDATE: *3/29/00*FAX NUMBER: *456 6220*TOTAL NUMBER OF PAGES (Including Cover): *5*

Comments:

** SENT in THIS EVENING'S
INSIDE MAIL*

Bill

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. Any dissemination, distribution or copying of this communication is strictly prohibited unless otherwise indicated. If there are any problems with this fax transmission, please contact (202) 225-0510. Thank you.

THE WHITE HOUSE

WASHINGTON

March 30, 2000

MEMORANDUM FOR ROBERT A. BRADTKE
NSC Executive Secretariat

FROM: KAY CASSTEVENS
Legislative Affairs

SUBJECT: PRESIDENTIAL CORRESPONDENCE

Attached are copies of letters sent to the President by various Members of Congress. Since these letters address national security issues, we would appreciate your assistance in drafting the responses.

Thank you very much for your assistance. If you have any questions, please call Courtney Crouch at x67500.

The following is a brief description of the letters:

- 1) Sen. John B. Breaux (D-LA), concerning the Navy training exercises at the Island of Vieques, Puerto Rico;
- 2) Sen. Dianne Feinstein (D-CA), recommending the delegation from the National Federation of Indian-American Associations (NFIA-NRI) participate in some of the public events during the President's recent trip to India;
- 3) Rep. Sam Gejdenson (D-CT), concerning the recent political developments in Russia;
- 4) Rep. J. Dennis Hastert (R-IL), Rep. Richard K. Armey (R-TX), Rep. Tom DeLay (R-TX) and Rep. J. C. Watts, Jr. (R-OK), concerning the case of Elian Gonzalez; and,
- 5) Rep. Maurice D. Hinchey (D-NY), enclosing information on the international community of Auroville, India.

Enclosures

MAR-27-2000 21:24

INS GENERAL COUNSEL

P.02/03



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 27 2000

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

Dear Mr. Eig:

Re: Elían Gonzalez v. Reno, et al., No. 11424-D (11th Cir.)

We have received your letter of this afternoon addressed to the Attorney General responding to our letter of March 24, 2000, as well as your motion to set a briefing schedule for your client's appeal to the Eleventh Circuit. We appreciate your willingness to move this case forward in an expedited manner. Your letter this afternoon does not, however, constitute the agreement that we proposed. In particular, you have refused to commit to a key element of the government's proposal of last week, namely, that your client specifically agree to comply with instructions of the Immigration and Naturalization Service (INS) concerning the transfer of Elían if the government prevails on appeal. Far from depriving Lazaro Gonzalez of his right to appeal, we have attempted to accommodate his interest in obtaining review by the Court of Appeals while assuring a prompt and orderly reunification of Elían and his father if the district court's decision is affirmed.

Your client's failure to make this commitment is critical to the government for two reasons. First, the provision of such a commitment upon request is required under Federal law as a condition of Elían's parole. See 8 CFR 212.5(c). Second, we strongly share your client's stated desire that his relationship with the government remain a cooperative one, and we emphasize that this is and will continue to be a matter entirely within his control. By giving and abiding by this commitment, your client can ensure that the case is resolved cooperatively and in a manner least disruptive to the child.

From the beginning of this case we have gone to great lengths to bring about a resolution that is reasonably prompt and that is carried out in a cooperative manner with as little disruption

MAR-27-2000 21:25

INS GENERAL COUNSEL

P.03/03

Spencer Eig, Esq.

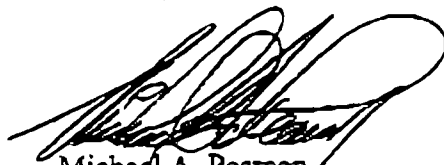
Page 2

for Elian as possible. Since the Commissioner announced her decision on January 5, 2000, that Elian Gonzalez' father speaks for Elian in immigration matters, the INS has voluntarily withheld implementation of that decision to allow your client to seek further review of that decision, first by the Attorney General and then by the Federal District Court. Nearly twelve weeks have passed since the Commissioner's decision, and you have never provided us with a simple, clear statement that your client is willing to produce the child when requested to do so by the INS. Without a specific written commitment as described in the Department of Justice's letter of March 23, 2000, we have no choice but to move forward with the termination of Elian's parole as of Thursday, March 30, 2000, at 9:00 a.m.

Accordingly, it remains necessary to meet with District Director Robert Wallis at 9:00 a.m. tomorrow morning at the INS District Office, 7880 Biscayne Boulevard, Miami. As we have previously stated, it will not be necessary to bring Elian to this meeting. We continue to believe that it is advisable to bring Lazaro Gonzalez to this meeting. If you prefer that tomorrow's meeting take place between lawyers only, and postpone a meeting with Lazaro until Wednesday, we would agree to that. We intend to discuss the ramifications of the parole termination and the orderly return of Elian to his father, including, most importantly, measures to ensure that the transfer occur in a manner that is sensitive to the needs of Elian.

Should you have any questions or concerns, please contact Assistant United States Attorney Dexter Lee at (305) 961-9320.

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
For Field Operations

cc: Opposing co-counsel

2188



OFFICE OF THE MAYOR MIAMI-DADE COUNTY, FLORIDA

ALEX PENELAS
Mayor

March 28, 2000

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

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶

To <i>Mary</i>	From <i>Ca...</i>
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

Dear Mr. President:

I am writing this letter after having made several attempts to speak with you directly regarding Elian Gonzalez's case.

It is with the deepest respect for the laws of the United States that I make the following request: that the Immigration and Naturalization Service (INS) not continue to interfere with Elian Gonzalez's right to exhaust all appellate avenues available to him. Mr. President, even the most heinous of criminals is allowed to exhaust all available legal remedies. How can a six-year-old boy be denied the same right?

The Department of Justice must continue to uphold its commitment to ensure that Elian Gonzalez's due process rights are protected. However, what disturbs me is that it is this same institution that appears to be strong-arming the relatives and legal representatives of Elian Gonzalez by threatening to revoke the child's status on March 30.

Mr. President, how is it that at this time, and suddenly, the Department can be making the unconscionable threat to revoke parole unless an agreement between INS and Elian's attorneys is achieved by this Thursday? Why the rush when the relatives are complying with all that the judicial branch has requested of them? This outrageous behavior on the part of INS is perceived in our community as a gross violation of Elian's right to due process. Mr. President, we are facing the potential of unrest in Miami-Dade County.

Although I have spoken to several members of your administration on this matter, it is to you that I must communicate my community's strong feelings on this issue. For any tragic consequences resulting from this situation, Mr. President, will ultimately reflect on you and the INS, and will be seen as your responsibility.

As always, I welcome your leadership and urge your continued attention to this matter.

Sincerely,

Alex Penelas
Mayor

MAR 29 11:48

STEPHEN P. CLARK CENTER, 111 N.W. FIRST STREET, SUITE 2910, MIAMI, FLORIDA 33128-1994 • (305) 375-5071 • FAX (305) 375-3611

03/29/00 WED 11:14 [TX/RX NO 7560] [001]

03/29/00 11:36 FAX

FINAL

**WHA Press Guidance
March 30, 2000**

Cuba: Request for visa for father and others in Elian Case

Background ONLY: At a 2pm conference, the attorney for Elian's father in the U.S. (Gregory Craig) announced that his client, his client's wife and their child would be applying for visas to come to the United States. The attorney met with Department officials and delivered a letter requesting visas.

Question: Will you issue visas to Elian's family?

Answer: **THE U.S. INTERESTS SECTION HAS NOT A RECEIVED VISA APPLICATION FOR JUAN MIGUEL GONZALEZ AND/OR ANY OTHER FAMILY MEMBERS. AS WE HAVE STATED PREVIOUSLY, WE WILL GIVE EXPEDITED CONSIDERATION TO A VISA APPLICATION BY MR. GONZALEZ (AND HIS IMMEDIATE FAMILY) AND WE WILL DO SO UNDER ESTABLISHED GUIDELINES.**

Question: Has the father's attorney requested the visas through the State Department?

Answer: **THE FATHER'S ATTORNEY MET WITH DEPARTMENT OFFICIALS AND DELIVERED A LETTER REQUESTING THAT VISAS BE ISSUED TO FAMILY MEMBERS. THE DEPARTMENT EXPLAINED THAT ANY VISA APPLICATIONS WOULD HAVE TO BE SUBMITTED TO THE U.S. INTERESTS SECTION IN HAVANA. WE HAVE ALERTED THE U.S. INTERESTS SECTION ABOUT THE IMMINENT REQUEST.**

AS WE HAVE SAID PREVIOUSLY, WE WILL GIVE EXPEDITED CONSIDERATION TO A VISA APPLICATION BY ELIAN'S IMMEDIATE FAMILY AND WE WILL DO SO UNDER ESTABLISHED GUIDELINES.

Question: Will Juan Miguel Gonzalez get custody of Elian?

Answer: **I WOULD REFER YOU TO INS ON ISSUES PERTAINING TO ELIAN'S FUTURE STATUS.**

IF ASKED ONLY:

Background: High ranking officials in the Cuban Government, military and the communist party as well as any other Cuban Government or communist party officer or employee deemed to be of potential foreign policy concern are subject to the Presidential Proclamation of October 4, 1985, which suspends entry to the United States for various classes of Cuban Officials. Visas are generally issued to senior Cuban officials only for the purpose of taking part in the proceedings of international organizations based in the United States.

Question: Was a visa requested for Ricardo Alarcon? Will it be issued?

Answer: **WE HAVE NOT RECEIVED AN APPLICATION FOR RICARDO ALARCON. VISAS FOR CUBAN OFFICIALS WILL BE REVIEWED SEPARATELY FROM THOSE REQUESTED BY FAMILY MEMBERS.**

OFFICE OF CUBAN AFFAIRS

U.S. Department of State
WHA/CCA, Room 3234
2201 C Street, N.W.
Washington, D.C. 20520-6263

Phone: (202) 647-9273
FAX: (202) 736-4476

FAX: HELMS-BURTON UNIT: (202) 647-7095

FAX COVER SHEET

DATE:

TO:

Coryn Hollis
Wendy Patten
Catherine Brown

FROM:

Bob

SUBJECT:

Did's letter #3

URGENT

ACTION

REPLY

FYI

REMARKS:

NUMBER OF PAGES (INCLUDING COVER PAGE):

(IF THIS TRANSMISSION WAS NOT RECEIVED IN ITS ENTIRETY, PLEASE CALL 202 647-9272)

Ciudad de La Habana, 22 de febrero de 2000

Sra. Janet Reno
Sra. Doris Meissner

Estimadas señoras:

En la tarde del pasado viernes 18 de febrero, la funcionaria del INS en La Habana me leyó telefónicamente una carta que, según me dijo, es de la misma fecha y la suscribe el señor Michael Pearson a quien identifica como asociado ejecutivo del Comisionado de la Sección de Operaciones. Lo que me fue leído, se supone, era en respuesta a las cartas que hube de dirigirles a ustedes los días 3, 13 y 14 de febrero.

En su comunicación el señor Pearson *"reitera que el INS continúa completamente comprometido a retornar a Elián a usted lo más pronto posible"* y también *"asegura que el INS está comprometido a que este caso sea resuelto justamente lo más pronto posible"*.

Aprécio, en todo lo que valen estas palabras que repiten, la posición mantenida por el INS desde que el 5 de enero, después de dos entrevistas conmigo y varias semanas de espera, finalmente, reconoció mis derechos como padre respecto a Elián, incluyendo el de que sólo a mí corresponde hablar en su nombre.

Sin dejar de agradecerles esa reiteración de la posición que ustedes han expresado en varias declaraciones, tengo que manifestar, sin embargo, mi inconformidad con la respuesta recibida.

Hace casi tres meses que mi hijo de seis años permanece separado de mí y de su familia, arbitrariamente retenido contra mi voluntad,

fuera de su hogar y en un país que no es el suyo. Como ustedes saben esta situación constituye una violación de las leyes internacionales y de las normas y prácticas aceptadas en todo el mundo. Al no devolverme a mi hijo, a pesar de haber reconocido varias veces que eso es lo que debe hacer, el gobierno de Estados Unidos asume una actitud moralmente injustificable. La total falta de acción de su Gobierno ha hecho que se extienda por casi tres meses el secuestro de mi hijo y ha permitido a los secuestradores realizar diversas maniobras para continuar su conducta criminal, incluyendo los procesos iniciados ante tribunales que, como ustedes saben, carecen por completo de jurisdicción y competencia.

Con respecto a la situación actual de Elián y a las preocupaciones que les expresé en mis cartas, la comunicación del señor Pearson resulta realmente desconcertante: no sólo deja sin resolver todas las inquietudes planteadas por mí sino que produce otras nuevas y aún mayores.

Considero enteramente arbitraria la negativa del INS a transferir a Elián para el hogar de Manolo González, con quien ustedes no han hecho indagación o gestión alguna en las dos semanas transcurridas desde el 3 de febrero. El hogar de Manolo González no es *"un ambiente desconocido o no familiar"* para Elián, sino el de alguien que ha tenido mucha más relación y vínculos con el niño que cualquiera de las personas del lugar donde el INS insiste en mantenerlo. ¿Con qué autoridad moral suplanta el INS mi voluntad ante un asunto tan sensible y tan directamente relacionado con la salud y la estabilidad emocional de un niño de seis años y que es mi hijo? ¿Qué significa en términos prácticos para mí ser, como ustedes afirman, quien habla por el niño si el INS no acepta y ni siquiera considera seriamente mi petición a este respecto?

Afirma el señor Pearson *"continuaremos monitoreando el bienestar de Elián mientras esté bajo la custodia de Lázaro González"*, pero es difícil encontrar en su comunicación algún indicio de preocupación real o de medidas concretas para proteger a mi hijo, que está bajo la jurisdicción y, por lo tanto, la responsabilidad del INS.

En una parte de su comunicación dice que una no identificada "organización no gubernamental establecida en Miami condujo una visita de antemano para verificar que el hogar de Lázaro González era un buen ambiente para la custodia temporal de Elián. La organización ha chequeado después de su primera visita".

Con relación a mi solicitud para que se me informe precisamente sobre el psiquiatra o psicólogo que ve a Elián y el tratamiento que le aplica y sobre la escuela a la que asiste mi hijo, la comunicación del señor Pearson se limita a prometer "vamos a solicitar información" lo que obviamente indica que carecen de ella y que todavía no han hecho nada concreto para obtenerla quince días después de habérsela reclamado a ustedes con todo el derecho que me asiste como padre.

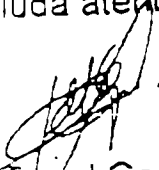
Es realmente sorprendente que toda la autoridad del INS se reduzca, al parecer, a depender de la buena voluntad de los secuestradores o de la opinión de organizaciones cuyo nombre ni siquiera menciona. No resulta extraño, por ello, que el señor Pearson pase por alto, completamente, mi solicitud de datos acerca de las personas que están permanentemente cerca de mi hijo o lo visitan con frecuencia y nada dice de mi exigencia de que cese el abuso y la manipulación de que hacen víctima a mi hijo, politiqueros, abogados, medios de prensa y otros individuos, algunos de ellos poseedores de antecedentes penales o de dudosa condición moral.

Tengo que dejar constancia de mi profunda insatisfacción ante la respuesta dada a mis tres cartas, la primera de las cuales fue entregada a ustedes hace ya más de quince días. Reitero todos y cada uno de los planteamientos que les hice en mis cartas del 3, el 13 y el 14 de febrero.

El gobierno de Estados Unidos tiene la obligación insoslayable de devolverme a mi hijo inmediatamente y mientras no acaba de cumplir ese deber, tiene que garantizar que no se ejerzan más presiones y abusos contra él, informarme de todos los aspectos

relacionados con su vida y trasladarlo transitoriamente al hogar de Manuel González, tal como pedí y reitero. El INS debe demostrar, en resumen, que su decisión anunciada el 5 de enero no eran sólo palabras y promesas.

Las saluda atentamente,



Juan Miguel González

O F F I C E O F C U B A N A F F A I R S

U.S. Department of State
ARA/CCA, Room 3234
2201 C Street, N.W.
Washington, D.C. 20520-6263

Phone: (202) 647-9273
FAX: (202) 736-4476
FAX: HELMS-BURTON UNIT: (202) 647-7095

F A X C O V E R S H E E T

DATE: 03/10/00

TO: SVTS PARTICIPANTS

FROM: ROBERT WITAJEWSKI

SUBJECT: SVTS

REMARKS: THERE WILL BE A SVTS TODAY,
3/10/00. AGENDA ATTACHED.

NUMBER OF PAGES, INCLUDING COVER PAGE: 2

(IF THIS TRANSMISSION WAS NOT RECEIVED IN ITS ENTIRETY, PLEASE CALL
202 647-9273)

SVTS - CUBA

March 10, 2000
12:00 - 1:00 p.m.

I. Illegal Migration

- A. Review of recent trends (USCG)
- B. Weather and volume predictions for March (USCG)

II. Guantanamo

- A. Review of resettlement efforts to date (State)
- B. Current occupancy and implications (State/JSC/NSC)

III. Cuban refusal to accept certain returnees

- A. Results of demarche to Cubans (State) — 1500 today —
- B. SOP for future operations (INS/USCG/STATE)
 - 1. Getting data quickly on prior US residency (INS)
 - 2. Providing Cubans with returnee lists (USCG)
 - 3. What happens when Cubans advise of non-returnability?

¿CÓMO MARCHAN LAS COMUNICACIONES TELEFÓNICAS ENTRE JUAN MIGUEL Y SU HIJO ELIÁN?

Los psiquiatras consideran que las comunicaciones telefónicas entre el padre y el hijo son fundamentales para preservar el equilibrio psíquico del niño y el vínculo con su hermanito, sus abuelos y demás familiares. Los métodos utilizados por el tristemente célebre tío abuelo Lázaro González y su núcleo familiar para impedirlos y obstaculizarlos son cada vez más crueles y cínicos.

A pesar de las reiteradas Notas remitidas al Departamento de Estado a través de la Oficina de Intereses de Cuba en Washington informando sistemáticamente cada vez que en Miami impiden esa comunicación, lo que dio lugar a gestiones de ese Departamento y del INS para resolver el problema, la situación es cada vez peor. Se advirtió al personaje, se le trazaron las normas, se estableció horario para la comunicación diaria, pero el siniestro personaje, al parecer cada vez más furioso e incontrolable, o tal vez más envalentonado por el apoyo de la mafia y la impunidad del crimen cometido, se burla de todo compromiso y desconoce casi por completo a las altas autoridades del gobierno de Estados Unidos.

Para ilustrar lo que aquí se afirma, ofrecemos a continuación una síntesis de lo ocurrido en un período que comprende los últimos 22 días de intentos de comunicación, a pesar de las 10 Notas diplomáticas entregadas por nuestra Sección de Intereses al Departamento de Estado. Esta síntesis ha sido elaborada a partir de la información que Juan Miguel y su familia envían sistemáticamente al Ministerio de Relaciones Exteriores para que el jefe de nuestra Sección de Intereses en Washington conozca los problemas que surgen diariamente y los pueda comunicar al Departamento de Estado. Granma la publica con la autorización previa de Juan Miguel.

Lunes 21 de febrero.

Juan Miguel llama. El teléfono dio timbre y nadie respondió al otro lado de la línea.

Miércoles 23 de febrero.

Dio ocupado. Luego en otro intento dio timbre, sin que alguien saliera; después sonó ocupado, hasta que a las 10:00 de la noche logran comunicar. Contesta la esposa de Lázaro y dice que el niño ya dormía.

Jueves 24 de febrero.

Se habló con el niño bastante bien.

Sábado 26 de febrero.

Temprano en la mañana Juan Miguel le pidió a Raquel que llamara al niño. Salíó al teléfono Ángela, la esposa de Lázaro y le dijo que el niño estaba durmiendo. Juan Miguel lo llamó por la tarde, se comunicaron bien.

Domingo 27 de febrero.

Juan Miguel trató de comunicarse en tres ocasiones. Insistió en distintos momentos, en distintas horas, y no pudo hablar, no salía nadie al teléfono.

Lunes 28 de febrero.

Juan Miguel trata de comunicarse varias veces por la tarde: a las cuatro, a las cinco, a las cinco y media, a las seis. Daba timbre y nadie respondía.

2

Martes 29 de febrero.

llamó un poco después de las seis de la tarde. Salíó Ángela al teléfono y le dijo que el niño estaba durmiendo. Él le preguntó la razón por la cual el niño dormía tan temprano. Le contestó que estaba enfermo, le habían puesto un sedante y se había quedado dormido. Le añadió que lo llamara el miércoles en la mañana y, al interesarse Juan Miguel por el medicamento que le habían puesto, ella le respondió que no sabía, que lo habían inyectado. Por tercer día consecutivo no le fue posible hablar con su hijo.

Miércoles 1° de marzo.

Poco después de las 9:00 de la mañana Juan Miguel logra comunicarse con Elián. Lo encontró más animado. Le dijo que ya se sentía mejor, que le habían puesto una inyección que le dio ganas de vomitar y vomitó. Juan Miguel se interesó por qué medicamento le habían inyectado el día anterior, a lo que Elián respondió que no sabía. Nadie le supo decir qué le inyectaron al niño.

Sábado 4 de marzo.

Juan Miguel llamó cinco veces a partir de las 5:00 de la tarde. En todas las ocasiones que pudo comunicar salió Lázaro al teléfono, quien siempre le respondió escuetamente que el niño había salido con Marisleysis.

Domingo 5 de marzo.

Juan Miguel llamó alrededor de las 10:00 de la mañana, a las 5:00 de la tarde y a las 8:00 de la noche. No respondió nadie.

Lunes 6 de marzo.

Juan Miguel comenzó a intentar comunicarse a partir de las 5:00 de la tarde. Cuando respondieron por primera vez y se dieron cuenta de que era él quien llamaba, colgaron. Después de varios intentos salió Alfredo, sobrino de Lázaro, opuesto también al regreso del niño, y dijo que el niño no había llegado de la escuela. Se repitió la llamada luego de media hora, respondió la esposa de Alfredo y dijo que el niño había salido. Media hora más tarde, en un nuevo intento por comunicarse, contesta Alfredo nuevamente y pone al niño. Después de los primeros minutos de conversación, lo llaman a comer, por lo que Juan Miguel le dice que lo haga y que lo llamaría un poco más tarde. Para asegurarse de poder conversar después con Elián sin dificultades, Juan Miguel pide que le pongan a Lázaro para hablar con él. Le dicen que no estaba en la casa y toma el teléfono Delfín, el otro hermano de Lázaro sancionado en más de una ocasión en la Florida por manejar en estado de embriaguez y provocar incluso daños materiales. Este, en tono agresivo, le dijo a Juan Miguel que ya había hablado con el niño, que no había por qué volverlo a llamar, que el Comandante daba órdenes en Cuba, pero no allá que era un país libre. Le afirma adicionalmente que Inmigración había precisado que se hablaría entre las 7:00 y las 7:20 de la noche solamente. Juan Miguel le expresó que no conocía esta precisión, que no discutiría más y que después llamaría al niño. Media hora más tarde, al intentar continuar la conversación con Elián, Delfín sale de nuevo al teléfono y plantea que el niño está comiendo todavía e insiste en la idea de que ya se había hablado con él. Media hora más tarde la escena se repite: Juan Miguel llama, Delfín responde igual y le cuelga el teléfono.

Miércoles 8 de marzo.

Se logró establecer comunicación alrededor de las 9:00 de la noche. Al segundo timbrado, responde Delfín, quien explicó que el niño estaba durmiendo porque habían ido a la iglesia y cuando llegaron, después de las 8:00 de la noche, se había acostado a dormir enseguida.

Jueves 9 de marzo.

Llamó a las 7:00 de la noche. De nuevo Delfín. Dijo que el niño había ido a ver a Marisleysis al hospital y después comería en un restaurante. A las 7:30 de la noche vuelve Juan Miguel a llamar. Otra vez Delfín, y dice que el niño había llegado con mucho sueño y que estaba durmiendo, que si quería que lo despertara. Juan Miguel responde: Correcto, eres responsable una vez más de que no pueda hablar con mi hijo.

Viernes 10 de marzo.

Llamó a las 4:50 de la tarde. Contesta Alfredo y dice que el niño no había llegado de la escuela. A las 5:50 de la tarde llamó nuevamente, Delfín tomó el teléfono, esperó unos segundos y cuando escuchó la voz de Juan Miguel le colgó. Seguidamente Juan Miguel intentó comunicarse una vez más. Esta vez Alfredo le dice que el niño se estaba bañando y que tenía que llamar a las 7:00 de la noche, que era la hora acordada. Juan Miguel responde que llevaba dos días llamando a las 7:00 de la noche y no podía hablar con el niño. (El Departamento de Estado le había informado a Juan Miguel el día 8 de marzo que a las 7:00 de la noche podía hablar con el niño diariamente sin límite de tiempo y que esto era de conocimiento de los familiares de Miami).

A las 6:30 de la tarde, Juan Miguel trata nuevamente de hablar con Elián. Alfredo, al salir al teléfono, le dice con cruel ironía que aún no eran las 7:00 p.m. y que el niño estaba comiendo todavía.

A las 7:00 de la noche, por fin se hizo efectiva la comunicación con el niño, pero éste tuvo que mandar a callar a los que hacían ruidos a su alrededor. En un momento en que el niño se refería a su escuela en Cuba, colgaron la llamada y hubo que repetirla.

A las 7:20 de la noche de ese mismo día, al reiniciarse la conversación, se escuchó un ruido de voces alrededor del niño, e incluso comenzaron a tocar las teclas del teléfono. La llamada se cortó poco después hasta que, en un último intento, Juan Miguel pudo despedirse del niño con besos que éste le enviaba a él y en particular a su hermanito de meses, que conoció estaba ingresado ese día en una clínica.

Domingo 12 de marzo.

Juan Miguel llamó a las 7:00 de la noche. Daba timbre y no salía nadie. A las 8:45 de la noche, Mariela, la abuela, pudo establecer comunicación y le dijeron que el niño había llegado en ese instante y estaba durmiendo. Mariela les expresó que ellos debían tener al niño en la casa a las 7:00 de la noche, que era la hora establecida. Le respondieron que habían salido, y nada podían hacer. No pudieron los familiares hablar con el niño finalmente, a pesar de que era domingo.

Lunes 13 de marzo.

Llamó Juan Miguel a las 7:00 de la noche. Cuando respondió el niño, a los pocos minutos se escuchó a Marisleysis agitándolo por las tareas de la escuela e increpándolo porque ya llevaba media hora hablando. Ante tal agobio para Elián, Juan Miguel decidió despedirse a fin de evitar que lo presionaran aún más.

Los elementos más significativos de las conversaciones con el niño desde el 6 de marzo explican por sí solos las reales intenciones de quienes lo mantienen secuestrado:

- Los que salen al teléfono son personas a las cuales no les está asignada la custodia temporal del niño, ni aparecían antes en las conversaciones.
- Todos precisan, establecen regulaciones y dan indicaciones de la manera en que Juan Miguel debe comunicarse con el niño.
- Los que lo tienen secuestrado estaban informados desde el 6 de marzo, y así lo plantearon, de que las llamadas serían a las 7:00 de la noche. Cuando a Juan Miguel se le comunicaron oficialmente, el día 8 de marzo, los términos de este acuerdo que no le habían consultado previamente, se percató de que en ningún momento se había fijado un límite de tiempo para sus conversaciones con Elián y que los 20 minutos autorizados a partir de las 7:00 de la noche de los que hablaban aquéllos constituían una nueva mentira para limitar aún más su comunicación con el niño.
- Siempre se escuchan voces cerca del niño, que comentan sobre lo que se habla con él, o se ríen, o le dan conversación o le ponen videos para distraerlo. Hacen todo lo posible por entorpecer los únicos contactos afectivos que durante más de tres meses Juan Miguel ha podido tener con su hijo.

Para mayor ilustración, copia textual del informe sobre lo ocurrido el 14 de marzo, cinco días después de la audiencia y seis después de que, a través de nuestra Sección de Intereses en Washington, "el Servicio de Inmigración y Naturalización le informó al Departamento de Estado que los familiares en Miami han acordado que el señor González puede llamar todas las noches a las 7:00 Hora del Este, hora en que Elián estará disponible para hablar con su padre."

Martes 14 de marzo.

- "Se habló a las 7:00 p.m. Contestó Ángela, no habló y pasó al niño. Se oía la voz de Marisleysis diciéndole: 'Si no quieres, no hables con tu papá', y el niño insistiendo en hablar.
- "El niño comenzó muy bien haciendo cuentos de la escuela, de lo que había hecho, pero después de los 10 minutos comenzaron a sentirse voces diciéndole que si le gustaba el oso, etcétera, parece que referido a un video.
- "El niño comenzó a protestar y dijo que lo estaban molestando, que hacían ruidos y mandó a callar.
- "Esto siguió hasta que el niño dijo al padre que 'siempre que él llamaba todo el mundo hablaba y ponía los videos, etcétera', que no lo dejaban hablar. Juan Miguel le sugirió salir de esa habitación, o que se fueran ellos, y se oyó que Marisleysis dijo: 'Nos metemos debajo de la tierra'.

- "El niño habló con sus abuelos Rolando, Mariela y Raquel.
- "Continuaron los ruidos. El niño siguió protestando y dijo al padre que no lo llamara a esa hora, pues era cuando todo el mundo se ponía a hablar.
- "Juan Miguel le explicó que él llamaba a esa hora porque allí lo quisieron así, y en ese momento Alfredo cogió el teléfono y furiosamente dijo, de forma ofensiva, que eso era así porque él se pasaba la vida protestando a Inmigración, que él no quería tanto al niño, y que Raquel nunca quiso a su hija." (Este ejemplo evidencia que las conversaciones entre Juan Miguel y Elián son escuchadas por todos en aquella casa).
- "Juan Miguel insistió en que lo dejaran hablar con su hijo, pero finalmente ellos colgaron y no pudo hablar más con Elián, aunque se insistió en tratar de establecer la comunicación múltiples veces."

Y por si fuera poca esta desagradable y triste historia en la que se le imposibilita al único padre sobreviviente de un niño una mínima e indispensable comunicación telefónica con él, ayer día 15, desde las 7:00 hasta las 8:40 de la noche Juan Miguel trató infructuosamente de comunicarse con Elián. Todo el tiempo dio timbre el teléfono y no respondió nadie. Sólo en una ocasión, a las 8:20 de la noche exactamente, el teléfono parecía ocupado. Una vez más impidieron que Juan Miguel hablara con su hijo.

(Editorial publicado en Granma el 16.3.2000)

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202 616 9777

P.02/05



U.S. Department of Justice

Civil Division

Washington, D.C. 20530

March 23, 2000

BY FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

Kendall Coffey, Esq.
Coffey, Diaz & O'Naghten, L.L.P.
2655 South Bayshore Drive, Suite 200
Miami, Florida 33133

Re: Elian Gonzalez v. Reno, et al., No. 00-0206-CIV

Dear Mr. Coffey:

I want to thank you and your colleagues for meeting with us on such short notice yesterday to discuss matters in light of the Court's decision to dismiss the above-captioned lawsuit.

As discussed yesterday, the principal objective of Commissioner Meissner and the Attorney General is to bring about a prompt, fair, and orderly resolution of this case in the manner most conducive to Elian's well-being. As Judge Moore stated in his decision, "each passing day is another day lost between Juan Gonzalez and his son, [and] the Court can only hope that those on each side of this litigation place the interests of Elian Gonzalez above all others." Under these circumstances, we are prepared to revoke Elian's parole into Lazaro Gonzalez's temporary care in order to carry out Commissioner Meissner's decision of January 5, 2000.

In light of the Southern District's dismissal of the lawsuit and the need, emphasized by the court, to avoid any further delay, the government would now proceed, in the ordinary course, to carry out the decision of the Commissioner that the district court sustained by effecting the immediate reunion of Elian and his father, unless Lazaro Gonzalez obtained an injunction pending appeal to change the legal status quo. As you know, a motion for

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of the Immigration and Naturalization Service concerning Elian's transfer within three calendar days of the Eleventh Circuit panel's decision, unless appellant obtains an injunction pending the filing and disposition of a petition for a writ of certiorari in the Supreme Court. Any motion by appellant for such an injunction shall be expressly conditioned upon appellant's filing of such a certiorari petition within five calendar days of the court of appeals' decision and, if requested by appellees, shall be further expressly conditioned upon agreement by appellant to the filing of a joint motion in the Supreme Court for expedition of the consideration of the certiorari petition to the maximum extent possible.

3. In accordance with the ongoing responsibility of the INS for Elian under the Immigration and Nationality Act and implementing regulations, this agreement shall not prevent appellees from terminating Lazaro Gonzalez's temporary care of Elian in the event that the INS determines that there has been a material change of circumstances affecting Elian's appropriate placement.

We hope you will find this approach acceptable. If we are unable to reach agreement, the government will make arrangements to implement Commissioner Meissner's decision as described above. Please advise us as to your position not later than 12:00 p.m. tomorrow, March 24, 2000.

/ / /

/ / /

/ / /

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P.01/05

URGENT: TO BE HELD CLOSELY

TO: MARY DEROSA (NSC)
KATHERINE BROWN (STATE)
SUSAN SNYDER (STATE)

FM: DAVE KLINE (DOJ)

RE: ELIAN GONZALEZ LETTER

Sent pursuant to Brad Glassman's
request.

Brad asks that the letter be
held closely.

URGENT: TO BE HELD CLOSELY

-2-

an injunction pending appeal, while properly granted only rarely, is the recognized means within our judicial system by which Lazaro Gonzalez may seek judicial intervention if he disagrees with the district court's determination that the appellees are free to proceed with their intended course of action.

We are willing, however, to consider an alternative way of proceeding in this case so long as appellate proceedings can be completed and Elian can be reunited with his father in a timeframe comparable to what would normally be required for the Court of Appeals to rule on a request for an injunction pending appeal. Our discussions yesterday regarding a joint motion for an expedited appeal may present a framework for such an arrangement.

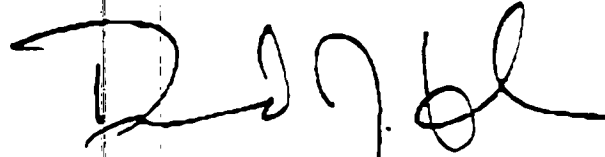
We propose that the parties agree in writing to request jointly, not later than tomorrow, March 24, 2000, that the Court of Appeals set an expedited briefing schedule and accelerate its consideration of your appeal, subject to the following terms and conditions:

1. Appellant's opening brief is due seven calendar days from tomorrow, March 24, 2000; appellees' answering brief is due seven calendar days from the date of service of appellant's brief; and appellant's reply brief is due three calendar days from the date of service of the answering brief. Service is to be by same-day facsimile transmission and first-class mail. Oral argument will be conducted as soon thereafter as practicable.
2. If the Eleventh Circuit panel grants the parties' joint motion for expedited briefing and consideration, appellees will not exercise their authority to revoke Elian's parole and terminate Lazaro Gonzalez's temporary care of Elian pending the court of appeals' decision on the expedited appeal. If the Eleventh Circuit panel affirms the district court, Lazaro Gonzalez and his family agree to comply with the instructions

-4-

We thank you for your continued professionalism and for your willingness to respond promptly.

Sincerely,



DAVID J. KLINE

Deputy Director

Office of Immigration Litigation

Civil Division

U.S. Department of Justice

P.O. Box 870, Ben Franklin Station

Washington, D.C. 20044

(202) 616-4900 (telephone)

(202) 616-4948 (facsimile)

cc: opposing co-counsel



**Immigration & Naturalization Service
Refugee Division**

Union Labor Life Insurance Building (ULLICO)

111 Massachusetts Avenue N.W. 3rd Fl.

Washington, DC 20536

Phone: (202) 305-2662; Fax: (202) 514-0560

To:

[Handwritten signature]

Date:

Fax No:

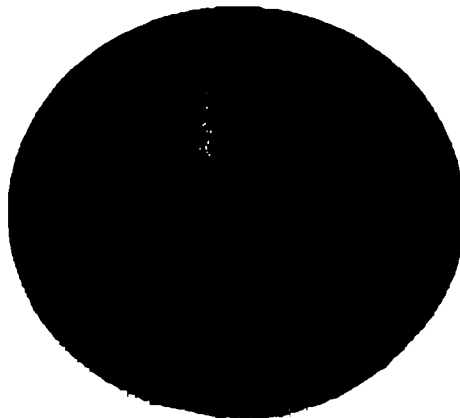
Total # of pages:
(Including cover)

From: *Kathleen Thompson*
Ralph Foelster
Karen McCoy
Todd Gardner

Janelle Jones
Ross Anderson
Jim Lassiter
Robyn Brown

Comments:

Office of International Affairs



COFFEY, DIAZ & O'NAGHTEN, L.L.P.

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MIAMI, FLORIDA 33133

TELEPHONE (305) 285-0800, EXT.: 101
TELECOPIER (305) 285-0257
E-MAIL: kc@abogadostia.com

KENDALL COFFEY

March 24, 2000

BY FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

David J. Kline, Deputy Director
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
Post Office Box 878, Ben Franklin Station
Washington, D.C. 20044

RE: Eljan Gonzalez v. Reno, et al.; Case No. 00-0206-CIV

Dear Mr. Kline:

Receipt is acknowledged of your letter faxed to my office at roughly 5:30 P.M. yesterday demanding a response by noon today. Because the letter presents the INS' latest scenario for judicial resolution of the case of six-year old Elian Gonzalez, it may be productive to review briefly several such positions by the INS in the past.

Following Elian's tragic ordeal and miraculous arrival at our shores, the INS publicly announced its position that issues of Elian's custody should be determined in the family courts of our state judicial system. This position was not only sensible; it comported with the law. Indeed, as the leading judicial decisions have firmly established, the INS is not an agency with competency or expertise in assessing the best interests of minor children. Precisely for that reason, federal courts have typically deferred to state family courts when the needs and welfare of children are to be defined.

For reasons never adequately explained, after announcing its adherence to the tradition of relying on state family courts concerning children's issues, the INS abruptly reversed fields in the case of Elian. Instead of affording respect for the state judicial process, the INS refused to participate in those proceedings and opted to announce essentially that it would ignore any decision of Florida's judiciary.

Following the INS' insistence that any judicial remedy would have to be pursued in federal court, the Lazaro Gonzalez family proceeded to the U.S. District Court in the Southern District of Florida. Once again, however, the INS acted energetically to close the court house doors to a six-year-old child. Arguing lack of jurisdiction, lack of standing and lack of any meaningful judicial

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
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right to revisit INS decisions, the INS contended that Elian was not entitled to a day in federal court on the issues of his best interests and his right to remain in this country. As you know, while losing on the first two issues, the INS nonetheless prevailed on the third ground as Judge Moore held, in substance, that Elian's fate is to be finally determined by the INS, not a federal court.

With the court house closed to Elian a second time, the parties confront further proceedings to resolve whether this child's cause, paid for with the life of his beloved mother, deserves even a chance to be heard and considered. Like you, we share the hope of mutual approach so that "those on each side of the litigation place the interests of Elian Gonzalez above all others." We also share the desire for a prompt and fairly considered resolution of this case. Toward that end, we propose a framework for a final adjudication that will operate far more promptly than any envisioned in your letter. At the same time, the structure we propose is one that truly addresses the "interests of Elian Gonzalez," a reality that has not been yet adjudicated through the purely legal paper exchanges between lawyers to date. Indeed, while no court or other forum of adjudication has yet made any determination of the best interests of this child, the need for addressing that issue remains paramount. So clear is the primacy of this issue that Vice President Gore and Texas Governor Bush, the Democratic and Republican candidates for President of the United States, both agree that there should be a day in court to decide what is in the best interests of this child and whether he should remain in the United States.

Accordingly, we submit that starting a week from Monday, proceedings should be conducted to review and determine once and for all whether, based on the best interests of the child, Elian should continue the recovery and healing process that is now underway. In that proceeding, critical issues could be considered that have never been evaluated before as part of an analysis by the INS, the Department of Justice or any court. Examples of such information include reports by expert child psychologists who have testified under oath that the child faces substantial risk of serious psychological harm if forcibly removed to Cuba at this time. All of us are aware of the traumatic ordeal of this small child whose mother died to win him a chance at freedom and who then drifted alone on an inner tube for some fifty hours before being rescued by fishermen. The potential for long-term, even permanent damage from such an intensely traumatic experience remains a grave concern. Equally clear is the fact that the subsequent bonding with a maternal figure in his life, Marisleysis Gonzalez, has been an integral part of a healing process that, according to experts, cannot be disrupted at this time without great risk of injury to Elian.

Just as these key circumstances have never been part of the decision-making by the INS, also missing is any assessment of Elian's future in Cuba. Will he be in a healthy, stable household receiving urgently needed and continuing psychological care, or would he, whatever may be the father's wishes, be subject to control by the government that would inevitably include indoctrination, brain washing and political exploitation in accordance with the wishes of the regime in Cuba? In any evaluation of a child's interest in our country, the issues of present and potential psychological harm as well as the future environment awaiting a child are closely studied in order to do what is

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

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Page 3

right for a child. And yet, remarkably, the INS has never done these things in the case of Elian. The framework we propose would permit that critically needed evaluation finally to take place.

As part of assessing the interests of the child, the wishes of the biological father are, of course, significant. We would readily agree to permit the Washington law firm of Williams & Connolly, along with their client, Juan Miguel Gonzalez, to appear in the adjudication process to present evidence on all relevant issues. Indeed, the participation of counsel for the father will be helpful in several respects. In this way, the father's lawyers could help address and potentially respond to troubling evidence that the father has been physically and psychologically abusive in the past, has a history of alcohol abuse, and has lied about matters ranging from the character of the stepfather who saved Elian's life to the father's own desires to leave Cuba and come to Miami. These are issues that would always be considered in any fair-minded evaluation of a child's interests in our country. Also a factor to be at least considered are the consistent and strong feelings of Elian himself who desperately wants to remain here, nurtured by a loving and protective family, and in fulfillment of his mother's dying wish. All these are matters which should be considered before Elian's fate can be fairly determined and irretrievably transformed. For obvious reasons, it is a process that is demanded by any basic notion of fairness and compassion.

In structuring a framework for this determination, the issues would include the matters described in this letter, especially the risks of psychological harm to Elian, as well as the question of his legal right to remain in this country. The family and the INS would agree to abide by the judgment of the neutral decision maker and forego any avenues of appeal whatsoever. Thus, we envision that, in its entirety, this process could be completed within two weeks. Stated simply, if the INS would agree at last to provide a day in court to this small child, the result would be not only a fair determination of what's right for Elian but a much faster resolution than is possible through further court battles.¹ While there are various approaches to selecting a fact-finder for what would amount to a binding arbitration, we are prepared to work immediately and responsively with any proposal the INS would suggest. By way of example, local individuals could include former Independent Counsel and Appellate Judge Daniel S. Pearson or former ABA President Chesterfield Smith. Should you prefer an arbitrator who is not from South Florida, names to discuss could include former Senators Bob Dole and George Mitchell as well as distinguished former family law judges. Due to the urgent time constraints imposed by the INS letter, we have had no opportunity to speak to any potential arbitrator. We are confident, though, that a neutral and highly respected arbitrator could be very promptly identified and agreed to by the parties if there is a will to do so.

¹Even under the scenario of the INS' ultimatum, the parties cannot control when an appellate court might hear oral argument or render its opinion. These processes are typically concluded months after all the briefs are filed. Moreover, should either side seek Supreme Court review, the Court's timetable cannot be predetermined, even by the INS.

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

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Page 4

In the event a dramatically expedited proceeding to provide a real day in court for Elian will not be considered by the INS, we turn to the pending appeal. Through this process we seek a ruling that, before forcibly removing Elian to Cuba, the INS must allow a chance for fair consideration of his asylum claim, that is, of his right to remain in this country. To a substantial extent, this appeal will center on the statutory mandate of U.S.C. §1158(a) concerning asylum rights for "Any alien...irrespective of the alien's status..." Stated simply, we believe that a six-year-old child also counts as "any alien." Indeed, your own agency's official position is that, "There are no age-based restrictions on applying for asylum." (Bo Cooper Memorandum, January 3, 2000) We agree with that premise, and intend to emphasize that point during the appeal. Moreover, as Judge Moore himself asked during the hearing, "Where does it say in the statute, 'But if you are under 6'?" (Hearing Transcript at 84).

We recognize, of course, that ultimately, the District Court found that "any alien" was "evidently not intended by Congress literally to include all aliens." (Order, at 45) Nonetheless, as reflected by the INS' own position, the district judge's own questions, and the language of the statute itself, the issue of the appeal, whether "any alien" includes Elian Gonzalez, is obviously an extremely substantial one. And yet, yesterday, you gave an ultimatum with an effect that could only reduce significantly our ability to present fairly these issues. Ironically, while condemned killers in our society enjoy appellate rights that ordinarily exceed ten years, the INS would now impose a timetable for submitting legal papers on behalf of Elian that totals ten days. This is truly troubling because there is no evidence in this case showing that Elian will be harmed by continuing to stay here during a normal appeal period. To the contrary, all the expert analysis on record compellingly demonstrates that he faces great harm if abruptly removed.

As a result, it is evident that the likely result of the INS' ultimatum is to minimize Elian's appellate rights and negatively impact his chances for a successful outcome. This is especially apparent concerning the five day ultimatum for receiving an appellate decision, researching all applicable issues and case law, drafting, finalizing, presenting and filing a petition for review before the United States Supreme Court. The five day demand for limiting a process that, according to court rules, should take ninety days, is a drastic and unconscionable impairment of Elian's rights.

We are thus deeply troubled by the unjustified insistence and accompanying threats directed at drastically diminishing the appellate rights of a vulnerable child. We believe that if the speediest possible resolution is your objective, you can and should agree to the two weeks, "no appeals" process that we advocate for concluding all issues relevant to this matter. If a fair and considered determination of the pending federal judicial litigation is your goal, the coercive and dramatic reduction of Elian's appellate rights cannot be reconciled with any thesis of fairness. Instead, the likely result of the INS' ultimatum would be to create, at most, a perception of meaningful appellate process while at the same time ensuring a reality of an exercise of legal futility. Thus, just as the federal district court case was never a true day in court for Elian's best interests, but rather an acknowledgment of the INS' broad discretion, your pre-conditions would transform appellate

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

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Page 5

proceedings into a matter of form rather than the substance of any meaningful right to an appeal.

Notwithstanding the momentous issues and concerns implicated by this appeal, I will be working, along with our legal team, day and night so that the initial brief is filed no later than April 3rd, 2000, and earlier, if at all possible. I will be filing a reply brief within five days of faxed receipt of the INS answer brief and, depending on the scope of issues presented by the INS, we may be able to file sooner. I make these assurances because, as a result of Judge Moore's ruling, we need to move as expeditiously as possible through the appellate process. In that fashion, we seek to secure an asylum hearing so that we can resolve Elian's status and end the months of anxiety for our clients. We will, as I have said before, not oppose acceleration of the appeal. Moreover, assuming we prevail, we believe that it is appropriate for INS to proceed within ten days thereafter to conduct an asylum hearing.

Following the rendition of the appellate decision and should either side determine that Supreme Court review may be warranted in light of the extraordinary circumstances of this case, a petition for certiorari will be served within fifteen days. Indeed, no lesser amount of time is possible. In fact, we are astonished by your insistence that the ninety day period for filing a certiorari petition that all other litigants are entitled must be shrunk to five days for a proceeding to define the future of a small child. As with the appeal, in the event certiorari is sought, we will not oppose prompt acceleration of the certiorari process and will abide by any timetable that the Court directs. With respect to any other preliminary motions pending certiorari review, we believe it is proper for both sides to review what, if any, motions the INS or Elian would need to file at that point. It is obviously premature to address a scenario that neither side can predict with certainty. In any event, parties have a duty under the rules of proper procedure to discuss and attempt to work through issues before seeking extraordinary relief from the nation's highest court. We assume that if there is a decision by either side to seek Supreme Court review, an acceptable approach to addressing the attendant circumstances can be promptly developed.

Concerning your inquiry about the future actions of the family, we emphasize that the Lazaro Gonzalez family has always obeyed the laws concerning the matter of Elian and will continue to do so. Indeed, we are confident that both sides will continue to respect the law as well as the rights all of us have in our legal system.

Finally, we repeat our entreaty that the INS conduct an actual evaluation of the psychological condition of this child and of the potential for the serious harm he faces in the event of a precipitous removal to Cuba. Stepping away from our roles as lawyers and advocates, we appeal to you as individuals who are wielding the entirety of the power of the United States government, a power that could crush the fragile psyche of a little boy who has already suffered beyond human description. Frankly, we are surprised and troubled that the INS continues to refuse any psychological evaluation of Elian Gonzalez. At a minimum, before any more positions are taken in this difficult matter, we prevail upon your sense of decency and upon the Justice Department's stated goal of seeking to do

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
Page 6

the right thing, especially when young children are at risk. We believe that should you undertake such an evaluation by independent and competent experts, you will at last understand the real implications and potential consequences of your projected course of action. Should you finally choose to undertake this critically needed analysis, you will, of course, have our full cooperation.

We await your response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kendall Coffey". The signature is fluid and cursive, with the first name "Kendall" being more prominent than the last name "Coffey".

Kendall Coffey

03/27/00 16:10 0202 514 1776

INS PRESS OFFICE

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03/27/00 13:25 0202 514 9077

DOJ

0001

Sent By: LAW OFFICES OF SPENCER EIG;

3056723770;

Mar-27-00 12:04PM;

Page 1/2

. 49077

SPENCER EIG

ATTORNEY AT LAW
407 LINCOLN ROAD
SUITE 6C
MIAMI BEACH, FLORIDA 33139

ADMITTED IN:
FLORIDA
GEORGIA
DISTRICT OF COLUMBIA

TEL: (305) 672-2770
FAX: (305) 672-3770
SOBELAW@AOL.COM

B7H

March 27, 2000

Hon. Janet Reno
Attorney General of the United States
10th and Constitution Avenue, N.W.
Washington, D.C. 20536

BY FACSIMILE

Re: Elian Gonzalez

Dear Attorney General Reno:

We have complied with your demand for an expedited appeal.

We continue to view your ultimatum to cut off Elian's appellate rights as improper and rather un-American. Simply put, INS has threatened to use force to seize the boy to prevent him from completing his appeal in a fair and proper way. In order to avoid the intense psychological harm to Elian that forced deportation would cause, we have filed an emergency motion for an expedited appeal in the Eleventh Circuit Court of Appeals this morning.

In light of our cooperation, we request that your officials cease their constant threats to revoke Elian's parole. These heavy-handed tactics demonstrate a lack of sensitivity to Elian, his family and this community. Your officials have repeatedly failed to inform anyone of their intentions regarding Elian if they do revoke his parole. The only conceivable purposes of revoking Elian's parole are to either return him to the fascist regime in Cuba prior to the completion of the appellate process or to institutionalize him pending the outcome of the appeal.

If your purpose is to return him to Cuba immediately, you are, in effect, denying Elian any appeal whatsoever. Once Elian is returned to Castro's clutches he will not be permitted to leave if his appeal is successful.

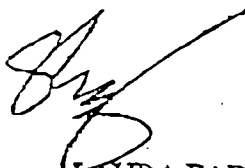
If your desire is to institutionalize Elian pending the appeal, or alter his present custody arrangements, we do not understand how you can consider this to be "the manner most conducive to Elian's well-being." Currently, Elian is being cared for by his family, to whom he has grown immensely attached since the premature and traumatic death of his beloved mother. No institution or stranger is capable of nurturing Elian to the degree that Marielsysia, Lazaro, and his loving relatives can. The permanent psychological harm this will cause Elian has already been confirmed by his child psychologist and psychiatrist. The reports have been communicated to you already, and are part of the record of this case. Any harmful actions in light of the contents of those reports could only be described as reckless and wanton conduct. It's ironic that with all the money and effort expended by the White House, the Justice Department and the INS to deport Elian to Cuba, you have never sought to have Elian or his best interests evaluated by experts in any way, as we have done.

In light of the fact that we have filed for the expedited appeal you sought, the meeting the Associate Commissioner suggested between Lazaro Gonzalez and INS enforcement officials will not be necessary. We look forward to working with your officials achieve a prompt and fair adjudication of Elian's best interests. We remain saddened that you rejected out of hand our innovative suggestion of prompt, binding arbitration.

You should be aware of recent, broadcast threats by Cuban President Fidel Castro to send an armed commando team to Miami to kidnap Elian. Consequently, the Gonzalez family has asked the Lincoln-Marti School to educate Elian at home for the time being. The family's decision is based in part on their desire not to endanger the lives of Elian's schoolmates.

We conclude with assurances that the Gonzalez family will continue to observe the laws of the United States and the State of Florida.

Sincerely,
LAW OFFICES OF SPENCER EIG
By: SPENCER EIG



ROSENTHAL & RASCO
By: EDUARDO RASCO

LAURA FABAR, P.A.
By: LAURA FABAR

COFFEY DIAZ & O'NAGHTEN, L.L.P.
By: KENDALL COFFEY
MANUEL DIAZ

RUDEN, McCLOSKEY, SCHUSTER
& RUSSELL, P.A.
By: JOSE GARCIA-PEDROSA

HACKLEY, BERNSTEIN
& OSBERG-BRAUN, P.L.
By: LINDA OSBERG-BRAUN
ROGER BERNSTEIN

GREENBERG TRAUIG, P.A.
By: BARBARA LAGOA
JUDD J. GOLDBERG
ELIOT PEDROSA

TALKING POINTS ON ELIÁN

- Share your concerns at this news.
- The Coordinator for Cuban Affairs has called the Principal Officer of the Cuban Interests Section in to convey our concerns.
- As you know, there are a number of visa applications still pending for the purpose of visiting Elián and they are being reviewed very thoroughly. Among these applications is one for Ricardo Alarcon that we do not expect to issue.
- With regard to the teacher, we did not issue a visa for her to teach a class in the United States, rather she was issued a visa because she was a family friend and Elián's former teacher.
- Once visa holders arrive in the United States the State Department is not responsible for their actions.
- We are in close contact with the INS and the Attorney General regarding this and other matters pertaining to visitors to Wye.

IF ASKED ONLY:

Question:

Why can't you expel the teacher?

Answer:

- The teacher is in this country on a visa that the Department of State issued. Upon her arrival in the U.S., the INS issued the teacher an I-94 good for 90 days.

If Pressed:

- She has not violated the terms of the visa and it would be very difficult to remove her.

U.S. Department of State
ARA/CCA, Room 3234
2201 C Street, N.W.
Washington, D.C. 20520-6263

URGENT

Phone: (202) 647-9273
FAX: (202) 736-4476
FAX: HELMS-BURTON UNIT: (202) 647-7095

F A X C O V E R S H E E T

DATE: 5/18/00

TO: James Castello

Cayn Hollis
Wendy Patten

FROM: Natly Tones

SUBJECT: Talking Points for Secretary to use
w/ Menendez

REMARKS:

Please clear/comment on the
attached.

NUMBER OF PAGES, INCLUDING COVER PAGE.

2

(IF THIS TRANSMISSION WAS NOT RECEIVED IN ITS ENTIRETY, PLEASE CALL 202 647-9273)

CUBA: ELIÁN GONZÁLEZ

Background:

Miami media have picked up on photographs appearing prominently May 16 in Cuban media showing Elián Gonzalez wearing a "Young Pioneer" uniform. Cuban media has proclaimed that Elián is being provided with a Cuban education under Communist principles while staying at Wye. The Miami Herald showed a picture of Elián with his pioneer uniform and he has also been shown on video chanting allegiance to the Revolution.

Talking Points:

- Share your consternation at this news.
- This behavior on the part of the Cuban Government in the United States is inappropriate.
- The Coordinator for Cuban Affairs will be calling the Principal Officer of the Cuban Interests Section in to protest and insist these types of activities cease.
- Education is a state responsibility and confident Maryland will address this issue if case drags on until next school year.
- Separate issue is Elián's dress. Clothing is standard Cuban uniform. We may not like it but it is for his father, Juan Miguel González, to make decisions regarding Elián's clothing.

To: Janelle Jones
Caryn Hollis
Wendy Patten

Fr: Natuy Torres

→ Please clear by 9 AM. The Secretary is expecting a call from Menendez.

O F F I C E O F C U B A N A F F A I R S

U.S. Department of State
ARA/CCA, Room 3234
2201 C Street, N.W.
Washington, D.C. 20520-6263

Phone: (202) 647-9273

FAX: (202) 736-4476

FAX HELMS-BURTON UNIT: (202) 647-7095

F A X C O V E R S H E E T

DATE: May 12, 2000

TO: Brad Glassman
Caryn Hollis
Wendy Patten

FROM: Natly Torres

SUBJECT: Request for Clearance

FOR: Clearance	Information	Per Request	Action
			XX

REMARKS:

Attached you will find four documents for clearance: (1) press guidance, (2) Talking Points for the Secretary to use with Menendez or Graham, (3) two q and a for the secretary to use this weekend with the press, and (4) talking points to use if necessary during her press conference with Rosario Green. Please clear by 2:30.

NO. OF PAGES, INCLUDING COVER PAGE: 9

(IF THIS TRANSMISSION WAS NOT RECEIVED IN ITS ENTIRETY, PLEASE CALL 647-9272)

TALKING POINTS ON ELIÁN
FOR Menendez or Graham

- Concerns have been raised on this matter.
- The Coordinator for Cuban Affairs has called the Principal Officer of the Cuban Interests Section in to convey these concerns.
- The Cubans were non-committal. We will continue to raise this issue with them.

IF ASKED ONLY:

- As you know, there are a number of visa applications still pending for the purpose of visiting Elián and they are being reviewed very thoroughly.
- With regard to the teacher, she was issued a visa because she was a family friend, someone with whom Elián felt comfortable with as his former kindergarten teacher and someone who could presumably tutor him.
- Once visa holders arrive in the United States, it is the Department of Justice, not the Department of State, who determines if and how long the person can stay.
- We are in close contact with the INS and the Attorney General regarding this and other matters pertaining to visitors to Wye.

IF ASKED ONLY:

Question:

Why can't you expel the teacher?

Answer:

- The teacher is in this country on a visa that the Department of State issued. Upon her arrival in the U.S., the INS issued the teacher an I-94 good for 90 days.

If Pressed:

Cont.
TP for
monetary

- She has not violated the terms of the visa and it would be very difficult to remove her.

CUBA: ELIÁN GONZÁLEZ

*For the Secretary to use w/ Press
Over the weekend*

Background:

Elián González and his family moved from Andrews Air Force Base to the Wye Farm facility on April 25. On April 27 Elián's former kindergarten teacher and 11 year-old cousin arrived, followed on April 28 by Elián's four playmates, their accompanying parents and a pediatrician. On May 15 the pediatrician returned to Cuba. The Federal Court of Appeals heard the case on May 11. It is expected that the Court will render its decision in a few weeks.

Question:

What is the latest update on Elián?

Answer:

- We expect that the González family will remain at Wye until the appeal process has concluded.
- Hearing was held at the Federal Appeals Court in Atlanta on May 11.
- We are awaiting the court's decision.

CUBA: ELIÁN GONZÁLEZ

For the Secretary to use with press over the weekend

Background:

The media has reported that Elián is being indoctrinated with Communist principles while staying at Wye. The Miami Herald showed a picture of Elián with his pioneer uniform and he has also been shown on video chanting allegiance to the Revolution.

Question:

What about the Cubans running a school at Wye?

Answer:

- Concerns have been raised.
- We have called the Principal Officer of the Cuban Interests Section in to discuss those concerns.
- But while we have your attention on Cuba, I want to say that we welcome the release of Félix Bonné and Marta Beatriz Roque.
- And we urge the Cuban authorities to free the remaining two members of the dissident working group, as well as all other prisoners being held for political reasons.

**Cuba: Elian Gonzalez
Q and A for Press with Rosario Green**

Background:

The media has reported that Elián is being indoctrinated with Communist principles while staying at Wye. The Miami Herald showed a picture of Elián with his pioneer uniform and he has also been shown on video chanting allegiance to the Revolution.

Question:

Any comments on the Cuban school at Wye?

Answer:

- One of the freedoms we most enjoy in this country is free choice. People can make choices that other find objectionable-- that goes for Mr. González as well.
- We are looking into concerns that have been raised.
- What is most important is for the legal process to complete its work and bring this difficult situation to an end as expeditiously as possible.
- But while we have your attention on Cuba, I want to say that we welcome the release of Félix Bonné and Marta Beatriz Roque.
- And we urge the Cuban authorities to free the remaining two members of the dissident working group, as well as all other prisoners being held for political reasons.

Question: The Department of State constantly criticizes Cuba's human rights record, why are you insisting that Elian be returned to Cuba?

Answer:

- This is about a six year old child who has lost his mother and whose only surviving parent is exercising his parental rights.
- We simply cannot take the position that because the government of a country denies its citizens human rights a parent in that country must lose his or her parental rights.

**WHA Press Guidance
May 18, 2000**

Cuba: Elián González

Question: What are your views on Elián's schooling at Wye?

Answer:

- **SOME CONCERNS HAVE BEEN RAISED ABOUT THIS.**
- **WE ARE TALKING WITH THE CUBAN GOVERNMENT ABOUT IT.**

Question: Why did the State Department issue a visa to a teacher for the purpose of holding classes?

Answer:

- **SHE WAS ISSUED A VISA AT THE REQUEST OF JUAN MIGUEL GONZÁLEZ BECAUSE SHE WAS A FAMILY FRIEND, SOMEONE WITH WHOM ELIÁN FELT COMFORTABLE AS HIS FORMER KINDERGARTEN TEACHER.**

Context: The media has reported that Elián is being indoctrinated with Communist principles while staying at Wye. The Miami Herald showed a picture of Elián with his pioneer uniform and he has also been shown on video chanting allegiance to the Revolution. According to INS, the State of Maryland Education Department does not see Elián's education at Wye as a violation of state law because the kids are not residents and it is a Cuban teacher teaching Cuban children who are all here on temporary visas.

- 3.2.1. ¿Por qué y cuando la ONPE decidió desarrollar otra aplicación para ser utilizada durante la segunda vuelta electoral?
- 3.2.2. ¿Cuándo se inició el desarrollo de la nueva aplicación y por qué la ONPE no compartió esa información con el grupo de trabajo de cómputo?
- 3.2.3. ¿Por qué la aplicación utilizada en la primera vuelta, no estaba en condiciones de ser utilizada en la segunda vuelta?
- 3.3. Las pruebas realizadas a la fecha no se aproximan ni pueden confundirse con una verdadera auditoría del sistema. Es más, son solamente pruebas parciales sobre la funcionalidad del programa de cómputo, que además, a la fecha, no están concluidas. Por esta razón para el grupo de informática de la MOE/OEA, se torna imposible cualquier evaluación responsable y completa del sistema de cómputo.
- 3.4. Por tratarse de un nuevo sistema de cómputo, es necesario contar con la siguiente información:
 - 3.4.1. Documentación correspondiente al desarrollo del nuevo sistema incluyendo análisis y diseño.
 - 3.4.2. Documentación con la descripción del diseño de los sistemas de seguridad y de monitoreo, en todos los niveles.
 - 3.4.3. Documentación con la descripción del sistema de auditoría utilizado por la ONPE y la metodología aplicada para probar el nuevo sistema.
4. El grupo de informática de la MOE/OEA, por lo observado en la ONPE, con relación al sistema de cómputo utilizado en la primera vuelta de las elecciones, presenta sus reservas sobre la capacidad real de la ONPE para desarrollar en un mes de trabajo, el sistema de cómputo que sería utilizado en la segunda vuelta de las elecciones. Lo anterior, toda vez que la MOE/OEA pudo comprobar las graves dificultades de la ONPE para desarrollar un sistema confiable, plenamente comprobado, para la primera vuelta de las elecciones presidenciales y congresales.
5. El grupo de informática de la MOE/OEA reconoce que el 12 de Mayo la ONPE hizo una demostración a los representantes de las instituciones involucradas en el grupo de trabajo de cómputo. Se trató de una primera versión del programa de cómputo a ser utilizado en la segunda vuelta de las elecciones. Sin embargo, la entrega de esta primera versión en CD permite solamente una evaluación funcional del programa de cómputo a partir de la fecha de hoy y para los fines exclusivos de la observación electoral de la MOE/OEA.
6. El grupo de informática de la MOE/OEA, se permite aclarar que debe distinguirse claramente entre auditoría del sistema de cómputo, la cual requiere una serie de procedimientos de verificación de cada uno de los componentes internos del sistema de cómputo, que permita emitir conclusiones responsables basadas en pruebas y metodologías comprobables, sobre cada una de las partes y detalles del sistema, con relación a las denominadas, por parte de la ONPE, como "constantes demostraciones y pruebas del programa", que en realidad son solamente pruebas de presentación preliminar, sin que las mismas puedan ser consideradas como pruebas funcionales del programa de cómputo, ya que para éstas también existe una metodología expresa a seguir.

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 0003906
RECEIVED: 12 JUN 00 16

TO: PRESIDENT

FROM: CARRO, JOSE

DOC DATE: 20 APR 00
SOURCE REF: 418421

KEYWORDS: CUBA
PRESIDENTIAL CORRESPONDENCE

HUMAN RIGHTS

PERSONS: GONZALEZ, ELIAN

SUBJECT: CUBAN PEDIATRIC SOCIETY IN EXILE URGES POTUS SUPPORT RE GONZALEZ
CASE

ACTION: PREPARE MEMO FOR BERGER

DUE DATE: 23 JUN 00 STATUS: S

STAFF OFFICER: PATTEN

LOGREF:

FILES: PA

NSCP:

CODES:

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

FOR ACTION
PATTEN

FOR CONCURRENCE
HOLLIS

FOR INFO
BAKER
SCHWARTZ
VALENZUELA

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSSWL

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED



418421

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José Carro, M.D.

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José E. Pérez Rodríguez, M.D.

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Enrique Cantón, M.D.

Ramón Rodríguez-Torres, M.D.

Walter R. Lambert, M.D.

Agustín W. Castellanos, M.D.

President Elect

Rubén González-Vallina, M.D.

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Eugenio Rothe, M.D.

Cuban Pediatric Society in Exile, Inc.

Sociedad Cubana de Pediatría en el Exilio, Inc.

P.O. Box 558988

Miami, Florida 33255-8988

Fax (305) 361-8563

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Hector Quevedo, M.D.

Miami, Florida

April 20, 2000

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

Honorable President Clinton:

The members of the Cuban Pediatric Society in Exile have followed very closely the case of Elian Gonzalez as the events unfold. As pediatric professionals and children's advocates, we respectfully ask you and the corresponding authorities to reevaluate all aspects of this unfortunate and tragic situation. As the highest authority in this great nation you have a duty as well as a moral obligation to assure that any biological parental rights do not supersede or violate those of Elian as an individual.

We have issued a public declaration, which we are hereby submitting for your consideration and support. It is unquestionable that the medical and psychiatric criteria of Elian's own treating physicians must be taken into consideration in all future decisions. I would like to reiterate our willingness to assist in mediation for the purpose of family reunification, while assuring that Elian's rights and physical as well as emotional well-being, are guaranteed at all times.

Respectfully yours,

Jose Carro, M.D.

7000 S.W. 97th Avenue

Suite 208

Miami, Florida 33173

Ph: (305)273-0808

CC: Ms. Janet Reno, Attorney General
Ms. Dorothy Meissner, Commissioner of I.N.S.

JUN 12 15:37

0-418421

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Jesús Rodríguez-Angulo, M.D.

Fernando Pennella, M.D.

José Vargas, M.D.

Miami, Florida

April 17, 2000

Whereas the Cuban Pediatric Society in Exile is a non political, scientific medical organization that has been in existence in the State of Florida for more than 30 years currently with more than 200 members.

Whereas Elian Gonzalez is a six year old Cuban boy who arrived to the US on Thanksgiving Day on November 25th, 1999. Elian was rescued at sea alone, after his mother lost her life in an attempt to seek freedom.

Where as there have been health care professionals from other areas traveling to South Florida and speaking to the media expressing their medical opinions without having obtained a medical history, performed a physical examination nor other proper psychological evaluations of Elian.

Based on the above facts the Cuban Pediatric Society in Exile states the following

DECLARATION OF PRINCIPLES :

That Elian's rights as a child should be honored and respected under the principles of the "Convention of The Rights of Children" promulgated by the United Nations and supported by Pediatricians around the world.

That every effort should be made to have a family reunion among Elian's father, his wife, Lazaro Gonzalez and other relatives in Miami. This meeting should be held in a neutral place without government, media or outside intervention and without any pre-conditions.

That the Cuban Pediatric Society in Exile offers its knowledge of the Cuban culture and its resources to obtain this goal.

That we denounce and strongly oppose statements made by individuals who have been expressing medical or psychological judgments without following the most basic rules of medical ethics and care.

That in our opinion the legal aspects of this case, if needed, would be better served in a family court which is the indicated forum for cases of this nature; therefore, it is our conviction that Elian Gonzalez is entitled to have "a day in court" as any other human being in the United States of America.

Every free and democratic society assures that everyone's basic and individual rights are honored and respected. Unfortunately children's rights are sometimes overlooked. As children's advocates it is our moral and legal obligation to make sure that individual rights of children are considered. National and world wide organizations support this notion. We feel that Elian Gonzalez's rights should be taken into account before any abrupt decision which could have life long implications, is made.

Unfortunately due to the political and emotional aspects surrounding this case many have rushed to make a judgment and express their opinion without taking all the facts into consideration.

The Cuban Pediatric Society in Exile was founded over 30 years ago. Its membership is composed of general pediatricians, pediatric subspecialists and other health care professionals with many years of experience in the field of Pediatrics. South Florida is a community made up of people with many different ethnic origins and backgrounds. For many years we have cared for the children in this community, especially children of Cuban origin. We have also traveled to many places in Latin America and to Guantanamo, Cuba to offer our services to Cuban and Haitian children there during the crisis created by the most recent massive exodus from Cuba. We feel our knowledge and expertise places us in the best position to evaluate this case. We do so in a nonpolitical, objective manner as children advocates that we are.

As it has been suggested by pediatric psychiatrists and psychologists treating Elian since his arrival to the United States, and because of what he went through and witnessed "first hand" he may fit the diagnosis of Post Traumatic Stress Disorder (PTSD). This is a condition in which the victims experience tremendous emotional impact on their lives after an overwhelming unexpected trauma. The persistent emotional symptoms that the victims experience become even worse when they are subjected to change or when they feel threatened in any way about their safety.

We understand and respect traditional Cuban family values. We are also well aware of the political situation in Cuba. This is why we insist that a family reunion with Elian's father, his wife and his Miami relatives take place in a neutral environment away from the pressures of governments, media and outsiders with their own hidden political agendas. This should be carried out without any prearranged condition.

Traditionally custody battles are resolved in Family Courts. Due to the political implications of this case, facts and decisions have been manipulated before taking into account all aspects of this unusual and unfortunate situation. Everyone has their right to have his/her day in court. Let's not deny Elian of this right.

Last but not least we urge everyone not to forget Elizabeth Brotons, Elian's mother, who made the ultimate sacrifice to bring her child to what she believed would be a better future. Her cry, along with thousands of others who have lost their lives in the Florida Straights in their attempt to reach freedom, democracy and the pursuit of happiness, should be heard.

Attention: **Honorable William J. Clinton**

Date: **4/21/00**

Company:

Number of Pages: **4**

Fax Number: **12024562461**

Voice Number:

From: **Eduardo A. Otero**

Company:

Fax Number: **305-265-9190**

Voice Number: **305-265-8668**

Subject:

Comments:

PLM TO DEBBIE JONES, ROOM 75

Please do the following with
the attached letter:

- ☐ Send to Agency Liaison for
appropriate action
- ☐ Send to Agency Liaison for
direct routing (no cover
letter) to:

- ☐ Send to Agency Liaison for
Jim Dorskind cover letter
and routing to:

- ☒ Other: Please forward
to Vicki Darnes, NSC,
379 OEB, for handling.

Name: Renée Sagiv

Phone: 45519

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

ID# 418421
PAGE 1

DATE RECEIVED: 06/08/2000

NAME OF CORRESPONDENT: DR. JOSE CARRO M.D.

SUBJECT: REQUEST THE PRESIDENT TO REEVALUATE ALL ASPECTS OF THE TRAGIC SITUATION
CONCERNING THE CASE OF ELIAN GONZALEZ AS THE EVENTS UNFOLD

		ACTION		DISPOSITION		
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
CORRESPONDENCE	JOHN WERTMAN	ORG	2000/06/08		C	2000/06/08

ACTION COMMENTS

NATIONAL SECURITY
COUNCIL

RSA 2000/06/08

ACTION COMMENTS ATTN: VICKI DARNES, RM. 379-OEOB

ACTION COMMENTS:

ACTION COMMENTS:

COMMENTS

ADDITIONAL CORRESPONDENTS: 0

MEDIA: FAX

INDIVIDUAL CODES:

REPORT CODES:

USER CODES:

JUN 12 15:37

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.

TO: PRESIDENT

FROM: MENENDEZ, ROBERT

DOC DATE: 19 MAY 00
SOURCE REF: 418152

KEYWORDS: CUBA CO
HUMAN RIGHTS

PERSONS: GONZALEZ, ELIAN

SUBJECT: URGES POTUS COMBAT CUBAN ATTEMPTS TO MANIPULATE GONZALEZ FAMILY

ACTION: PREPARE MEMO FOR BERGER

DUE DATE: 12 JUN 00 STATUS: S

STAFF OFFICER: PATTEN

LOGREF:

FILES: PA

NSCP:

CODES:

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

FOR ACTION
PATTEN

FOR CONCURRENCE
HOLLIS
LACKEY

FOR INFO
SCHWARTZ
VALENZUELA

COMMENTS: IF FINAL REPLY CANNOT BE PREPARED BY DUE DATE, AN INTERIM RESPONSE
MUST BE PREPARED FOR MILES LACKEY'S SIGNATURE.

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSSWL

CLOSED BY:

DOC 1 OF 1

ROBERT MENENDEZ
13TH DISTRICT, NEW JERSEY
VICE CHAIR OF THE DEMOCRATIC CAUCUS

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE

SUBCOMMITTEES:

AVIATION
WATER RESOURCES AND ENVIRONMENT

COMMITTEE ON INTERNATIONAL
RELATIONS

SUBCOMMITTEES:

INTERNATIONAL ECONOMIC POLICY AND TRADE
WESTERN HEMISPHERE



Congress of the United States
House of Representatives
Washington, DC 20515-3013

May 19, 2000

3655

REPLY TO:

☐ 405 CANNON H.O.B.
WASHINGTON, DC 20515-3013
(202) 225-7919

DISTRICT OFFICES:

☐ 911 BERGEN AVENUE
JERSEY CITY, NJ 07306
(201) 222-2828

☐ 654 AVENUE C
BAYONNE, NJ 07002
(201) 823-2900

☐ 263 HOBART STREET
PERTH AMBOY, NJ 08861
(732) 324-6212

☐ 3109 BERGENLINE AVENUE
2ND FLOOR
UNION CITY, NJ 07087
(201) 558-0800

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



418152

Dear Mr. President:

The front page of yesterday's *Washington Times* carried a photo of six year-old Elián Gonzalez at his temporary residence near Wye Plantation, dressed in a Union of Communist Pioneer's uniform. I was appalled by this photo and others taken by the Cuban regime that appeared yesterday in *Granma*, Cuba's propaganda paper. A copy is enclosed.

It is incomprehensible that the U.S. would permit the communist indoctrination of Elián Gonzalez and other children on U.S. soil while under the supervision of the U.S. Marshall's Service.

The Union of Communist Pioneers is not like the Boy Scouts; participation in pioneers is mandatory, and the primary goal of the group is the indoctrination of young children in communist political and military ideology, and military readiness training. The "skills" children are taught include, how to hold bridges from enemy troops, find landmines, throw grenades through windows, and assemble a rifle while blindfolded.

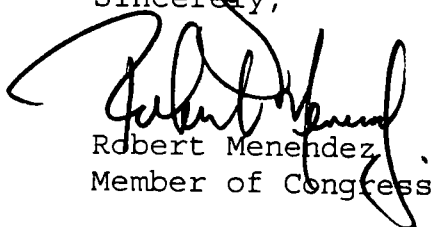
The intent behind housing Elián and his family at Wye Plantation was to give them time to spend together as a family - not to make them wards of the Cuban regime. Yet Cuban officials have been given seemingly unrestricted access to the family and are being allowed to dictate their daily activities.

The fact that the U.S. has facilitated Elián's Marxist-Leninist indoctrination by providing visas to Cuban "educators" is even more appalling.

Lastly, as we wait for the decision of the 11th Circuit Court of Appeals, I am disturbed by the possibility that should Elián be granted his right to apply for asylum, the past weeks of indoctrination are likely to influence his ability to respond truthfully in an interview with an asylum officer.

I urge you to immediately intervene to end Castro's attempt to carry out his maligned social experiment on U.S. soil and to ensure that Elián and the Gonzalez family are not further manipulated by the Castro regime.

Sincerely,



Robert Menendez
Member of Congress

cc: The Honorable Madeleine Albright
Secretary of State

The Honorable Janet Reno
Attorney General of the United States

THE WHITE HOUSE

WASHINGTON

May 30, 2000

MEMORANDUM FOR ROBERT A. BRADTKE
NSC Executive Secretariat

FROM: KAY CASSTEVENS
Legislative Affairs

SUBJECT: PRESIDENTIAL CORRESPONDENCE

Attached are copies of letters sent to the President by various Members of Congress. Since these letters address national security issues, we would appreciate your assistance in drafting the responses.

Thank you very much for your assistance. If you have any questions, please call Courtney Crouch at x67500.

The following is a brief description of the letters:

- 1) Sen. Kent Conrad (D-ND), Sen. Byron L. Dorgan (D-ND) and Rep. Earl Pomeroy (D-ND), recommending that any START III Treaty retains all 500 Minuteman III ICBMs and does not reduce the B-52 force;
- 2) Sen. Mike DeWine (R-OH), recommending the President to address the issue of international parental abduction during his upcoming meeting with German Chancellor Gerhard Schroeder;
- 3) Sen. Phil Gramm (R-TX), recommending the President to address the issue of Mexico's water management plan in the Rio Grande watershed during his upcoming meeting with Mexican President Ernesto Zedillo;
- 4) Sen. Mary L. Landrieu (D-LA), recommending the President to support a moment of silence honoring the ideals of world peace during the inaugural ceremonies of the 2000 Summer Olympic games in Sydney, Australia;
- 5) Rep. James C. Clyburn (D-SC) and thirty-one other Members of Congress, concerning the current situation in Sierra Leone and the Lome Accords;
- 6) Rep. Norman D. Dicks (D-WA) and thirty-seven other Members of Congress, recommending the President to sustain and strengthen political, economic and cultural ties with Turkey;

MAY 30 18:23

- 7) Rep. Sam Gejdenson (D-CT), recommending the President to address political developments in Belarus during his upcoming meeting with Russian President Vladimir Putin;
- 8) Rep. Sam Gejdenson (D-CT), concerning the START II Treaty;
- 9) Rep. Benjamin A. Gilman (R-NY) and thirteen other Members of Congress, concerning the possibility of resuming the suspended United States military to military relationship with Indonesia;
- 10) Rep. Duncan Hunter (R-CA), recommending the President to address the issue of the release of Mr. Edmond Pope during his upcoming meeting with Russian President Vladimir Putin;
- 11) Rep. Peter T. King (R-NY), recommending the President to address the issue of international parental abduction during his upcoming meeting with German Chancellor Gerhard Schroeder;
- 12) Rep. Cynthia A. McKinney (D-GA), concerning the current situation in Sierra Leone;
- 13) Rep. Robert Menendez (D-NJ), concerning the case of Elian Gonzalez;
- 14) Rep. George Miller (D-CA) and thirty-six other Members of Congress, concerning the investigations of a group of murders alleged to have been ordered by former Chilean General Augusto Pinochet;
- 15) Rep. Matt Salmon (R-AZ), concerning the transfer of Muhammad Deif from the Palestinian Authority to the United States for prosecution in a U.S. court of law;
- 16) Rep. Frank R. Wolf (R-VA), concerning the problem of diamond trafficking in Africa and the current situation in Sierra Leone.

Enclosures

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

ID# 418152
PAGE 1

DATE RECEIVED: 05/25/2000

NAME OF CORRESPONDENT: THE HONORABLE ROBERT MENENDEZ

SUBJECT: URGES THE PRESIDENT TO IMMEDIATELY INTERVENE TO END CASTRO'S ATTEMPT TO CARRY OUT HIS MALIGNED SOCIAL EXPERIMENT ON U.S. SOIL AND TO ENSURE THAT ELIAN AND THE GONZALEZ FAMILY ARE NOT FURTHER MANIPULATED BY THE CASTRO REGIME

		ACTION		DISPOSITION		
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACTION CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
LEGISLATIVE AFFAIRS	CHARLES "CHUCK" BRAIN	ORG	2000/05/25		C	05/25/00

ACTION COMMENTS

NSC

ACTION COMMENTS:

ACTION COMMENTS:

ACTION COMMENTS:

COMMENTS BATCH #418143

ADDITIONAL CORRESPONDENTS: 0

MEDIA: LETTER

INDIVIDUAL CODES:

REPORT CODES:

USER CODES:

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.

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 0003716
RECEIVED: 02 JUN 00 16

TO: PRESIDENT

FROM: FOEMAN, WALTER

DOC DATE: 22 MAY 00
SOURCE REF: 418412

KEYWORDS: CUBA

PRESIDENTIAL CORRESPONDENCE

PERSONS: GONZALEZ, ELIAN

SUBJECT: CITY OF MIAMI FWD CY RESOLUTION 00316 URGING POTUS DECLEAR STATE OF
EMERGENCY IN MIAMI DUE TO GONZALEZ ISSUE

ACTION: APPROPRIATE ACTION

DUE DATE: 14 JUN 00 STATUS: S

STAFF OFFICER: PATTEN

LOGREF:

FILES: PA

NSCP:

CODES:

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

FOR ACTION
PATTEN

FOR CONCURRENCE
BAKER
HOLLIS

FOR INFO
SCHWARTZ
VALENZUELA

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSSWL

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

3766

City of Miami

WALTER J. FOEMAN
City Clerk



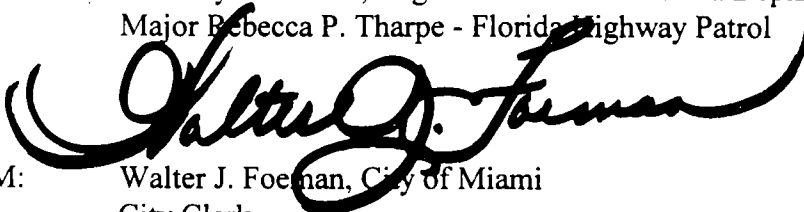
DONALD H. WARSHAW
City Manager

May 22, 2000



418412

TO: The Honorable William Jefferson Clinton, President of the United States
Mr. Robert Wallis, Director - Department of Immigration and
Naturalization Services
Janet Reno, Attorney General of the United States
The Honorable Jeb Bush – Governor
Federal Emergency Management Agency (“FEMA”)
The Honorable Alex Penelas, Mayor – Miami-Dade County
Mr. Doyle Jourdan, Regional Director - Florida Department of Law Enforcement
Major Rebecca P. Tharpe - Florida Highway Patrol


FROM: Walter J. Foeman, City of Miami
City Clerk

Enclosed please find a copy of Resolution 00-316, which was passed and adopted by the City of Miami Commission at its meeting on April 13, 2000. This legislation is being forwarded to you for your information and files.

JUN 21 1997

J-00-364
4/13/00

RESOLUTION NO. 00-316

A RESOLUTION OF THE MIAMI CITY COMMISSION STRONGLY URGING PRESIDENT WILLIAM JEFFERSON CLINTON TO DECLARE A STATE OF EMERGENCY IN THE CITY OF MIAMI, FLORIDA, DUE TO THE EXTRAORDINARY CONTROVERSY SURROUNDING THE ISSUES CONCERNING THE CUSTODY AND ASYLUM OF ELIAN GONZALEZ; FURTHER REQUESTING THAT THE FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") BE DIRECTED TO REIMBURSE THE CITY OF MIAMI, MIAMI-DADE COUNTY, AND ALL OTHER LOCAL AND STATE GOVERNMENTAL ENTITIES FOR EXPENSES INCURRED IN THEIR EFFORTS TO MAINTAIN THE PUBLIC PEACE, ORDER AND GENERAL WELFARE OF THE CITIZENS OF THE CITY OF MIAMI; DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO THE HEREIN DESIGNATED OFFICIALS.

WHEREAS, the costs to maintain public peace and order related to issues concerning the custody and asylum of Elian Gonzalez have become overwhelming for the City of Miami and other local and State of Florida governmental entities; and

WHEREAS, federal policy is at the core of the controversy, and therefore, the United States government should bear the burden of the costs to assure the public health and welfare of the citizens of the City of Miami;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

CITY COMMISSION
MEETING OF

APR 13 2000
Resolution No.

00-316

Section 1. The recitals and findings contained in the Preamble to this Resolution are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. The Miami City Commission hereby strongly urges President William Jefferson Clinton to declare a State of Emergency in the City of Miami, Florida, due to the extraordinary controversy surrounding issues concerning the custody and asylum of Elian Gonzalez.

Section 3. The Miami City Commission further requests that the Federal Emergency Management Agency ("FEMA") be directed to reimburse the City of Miami, Miami-Dade County, and all other local and State governmental entities for expenses incurred in their efforts to maintain the public peace, order and general welfare of the citizens of the City of Miami.

Section 4. The City Clerk is hereby directed to transmit a copy of this Resolution to President William Jefferson Clinton, the United States Department of Immigration and Naturalization Service, Attorney General of the United States Janet Reno, FEMA, Florida Governor Jeb Bush, Miami-Dade County Mayor Alex Penelas, the Florida Department of Law Enforcement, and the Florida Highway Patrol.

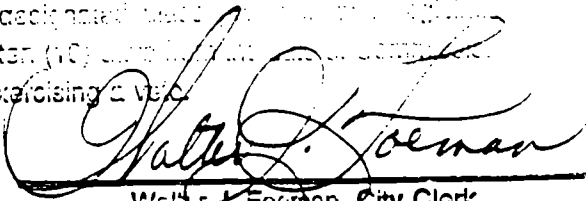
Section 5. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.

PASSED AND ADOPTED this 13th day of April, 2000.

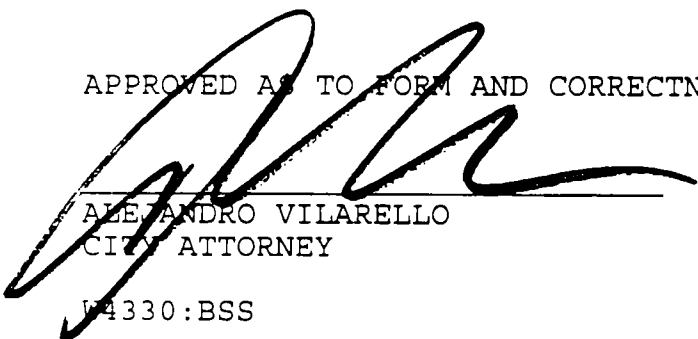
JOE CAROLLO, MAYOR

In accordance with Miami Code Sec. 2-36, since the Mayor did not indicate approval of this legislation by signing it in the designated space, this Resolution shall become effective with the elapse of ten (10) days from the date of its adoption, unless the Mayor exercises a veto regarding same, without the Mayor exercising a veto.

ATTEST:


Walter J. Foeman, City Clerk

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: 

ALEJANDRO VILARELLO
CITY ATTORNEY

W4330:BSS

^{1/} If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.

PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-11424

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,

Plaintiffs-Appellants,

versus

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-Appellees,

JUAN MIGUEL GONZALEZ,

Intervenor.

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

(June 1, 2000)

Before EDMONDSON, DUBINA and WILSON, Circuit Judges.

EDMONDSON, Circuit Judge:

This case, at first sight, seems to be about little more than a child and his father. But, for this Court, the case is mainly about the separation of powers under our constitutional system of government: a statute enacted by Congress, the permissible scope of executive discretion under that statute, and the limits on judicial review of the exercise of that executive discretion.

Elian Gonzalez ("Plaintiff"), a six-year-old Cuban child, arrived in the United States alone. His father in Cuba demanded that Plaintiff be returned to Cuba. Plaintiff, however, asked to stay in the United States; and asylum applications were submitted on his behalf. The Immigration and Naturalization Service ("INS") -- after, among other things, consulting with Plaintiff's father and considering Plaintiff's age -- decided that Plaintiff's asylum applications were legally void and refused to consider their merit.

Plaintiff then filed this suit in federal district court, seeking on several grounds to compel the INS to consider and to determine the merit of his asylum applications. The district court dismissed Plaintiff's suit. Gonzalez ex rel. Gonzalez v. Reno, 86 F. Supp.2d 1167, 1194 (S.D. Fla. 2000). Plaintiff appeals,⁽¹⁾ and we affirm.

I.

In December 1993, Plaintiff was born in Cuba to Juan Miguel Gonzalez and Elizabeth Gonzalez. When Plaintiff was about three years old, Juan Miguel and Elizabeth separated. Elizabeth retained custody of Plaintiff after the separation. Juan Miguel, however, continued to have regular and significant contact with his son. Plaintiff, in fact, attended school in the district where his father lived and often stayed at Juan Miguel's home.

In November 1999, Elizabeth decided to leave Cuba and to take her son to the United States. In the pre-dawn hours of 22 November, Plaintiff and Elizabeth, along with twelve other Cuban nationals, left Cuba aboard a small boat. The next day, the boat capsized in strong winds and rough seas off the coast of Florida. Eleven of the passengers, including Elizabeth, died. Plaintiff, clinging to an inner tube, endured and survived.

Two days later, Plaintiff was rescued at sea by Florida fishermen and was taken to a hospital in Miami for medical treatment. While Plaintiff was receiving medical treatment, the INS was contacted by Plaintiff's great-uncle: Miami resident Lazaro Gonzalez. INS officials decided, upon Plaintiff's release from the hospital, not to remove Plaintiff immediately to Cuba. Instead, the INS deferred Plaintiff's immigration inspection and paroled Plaintiff into Lazaro's custody and care.

Soon thereafter, Lazaro filed an application for asylum on Plaintiff's behalf with the INS. This application was followed shortly by a second application signed by Plaintiff himself. A third asylum application was filed by Lazaro on Plaintiff's behalf in January 2000, after a state court awarded temporary custody of Plaintiff to Lazaro.⁽²⁾ The applications were prepared by a Miami lawyer.

The three applications were substantially identical in content. The applications stated that Plaintiff "is afraid to return to Cuba." The applications claimed that Plaintiff had a well-founded fear of persecution because many members of Plaintiff's family had been persecuted by the Castro government in Cuba. In particular, according to the applications, Plaintiff's stepfather had been imprisoned for several months because of opposition to the Cuban government. Two of Plaintiff's great-uncles also had been imprisoned for their political acts. Plaintiff's mother had also been harassed and intimidated by communist authorities in Cuba. The applications also alleged that, if Plaintiff were returned to Cuba, he would be used as a propaganda tool for the Castro government and would be subjected to involuntary indoctrination in the tenets of communism.

Plaintiff's father, however, apparently did not agree that Plaintiff should remain in the United States. Soon after Plaintiff was rescued at sea, Juan Miguel sent to Cuban officials a letter, asking for Plaintiff's return to Cuba. The Cuban government forwarded this letter to the INS.

Because of the conflicting requests about whether Plaintiff should remain in the United States, INS officials interviewed both Juan Miguel and Lazaro. An INS official, on 13 December, met with Juan Miguel at his home in Cuba. At that meeting, Juan Miguel made this comment:

[Plaintiff], at the age of six, cannot make a decision on his own I'm very grateful that he received immediate medical assistance, but he should be returned to me and my family As for him to get asylum, I am not allowing him to stay or claim any type of petition; he should be returned immediately to me.

Juan Miguel denied that Lazaro was authorized to seek asylum for Plaintiff; Juan Miguel also refused to consent to any lawyer representing Plaintiff. Juan Miguel assured the INS official that his desire for Plaintiff's return to Cuba was genuine and was not coerced by the Cuban government.

One week later, INS officials in Miami met with Lazaro, Marisleysis Gonzalez (Plaintiff's cousin), and several lawyers representing Plaintiff. At that meeting, the parties discussed Juan Miguel's request. Lazaro contended that Juan Miguel's request for Plaintiff's return to Cuba was coerced by the Cuban government.⁽³⁾ INS officials also inquired about the legal basis for Plaintiff's asylum applications; Lazaro replied this way: "During the time he's been here, everything he has, if he goes back, it's all changed. His activities here are different from those that he would have over there." Plaintiff's lawyers told the INS again of the persecution of Plaintiff's relatives in Cuba because of their political opposition to the

Castro government.

On 31 December, an INS official again met with Juan Miguel in Cuba to investigate further Lazaro's claim that Juan Miguel's request had been coerced.⁽⁴⁾ At that meeting, Juan Miguel repeated that he desired Plaintiff's return to Cuba. Juan Miguel also reasserted that he was under no undue influence from any individual or government. The INS official -- taking Juan Miguel's demeanor into account -- determined that Juan Miguel, in fact, genuinely desired his son's return to Cuba.

The INS Commissioner, on 5 January 2000, rejected Plaintiff's asylum applications as legally void. The Commissioner -- concluding that six-year-old children lack the capacity to file personally for asylum against the wishes of their parents -- determined that Plaintiff could not file his own asylum applications. Instead, according to the Commissioner, Plaintiff needed an adult representative to file for asylum on his behalf. The Commissioner -- citing the custom that parents generally speak for their children and finding that no circumstance in this case warranted a departure from that custom -- concluded that the asylum applications submitted by Plaintiff and Lazaro were legally void and required no further consideration. Plaintiff asked the Attorney General to overrule the Commissioner's decision; the Attorney General declined to do so.

Plaintiff then, by and through Lazaro as his next friend, filed a complaint in federal district court seeking to compel the INS to consider the merits of his asylum applications. In his complaint, Plaintiff alleged, among other things, that the refusal to consider his applications violated 8 U.S.C. § 1158 and the Fifth Amendment Due Process Clause. The district court rejected both claims and dismissed Plaintiff's complaint. Plaintiff appeals.⁽⁵⁾

II.

On appeal, Plaintiff argues that the district court erred (1) by dismissing Plaintiff's claim under 8 U.S.C. § 1158, (2) by dismissing Plaintiff's due process claim, and (3) by failing to appoint a guardian ad litem to represent Plaintiff's interests.⁽⁶⁾ We have reviewed carefully the record and the briefs filed by all parties. We conclude that Plaintiff's due process claim lacks merit and does not warrant extended discussion. See Jean v. Nelson, 727 F.2d 957, 968 (11th Cir. 1984) (en banc) ("Aliens seeking admission to the United States . . . have no constitutional rights with regard to their applications . . ."), aff'd on other grounds, 105 S. Ct. 2992 (1985). Plaintiff's guardian ad litem claim, because Plaintiff was ably represented in district court by his next friend, also lacks merit and similarly does not warrant extended discussion. See Fed. R. Civ. P. 17(c) (providing for appointment of

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guardian ad litem in discretion of district court); see also Roberts v. Ohio Cas. Ins. Co., 256 F.2d 35, 39 (5th Cir. 1958) (noting that guardian ad litem may be unnecessary where child already represented adequately by next friend). We, accordingly, affirm the district court's dismissal of the constitutional claim and the district court's refusal to appoint a guardian ad litem.⁽⁷⁾ We now turn, however, to a more difficult question: the district court's dismissal of Plaintiff's statutory claim.

III.

Plaintiff contends that the district court erred in rejecting his statutory claim based on 8 U.S.C. § 1158. Section 1158 provides that "[a]ny alien . . . may apply for asylum." 8 U.S.C. § 1158(a)(1). Plaintiff says that, because he is "[a]ny alien," he may apply for asylum. Plaintiff insists that, by the applications signed and submitted by himself and Lazaro, he, in fact, did apply for asylum within the meaning of section 1158. In addition, Plaintiff argues that the summary rejection by the INS of his applications as invalid violated the intent of Congress as set out in the statute.

The INS responds that section 1158 is silent about the validity of asylum applications filed on behalf of a six-year-old child, by the child himself and a non-parental relative, against the wishes of the child's parent. The INS argues that, because the statute does not spell out how a young child files for asylum, the INS was free to adopt a policy requiring, in these circumstances, that any asylum claim on Plaintiff's behalf be filed by Plaintiff's father. As such, the INS urges that the rejection of Plaintiff's purported asylum applications as legally void was lawful. According to the INS, because the applications had no legal effect, Plaintiff never applied at all within the meaning of the statute.

Guided by well-established principles of statutory construction, judicial restraint, and deference to executive agencies, we accept that the rejection by the INS of Plaintiff's applications as invalid did not violate section 1158.

A.

Our consideration of Plaintiff's statutory claim must begin with

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an examination of the scope of the statute itself. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 104 S. Ct. 2778, 2781 (1984); see also INS v. Aguirre-Aguirre, 119 S. Ct. 1439, 1445 (1999) (instructing that analysis set out in Chevron is applicable to immigration statutes); Jaramillo v. INS, 1 F.3d 1149, 1153 (11th Cir. 1993) (en banc) (same). In Chevron, the Supreme Court explained: "First, always, is the question whether Congress has directly spoken to the precise question at issue. 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." 104 S. Ct. at 2781. We turn, therefore, to the plain language of the statute.

Section 1158 provides, in pertinent part:

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), 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) (emphasis added). Section 1158 is neither vague nor ambiguous. The statute means exactly what it says: "[a]ny alien . . . may apply for asylum." See Pennsylvania Dep't of Corrections v. Yeskey, 118 S. Ct. 1952, 1956 (1998) (observing that statute is not ambiguous just because it is broad and that statute may apply to circumstances not envisioned by Congress). That "[a]ny alien" includes Plaintiff seems apparent.⁽⁸⁾ See 8 U.S.C. § 1101(a)(3) (defining "alien" as "any person not a citizen or national of the United States"); see also Merritt v. Dillard Paper Co., 120 F.3d 1181, 1186 (11th Cir. 1997) (noting that word "any" has "an expansive meaning"). Section 1158, therefore, plainly would permit Plaintiff to apply for asylum.

When an alien does apply for asylum within the meaning of the statute, the INS – according to the statute itself and INS regulations – must consider the merits of the alien's asylum claim. See 8 U.S.C. § 1158(d)(1) ("The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section.") (emphasis added); 8 C.F.R. § 208.9(a) (requiring INS to "adjudicate the claim of each asylum applicant whose application is complete"). The important legal question in this case, therefore, is not whether Plaintiff may apply for asylum; that a six-year-old is eligible to apply for asylum is clear. The ultimate inquiry, instead, is whether a six-year-old child has applied for asylum within the meaning of the statute when he, or a non-parental relative on his behalf, signs and submits a purported application against the express wishes of the child's parent.

About this question, more important than what Congress said in section 1158 is what Congress left unsaid. In reading statutes, we consider not only the words Congress used, but the spaces between those words. Section 1158 is silent on the precise question at issue in this case. Although section 1158 gives "[a]ny alien" the right to "apply for asylum," the statute does not command how an alien applies for asylum. The statute includes no definition of the term "apply." The statute does not set out procedures for the proper filing of an asylum application. Furthermore, the statute does not identify the necessary contents of a valid asylum application. In short, although the statute requires the existence of some application procedure so that aliens may apply for asylum, section 1158 says nothing about the particulars of that procedure. See 8 U.S.C. § 1158.

B.

Because the statute is silent on the issue, Congress has left a gap in the statutory scheme.⁽⁹⁾ From that gap springs executive discretion.⁽¹⁰⁾ As a matter of law, it is not for the courts, but for the executive agency charged with enforcing the statute (here, the INS), to choose how to fill such gaps.⁽¹¹⁾ See Chevron, 104 S. Ct. at 2793. Moreover, the authority of the executive branch to fill gaps is especially great in the context of immigration policy.⁽¹²⁾ See Aguirre-Aguirre, 119 S. Ct. at 1445. Our proper review of the exercise by the executive branch of its discretion to fill gaps, therefore, must be very limited. See Pauley v. Bethenergy Mines, Inc., 111 S. Ct. 2524, 2534 (1991).

That the courts owe some deference to executive policy does not mean that the executive branch has unbridled discretion in creating and in implementing policy. Executive agencies must comply with the procedural requirements imposed by statute. See Morton v. Ruiz, 94 S. Ct. 1055, 1073 (1974). Agencies must respect their own procedural rules and regulations. See id. at 1074; see also Hall v. Schweiker, 660 F.2d 116, 119 (5th Cir. 1981). And the policy selected by the agency must be a reasonable one in the light of the statutory scheme. Chevron, 104 S. Ct. at 2782. To this end, the courts retain the authority to check agency policymaking for procedural compliance and for arbitrariness. But the courts cannot properly reexamine the wisdom of an agency-promulgated policy.⁽¹³⁾ See SEC v. Chenery Corp., 67 S. Ct. 1575, 1582 (1947) ("The wisdom of the principle adopted is none of our concern.").

In this case, because the law -- particularly section 1158 -- is silent about the validity of Plaintiff's purported asylum applications, it fell to the INS to make a discretionary policy choice. The INS, exercising its gap-filling discretion, determined these things: (1)

six-year-old children lack the capacity to sign and to submit personally an application for asylum; (2) instead, six-year-old children must be represented by an adult in immigration matters; (3) absent special circumstances, the only proper adult to represent a six-year-old child is the child's parent, even when the parent is not in this country; and, (4) that the parent lives in a communist-totalitarian state (such as Cuba),⁽¹⁴⁾ in and of itself, does not constitute a special circumstance requiring the selection of a non-parental representative. Our duty is to decide whether this policy might be a reasonable one in the light of the statutory scheme. See Chevron, 104 S. Ct. at 2782.

But we first address Plaintiff's contention that the "policy" relied on by the INS in this case is really no policy at all but is, in reality, just a litigating position. An after-the-fact rationalization of agency action – an explanation developed for the sole purpose of defending in court the agency's acts – is usually entitled to no deference from the courts. Bradberry v. Director, Office of Workers' Comp. Programs, 117 F.3d 1361, 1366 (11th Cir. 1997). But we are unable to say that the position of the INS here is just an after-the-fact rationalization.

The INS policy toward Plaintiff's application was not created by INS lawyers during litigation, but instead was developed in the course of administrative proceedings before litigation commenced.⁽¹⁵⁾ Cf. IAL Aircraft Holding, Inc. v. FAA, 206 F.3d 1042, 1046 & n.5 (11th Cir. 2000). While the policy announced by the INS may not harmonize perfectly with earlier INS interpretative guidelines (which are not law),⁽¹⁶⁾ the parties have cited, and we have found, no statutory provision, no regulatory authority, and no prior agency adjudication that "flatly contradicts" the policy. Cf. General Elec. Co. v. Gilbert, 97 S. Ct. 401, 411 (1976); see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 103 S. Ct. 2856, 2866 (1983) (noting that agencies have latitude to "adapt their rules and policies to the demands of changing circumstances"). That the INS policy was developed in the course of an informal adjudication, rather than during formal rulemaking, may affect the degree of deference appropriate but does not render the policy altogether unworthy of deference. See Chenery, 67 S. Ct. at 1580; see also Cook v. Wiley, 208 F.3d 1314, 1319-20 (11th Cir. 2000) (explaining that executive policies not "subjected to the heightened scrutiny of [formal] rulemaking" are nonetheless entitled to "some deference"); Bigby v. INS, 21 F.3d 1059, 1063-64 (11th Cir. 1994) (finding Chevron deference appropriate even though agency policy had not been adopted as regulation); U.S. Mosaic Tile Co. v. NLRB, 935 F.2d 1249, 1255 n.6 (11th Cir. 1991) ("Although the agency action in Chevron involved a legislative regulation, the deference standards set forth in that case are now applied to most agency actions, including administrative adjudications . . ."). And that the INS policy may not be a longstanding one likewise affects only the degree of deference required.⁽¹⁷⁾ See Chenery, 67 S. Ct. at 1580. The INS policy, therefore, is entitled to, at least, some deference under Chevron; and that deference, when we take account of the implications of the policy for foreign affairs, becomes considerable.

We accept that the INS policy at issue here comes within the range of reasonable choices. First, we cannot say that the foundation of the policy -- the INS determination that six-year-old children necessarily lack sufficient capacity to assert, on their own, an asylum claim -- is unreasonable.⁽¹⁸⁾ See Polovchak v. Meese, 774 F.2d 731, 736-37 (7th Cir. 1985) (presuming that twelve-year-old child was "near the lower end of an age range in which a minor may be mature enough to assert" an asylum claim against the wishes of his parents). Because six-year-old children must have some means of applying for asylum, see 8 U.S.C. § 1158(a)(1), and because the INS has decided that the children cannot apply personally, the next element of the INS policy -- that a six-year-old child must be represented by some adult in applying for asylum -- necessarily is reasonable.

The INS determination that ordinarily a parent (even one outside of this country)⁽¹⁹⁾ -- and, more important, *only* a parent -- can act for his six-year-old child (who is in this country) in immigration matters also comes within the range of reasonable choices. In making that determination, INS officials seem to have taken account of the relevant, competing policy interests: the interest of a child in asserting a non-frivolous asylum claim; the interest of a parent in raising his child as he sees fit; and the interest of the public in the prompt but fair disposition of asylum claims. The INS policy -- by presuming that the parent is the sole, appropriate representative for a child -- gives paramount consideration to the primary role of parents in the upbringing of their children. But we cannot conclude that the policy's stress on the parent-child relationship is unreasonable.⁽²⁰⁾ See Ginsberg v. New York, 88 S. Ct. 1274, 1280 (1968) ("[T]he parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.").

Critically important, the INS policy does not neglect completely the independent and separate interest that a child may have, apart from his parents, in applying for asylum. See Polovchak, 774 F.2d at 736-37. Instead, according to the INS policy, special circumstances may exist that render a parent an inappropriate representative for the child.⁽²¹⁾ Where such circumstances do exist, the INS policy appears to permit other persons, besides a parent, to speak for the child in immigration matters. So, to some extent, the policy does protect a child's own right to apply for asylum under section 1158 despite the contrary wishes of his parents.

We are not untroubled by the degree of obedience that the INS policy appears to give to the wishes of parents, especially parents who are outside this country's jurisdiction. Because Congress has decided that "[a]ny alien" (including six-year-old children) may apply for asylum, 8 U.S.C. § 1158(a)(1), Congress has charged the INS -- when it promulgates policy and fills gaps in the statutory scheme -- with facilitation, not hindrance, of that legislative goal. See Shoemaker v. Bowen, 853 F.2d 858, 861 (11th Cir. 1988) (noting that Chevron does not provide agency with license to "frustrate[] the underlying congressional policy"). We recognize that, in some instances, the INS policy of deferring

to parents -- especially those residing outside of this country -- might hinder some six-year-olds with non-frivolous asylum claims and prevent them from invoking their statutory right to seek asylum. But, considering the well-established principles of judicial deference to executive agencies, we cannot disturb the INS policy in this case just because it might be imperfect. See Industrial Union Dept., AFL-CIO v. American Petroleum Inst., 100 S. Ct. 2844, 2875 (1980) (Burger, C.J., concurring) (noting that agency policy may be valid although policy does not perfectly accomplish legislative goals). And we cannot invalidate the policy -- one with international-relations implications -- selected by the INS merely because we personally might have chosen another. See Chevron, 104 S. Ct. at 2793; see also Jaramillo, 1 F.3d at 1152-53. Because we cannot say that this element of the INS policy -- that, ordinarily, a parent, and only a parent, can act for a six-year-old child in immigration matters -- is unreasonable, we defer to the INS policy.

The final aspect of the INS policy also worries us some. According to the INS policy, that a parent lives in a communist-totalitarian state is no special circumstance, sufficient in and of itself, to justify the consideration of a six-year-old child's asylum claim (presented by a relative in this country) against the wishes of the non-resident parent. We acknowledge, as a widely-accepted truth, that Cuba does violate human rights and fundamental freedoms and does not guarantee the rule of law to people living in Cuba.⁽²²⁾ See generally U.S. Dept. of State, 1999 Country Reports on Human Rights Practices: Cuba (2000) ("[The Cuban Government] continue[s] systematically to violate fundamental civil and political rights of its citizens."). Persons living in such a totalitarian state may be unable to assert freely their own legal rights, much less the legal rights of others. Moreover, some reasonable people might say that a child in the United States inherently has a substantial conflict of interest with a parent residing in a totalitarian state when that parent -- even when he is not coerced -- demands that the child leave this country to return to a country with little respect for human rights and basic freedoms.

Nonetheless, we cannot properly conclude that the INS policy is totally unreasonable in this respect. The INS policy does take some account of the possibility of government coercion: where special circumstances -- such as definite coercion directed at an individual parent -- exist, a non-parental representative may be necessary to speak for the child. In addition and more important, in no context is the executive branch entitled to more deference than in the context of foreign affairs. See generally United States v. Curtiss-Wright Export Corp., 57 S. Ct. 216, 221 (1936). This aspect of the INS policy seems to implicate the conduct of foreign affairs more than any other. Something even close to a per se rule -- that, for immigration purposes, no parent living in a totalitarian state has sufficient liberty to represent and to serve the true, best interests of his own child in the United States -- likely would have significant consequences for the President's conduct of our Nation's international affairs: such a rule would focus not on the qualities of the particular parent, but on the qualities of the government of the parent's country. As we understand the legal precedents, they, in effect, direct that a court of law defer especially

to this international-relations aspect of the INS policy.

We are obliged to accept that the INS policy, on its face, does not contradict and does not violate section 1158, although section 1158 does not require the approach that the INS has chosen to take.

C.

We now examine the INS's application of its facially reasonable policy to Plaintiff in this case. Although based on a policy permissible under Chevron, if the ultimate decision of the INS -- to treat Plaintiff's asylum applications as invalid -- was "arbitrary, capricious, [or] an abuse of discretion," the decision is unlawful.⁽²³⁾ See 5 U.S.C. § 706(2)(A); see also INS v. Yueh-Shajio-Yang, 117 S. Ct. 350, 353 (1996); Citizens to Preserve Overton Park, Inc. v. Volpe, 91 S. Ct. 814, 822 (1971). But whatever we personally might think about the decisions made by the Government, we cannot properly conclude that the INS acted arbitrarily or abused its discretion here.

The application signed and submitted by Plaintiff himself, insofar as the INS has decided that six-year-old children cannot file for asylum themselves, necessarily was a nullity under the INS policy. As we have explained, the INS's per se rule -- prohibiting six-year-old children from personally filing asylum applications against their parents' wishes -- is entitled to deference under the law. The INS, therefore, did not act arbitrarily or abuse its discretion in rejecting Plaintiff's own purported asylum application as void.

Plaintiff contends that, even if the INS policy is facially reasonable under Chevron, the INS decision to reject the applications submitted by Lazaro was arbitrary. Plaintiff asserts that two special circumstances -- the alleged coercion of Juan Miguel by the Cuban government and the objective basis of Plaintiff's asylum claim -- bear negatively upon Juan Miguel's fitness to represent Plaintiff in immigration matters. The INS, according to Plaintiff, was therefore required to recognize some other adult representative -- namely, Lazaro -- to act on Plaintiff's behalf. We, however, conclude that the INS adequately considered these circumstances in reaching its ultimate decision.

The INS first determined that Juan Miguel, in fact, was not operating under coercion from the Cuban government or that, even if he was, his honest and sincere desires were aligned with those of the Cuban government. That determination was not clearly wrong and was no abuse of discretion. An INS official, on two occasions, interviewed Juan Miguel in person in Cuba. Aware of the possibility that Juan Miguel might be under some kind of

coercion, the INS official took steps to ensure that Juan Miguel could express freely his genuine wishes about Plaintiff's asylum claim. The INS official, after meeting with Juan Miguel face-to-face, concluded -- based upon her observations of his demeanor -- that Juan Miguel's statement was not the result of duress or coercion. We, therefore, cannot say that the INS's rejection of Plaintiff's contention about coercion was arbitrary.

The INS also preliminarily assessed the objective basis of Plaintiff's asylum claim and concluded that his claim for asylum probably lacked merit.⁽²⁴⁾ Again, we cannot conclude that the INS's determination was arbitrary or an abuse of discretion. In making this assessment, the INS considered the information contained in the asylum applications and information provided to the INS by Plaintiff's lawyers. In addition, the INS interviewed Lazaro and inquired about the basis for Plaintiff's asylum claim.⁽²⁵⁾

The essence of Plaintiff's asylum claim was that, if he is returned to Cuba: (1) he will not enjoy the freedom that he has in the United States; (2) he might be forced to undergo "re-education" and indoctrination in communist theory; and (3) he might be used by the Cuban government for propaganda purposes. No one should doubt that, if Plaintiff returns to Cuba, he will be without the degree of liberty that people enjoy in the United States. Also, we admit that re-education, communist indoctrination, and political manipulation of Plaintiff for propaganda purposes, upon a return to Cuba, are not beyond the realm of possibility.

Nonetheless, we cannot say that the INS's assessment of Plaintiff's asylum claim -- that it probably lacked merit -- was arbitrary. To make a meritorious asylum claim, an asylum applicant must show that he has a "well-founded fear of persecution" in his native land. See 8 U.S.C. § 1101(a)(42). Congress largely has left the task of defining with precision the phrase "well-founded fear of persecution" to the INS. See Perlera-Escobar v. Executive Office for Immigration, 894 F.2d 1292, 1296 (11th Cir. 1990) (stating that, where statutory term is ambiguous, agency properly defined term through adjudications); see also Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998) (noting that statutes do not define "persecution" or specify acts constituting "persecution").

Plaintiff points to no earlier INS adjudications or judicial decisions where a person, in circumstances similar to Plaintiff's, was found to have established a "well-founded fear of persecution." Political conditions "which affect the populace as a whole or in large part are generally insufficient to establish [persecution]." See Mitev v. INS, 67 F.3d 1325, 1330 (7th Cir. 1995). We cannot say that the INS had to treat education and indoctrination as synonymous with "persecution." See Ghaly v. INS, 58 F.3d 1425, 1431 (9th Cir. 1995) (explaining that "persecution is an extreme concept that does not include every sort of treatment our society regards as offensive"); see also Mikhaillevitch v. INS, 146 F.3d 384, 390 (6th Cir. 1998) (stating that "persecution" "requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment,

infliction of harm, or significant deprivation of liberty"); Brad v. INS, 128 F.3d 1009, 1012 (7th Cir. 1997) ("[M]ere harassment does not amount to persecution."); Ira J. Kurzban, Kurzban's Immigration Law Sourcebook, 254-61 (6th ed. 1998) (citing cases discussing meaning of "persecution"). Not all exceptional treatment is persecution. The INS's estimate of the purported applications -- as applications that were not strong on their merits -- is not clearly inaccurate. ⁽²⁶⁾

We have not the slightest illusion about the INS's choices: the choices -- about policy and about application of the policy -- that the INS made in this case are choices about which reasonable people can disagree. Still, the choices were not unreasonable, not capricious and not arbitrary, but were reasoned and reasonable. The INS's considerable discretion was not abused.

CONCLUSION

As policymakers, it is the duty of the Congress and of the executive branch to exercise political will. Although courts should not be unquestioning, we should respect the other branches' policymaking powers. The judicial power is a limited power. It is the duty of the judicial branch not to exercise political will, but only to render judicial judgment under the law.

When the INS was confronted with Plaintiff's purported asylum applications, the immigration law of the United States provided the INS with no clear answer. The INS accordingly developed a policy to deal with the extraordinary circumstances of asylum applications filed on behalf of a six-year-old child, by the child himself and a non-parental relative, against the express wishes of the child's parents (or sole parent). The INS then applied this new policy to Plaintiff's purported asylum applications and rejected them as nullities.

Because the preexisting law compelled no particular policy, the INS was entitled to make a policy decision. The policy decision that the INS made was within the outside border of reasonable choices. And the INS did not abuse its discretion or act arbitrarily in applying the policy and rejecting Plaintiff's purported asylum applications. The Court neither approves nor disapproves the INS's decision to reject the asylum applications filed on Plaintiff's behalf, but the INS decision did not contradict 8 U.S.C. § 1158.

The judgment of the district court is **AFFIRMED**. ⁽²⁷⁾

1. Several defendant-appellees are involved in this appeal. All these defendants are part of the executive branch of our government. For the sake of simplicity, we refer to the defendants collectively as the "INS."

2. A Florida state court since has dismissed Lazaro's petition for custody of Plaintiff. See In re the Matter of Lazaro Gonzalez, No. 00-00479-FC-28 (Fla. 11th Cir. Ct. 2000).

3. As proof of this contention, Lazaro told INS officials that, before Plaintiff was discovered at sea, Juan Miguel telephoned Lazaro and asked Lazaro to take care of Plaintiff if Plaintiff made it to the United States. Lazaro stated that, after Plaintiff's rescue, Juan Miguel's demeanor had changed noticeably and that, according to Juan Miguel's neighbors in Cuba, Juan Miguel was "[g]etting extra protection" from Cuban authorities.

4. To reduce third parties' opportunities to eavesdrop upon the meeting, this interview was held at the residence of a United Nations official near Havana. Also, some of the interview was conducted in writing to prevent eavesdropping.

5. During the pendency of this appeal, the INS revoked Plaintiff's parole and removed Plaintiff from Lazaro's custody. The INS then paroled Plaintiff into the custody of Juan Miguel, who had traveled to the United States to reclaim his son. After Juan Miguel came to the United States, we permitted Juan Miguel to intervene in this case.

To ensure that Plaintiff would not be returned to Cuba, depriving Plaintiff of a day in court and depriving this Court of jurisdiction over Plaintiff's appeal, we enjoined Plaintiff's removal from the United States pending appeal. Considering that we affirm the judgment of the district court, the injunction will dissolve (without a further order) when the Court's mandate is issued.

6. The INS contended in district court that the district court lacked subject-matter jurisdiction over Plaintiff's suit. The district court, however, rejected this argument and concluded that subject-matter jurisdiction did exist. The INS has not renewed its jurisdictional contention on appeal.

We, however, are mindful of our own jurisdictional limits. So, we have considered our subject-matter jurisdiction over this appeal. We conclude that this Court does have subject-matter jurisdiction over Plaintiff's appeal.

7. Also before this Court is a recently filed motion of Intervenor, Juan Miguel Gonzalez, to remove Lazaro Gonzalez as Plaintiff's next friend and to substitute Plaintiff's father as next friend. Notwithstanding that much has happened since Lazaro brought this suit as Plaintiff's next friend, Lazaro (aided by a troop of seasoned lawyers) has completely and steadfastly pressed Plaintiff's claimed rights in the district court and in this Court. We see

no powerful reason to make a change at this point. We, therefore, deny Intervenor's motion to remove Lazaro and to substitute Intervenor as next friend for the purposes of this litigation.

8. The INS concedes that Plaintiff is eligible to apply for asylum pursuant to section 1158.

9. That Congress left a gap in the statutory scheme does not mean that Congress has done something wrong. Whether Congress could or should legislate with sufficient detail to address every conceivable set of circumstances that might arise is highly debatable. See generally Loving v. United States, 116 S. Ct. 1737, 1744 (1996) ("To burden Congress with all federal rulemaking would divert that branch from more pressing issues, and defeat the Framers' design of a workable National Government."). Congress may properly commit something to the discretion of the other branches of government.

10. This case is about the discretion of the executive branch to make policy, not about ministerial enforcement of the "law" by executive officials. It has been suggested that the precise policy adopted by the INS in this case was required by "law." That characterization of this case, however, is inaccurate. As we have explained, when the INS made its pertinent policy, the preexisting law said nothing about the validity of Plaintiff's asylum applications.

Instead, Congress just provided that "[a]ny alien" may apply for asylum and left the details of the application process to the discretion of the INS. See Mesa Verde Constr. Co. v. Northern Cal. Dist. Council of Laborers, 861 F.2d 1124, 1140 (9th Cir. 1988) (en banc) (Hug. J., dissenting) (explaining that sometimes "Congress enacts quite general provisions, with the specifics to be filled in by the agency"). The INS, in its discretion, decided to require six-year-old children - who arrive unaccompanied in the United States from Cuba - to act in immigration matters only through (absent special circumstances) their parents in Cuba. The INS could have shaped its policy in a different fashion, perhaps allowing relatives (for example, those within the fourth degree of relationship) in the United States to act for such children. But it did not, and we cannot. That choice was the sole prerogative of the executive branch. According to the principles set out in Chevron, we can only disturb that choice if it is unreasonable. See Chevron, 104 S. Ct. at 2793; see also Mistretta v. United States, 109 S. Ct. 647, 678 (1989) (Scalia, J., dissenting) (explaining discretionary authority of executive branch in administering statutory scheme).

11. When a statute is ambiguous or silent on the pertinent issue, it ordinarily is for the judicial branch to construe the statute. See generally Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). But the ordinary rule does not always apply: where Congress has indicated that gaps in the statutory scheme should be filled in by officers of the executive branch (a political branch accountable to the people and fit for making policy

judgments), then the gaps should not be filled in by federal judges. Where Congress has committed the enforcement of a statute to a particular executive agency, Congress has sufficiently indicated its intent that statutory gaps be filled by the executive agency. And the Supreme Court has directed that, for such statutes, if "Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute Rather, if the statute is silent . . . the question for the court is whether the agency's answer is based on a permissible construction of the statute." Chevron, 104 S. Ct. at 2782.

12. The authority of the executive branch in immigration matters stems from the primacy of the President and other executive officials (such as the INS) in matters touching upon foreign affairs. See Aguirre-Aguirre, 119 S. Ct. at 1445. Respect for the authority of the executive branch in foreign affairs is a well-established theme in our law. See United States v. Curtiss-Wright Export Corp., 57 S. Ct. 216, 221 (1936) (recognizing "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations"). And the judicial respect for executive authority in matters touching upon foreign relations is even greater where the presidential power has been affirmed in an act of Congress. See Youngstown Sheet & Tube Co. v. Sawyer, 72 S. Ct. 863, 870 (1952) (Jackson, J., concurring) ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."); see also United States v. Frade, 709 F.2d 1387, 1402 (11th Cir. 1983) (same).

13. The Supreme Court has instructed us with these words:

[F]ederal judges - who have no constituency - have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the wisdom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: "Our Constitution vests such responsibilities in the political branches."

Chevron, 104 S. Ct. at 2793 (citation omitted).

14. See U.S. Dept. of State, 1999 Country Reports on Human Rights Practices: Cuba (2000) (noting that "Cuba is a totalitarian state," where Communist Party "exercises control over all aspects of Cuban life").

15. The INS policy on unaccompanied six-year-old children purporting to file for asylum against their parents' wishes was set out in these writings: (1) a memorandum, dated 3 January 2000, from the INS General Counsel to the INS Commissioner; (2) two letters, dated 5 January, from an INS district director to Plaintiff's lawyers and Lazaro, letters explaining the decision of the INS Commissioner; and (3) a letter, dated 12 January, from

the Attorney General to Plaintiff's lawyers and Lazaro.

16. The INS Guidelines "do not have the force and effect of law." Haitian Refugee Ctr., Inc. v. Baker, 953 F.2d 1498, 1511 (11th Cir. 1992).

17. The INS claims that the approach taken in Plaintiff's case is the INS's longstanding position on young, unaccompanied aliens. The INS, however, points to no evidence in the record showing that the INS, in the past, has taken this approach. But, even assuming that Plaintiff's case triggered the making of this policy to fit cases like Plaintiff's peculiar circumstances, deference to the INS policy would still be due if the policy is a reasonable one. See Chenery, 67 S. Ct. at 1580 ("[P]roblems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule.").

18. In other words, we do not think that the INS, as a matter of law, must individually assess each child's mental capacity; we cannot say that looking at capacity instead of age for young children is required. Instead, we recognize that absolute line drawing - although necessarily sacrificing accuracy and flexibility for certainty and efficiency - is an acceptable approach. See Massachusetts Bd. of Retirement v. Murgia, 96 S. Ct. 2562, 2567-68 (1976). And, as long as the approach taken by the INS is a reasonable one, we need not decide what the best approach would be.

We, however, do not mean to suggest that the course taken by the INS is the only permissible approach. Although the INS is not required to let six-year-old children speak for themselves about asylum, neither is the INS required to ignore the expressed statements of young children. Even young children can be capable of having an accurate impression of the facts about which they might speak. To obtain asylum, we doubt that it is essential for a child to be able to debate the merits of Marxism-Leninism against the merits of Western-style democracy. Some reasonable people could conclude that it should be sufficient for a child to be able to speak about his fears and to recount the facts that support his fears about returning to another country. Not infrequently, the law does permit six-year-old children (and even younger children) to speak and, in fact, does give their words great effect. See, e.g., Pocatello v. United States, 394 F.2d 115, 116-17 (9th Cir. 1968) (affirming district court's admission of five-year-old's testimony); Miller v. State, 391 So.2d 1102, 1106 (Ala. Crim. App. 1980) (affirming decision of trial court to permit four-year-old to testify); Baker v. State, 674 So.2d 199, 200 (Fla. Dist. Ct. App. 1996) (affirming trial court decision admitting testimony and statements of six-year-old victim).

19. We conclude that the approach taken by the INS about out-of-the-country representatives was a reasonable one. Other approaches might have been available. The INS might have selected a policy giving more weight to the fact that the parent of a child in the United States remained outside of this country's jurisdiction. For example, maybe the

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INS could have required that the adult representative -- purporting to act in immigration matters (either by applying for asylum on behalf of the child or in effect vetoing an application for asylum) for a child in this country -- be present in this country himself at the pertinent time. See, e.g., Cozine v. Bonnick, 245 S.W.2d 935, 937 (Ky. 1952) (requiring that next friend, purporting to represent child in court, be resident of state). But what else might have been done is not decisive for us.

20. We do not suggest that recognizing the parent-child relationship to the exclusion of other familial relationships is the only reasonable approach. The parent-child relationship is obviously an important one. See Wisconsin v. Yoder, 92 S. Ct. 1526, 1541-42 (1972); Pierce v. Society of Sisters, 45 S. Ct. 571, 573 (1925); see also In re Custody of Smith, 969 P.2d 21, 27-28 (Wash. 1998), cert. granted sub nom. Troxel v. Granville, 120 S. Ct. 11 (1999). Still, although the common practice in the courts of this country seems to be that a parent will be appointed to act as next friend for a child, a parent is not usually entitled to be the next friend of his child as a matter of absolute right. See Fong Sik Leung v. Dulles, 226 F.2d 74, 82 (9th Cir. 1955) ("[No] parent [] may claim to be a guardian ad litem of his minor child as a matter of right."). Especially because the best interests of a child and the best interests of even a loving parent can clash, parental authority over children - even where the parent is not generally "unfit" - is not without limits in this country. See, e.g., In the Matter of Sampson, 323 N.Y.S.2d 253, 255 (N.Y. App. Div. 1971) (affirming order requiring disfigured child to undergo risky cosmetic surgery against genuine wishes of child's only parent; the state contended surgery would have "a beneficial effect" upon child); Crommelin-Monnier v. Monnier, 638 So.2d 912, 916 (Ala. Civ. App. 1994) (requiring appointment of guardian ad litem where custodial parent sought to remove child to foreign country). In addition, the law in the United States frequently treats more distant familial relationships as important. See, e.g., Kan. Stat. Ann. § 38-1541 (permitting any person related within the fourth degree to child to move to intervene in "child in need of care" proceedings); Ala. Code § 12-16-150(4) (allowing challenge for cause where potential juror is related within ninth degree to party); O.C.G.A. § 15-12-135(a) (disqualifying persons related within the sixth degree to interested parties from jury service).

21. Under the INS policy, a substantial conflict of interest between the parent and the child may require or allow another adult to speak for the child on immigration matters. In considering whether a substantial conflict of interest exists, the INS considers the potential merits of a child's asylum claim. If the child would have an exceedingly strong case for asylum, the parent's unwillingness to seek asylum on that child's behalf may indicate, under the INS policy, that the parent is not representing adequately the child's interests.

22. According to the United States Department of State, the human rights record of the Cuban government is "poor." Cuban citizens who oppose or criticize the government routinely are "harass[ed], threaten[ed], arbitrarily arrest[ed], detain[ed], imprison[ed], and defame[d]." Cuba regularly denies citizens "the freedoms of speech, press, assembly, and association," and restricts the free exercise of religion. The Cuban constitution provides that "legally recognized civil liberties can be denied to anyone who actively opposes the 'decision of the Cuban people to build socialism.'" See U.S. Dept. of State, 1999 Country Reports on Human Rights Practices: Cuba (2000); see also UNHCHR Res. 2000/25, U.N. Comm. on Human Rights, 56th Sess., U.N. Doc. E/CN.4/2000/L.11 (2000) (expressing concern about "the continued violation of human rights and fundamental freedoms in Cuba").

23. The INS asks us to apply the "facially legitimate and bona fide reason" standard of review set out in Kleindienst v. Mandel, 92 S. Ct. 2576, 2585 (1972), instead of the more stringent "arbitrary, capricious, or an abuse of discretion" standard. We think that the Kleindienst standard is not the correct standard to

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apply in this case. But we do note that, even if the Kleindienst standard were applied, the result in this case would remain the same.

24. We do not decide, as the INS advocates, that this summary and preliminary assessment of the merits of Plaintiff's asylum claim was a "consideration" of Plaintiff's purported asylum application within the meaning of the statute. But we do accept that this rough look at the potential merits was a legitimate part of deciding whether Plaintiff's father had a substantial conflict of interest with Plaintiff about asylum that would disqualify the father from representing Plaintiff.

25. That the INS, in making a preliminary assessment of the strength of Plaintiff's asylum claim, never interviewed Plaintiff has worried us. But the INS did speak with persons representing Plaintiff -- Lazaro, Marisleysis, and Plaintiff's lawyers -- on more than one occasion about the nature of his asylum claim.

26. We do not know for certain that, if Plaintiff's asylum applications were accepted and fully adjudicated, Plaintiff necessarily would fail to establish his eligibility for asylum. Depending on how the record was developed, we expect that a reasonable adjudicator might find that Plaintiff's fears were "well-founded." We also think that some reasonable adjudicator might regard things like involuntary and forcible "re-education" as persecution. But these issues are not questions that we, in the first instance, are to answer. The ultimate merits of an asylum petition are not before this Court at all. Instead, they are matters that would be committed to the discretion of the INS. The INS (and the courts) never have suggested that an asylum applicant in like circumstances was eligible for asylum. We cannot say that the INS's assessment of the likelihood of success of the applications in this case was arbitrary.

27. NOTICE OF SHORTENED TIME: We order that, if petitions for rehearing or suggestions for rehearing en banc are to be filed, they must be filed within 14 days of this date. Expect no extensions.

CUBA: ELIÁN GONZÁLEZ**Background:**

The Eleventh Circuit Court of Appeals affirmed the lower court decision and found that INS acted reasonably in deciding that only the father can speak for the child in immigration matters. The Miami family has 14 days to appeal. The injunction against taking Elián from the U.S. dissolves when the appeals court issues "mandate" usually seven days after all appeals have been acted upon. The Miami family said they will appeal, but the lawyers are studying how and on what grounds. They also said they would go to court to see the boy, if Juan Miguel does not agree to a meeting. Greg Craig told the press that the Miami family should drop the case if they love the boy. The AG told a press conference that "justice has been done."

Question:

Any comments on the Court's ruling in the Elián González case?

Answer:

- First of all, I would like to say that this is a very sad case. This child has suffered a lot and we are optimistic that his case will be resolved very soon.
- The Department of State is pleased with the ruling. We are happy that the court has reaffirmed the bond between father and son and that it upheld the INS decision that only the father could speak for the boy on immigration matters.
- Our Justice Department, which represents the U.S. Government, will work on the next steps and any subsequent appeals.
- While we have focused on parental rights and US law, no one is saying that Cuba is a good place. It is a place where basic human and civil rights are routinely violated.

- That is why we worked so hard on behalf of the resolution condemning the human rights situation in Cuba that was passed by the UN Commission on Human Rights last month.

O F F I C E O F C U B A N A F F A I R S

**U.S. Department of State
WHA/CCA, Room 3234
2201 C Street, N.W.
Washington, D.C. 20520-6263**

**Phone: (202) 647-9273
FAX: (202) 736-4476**

F A X C O V E R S H E E T

DATE: May 31, 2000

**TO: William Brownfield (WHA) Caryn Hollis (NSC)
 Nick Lauderdale (CA) 3-3897 Wendy Patten (NSC)
 Janell Jones (INS) 305-2918 Scott Busby (PRM)
 Elise Kleinwaks (PRM) 3-1364
 Teresa McHenry (DOJ) 616-5748
 Greg Magee (USCG) 267-4082**

FROM: Natly Torres

SUBJECT: Migration Talks Delegations Meeting

FOR: Clearance	Information	Per Request	Action
			XX

REMARKS:

The 13th round of Migration Talks is upon us. The Cubans have agreed to meet on June 27 and possibly the 28th. I have attached an agenda for the Friday, June 2 delegation meeting.

NUMBER OF PAGES, INCLUDING COVER PAGE: 2

(IF THIS TRANSMISSION WAS NOT RECEIVED IN ITS ENTIRETY, PLEASE CALL 647-9272)

AGENDA

Migration Talks Meeting
10:00 AM, June 2, 2000
Room 6263 State Dept.

I. Logistics:

- Migration Talks Tentative Date: June 27 & 28
- Travel to/from New York (leave 6/26/00 and return 6/28/00)
- Lodging and Travel Arrangements
- Lunch arrangements (6/27)

II. Migration Talks Agenda:

- We will be sharing our agenda with the Cubans prior to the talks
- US will focus on two new issues in addition to the usual ones:
 - Return of Cuban migrants despite their stay in the U.S.
 - Pushing Cubans to issue exits for those with U.S. travel documents
- Cuba will likely focus on:
 - The application of the Cuban adjustment Act
 - Addressing the increase in alien smuggling
 - Radio and TV Marti coverage of migration issues
 - False rafters (those who go back to Cuba from the US to organize alien smuggling)

III. Delegation:

- Who will be attending this round

IV. Closing:

- Submissions for the briefing book are due June 9

Lotus cc:Mail for Ronald W Whitney

Date: 01/19/2000 10:03 AM
Sender: Owen S Cooper
To: Ronald W Whitney; Arthur D Strathorn III; Dea D Carpenter
Priority: Normal
Subject: Re: Daily conference calls re: Elian
Who will join from our office? Have we coordinated this with the press office and the chief of staff's office?

Reply Separator
Subject: Daily conference calls re: Elian
Author: Ronald W Whitney
Date: 01/19/2000 9:29 AM

DCS wants to have a daily conference call to coordinate press guidance and communications with the Cubans. They have lots of questions concerning the timing of litigation, so they have asked for OIL to participate. The calls will be at 9:00am, a[]

--Ron

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WHA Press Guidance
June 8, 2000

Cuba: Alleged USG-Cuban Government "Coordination" over Elián Gonzalez

Question: Can you comment on press reports about an e-mail from the Department of Justice - INS that says that the State Deptment wants to coordinate press guidance and contact with Cuban Government officials about the Elián Gonzalez matter?

Answer:

- **WE HAVE SEEN THE E-MAIL IN QUESTION.**
- **IT REFERS TO PRESS COORDINATION BETWEEN AGENCIES --
STANDARD OPERATING PROCEDURE IN HAVING ACCURATE
INFORMATION FOR THE AMERICAN PEOPLE.**
- **IT REFERS TO COORDINATING THROUGH OFFICIAL CHANNELS ALL
COMMUNICATIONS WITH A FOREIGN GOVERNMENT.**
- **THE DEPARTMENT OF STATE, OFFICE OF CUBAN AFFAIRS, IS THE
ONLY AUTHORIZED POINT OF CONTACT FOR THE U.S.
GOVERNMENT WITH THE CUBAN OFFICIALS IN THE UNITED
STATES.**

- THE DEPARTMENT OF STATE WANTED TO ENSURE THAT NO OTHER DEPARTMENT OF THE GOVERNMENT ENTERED DIRECT COMMUNICATION WITH THE CUBAN GOVERNMENT.
- ANY OTHER CONSTRUCTION OF ONE OF THE E-MAILS CITED IN THE WASHINGTON TIMES IS INCORRECT.

Question: Did the Administration "coordinate" press strategy with the Cuban Government on the return of Elián Gonzalez?

Answer:

- NO! WE HAVE SEEN THE WASHINGTON TIMES' ARTICLE. IT IS INACCURATE AND IRRESPONSIBLE.
- AT NO POINT HAVE WE EVER COORDINATED ANY PRESS GUIDANCE WITH THE CUBAN GOVERNMENT ON ANYTHING -- EVER.

Background to Briefer:

The Washington Times (June 8, 2000) in its lead story claim that "Cuba, U.S. 'coordinated' Elián seizure strategy." The story was based on two e-mails obtained from the INS under a Freedom of Information request by a group called "Judicial Watch, Inc."

There are only two authorized points of contact with Cuban officials are either the U.S. Interests Section in Havana and the Office of Cuban Affairs of the Department of State. All Executive Branch contacts and meetings with Cuban officials are either arranged by these two entities or representatives from USINT or WHA/CCA are present at such meetings.

THE WHITE HOUSE

Office of the Press Secretary
(Berlin, Germany)

For Immediate Release

June 1, 2000

STATEMENT BY THE PRESIDENT

I am pleased with the decision today of the 11th Circuit Court of Appeals. As I have said before, this is a case about the importance of family and the bond between a father and son. I have supported the Justice Department's conclusion that Elian's father, Juan Miguel Gonzalez, is the one best suited to speak for his child, and I am pleased that the court has upheld the Justice Department's determination.

30-30-30

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED No. 00-11424
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
06/23/00
THOMAS K. KAHN D. C. Docket No. 00-206-CV-KMM
CLERK

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

Plaintiff-Appellant,

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-Appellees,

JUAN MIGUEL GONZALEZ,

Intervenor.

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

(June 23, 2000)

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

FILED (Opinion _____ 11th Cir. 2000, F.3d ____).
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
06/23/00

THOMAS K. KAHN
Before EDMONDSON, DUBINA and WILSON, Circuit judges.

PER CURIAM:

Our decision of 1 June hung largely on two ideas: (1) that the policy adopted by the INS in this case -- a policy developed in what we called "informal adjudication" -- was due "some deference" because 8 U.S.C. § 1158(a) was silent on the precise question at issue and because the INS had the duty to set how the statute was to be applied when the statute was silent, and (2) that the level of deference due the INS policy was strengthened -- becoming "considerable" -- when we also took into account the foreign policy implications of the administrative decisions dealing with immigration. Among other things, our opinion spoke of Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 104 S. Ct. 2778 (1984).

When our opinion was written, we knew of Christensen v. Harris County, 120 S. Ct. 1655 (1 May 2000), a Fair Labor Standards Act (FLSA) decision. But

no lawyer in this case had cited or argued Christensen to us. More important, we thought that Christensen -- which involved no immigration law, no foreign policy considerations, and no kind of agency adjudication -- was noncrucial to this case. So, we never mentioned Christensen.

Now in the petition for rehearing, Plaintiff stresses Christensen. Therefore, we will write briefly about it.

First, Christensen involved an opinion letter from the Department of Labor giving advice to Harris County, Texas. The letter, in itself, did not decide Harris County's rights; it did not stop and did not purport to be able to stop Harris County from acting against the advice given. The letter was in no way binding on Harris County. And later when Christensen arose as active litigation, Harris County was not sued by the Department of Labor, but by private citizens: county employees who contended that Harris County was misconstruing the FLSA. The Supreme Court said that the administrative position taken in the opinion letter was not due Chevron deference. As we read it, the Supreme Court's opinion also indicated that the view of the pertinent statute taken in the opinion letter was wrong and unreasonable: "this view is exactly backwards." Id. at 1663.

In our case, the INS did directly decide Plaintiff's specific right to file certain asylum applications under the pertinent statute and did so after receiving and weighing some evidence. The INS acted in the context of an actual and concrete dispute with and before that agency. The INS decision¹ was final and binding on Plaintiff unless he, in effect, appealed it to a court. The sovereign power of the United States -- per the INS and the Attorney General -- had determined that neither Plaintiff himself nor Lazaro Gonzalez could file for asylum on Plaintiff's behalf over the objections of Plaintiff's father. This kind of administrative decisionmaking -- which we think no one can seriously question was the deliberate and official position of the pertinent agencies of the executive branch of our government -- is substantially different from and more than the opinion letter in Christensen. We considered the administrative decisionmaking in this case to be adjudication² and to be outside Christensen's scope.³ In our view, to apply

¹By "the INS decision," we mean the decision of the INS Commissioner, as affirmed by the Attorney General.

²See 5 U.S.C. § 551(6)-(7).

³The Supreme Court opinion gives some examples of the kinds of agency acts that are due Chevron deference. In setting out some examples, "formal adjudication" is mentioned. We have described what happened before the INS in our case as informal adjudication. We understand the listing in Christensen to be illustrative and not to be an exhaustive or complete list of agency acts due deference. And, see Pension Benefit Guar. Corp. v. LTV Corp., 110 S. Ct. 2668, 2678-79,

Christensen to this case would not be following Christensen but would be an extension of Christensen.

Second, we thought, even when Christensen does apply, administrative decisions of agencies are still due some deference. And we believed that under Chevron or Christensen, when the foreign-policy impact of immigration law was added as a separate source of judicial deference, we were justified in exercising the judicial restraint that marked our opinion. In addition, we did conclude that the executive branch decisions under section 1158 were reasoned and reasonable.

2681 (1990).

The petition for rehearing⁴ is DENIED; and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, the Petition for Rehearing En Banc is DENIED.

The mandate of this court will issue on Wednesday, 28 June 2000, at 4:00 in the afternoon (Atlanta time). A filing of a motion to stay the issuance of the mandate will **not** extend the time for the issuance of the mandate. Expect no motions to stay the issuance of the mandate to be granted. All injunctions in this case will dissolve on Wednesday, 28 June 2000, at 4:00 in the afternoon (Atlanta time). All further requests for stays or for injunctive relief should be directed to the Supreme Court of the United States.

*Entered for the
Court:*

/s/ J.L. EDMONDSON
UNITED STATES CIRCUIT JUDGE

⁴Plaintiff, in his petition for rehearing, also argues that we should not have rejected his constitutional claim. We, however, feel bound by the decision in Jean v. Nelson, 727 F.2d 957 (11th Cir. 1984) (en banc), aff'd on other grounds, 105 S. Ct. 2992 (1985), to reject Plaintiff's constitutional claim.

THE WHITE HOUSE

Office of the Press Secretary
(Berlin, Germany)

For Immediate Release

June 1, 2000

STATEMENT BY THE PRESIDENT

I am pleased with the decision today of the 11th Circuit Court of Appeals. As I have said before, this is a case about the importance of family and the bond between a father and son. I have supported the Justice Department's conclusion that Elian's father, Juan Miguel Gonzalez, is the one best suited to speak for his child, and I am pleased that the court has upheld the Justice Department's determination.

30-30-30

CUBAN BOY
June 2, 2000

CONTEXT: Yesterday, a three-judge panel of the 11th Circuit Court of Appeals in Atlanta upheld the decision of the federal district court, dismissing the challenge to the INS decision filed by the Miami relatives of Elian Gonzalez. 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. The court set a deadline of 14 days for appeal or rehearing, and will issue its mandate 7 days thereafter if no action is taken by the Miami relatives. Once the mandate is issued, the injunction barring Elian's removal from the United States will dissolve.

What's your reaction to yesterday's decision by the 11th Circuit Court of Appeals, dismissing the appeal by Elian's Miami relatives?

- We are pleased with the decision. It underscores the importance of family and the bond between a parent and child.

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

- We understand that they will be here for at least 21 more days, but we refer you to the Justice Department for more details.

[IF ASKED] Isn't it time for Elian and his family to go home to Cuba?

- With the injunction still in place, it would be premature to discuss this issue.

probable since 4:00 next week.

unless S Ct says otherwise and

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expert or reliable

28 4:00 no further action
see follow S Ct.