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Folder Title:

Immigration (Elian Gonzalez) [1]

Staff Office-Individual:

Legal Advisor-Derosa, Mary

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001. form	re: Questions [partial] (1 page)	12/13/1999	P6/b(6)

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Immigration (Eliau Gonzalez) [1]

2012-0371-F

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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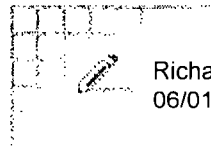
Emily Karcher

06/01/2000 03:28:51 PM

Record Type: Record

To: Mary B. DeRosa/NSC/EOP@EOP
cc: Benjamin M. Adams/WHO/EOP@EOP
Subject: What the POTUS actually said in Germany

----- Forwarded by Emily Karcher/WHO/EOP on 06/01/2000 03:28 PM -----



Richard L. Siewert
06/01/2000 03:26:38 PM

Record Type: Record

To: Beth Nolan/WHO/EOP@EOP, Emily Karcher/WHO/EOP@EOP
cc:
Subject: What the POTUS actually said in Germany

Finally, just one word on a development back in the United States today. I was very pleased with the decision of the 11th Circuit Court of Appeals in the Elian Gonzalez case, upholding the decision of the Justice Department that he should be with his father. We have tried to honor the principles that the Chancellor and I discussed today in the cases involving our two countries in that case. I think the Justice Department and the Attorney General did the right thing, and I'm very pleased that the 11th Circuit upheld their decision today.

THE WHITE HOUSE
WASHINGTON
COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: _____

TOTAL PAGES (INCLUDING COVER PAGE): _____

TO: Mary

ATTN: _____

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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

**THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

ID# 416584
PAGE 1

DATE RECEIVED: 05/08/2000

NAME OF CORRESPONDENT: THE HONORABLE RON PAUL

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

		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	2000/05/08			
ACTION COMMENTS						
<i>Department of Justice</i>						
ACTION COMMENTS:						
ACTION COMMENTS:						
ACTION COMMENTS:						

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

ADDITIONAL CORRESPONDENTS: 0 MEDIA: LETTER INDIVIDUAL CODES:

REPORT CODES: USER CODES:

*Mary -
FRT. We are tasking
to Justice Department
-Devan Patel
Legislative Affairs*

ACTION CODES:
A - APPROPRIATE ACTION
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D - DRAFT RESPONSE
F - FURNISH FACT SHEET
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CODE = A
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RON PAUL
14TH DISTRICT, TEXAS

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AND FAMILIES

Congress of the United States
House of Representatives
Washington, DC 20515-4314

May 3, 2000

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MOBILE OFFICE
(512) 753-5553

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



Dear President Clinton:

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

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

Sincerely,

Ron Paul

Ron Paul

H-416573

86775



United States Department of State

*Assistant Secretary of State
for Consular Affairs*

Washington, D.C. 20520

DECLARATION OF MARY A. RYAN

I, Mary A. Ryan, hereby declare as follows:

1. I am the Assistant Secretary of State for Consular Affairs of the United States Department of State, a position I assumed on May 12, 1993. I am also a career member of the United States Foreign Service, in which I hold the rank of Career Ambassador. Since joining the Foreign Service in 1966, I have held a variety of assignments in Latin America, Africa, the Middle East, and the United States. These have included consular and management positions and a Presidential appointment as United States Ambassador to Swaziland. I make this declaration based on information available to me as Assistant Secretary for Consular Affairs and on my thirty-four-years experience in the diplomatic and consular service of the United States.
2. I submit this declaration in connection with the decision made by the Commissioner of the Immigration and Naturalization Service (INS), and ratified by the Attorney General, that the six-year-old Cuban child, Elian Gonzalez Brotons, should be returned to his father in Cuba. The Department of State would expect a foreign government to make the same decision with respect to an American child in Elian Gonzalez Brotons' circumstances. The INS decision is also consistent with the principles that the Department of State would seek to have followed in cases involving a child whose custody is disputed between two parents, one in the United States and the other in a foreign country to which the child has been taken. It is my belief that failure to implement the INS decision could seriously prejudice the ability of the United States Government to help parents in the United States recover their children taken to foreign countries.
3. As Assistant Secretary for Consular Affairs, I am the senior State Department official charged with exercising the Secretary of State's responsibility to protect and provide consular services to United States citizens abroad. These services are provided by the Department of State's Bureau of Consular Affairs, which I head, and by United States consular officers under my general direction who are assigned to United States embassies and consulates throughout the world. Consular services include such activities as issuing passports and assisting citizens involved in emergencies outside the United States, including deaths, arrests, medical emergencies, and evacuations.
4. A substantial and ever-increasing aspect of the Department's consular work involves the provision of services in connection with children. We document children born abroad as U.S. citizens and repatriate destitute and runaway U.S. citizen children. We issue U.S. visas to children adopted abroad by U.S. citizen parents; seek to prevent abuse, abandonment, neglect and exploitation of U.S. citizen children abroad; and issue and validate passports so

that U.S. citizen children may travel with their parent(s), among other services. We also seek to prevent and resolve cases involving international parental child abduction. In this connection, the Office of Children's Issues in the Bureau of Consular Affairs serves as the United States Central Authority under Article 6 of the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"). As such, it is responsible for cooperating with the Central Authorities in other countries to "secure the prompt return of children" to their place of habitual residence under the Hague Convention when they have been "wrongfully removed . . . or retained" by one parent, and to achieve the other objectives of the Hague Convention. (Generally speaking, a wrongful removal or retention occurs when a child is taken to or kept in another country in violation of custody rights of the left-behind parent.) Our work on behalf of children is generally initiated by a parent's request for assistance, and often occurs in the context of an international child custody dispute involving an American child. As the U.S. Central Authority under the Hague Convention, however, we also assist foreign governments in seeking the return of children brought to the United States in violation of the custody rights of a parent in a foreign country.

5. The role of consular officers in protecting children is recognized in the 1963 Vienna Convention on Consular Relations ("VCCR"), 21 UST 77, which largely codified customary international law and which now, with over 160 countries as parties, sets forth well-established and generally recognized principles. Article 5(h) of the VCCR specifically provides that consular functions include, "safeguarding . . . the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons." Article 37 (b) of the VCCR generally requires the "competent authorities of the receiving State" (*i.e.*, the country in which a foreign national is found) "to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State."
6. The rights of parents are also recognized internationally and have long been a central premise of our consular work on behalf of Americans. It is a basic precept of our work that the parents of American citizen children, not the Department of State or the United States Government, should decide what is best for their children. For example, although use of United States passports for travel to Libya and Iraq has been restricted under 22 USC 211a because there is an "imminent danger to the public health or the physical safety of United States travellers" in those countries, we validate passports for travel to such countries on a case-by-case basis, pursuant to 22 CFR 51.74. We have validated passports for U.S. citizen children being taken to Libya or Iraq to live with their Libyan or Iraqi national parent(s) (who in some cases are married to American citizens) who are domiciled there. (Recently, for example, we validated the passport of a fourteen-year-old American child residing in Libya with his Iraqi parents.) In such cases, we act on the premise that it is the right of the parent(s) to decide whether to raise their children in Iraq or Libya, rather than in the United States. Moreover, "American citizens residing in Iraq on February 1, 1991, who continue to reside there," are exempt from the Iraq passport restriction. This permits such citizens, including citizen children, to continue to live in Iraq with their families, whether the family is multinational or simply deeply rooted in the country. As a general matter, the issuance of passports to and travel by minor U.S. citizen children is governed, under Department of State regulations and practice, by the wishes of their parents.

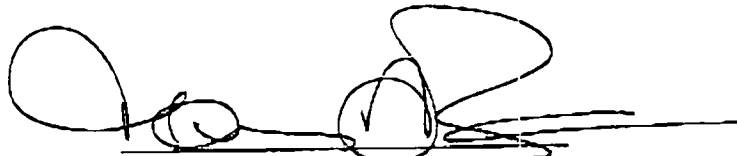
7. The United States is at the forefront in the provision of consular services to its citizens abroad and in its advocacy on behalf of parents seeking the return of their children to the United States. Because other countries carefully scrutinize the practices of the United States, our credibility and effectiveness depend upon our ability to adhere to the principles we espouse. If the United States fails to act in accordance with such principles, it jeopardizes its ability to insist on adherence by other countries. Consistency between principles and practice is particularly important in matters of foreign relations, where enforcement of rights so often depends upon reciprocity, diplomatic pressure and negotiations, and cooperation. These considerations are critical to the ability of the United States to obtain the return of children to the United States. Over the years, hundreds of children have been returned to their parents in the United States because other countries have been willing to respect basic principles of international law and custom and, when applicable, relevant treaty obligations.
8. When a young child is found in a foreign country, the accepted international practice is to attempt to identify the child's parent or parent(s), and to return the child to that person whenever possible, often through the assistance of consular officials representing the child's country of origin. Were a U.S. citizen minor child found in a foreign country in the circumstances of Elian Gonzalez Brotons, we would expect the government of that country immediately to seek the child's surviving parent, if any, and to contact U.S. consular officials for assistance in doing so if necessary. We would then expect the government promptly to return the child to the parent, unless the parent expressly asked that other arrangements be made. We would ensure that the foreign government was aware of the parent's wishes and would not expect our representations in that regard to be questioned. Thus, we would expect that the parent's direct participation in proceedings in the foreign country would not be required. We would not expect that the surviving parent would necessarily have to travel to the foreign country to recover the child. Nor would we expect the surviving parent to have to participate in a foreign court's custody proceedings to establish his or her right to assume responsibility for the child. We would not agree that there was any custody issue to be resolved; rather, custody would clearly belong to the surviving parent. We would object strongly if a foreign government declined to return an American child to its only surviving parent because other relatives sought custody of the child or because of a judgment that the child would be better off in the country in which the child was found. We also would take vigorous exception to a foreign government or court that sought to substitute its view of the "best interests of the child" for those expressed by a parent, absent a previous finding that the parent was unfit. Moreover, we would expect any decision about fitness or custody to be made not by a court in the country where the child was found, but by a court in the country of the child's habitual residence. A failure to return Elian Gonzalez Brotons to his father would be fundamentally inconsistent with these principles and with what we would advocate in the case of an American child.
9. The case of Elian Gonzalez Brotons is straightforward because there is no surviving parent in the United States. Cases involving a child with two living parents who is taken to a foreign country by one parent are far more complex and difficult to resolve. The behavior of the United States in the Elian Gonzalez Brotons case has implications for such cases as well, however. Many countries of the world, like Cuba, are not party to the Hague Convention on the Civil Aspects of International Child Abduction. When children are taken from the United States by one parent to such a "non-Hague country," the Department of State typically seeks

the cooperation of officials of that country in securing the return of the child to the parent left behind in the United States. These efforts have taken a variety of forms, including in some cases direct requests by senior U.S. Government officials to high level foreign officials. If INS's decision is not upheld, the ability of the United States to make such requests successfully in the future will surely be impaired. First, such requests appeal to the foreign country involved to respect the rights of the left-behind parent and the importance of the parent-child relationship; the ability of the United States to appeal to these considerations with credibility will be diminished. Second, foreign authorities will have to consider the possibility that their own countrymen will remember the failure of the United States to return Elian Gonzalez Brotons to his father and react negatively if such authorities return a child to a left-behind parent in the United States.

10. Because in recent years consular work has been enormously complicated by the increasing number of multinational families, the Department has made an effort to develop conventions to address the unique problems that arise in such families. The Department led the U.S. delegations that negotiated the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption; and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. These and other private international law agreements, such as those currently being negotiated on reciprocal child support enforcement, seek to provide an agreed legal framework and appropriate legal remedies to assist and protect children and parents in multinational families, particularly when the family breaks apart and becomes transnational.
11. When a child custody dispute involves countries that apply the Hague Convention, the Convention's mechanisms and legal standards can be invoked by the left-behind parent to seek the return of a child taken from his or her "habitual residence." The U.S. subscribes fully to the Convention's core concept that a child should be returned to the child's habitual residence when the child has been wrongfully removed, absent evidence of "grave risk" to the child as defined by the Convention. We do not accept that a "grave risk" can be found under the Convention based on a judgment that the child will have a better life in the country to which he or she has been taken. We also look with extreme caution on suggestions that a decision whether to return a child should be based on the views of the child. The Hague Convention permits consideration of the views of a child only when the child has attained "an age and degree of maturity at which it is appropriate to take account of its views." Because of concerns that this provision could be abused as a basis for not returning a child to his or her habitual residence, the United States originally took the position that the Convention should not permit consideration of the views of the child at all, or at least not if the child was under age twelve. We were concerned that a younger child would not be mature enough, and that the child would inevitably have been influenced by the parent or person with immediate physical custody. Although the negotiators declined to establish an absolute age-limit, there was a general agreement in principle with the United States' views and concerns. Thus, in applying this exception, the courts of most countries have been careful and restrained.

12. Regardless of whether a child is taken to a Hague or a non-Hague country, the United States maintains that a child should be returned to the child's place of habitual residence except in limited circumstances. Such circumstances would include situations in which returning the child to the place of habitual residence would be inconsistent with the U.N. Refugee Convention and Protocol or the Torture Convention. The INS decision that Elian Gonzalez Brotons should be returned to his father in Cuba is consistent with these principles.
13. A failure to enforce the INS decision would, conversely, be inconsistent with the principles we advocate on behalf of the United States and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizen children taken to foreign countries. First, not returning Elian Gonzalez Brotons to his father would be perceived as a decision that the fundamental parent-child relationship can be ignored, even where there is no evidence of unfitness. A decision based on the "independent" views of a six-year-old child would also be a dangerous precedent. Finally, not returning Elian Gonzalez Brotons to his father could be perceived as endorsing the right of the country in which a child is found to refuse to return the child to the child's habitual residence based on a judgment that the habitual residence is not a desirable place to raise a child.
14. Hundreds of cases involving children taken from the United States over the past twenty-five years have taught us that it is extremely difficult to obtain the return of a child from a country that acts in whole or in part on the basis of judgments about the environment in which a child will be raised. This is a particular problem when we seek the return of U.S. citizen children from Islamic countries, which generally give custody to the father but which will sometimes give custody of very young children to the mother. For example, an abducting father defending his custody in a Middle Eastern country's courts against a left-behind American mother last year alluded to the "moral decay" invading the United States. We frequently find that a father who has abducted a child to an Islamic country, even if conceding that the left-behind mother in the United States is a good parent, will justify the abduction on the ground that the social environment in the United States is immoral, sexually promiscuous, or otherwise unsuitable for the raising of children. I believe that a decision not to return Elian Gonzalez Brotons to Cuba could encourage the making of such arguments by abducting parents and their acceptance by foreign authorities.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C., on January 24, 2000.



Mary A. Ryan

03/27/00 17:53
03/27/00 16:45 FAX

202 456 9130

NSC-INTERAMERICA

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002

03/27/00 13:28 202 514 1776
03/27/00 13:28 202 514 9077
Sent By: LAW OFFICES OF SPENCER EIG;

INS PRESS OFFICE

DOJ

3056723770;

Mar-27-00 12:04PM;

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001
Page 1/2

49077

SPENCER EIG

ATTORNEY AT LAW
407 LINCOLN ROAD
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ADMITTED IN:
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SOBELAW@AOL.COM

BTH
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.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶

To	Mary, ERIC;	From	CARLYN
Dept./Agency	DAN	Phone #	
Fax #		Fax #	

NSN 7540-01-317-7388 5099-101 GENERAL SERVICES ADMINISTRATION

03/27/00 16:45 FAX

003

03/27/00 16:16

202 514 1776

INS PRESS OFFICE

002

03/27/00 13:28

202 514 9077

DOJ

Sent By: LAW OFFICES OF SPENCER EIG;

3056723/0;

Mar-27-00 12:04PM;

002
Page 2/2

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 Marisleysis, 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

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

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



LAURA FABAR, P.A.
By: LAURA FABAR

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

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

Yahoo - CANF Blasts Justice Department's Strong

http://biz.yahoo.com/prnews/000326/dc_canf_bl_1.html

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

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Sunday March 26, 10:00 am Eastern Time

Company Press Release

SOURCE: Cuban American National Foundation

CANF Blasts Justice Department's Strong Arm Tactics

Says Attorney General Seeks No Conciliation in Elian Affair But Another Waco



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Get Quotes

WASHINGTON, March 26 /PRNewswire/ -- The Cuban American National Foundation today assailed the Justice Department's strong arm tactics of late Friday, in which the Miami relatives of Elian Gonzalez received yet another ultimatum from the Clinton Administration that they relinquish their right to pursue legal remedies aimed to guarantee the child's right to an asylum hearing.

For all the talk by Attorney General Janet Reno, in her Thursday briefing, that she would like to find a solution to this issue in an amicable manner that is sensitive to everyone, including the sentiments of the Cuban American community, the actions that she has displayed belie her own words which could not possibly ring more hollow.

Far from practicing the politics of conciliation, Ms. Reno's conduct appears to suggest she seeks only to provoke another Waco. The Attorney General's actions since Tuesday's ruling by Federal Court Judge K. Michael Moore, have been marked by incendiary threats and poor judgment that do nothing to assuage what is already a tense and difficult situation for all parties, and which are patently offensive towards a community that has endured great human suffering as victims of Cuba's tragedy and is now again shaken by the unspeakable grief of a child's arduous battle for freedom. Her offensive and deplorable approach of confrontation and hostility, exemplified in Friday's developments, serves no one and demands an apology to this community.

This wholly unwarranted and irresponsible bullying seems to again underscore for all the gross politicization by this Administration of Elian's dilemma. While Elian's Miami relatives and their team of lawyers have shown remarkable good will and faith in their dealings with the Justice Department throughout these proceedings -- keeping the lines of communication open and demonstrating a willingness to cooperate in order to facilitate a civilized, intelligent and serious approach to the issues at hand -- the pressure reportedly being brought to bear on Ms. Reno by Gregory Craig, former counsel to President Clinton, may indeed have much to do after all with this reprehensible posture now assumed by DOJ, and further points to a potentially gross conflict of interest that demands public scrutiny. Indeed, queries about Mr. Craig's involvement, and who is paying for his services, remain unanswered and are concerns that merit immediate clarification if respect for the public trust is to be maintained throughout this process.

What is abundantly clear is that President Clinton, and National Security Advisor Sandy Berger, appear intent on using this case for the politically expedient objective of furthering their policy of rapprochement with Fidel Castro before leaving office. Rather than acquiescing to the prevailing sentiment that Elian's fate be resolved in a family court -- where trained professionals and psychologists can ascertain the child's true wishes, and what is truly in his best interests will be the superceding consideration -- the Clinton White House once again buckles before the demands of the Cuban government whose deprecation of civility and lack of compassion are stunningly mirrored in these abhorrent and capricious maneuvers to lay Elian at the altar of appeasement.

Let it be clear, however, that this community will hold Vice President Al Gore accountable for this cruel and misguided foreign policy, and for a Justice Department that grants greater consideration to the rights of criminals than to innocent children seeking asylum in the shores of this country. We hope this is not his vision for America.

Furthermore, the Attorney General will be well served to respect the wishes of the United States Senate, including efforts by Senators Connie Mack (R-FL) and Spencer Abraham (R-MI), to investigate the handling of this case by INS. Indeed, too many critical questions remain unresolved, including matters of National Security, that the American people deserve and have a right to know.

We call today on Vice President Gore to step forward and demonstrate leadership by attempting to restore a modicum of compassion, respect, and sensitivity to an Administration that has shown none whatsoever. In a week when the world debates the merits of Pope John Paul II's apologia for the church's indifference towards human suffering, each person of good will similarly bears the obligation of looking around to the world in which we live today, and ask what each one of us has done, through our actions, before the continued presence of evil and human suffering. Words sometimes indeed do ring hollow.

SOURCE: Cuban American National Foundation

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[Questions or Comments?](#)



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 24 2000

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. 11424-D (11th Cir.)

Dear Mr. Coffey:

The Department of Justice yesterday provided you with a proposal that would give your client, Lazaro Gonzalez, the opportunity to pursue an appeal of the District Court's judgment sustaining Commissioner Meissner's decision that Elian Gonzalez' father speaks for Elian in immigration matters, while at the same time assuring a prompt reunification of Elian and his father if such an appeal is unsuccessful. This proposal followed the District Court's dismissal of your client's complaint, which sought to enjoin the Immigration and Naturalization Service (INS) from implementing its decision. In our proposal, the government expressed its willingness to withhold implementation of the Commissioner's decision, without requiring your client to seek and obtain an injunction pending appeal, while your client sought review in the Eleventh Circuit. In exchange, we had asked that your client join in a motion for an expedited appeal process, agree to a specific schedule governing an appeal to the Eleventh Circuit and any proceedings before the Supreme Court, and comply with INS instructions concerning Elian's transfer to his father should your client not prevail on appeal.

In order to provide your client with the opportunity to seek and obtain review in federal court, the INS has already withheld implementation of a decision that it has had full authority to implement since the Commissioner's announcement on January 5, 2000. The government's latest proposal would have postponed implementation pending expedited review at the Eleventh

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Circuit and an opportunity to seek an injunction from the Supreme Court, but your response does not accept our offer.

As an initial matter, we are unable to agree to your proposal that some newly constituted body make decisions concerning Elian's future. Under the Constitution and laws of the United States, as well as universally accepted standards of the international community, a parent speaks for and makes decisions for his child, especially one of such tender years as Elian. The Commissioner has determined that Elian's father properly speaks for Elian in immigration matters. The Attorney General has ratified that decision, and the district court has now sustained it.

While your reply suggests an alternative briefing schedule, your letter agrees to neither the filing of a joint motion to expedite the appeal with an accelerated briefing schedule nor a specific written commitment by Lazaro Gonzalez to abide by the instructions of the INS regarding Elian's reunification with his father in the event of a decision on appeal in favor of the government. If we have misinterpreted the intention of your letter and your client would agree to the other terms of our proposal, we would be willing to agree to a briefing schedule that accommodates your desire to have the additional time you feel you need to file your opening brief while adhering to the overall timeframe that we had proposed. Under that alternative, the parties would jointly propose filing simultaneous opening briefs on April 3, 2000 and simultaneous reply briefs on April 10, with a request to the court for oral argument the week of April 10. Because review by the Supreme Court is discretionary with the Court, and because of the need for a prompt reunification of Elian and his father, if the Eleventh Circuit affirms the district court's decision, we would proceed to revoke parole in the absence of an injunction pending certiorari as described in our letter of yesterday.

Otherwise, and as the Department of Justice had advised you in yesterday's letter, the INS is prepared to carry out the Commissioner's decision. In light of Judge Moore's recognition that "each passing day is another day lost between Juan Gonzalcz and his son," we are not prepared to forestall the implementation of that decision to accommodate a lengthy appeals process, or without a firm commitment to an orderly reunification of Elian and his father if the Eleventh Circuit affirms the district court's decision. Elian should be reunited with his father in a prompt, fair, and orderly manner. Our offer was an attempt to reach that objective by agreement of the parties.

In the absence of such an agreement by noon on Monday, March 27, 2000, District Director Robert Wallis and I hereby give notice that Elian's parole will terminate as of Thursday, March 30, 2000, at 9:00 a.m. If you do not agree to our proposal, this time period will provide you the opportunity to seek an injunction pending appeal.

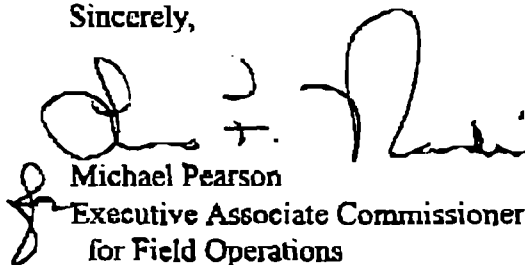
In view of the trauma that Elian has already experienced, it is obviously desirable to reunite this boy with his father in as smooth a manner as possible, and we continue to seek Lazaro Gonzalez' cooperation in that effort. Accordingly, we believe it is advisable for Lazaro

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Gonzalez and his counsel to meet with District Director Wallis at 9:00 a.m. on Tuesday, March 28, 2000 at the INS District Office, 7880 Biscayne Boulevard, Miami, to discuss the ramifications of the revocation of parole and the orderly return of Elian to his father. It will not be necessary to bring Elian to this meeting.

Should you have any questions, please contact Mr. Wallis at (305) 762-3680.

Sincerely,



Michael Pearson
Executive Associate Commissioner
for Field Operations

cc: Opposing co-counsel



Department of Justice

FOR IMMEDIATE RELEASE
Friday, March 24, 2000
WWW.USDOJ.GOV

AG
(202) 616-2777
TDD (202) 514-1888

Statement by Attorney General Janet Reno on the Elian Gonzalez Case

"As I said earlier this week, our goal is to reunite Elian with his father in a fair, prompt and orderly manner. From the beginning, we have been mindful of the fact that at the center of this case is a six year old boy who has been through a terrible ordeal. We are concerned for him and will continue to try to resolve this matter in a way that avoids additional trauma to him.

"Earlier this week, Federal District Court Judge K. Michael Moore sustained our judgment that Elian should be reunited with his father. We have been willing to postpone the reunion while the district court considered the case, but we are not willing to wait through an open-ended appeals process that could prolong the separation of this child from his father. We agree with Judge Moore that "each passing day is another day lost between Juan Gonzalez and his son," and we cannot risk the harm that a prolonged separation might create.

"That is why we have proposed a solution that allows Elian's Miami relatives adequate opportunity to appeal their case, while working to achieve a reunion between Elian and his father.

"Yesterday, we asked the relatives to agree to an expedited appeals schedule, and we also asked them to commit to quickly returning Elian to his father if their appeal does not prevail. As of this moment, they have not agreed to comply with these terms.

"We will continue to try to reach an agreement with Elian's Miami relatives that meets these objectives. To that end, we have sent their attorneys another letter this evening setting forth the next steps.

"A great strength of the United States is that we are a Nation of laws and of respect for the law. I hope that all in the community will work together to uphold our laws and help make an orderly process possible."

###

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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

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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, Marisleyxis 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

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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.

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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

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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

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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 black ink that reads "Kendall Coffey". The signature is written in a cursive, flowing style.

Kendall Coffey



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: Elían 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 Elían'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 Elían Gonzalez above all others." Under these circumstances, we are prepared to revoke Elían'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 Elían 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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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

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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.

/ / /

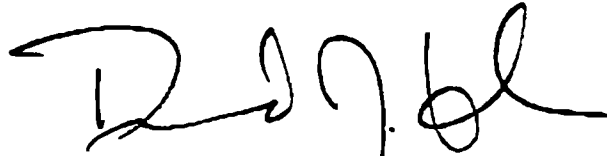
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/ / /

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

Sincerely,

A handwritten signature in black ink, appearing to read 'D.J. Kline', with a large, stylized initial 'D' and a long horizontal stroke extending to the right.

DAVID J. KLINE
Deputy Director
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
(202) 616-4900 (telephone)
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cc: opposing co-counsel



February 9, 2000

Troubles of Cuban Boy's Kin May Muddle Custody Battle

Forum

- [Join a Discussion on Custody and Cuba](#)

By PETER T. KILBORN



M IAMI, Feb. 8 -- For more than two months the Florida family of Elián González has been a staple of the nightly news. There is Elián, the 6-year-old refugee, swinging a baseball bat in front of the little stucco house in a working-class neighborhood of Little Havana. There he is kicking a soccer ball with his great-uncle Lázaro González and hugging Marisleysis, his cousin.

But not surprisingly, a closer look provides a far more complex portrait of an immigrant family suddenly caught up in an international spectacle of a dispute over the custody of Elián, who survived a crossing from Cuba in which his mother and 10 other people drowned. It is a striving, hard-working, close-knit family that neighbors say is unassuming, helpful and easy to get along with.

The two-bedroom, one-bath home of Lázaro González, 49, his wife, Angela, and their daughter, Marisleysis, 21, is the gathering place for an extended family that itself is divided over Elián's future. And it is the focal point of a public relations struggle between Miami's Cuban-Americans and the Cuban government of Fidel Castro.

But this extended family is also one that has run afoul of the law in ways that could affect their bid to gain permanent custody of Elián, whose father in Cuba wants him returned, experts in custody law say.

Lázaro González, an automobile mechanic who moved here from Cárdenas, Cuba, 15 years ago, has four convictions for driving under the influence of alcohol during the 1990's, according to the Florida Department of Highway Safety and Motor Vehicles. His license was revoked or suspended for a total of three years. He completed an alcohol treatment course after his most recent conviction, in July 1997.

Mr. González's brother Delfin González, 63, a fisherman who usually lives in Marathon in the Florida Keys but who is a staunch supporter of Lázaro's custody claim and has been staying here with the family, has four convictions for driving under the influence over the last decade, most recently in May 1997. Two of the cases involved accidents with property damage or personal injury. Delfin González had his license revoked for a total of two years.

Two other relatives who have been periodic visitors at the home have also had run-ins with the law, the weekly New Times newspaper here first reported.

Jose Cid, 32, one of Lázaro and Delphin's nephews and a son of their sister here, Georgina Cid, went to jail last month to begin a 13-year sentence for grand theft, forgery and violating probation, according to the Miami-Dade Department of Corrections. His twin brother, Luis Cid, goes on trial on Feb. 18 on charges relating to a robbery last September in Little Havana.

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While legal problems like those of the Gonzálezes are not uncommon, lawyers say the drunken-driving convictions, especially, create problems for Lázaro González's claims for custody and give the government a new argument in defending its decision last month to return the boy to Cuba.

"This does have an impact on the fitness of these adults to raise this child, unquestionably," said Bernard Perlmutter, a professor and expert in family law at the University of Miami.

Martin Guggenheim, a professor of law at New York University and a specialist in child and family law, said, "Increasingly in recent years, courts have been interested in any and all information that bears upon parental fitness.

"The child might be in the car and subject to an accident caused by drunk driving," Mr. Guggenheim said, "or the parent could end up injured, dead or in prison because of drunk driving."

No close González relatives in Miami could be reached for comment. Armando Gutierrez, a prominent Cuban-American political consultant here and the relatives' publicist and spokesman, said he had not heard of the driving records until today.

The driving convictions, said Spencer Eig, the relatives' lead lawyer, are less troubling than comments by one of Elián's grandmothers, who told Cuban television that she bit Elián's tongue when she visited him here last month to goad him to talk and unzipped his pants.

Lázaro and Angela González live in a neighborhood of fortresses and locks. Chain-link fencing cuts across the front of most yards, with padlocked gates across the front walks and the driveways. Many houses have wrought-iron gates to protect the front door, and wrought-iron grills on the windows.

To varying degrees most households are reaping the benefits of the nation's prosperity. The most prosperous have central air conditioning, red ceramic tiles on their roofs, replacing asphalt tiles, and tall, spiked iron fences.

The González home, a 48-year-old, gray-white stucco house, is more modest than most. Except for Elián's outdoor toys, all donated, nothing is new. It is assessed for tax purposes at \$67,298. Marisleysis shares her bedroom with Elián. Real estate agents said the rent would be \$500 to \$1,000 a month.

Only Lázaro, Angela, Elián and Marisleysis are living there now, although Delfín often visits. William, Lázaro and Angela González's 27-year-old son, moved out about three years ago, after marrying the granddaughter of Guillermina Ferrer, the Gonzálezes' next-door neighbor.

One member of the clan, Manuel González, a brother of Lázaro, is not welcome in the house because he has supported Elián's repatriation.

Angela González rises before dawn each day to work in a factory sewing clothes and devotes the rest of her day to domestic activity inside the home. Lázaro González works irregularly. Now and then he comes out to tinker with a red 1988 Thunderbird, registered in his wife's name, that was bought four years ago.

Marisleysis is a loan officer at the main branch of Ocean Bank here, along with a cousin, Georgina Cid Cruz. Georgina is the sister of the Cid twins.

Mrs. Ferrer has lived next door for as long as the Gonzálezes have been there. She said she watched William and her granddaughter Jacqueline's 6-month-old son while the parents worked.

"Angela is a very quiet woman," Mrs. Ferrer said. "Even before all this started, you never even heard her talk. You never even knew when she was around."

"I've never heard of anyone in that family getting into any kind of trouble or anything," she added.

Maria Castillo, across the street, said, "They're always there to help you. That

family gets along fine and is very close."

Neighbors said that for entertainment, the Gonzálezes tended to stay home with relatives, rather than go out.

Across this neighborhood, and across Little Havana, there are few signs of the epic war of words and lawsuits that have stirred Congress, the Clinton administration, Cuba and the Cuban-American leadership.

The media vans and the demonstrators, largely anti-Castro immigrants from outside the neighborhood, have the Gonzálezes to themselves. Just one household near Elián's, a block away, has taken any note of their fight still raging in court. "Back To No Future," a sign on the door reads.

But the case for holding Elián has taken another sharp turn. It is harder to argue for holding him in America, Mr. Perlmutter of the University of Miami said, in view of family's troubles with the law.

The family here is attempting to argue that it can offer Elián a better life than his father can, while the real issue is whether the father, Juan Miguel, is fit to raise his son, he said.

With the disclosure of the drunken-driving convictions, Mr. Perlmutter said, the Miami family's case is harder to make. Except for innuendo and unsubstantiated rumor, he said, no one has challenged the father's fitness to raise a child.

"He should win hands down," he said.

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U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

TO: Wendy Sutton
480-9140
644-0247

STATEMENT

2/18/00

INS Response to Mr. Juan Gonzalez

The U.S. Immigration and Naturalization Service (INS) today informed Mr. Juan Gonzalez, father of Elian Gonzalez, that the INS remains fully committed to reuniting him with his son Elian as soon as possible, consistent with legal procedures. The INS told Mr. Gonzalez that after careful consideration of his request to move Elian, the agency does not plan to change the temporary care arrangements for Elian at this time.

The decision was made in response to requests from Juan Gonzalez that Elian be moved from the care of Lazaro Gonzalez and placed in the care of Manolo Gonzalez, both of whom are Juan Gonzalez's uncles. INS emphasized to Mr. Gonzalez that Elian's current care arrangements are only temporary while a federal court reviews INS' decision. INS stated that the agency shares Mr. Gonzalez' concern that Elian be well cared for, and therefore will request information from Lazaro Gonzalez concerning the credentials of any psychiatrist or psychologist who has seen Elian, as well as an explanation of any treatment that may have been prescribed for him. INS also will request information regarding Elian's schooling.

The INS advised Juan Gonzalez that a Miami-based nongovernmental organization conducted a post-placement visit to verify that Lazaro Gonzalez' home was an adequate setting for Elian's temporary care. INS indicated that transferring Elian temporarily to a new and unfamiliar environment would not be advisable for the child after already experiencing the trauma of leaving his home in Cuba and losing his mother. Instead, INS will continue to focus its efforts on returning Elian to his father.

INS also stated that it is aware of Lazaro Gonzalez' past convictions for driving under the influence of alcohol, but that the information INS has at present does not suggest that Lazaro Gonzalez' home is not an adequate environment for Elian's temporary care at this time. INS is prepared, however, to revisit this issue if additional relevant information becomes available.

Regarding Mr. Gonzalez' concern about the Miami family's request that the federal district court appoint a *guardian ad litem* for Elian, INS stated that the government is preparing a response to that motion which will be filed with the court within the next few days.

INS reiterated to Mr. Gonzalez that it is committed to resolving this matter as fairly and expeditiously as possible.

PLEASE HELP US RETURN ELIAN GONZALEZ TO HIS FATHER IN CUBA

We deplore the detention of the young Cuban boy Elián González in Miami -- and we urge our government to enforce the January 5 decision of the Immigration and Naturalization Service (INS) and immediately return Elián to his father and his family in Cuba.

We strongly protest the shameless exploitation of a traumatized and grieving little boy by extremists in Miami (and their supporters in Washington). They are exploiting Elián politically, psychologically, and economically. Their cold-blooded and materialistic actions defy family values and basic morality, and show how little they understand the needs and rights of a small child. We are also outraged by the inaction of the US Administration, whose delays and deceptions have kept little Elián separated from his father for three months. We call on our government to show compassion and common sense -- and to send Elián home now!

The best gift we can give to Elián is better than all the toys and puppies in Miami -- it's to send him home to his family, to the home he knows and loves.

**UPHOLD THE LAW AND BASIC FAMILY VALUES -- RETURN ELIAN IMMEDIATELY
TO HIS FAMILY IN CUBA! JUSTICE AND DECENCY DEMAND IT!**

PLEASE CONTACT:

Attorney General Janet Reno

President Clinton and Vice President Gore

Your Senators and Congressional representative

PHONE:

202/514-2001

202/456-1111

202/225-3121

FAX:

202/307-6777

202/456-2461

TELL THEM TO SEND ELIAN HOME NOW!!!

BACKGROUND AND TALKING POINTS:

- ♦ As Elián's detention in Miami is prolonged, he is increasingly being placed right in the center of the **political circus** that grows crazier every day in Miami -- and in Washington. To treat a 6-year-old child this way is **abusive**, and is surely damaging him psychologically.
- ♦ The people detaining Elián have complained, preposterously, that Elián's father was being coerced to want him home. **BUT THEY ARE COERCING ELIAN:** bribing him with toys and ponies, brainwashing a bereaved and traumatized boy -- trying to convince him to detach himself from his loving father and grandparents and his home just 90 miles away. What greater damage can they inflict on this child? *And how can we allow it to continue?*
- ♦ This is not a case of a boy being rescued from an abusive situation; it's a **kidnaping**, plain and simple. Elián was taken from his home without the consent or knowledge of his father or his four grandparents in Cuba; they immediately demanded, and continue to demand, that US authorities send him home. Elián's father is an **upstanding citizen** with a decent income. He had joint custody of Elián, after an amicable divorce, and has been a loving primary caregiver to his son. His paternal rights, and Elián's needs, must be respected!
- ♦ US, Cuban, and international law all mandate that Elián should have been immediately returned to his natural father in Cuba. **A child from any other nation in the world**, under the same circumstances, would have been automatically returned to the surviving parent in his/her home country, without any need for an appeal. 14,000 unaccompanied minors are returned every year by INS. This double standard in immigration policies is very unfair!

- ♦ Elián was only detained in the US because of the **effective machinations** of the Cuban American National Foundation and their allies in Congress. They are shamelessly exploiting the boy for their own political purposes. The vast majority of the people of the US are outraged and disgusted by their actions.
- ♦ By responding to those extremist interests instead of to US law, US immigration officials violated US immigration accords and precipitated a **serious setback in US/Cuba relations**.
- ♦ Countless lives have been lost as US interests continue to entice Cubans to emigrate illegally. Cuba has strong laws against this sort of trafficking in human lives; but the US persists in encouraging illegal and perilous emigration from Cuba. This must stop!
- ♦ Elected officials have tried some tricks to prevent or delay Elián's return to his home, including subpoenas and bills to grant US citizenship or residency against his father's will. These are serious **abuses of Congressional power**, which make a mockery of the law.
- ♦ The issue of **campaign contributions** figures large in this story. The Cuban American National Foundation, which is orchestrating the detention of Elián, gives substantial campaign support to many elected officials. Indiana Rep. Dan Burton, who subpoenaed Elián, gets more money from Miami than from his home state. VP Al Gore, who depends on CANF funding, has not supported the INS' ruling to send Elián home. We've heard that the Miami bloc has already raised **\$3 million** in its campaign to kidnap Elián, and we're sure that a good deal of this money will end up in campaign coffers. [CANF money has also been contributed to the supposedly "neutral" Barry University, where Elián met with his grandmothers...] We are outraged by their "political pimping" off this vulnerable little boy.
- ♦ We know that Elián would have a **good life in Cuba** -- with fewer material goods, but with a loving family, and with his basic human rights assured, in a society which cherishes and honors its children. The question of different standards of living is far from absolute. The INS's January 5th ruling was based on a thorough investigation of Elián's family and status. There are no indications that Elián had suffered, or would suffer, any form of abuse or neglect in Cuba.
- ♦ Since Elián was kidnaped from Cuba and rescued in international waters, **US courts have no jurisdiction whatsoever** in his case. Elián's father should not have to submit himself to the **circus of bribes and blackmail** which would surely ensue if he were to try to appear in Miami. And Florida judges like Rosa Rodriguez, who are locally elected, are far from unbiased with regard to the historically loaded issue of US/Cuba relations.
- ♦ Some in the US have said that the boy should stay in the US-- 'to honor the dead mother's dying wishes.' **Even her parents -- Elián's maternal grandparents -- are insisting and pleading that the boy be brought home to live with his family.** We agree: Elián should be with his father and his grandparents!

Please keep me informed about Elián, and about related issues. Here's how to contact me (please print):

Name _____ Daytime phone _____ Evening phone _____

Address _____ City _____ State _____ Zip _____

Fax _____ Email _____

SEND THIS COUPON TO: NATIONAL COMMITTEE TO RETURN ELIAN TO HIS FATHER IN CUBA
c/o ifco, 402 w.145th st, ny, ny 10031 212/926-5757; fax 212/926-5842; ifco@igc.apc.org

TALKING POINTS FOR TORRICELLI MEETING

- I want to thank you for your thoughts regarding how to resolve the Elian Gonzalez matter. We really appreciate your effort to make constructive suggestions in the interest of all involved.
- We've given a lot of thought to your idea that this case could best be brought to closure by moving the state court case out of Miami. In the end, though, we've concluded that a change in venue is not a viable option.
- Elian's father is not going to appear in the case and request a change in venue. All the signs strongly suggest that he would not want to validate the state court proceeding in any way.
- Justice will not want to involve itself in the state court case either. Justice is not a party, and even if they would welcome a change in venue, intervening in the suit would implicitly recognize the authority of the state court in an immigration matter. That could have implications far beyond this case – a risk that Justice would not want to take.
- So Justice and INS continue to work through options, and we continue to talk with the Cubans about the case.
- I'd be curious to hear any other ideas you might have.
- What do you think about the idea of the father coming to the U.S. (but not Miami) and asking INS to transfer custody of the child to him while he awaits a decision in the federal case? Do you think the Miami relatives would comply? How would that play out?
- If they refused to turn the child over, and then the federal court ordered the family to comply with the INS directive, ^{and the INS made} ~~while making clear that the~~ father could not leave with Elian until the federal case was decided, would the family do as the judge ordered?
- If the federal district court ultimately rules in favor of INS, will we be able to reunite this child with his father at that point? *What if the state court has done something inconsistent with that -- for example if the father never appears in that case?*

Mary - _____
letters #2 +
#3 from Elian's
father. (en
español). Talk to
me now for a
summary (en inglés)
- up

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FAX COVER SHEET

DATE: 2/4

TO:

Gwyn Hollis
Wendy Patten
Lula Rodriguez
Janelle Jones

FROM:

Bob

SUBJECT:

Letter #3 from Dad
"The Public Letter"

URGENT

ACTION

REPLY

FYI

REMARKS:

NUMBER OF PAGES (INCLUDING COVER PAGE):

5

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Ciudad de La Habana, 14 de febrero de 2000

S.E. Janet Reno, Secretaria de Justicia
S.E. Doris Meissner, Comisionada del INS

Distinguidas señoras:

Hace ya más de dos meses y medio que mi hijo, Elián González, permanece retenido en el territorio de Estados Unidos en contra de mi voluntad y a pesar de que solicité el 27 de noviembre su inmediata devolución.

Transcurrieron más de diez días después que mi petición fue transmitida por los canales diplomáticos hasta que recibí la primera reacción de las autoridades norteamericanas y ésta fue realmente decepcionante. No me entregaron al niño ni siquiera me comunicaron cuándo lo harían, sólo pidieron que me reuniese con representantes del INS y del Departamento de Estado para acreditar mi paternidad y mis vínculos con Elián. Me reuní con ellos el 13 de diciembre completamente a solas y en compañía de mi padre y de mi madre, no llevé abogados ni asesores. En esa reunión les entregué todos los documentos necesarios y muchos más y respondí todas las preguntas que quisieron hacerme. Les demostré ampliamente que Elián es mi hijo con el que siempre he mantenido una relación sistemática, constante, con todo el amor y el cuidado que un padre puede dar y que Elián, además, cuenta con una familia en la que se ha criado rodeado de cariño y atención y que reclama su regreso.

Pasaron más de dos semanas sin que se me diese respuesta alguna hasta que el 31 de diciembre, a petición suya, volví a reunirme con los mismos funcionarios de Estados Unidos. Otra vez lo hice sólo y sin más compañía que la de mis padres. Tampoco esa vez me entregaron al niño ni me dijeron cuándo se proponían hacerlo. Sus funcionarios se limitaron a hacerme preguntas, todas las cuales respondí, y a escuchar mis reclamos que apenas pudieron responder.

He podido comprobar después, que esta nueva entrevista conmigo se derivaba de una reunión que el INS había tenido el 20 de diciembre en Miami con el señor Lázaro González quien estuvo asesorado por otras personas, incluyendo varios abogados que participaron activamente en ese encuentro.

El 5 de enero de este año, finalmente, el INS anunció su determinación por la cual reconocía mis derechos como padre, incluyendo el de ser la única persona que puede representar a Elián y hablar por él.

Desgraciadamente a esa determinación no ha seguido acción alguna para llevarla a la práctica. Cuarenta días después de haberla anunciado, Elián continúa retenido arbitrariamente por las mismas personas y en el mismo lugar donde se encontraba el 5 de enero.

Ese día y en respuesta a la comunicación recibida del INS, les propuse varias fórmulas para resolver la situación todas ellas conformes a la propia decisión anunciada por ustedes.

Les propuse que, aplicando los procedimientos normales que el INS aplica todos los días en incontables casos, el propio Servicio Migratorio se encargase de la devolución del niño. Les propuse como alternativa que entregase a Elián al Consejo Nacional de Iglesias de Cristo en Nueva York para que desde allí ese Consejo lo trasladase a Cuba o nos lo entregase a sus familiares.

El 22 de enero mi madre, Mariela Quintana, debidamente autorizada por mi mediante documento legalizado ante la oficina diplomática de Estados Unidos en La Habana, solicitó directamente a ustedes la entrega del niño.

Todas estas propuestas han sido expresión de nuestra voluntad y disposición de hacer lo necesario para poner fin al secuestro de mi hijo, un niño de seis años y devolverlo cuanto antes a su hogar.

Hemos dado a las autoridades norteamericanas la cooperación que nos han solicitado para ayudarlas a resolver un problema cuya solución ha estado y continúa estando enteramente al alcance de esas autoridades.

Me permito recordarles, a este respecto, la declaración jurada del 24 de enero de la secretaria asistente de Estado para asuntos consulares, embajadora Mary A. Ryan quien, entre otras cosas, afirmó:

"Cuando un niño es encontrado en un país extranjero, la práctica internacional aceptada es intentar identificar al padre o los padres, y devolver al niño a esa persona en cuanto sea posible, frecuentemente a través de la asistencia de funcionarios consulares representando el país de origen. Da ser encontrado un niño pequeño, ciudadano norteamericano, en un país extranjero en las circunstancias de Elián González Brotóns, nosotros esperaríamos que el gobierno de ese país inmediatamente buscara al padre sobreviviente, si hay alguno, y contactara a los funcionarios consulares norteamericanos para brindar asistencia si fuese necesaria. Nosotros esperaríamos entonces que el gobierno devolviera el niño a sus padres rápidamente, a menos que el padre

expresamente pidiera que fueran hechos otros arreglos. Nos aseguraríamos que el gobierno extranjero estuviera al tanto de los deseos del padre y no esperaríamos que nuestras declaraciones en este caso sean cuestionadas. De esta forma, nosotros esperaríamos que la participación directa del padre en los procedimientos en el país extranjero no sería requerida. No esperaríamos que el padre sobreviviente necesariamente tenga que viajar al país extranjero a recuperar a su hijo. Tampoco esperaríamos que el padre sobreviviente tenga que participar en un proceso de custodia en un tribunal extranjero para establecer su derecho de asumir la responsabilidad por el niño. No estaríamos de acuerdo que estemos en presencia de un asunto de custodia a ser resuelto; más bien la custodia claramente pertenecería al padre sobreviviente. Objetaríamos fuertemente si un gobierno extranjero declinara devolver un niño norteamericano a su único padre sobreviviente, a causa de que otros parientes buscaran la custodia del niño, o a causa de un criterio de que el niño estaría mejor en el país en el cual fue encontrado. También objetaríamos vigorosamente a un gobierno o a un tribunal extranjero que intente sustituir con su punto de vista sobre los "mejores intereses del niño", aquello expresado por un padre, a menos que exista una decisión previa que el padre no sea apto. Aun más, esperaríamos que cualquier decisión sobre la capacidad o custodia sea hecha no por un tribunal en el país donde el niño fue encontrado, sino por un tribunal del país de residencia habitual del niño. La no devolución de Elián González Brotóns a su padre sería fundamentalmente inconsistente con estos principios y con lo que nosotros defenderíamos en el caso de un niño norteamericano".

Hasta ahora, sin embargo, Estados Unidos no ha dado los pasos a los que está obligado conforme al derecho internacional, a la práctica universalmente aceptada y a la propia legislación norteamericana.

Entretanto, quienes mantienen secuestrado a mi hijo llevan a cabo diversas maniobras ante tribunales de Estados Unidos —que carecen de competencia para juzgar la aptitud de un padre o la custodia de un niño, ambos cubanos, ciudadanos y residentes de la República de Cuba— con el evidente propósito de perpetuar el secuestro de Elián y poner obstáculos a la ejecución de la decisión del INS que éste, sin embargo, basado en sus propias leyes, sigue teniendo la obligación de ejecutar.

Dichas maniobras han llegado a mi conocimiento sólo por lo que acerca de ellas han divulgado algunos medios de prensa. De acuerdo con tales versiones una jueza estatal de la Florida, de dudosa moralidad ya que, entre otras cosas, tiene vínculos comprometedores con los secuestradores y sus agentes, pretende arrogarse facultades para determinar acerca de la custodia de mi hijo. La secretaria de Justicia, Janet Reno, determinó, por su parte, que el caso de Elián corresponde enteramente a la instancia federal y que sólo a mi corresponde hablar en nombre de mi hijo. No reconozco jurisdicción alguna a

esa corte estadual y objeto formalmente las gestiones que ante ella hayan realizado o realicen quienes retienen a Elián arbitrariamente, contra mi expresa voluntad y a contrapelo de la decisión tomada por el INS el 5 de enero. Mi objeción a la actuación de ese tribunal no constituye ni puede interpretarse, en modo alguno, como renuncia a ninguno de mis derechos.

Igualmente, quiero hacer constar que rechazo categóricamente cualquier intento de designar para Elián un supuesto "guardián independiente", y cualquier otra maniobra que pretenda realizarse ante tribunales o por cualquier otro medio y cuyo efecto sería prolongar el secuestro de mi hijo, el daño que se le está ocasionando y el sufrimiento de él y de su familia. Este caso no es una disputa familiar relacionada con la custodia de un niño. La mamá de Elián, desgraciadamente murió, víctima ella también de la ilegal operación de contrabando que condujo a la arbitraria retención de mi hijo en Estados Unidos. Me corresponde a mí, única y exclusivamente, el ejercicio de la patria potestad incluyendo la guarda y custodia de mi hijo. Quienes hoy lo mantienen secuestrado carecen de todo derecho sobre él. Su inadmisibles pretensión de imponerle al niño un supuesto "guardián independiente", no es sino una cinica maniobra para prolongar el secuestro que debe ser rechazada absolutamente, ya que si se la aceptase de cualquier forma se les estaría haciendo una concesión absurda e intolerable a los secuestradores.

Es inadmisibles y contrario al derecho internacional, cualquier intento por conferir a los secuestradores la posibilidad de valerse de procedimientos judiciales y convertir a las víctimas del secuestro en víctimas también de interminables maniobras ante tribunales que, por muy respetables que puedan ser, carecen de jurisdicción sobre un niño cubano que no ha sido admitido legalmente en los Estados Unidos, ni podría serlo contra mi expresa y reiterada voluntad.

La solución corresponde por completo a la Administración de Estados Unidos que debe proceder inmediatamente, a poner fin al secuestro y devolverme a mi hijo sin más dilación.

Las saluda atentamente,


Juan Miguel González

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FAX COVER SHEET**DATE:**

2/14/

TO:Wendy Patten
Caryn Hollis**FROM:**

Bob

SUBJECT:

Letter #2 from DAD

URGENT ACTION REPLY FYI**REMARKS:****NUMBER OF PAGES (INCLUDING COVER PAGE):**

4

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La Habana, 14 de febrero de 2000

S.E. Janet Reno, Secretaria de Justicia
S.E. Doris Meissner, Comisionada del INS

Distinguidas señoras:

El 3 de febrero del 2000 me dirigí a ustedes para trasladarles mis preocupaciones respecto a la lentitud y aplazamiento del proceso de devolución de mi hijo Elián González Brotóns, y al daño psíquico que se le está ocasionando; hacerles varias preguntas sobre el ambiente que rodea al niño; y presentarles solicitudes muy concretas sobre su actual régimen de vida.

Lamentablemente, diez días después, aún no he recibido respuesta a ninguna de mis preocupaciones, interrogantes y solicitudes.

Este período de tiempo puede parecer breve en circunstancias normales, pero cuando lo que está en peligro es la salud mental y la estabilidad emocional de un niño de apenas 6 años, es demasiado tiempo.

Es por esa razón que he decidido escribirles nuevamente. El propósito de esta carta no es sólo reclamar la debida respuesta a mis anteriores planteamientos, sino además, analizar nuevos elementos que incuestionablemente agravan la situación.

Las evidencias que han salido a la luz pública de los problemas que Lázaro y Delfín González han afrontado con la ley debido a la ingestión de bebidas alcohólicas, y la revelación de que uno de los primos -José Cid- se encuentra cumpliendo una condena de 13 años de prisión y su hermano Luis Cid está a la espera de un juicio por asalto con violencia, son elementos de mucho peso en todo este asunto que no hacen más que confirmar mis preocupaciones y conceder mayor fuerza a mi solicitud de que el niño me sea devuelto de inmediato.

A lo anterior se suman las recientes maniobras dilatorias orquestadas por los secuestradores, que después de acudir hasta lo impensable, ahora pretenden designarle a Elián un "*guardián independiente*", con la clara y cínica intención de entorpecer y complicar el proceso de aplicación de la ley por el I.N.S.

Desafortunadamente, ha sido por los medios de prensa que he podido conocer de estas cuestiones que afectan tan directamente la seguridad y estabilidad emocional de mi hijo Elián.

Es inconcebible que el INS, que se mostró tan incisivo para determinar mi condición de padre, investigando hasta el último detalle, no haya hecho ningún tipo de indagación sobre los antecedentes de la familia de Miami, de la cual sin duda estos antecedentes

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hubieran salido a relucir.

Es inconcebible también que, de contar con esa información, el INS no me la haya dado a conocer, especialmente después de reconocer el 5 de enero mi condición de padre y mis derechos como tal, incluyendo que soy yo quien sólo puede hablar y decidir en nombre de mi hijo.

Precisamente, invocando esos mismos derechos de padre que ustedes me han reconocido y que me reconocen también las leyes de su país, las de Cuba y el derecho internacional, debo reiterar cada una de las preocupaciones que he planteado respecto al proceso de devolución de Elián y el daño psíquico a que está sometido, y en particular las interrogantes contenidas en mi carta del 3 de febrero y sobre las cuales no he recibido respuesta alguna.

Una vez más solicito formalmente:

1. Me entreguen a mi hijo conforme a la decisión anunciada el pasado 5 de enero.
2. Que mientras no se ejecute esa decisión, mi hijo sea trasladado de inmediato al domicilio del señor Manolo González, mi tío, quien reside también en la ciudad de Miami, no lejos del sitio donde Elián permanece secuestrado.
3. Que inmediatamente se ponga fin al acoso, la manipulación, las presiones psicológicas y las violaciones de la privacidad de mi hijo Elián González.
4. Que me informen con la mayor precisión posible los nombres, ocupación y antecedentes de todas las personas que están permanentemente cerca de mi hijo o lo visitan regular o frecuentemente, incluidos los del psicólogo o psicólogos y/o psiquiatras, el tratamiento que le dan, y dentro del mismo, cualquier suministro de fármacos. Asimismo, les solicito información precisa sobre el régimen actual de vida de Elián —horarios, rutina diaria, empleo del tiempo— y sobre la escuela a la que asiste, el programa de estudios y su aprovechamiento escolar, incluyendo quiénes son los profesores y cuáles sus antecedentes personales y su experiencia profesional.

Igualmente, quiero hacer constar que rechazo categóricamente cualquier intento de designar para Elián un supuesto "*guardián independiente*", y cualquier otra maniobra que pretenda realizarse ante tribunales o por cualquier otro medio y cuyo efecto sería prolongar el secuestro de mi hijo, el daño que se le está ocasionando y el sufrimiento de él y de su familia. Este caso no es una disputa familiar relacionada con la custodia de un niño. La mamá de Elián, desgraciadamente murió, víctima ella también de la ilegal operación de contrabando que condujo a la arbitraria retención de mi hijo en Estados Unidos. Me

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corresponde a mi, única y exclusivamente, el ejercicio de la patria potestad incluyendo la guarda y custodia de mi hijo. Quienes hoy lo mantienen secuestrado carecen de todo derecho sobre él. Su inadmisibile pretensión de imponerle al niño un supuesto "*guardián independiente*" no es sino una cínica maniobra para prolongar el secuestro, que debe ser rechazada absolutamente, ya que, si se la aceptase de cualquier forma, se les estaría haciendo una concesión absurda e intolerable a los secuestradores. Con los secuestradores no se puede negociar. Basta ya de inexplicable tolerancia con el crimen que cometen contra un niño de seis años. Oblígueseles a acatar la decisión del I.N.S. del 5 de enero.

La gravedad de esta situación hace que una pronta acción se torne cada día que pasa más imperiosa para que esta agonía no se prolongue por más tiempo.

En esas circunstancias, espero su rápida respuesta.



Juan Miguel González

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

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FAX COVER SHEET

DATE: 2/8

TO: Wendy Sherman - NSC
Caryn Hollis - NSC
Tanell Jones - INS

FROM: Bob

SUBJECT: Questions on Elian from
Ricardo Alarcon

URGENT ACTION REPLY FYI

REMARKS:

NUMBER OF PAGES (INCLUDING COVER PAGE): 3

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

02/08/00 13:27 FAX 53 7 33 4728

AYUDA MEMORIA

- I) ¿Qué respuesta darán a la carta de Juan Miguel González a Reno y Meissner?
- II) ¿Qué harán cuando se produzca el fallo del Juez Federal?
 - Si es a favor del Gobierno. ¿devolverán a Elián a su padre inmediatamente, o lo dejarán en poder de los secuestradores?
 - Si es en contra del Gobierno, ¿apelarán inmediatamente?
 - ¿Cuál es la estrategia del Gobierno?
 - ¿Por qué en su alegato el Gobierno no incluyó solicitud al Juez que emitiera orden de entrega del niño? ¿Por qué no participó el Solicitor General?
 - Desde el principio advertimos las consecuencias que tendría seguir el camino judicial. ¿Cómo piensan salir de este enredo?
- III) El caso de Elián y la emigración legal, ordenada y segura.
 - Llega el verano con Ley de Ajuste enmendada y ampliada, con INS manteniendo posición de no ejecutar su decisión sobre Elián, con E.U. plegándose a presiones y amenazas de los enemigos del Acuerdo Migratorio, con bloqueo y hostilidad, con propaganda subversiva Radio Martí, con ausencia de medidas eficaces para enfrentar el contrabando de inmigrantes.
 - Consecuencia previsible: Debemos esperar un incremento sustancial de intentos de emigración ilegal.
 - Adicionalmente el caso de Elián crea un grave precedente al estimular a quienes no pueden emigrar legalmente por motivos de patria potestad. ¿Qué harían ellos y qué podemos hacer nosotros si se repiten ahora casos semejantes?
 - Mantenemos nuestro compromiso con los Acuerdos que incluyen no uso de la fuerza y empleo de métodos persuasivos para desalentar la emigración ilegal. Pero conducta de E.U. prácticamente anula nuestra capacidad de persuasión, y tiende a neutralizar el gran esfuerzo que estamos realizando para prevenir, advertir y confiscar materiales y medios de construir embarcaciones que venimos llevando a cabo con el apoyo del pueblo.

02/08/00 13:27 FAX 53 7 33 4728

- Seguiremos expresando voluntad de cumplir los Acuerdos, pero estamos obligados a denunciar que E.U. los está violando con el caso de Elián y con Ley de Ajuste, y su ampliación desde abril de 1999.
- La opinión pública cubana no acepta ni aceptaría que diésemos una visión positiva sobre la ejecución de los acuerdos.
- Por seriedad de nuestro compromiso con los Acuerdos queremos advertir por esta vía -y esperamos que consideren el asunto con toda la seriedad y responsabilidad que requiere- que todo indica que de no enmendarse la actual situación nos acercaremos a un incremento sustancial y preocupante de los intentos de emigración ilegal, insegura y desordenada. Nuestra capacidad para evitarla se verá limitada como consecuencia de la conducta de E.U.
- Hemos aceptado celebrar en marzo la próxima ronda migratoria. Es lamentable que no hubiesen aceptado reunimos en enero, como propusimos, y que Vocero del Departamento de Estado despachase con tal ligereza esa propuesta.

Nos reuniremos en marzo. Iremos a Nueva York en la fecha que ustedes digan. Pero ¿qué señal saldrá de esa reunión? ¿Creen que a estas alturas pueden referirse a ella como una reunión técnica, de rutina? ¿Piensan liquidarla en una jornada de trabajo? ¿Están dispuestos a discutir en serio los problemas importantes, la Ley de Ajuste y el secuestro de Elián, que hoy amenazan gravemente la emigración legal?

Ciudad de La Habana, 8 de febrero de 2000

Elián

February 3, 2000

H. E. Janet Reno, Attorney General
H. E. Doris Meissner, INS Commissioner

Distinguished ladies,

I am writing this letter to you because I am deeply concerned and anguished over the present condition of my six-year-old son, Elian Gonzalez, unfairly and cruelly separated from our family for over two months.

The two grandmothers were hurt and embittered to realize the grave damages caused to my son's health and emotional balance by his long and insufferable captivity. They could witness the nefarious consequences for this young and innocent child of the conditions surrounding his life as have been exposed by the media and denounced by prestigious pediatric psychologists and other experts in the United States.

For over two months, Elian has been under constant harassment and pressure from politicians, journalists, lawyers, publicity agents and others unrelated to his family. Some like Mrs. Ileana Ross-Lehtinen and Mr. Jose Basulto have repeatedly said in public that they have been meeting with my son on a daily basis throughout all this period. Others have announced that they have sustained interviews with him lasting several hours. The boy has been forced to pose for TV cameras day and night with people he does not know and who are unscrupulously manipulating him. That rude invasion of his privacy and disrespect for his childhood innocence should cease immediately and you should guarantee that such things do not happen again.

Notorious twin brothers are among those constantly appearing with my boy. These two people are so well known by now that they even receive attention from some of those who spend time in front of the house where the child is held in captivity despite the fact that both have long criminal records and have several times been convicted in the Florida courts of law. How many others with similar backgrounds are around my son? How much longer can the INS continue to put up with this situation?

The twin brothers' sister, a spokeswoman for those arbitrarily holding my son captive, announced last January 26 that psychologists are treating Elian. As a father whose full and exclusive parental rights you have recognized, I formally make the following request:

1. That my son is returned to me in compliance with your decision announced last January 5.
2. That while such decision awaits implementation, my son is transferred to the house of my uncle Manolo Gonzalez, who also lives in Miami city not far from the place where Elian remains in captivity.
3. That an end is immediately put to harassment, manipulation, psychological pressures and the violation of my son Elian's privacy.
4. That with absolute urgency and with as much accuracy as possible, the Immigration and Naturalization Service gives me information on the following:
 - a) The full name of the psychologist or psychologists who are checking on my son. The institutions where they studied, their practice certificates and professional expertise, the treatment they have chosen for the boy and if medications have been prescribed which and why;

- b) The full name, present occupation and background of all those people visiting Mr. Lazaro Gonzalez house. Also, who are staying there and if they are in direct contact with the child as well as who are keeping him company while he sleeps.

I hope you can understand my feelings, which are shared by the four grandparents, the great-grandmother and the rest of Elian's family. We have lovingly cared for him in our Cardenas home and we are in deep suffering and anguish to know him the victim of mistreatment and abuse by his captors.

My son is the victim of such damage as will unfortunately leave him life sequels, and this worsens with every passing day. Those who can prevent it have a moral obligation to act with full urgency.

I look forward to your reaction.

Sincerely yours,


Juan Miguel Gonzalez

La Habana, 3 de febrero de 2000

S.E. Janet Reno, Secretaria de Justicia
S.E. Doris Meissner, Comisionada del INS

Distinguidas señoras:

Les escribo movido por la más profunda preocupación y angustia sobre el estado en que se encuentra mi hijo de seis años. Elián González, separado de su familia injusta y cruelmente hace más de dos meses.

Sus dos abuelas pudieron apreciar con dolor y amargura los graves perjuicios que para la salud y el equilibrio emocional de mi hijo ha significado su prolongado e intolerable cautiverio. Ellas comprobaron las consecuencias nefastas de las condiciones que rodean la existencia de un niño inocente y de tan tierna edad, las cuales, por cierto, han sido reflejadas en diversos medios de prensa y denunciadas por prestigiosos psicólogos infantiles y otros especialistas de Estados Unidos.

Elián lleva más de dos meses bajo el constante asedio y la presión de políticos, periodistas, abogados, agentes de publicidad y otros individuos ajenos a su familia. Algunos de ellos como la señora Ileana Ross Lehtinen y el señor José Basulto han dicho y repetido públicamente que se han reunido con mi hijo, todos los días, durante este largo período. Otros han divulgado que han sostenido con él entrevistas de varias horas. El niño ha sido forzado a posar ante cámaras de televisión día y noche junto a personas que él no conoce y que lo manipulan inescrupulosamente. Esta invasión grosera de su privacidad y esta falta de respeto para su inocencia infantil, deben cesar inmediata y totalmente y ustedes deben garantizar que tales cosas no ocurran más.

Entre las personas que aparecen constantemente junto a mi hijo --tanto, que son bien identificados y reciben homenajes de quienes permanecen siempre ante el lugar del secuestro-- se encuentran los conocidos mellizos, ambos con larga trayectoria criminal varias veces condenados por tribunales de La Florida. ¿Cuántos otros individuos de similares antecedentes rodean a mi hijo? ¿Puede tolerar el INS que esta situación continúe?

La hermana de los mellizos, vocera de quienes retienen arbitrariamente a mi hijo, declaró el pasado 26 de enero que Elián está recibiendo tratamiento psicológico.

Como padre, cuyos derechos exclusivos fueron reconocidos por ustedes, les solicito formalmente que:

1. Me entreguen a mi hijo conforme a la decisión anunciada el pasado 5 de enero.
2. Que mientras no se ejecute esa decisión, mi hijo sea trasladado al domicilio del señor Manolo González, mi tío, quien reside también en la ciudad de Miami no lejos del sitio donde Elián permanece secuestrado.
3. Que inmediatamente se ponga fin al acoso, la manipulación, las presiones psicológicas y las violaciones de la privacidad de mi hijo Elián González.
4. Que con toda urgencia, y la mayor precisión posible, el Servicio de Inmigración y Naturalización me informe sobre las siguientes cuestiones:
 - Nombres y apellidos del psicólogo o los psicólogos que visitan a mi hijo, instituciones donde estudiaron, nivel y experiencia profesional que poseen, tratamiento que le están aplicando incluyendo si le están suministrando psicofármacos, cuáles y para qué.
 - Nombres, apellidos, ocupación actual y antecedentes de todas las personas que visitan la casa del señor Lázaro González, quienes permanecen en su interior y se relacionan directamente con el niño y quién o quienes lo acompañan cuando duerme.

Espero que ustedes comprendan mis sentimientos y los de los cuatro abuelos, la bisabuela y el resto de la familia de Elián González, que con tanto amor lo hemos criado y cuidado en nuestro hogar de Cárdenas y que sufrimos bajo la angustia de saberlo víctima del maltrato y el abuso de quienes lo mantienen secuestrado.

A mi hijo se le está ocasionando un daño que desgraciadamente podrá dejarle secuelas para toda la vida. Cada día que pase el daño será mayor. Quienes pueden evitarlo tienen una obligación moral de actuar con toda urgencia.

Espero su respuesta.

Atentamente,

Juan Miguel González

Mary —

The Elian Gonzales

correspondence

we talked about.

I gave Didi Alexander

your name —
for Meredith

EXECUTIVE OFFICE OF THE PRESIDENT



FACSIMILE TRANSMITTAL SHEET

Number of pages including cover 3Date 1-31-00To Meredith CabelFAX Number x 61647Comments EYI. I'm also sending this to Wendy Patton.Tracy Sisser will eventually do the draft.Please advise.Thanks!From Deki x66018

OFFICE OF THE DIRECTOR
Presidential Correspondence
The White House 20502
Washington, DC
Phone: 202-456-7610
Fax: 202-456-2993



Harold S. Koplewicz, M.D.
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Director, Child Study Center
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January 27, 2000

President William Jefferson Clinton
Office of the President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20501

Dear Mr. President:

I was very comforted by your recent comments concerning the plight of Elian Gonzalez and want to applaud you for stating firmly and publicly that this little boy needs to return home immediately. Quite clearly, this child has suffered enough and should be reunited with his father. As a child and adolescent psychiatrist, I thought it might be helpful to offer developmental and psychological reasons from the field to support your position.

Elian lost his mother in an incomprehensibly traumatic event. He witnessed his mother's death, and he experienced this tragic event alone. As a result, we know that Elian is at high risk for developing Post Traumatic Stress Disorder (PTSD). The onset of PTSD may be delayed for many years, but research indicates that families and supportive caretakers can help prevent or minimize the impact of this disorder. Anyone, but especially a child, after experiencing such a horrific loss, needs to go back to things that are familiar, consistent, and nurturing. Elian's biological father has always been one of his caretakers, and there has never been any question about his ability to parent or his desire for his son to be returned. The location and the people who were a part of Elian's every day routine up until his trauma are a vital part of his psychological well-being and for his recovery from this horror.

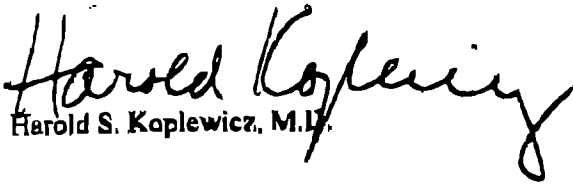
Many leading scientists and clinicians who work with children support the position that Elian Gonzalez should be returned to his father. Unfortunately, well-meaning individuals have lost sight of what is in the best interest of the child and are using him for a political agenda that does not serve him in any sense. Visiting Disney World, receiving gifts and attention would make any child look happy. But his appearance should not be an index of his psychological well being. In addition to PTSD, studies have long documented that separation and loss at an early age can have other negative long-term effects on a growing child. If Elian did not have a father or grandparents back in Cuba, it would be wonderful to have American cousins, who never knew him until his recent arrival, that were generous, warm, and welcoming. But that is not the case. A father waits for Elian back in Cuba, along with his extended family, classmates, neighbors, a school, and a routine that will help him recover. It will be very difficult for this child to reconcile the loss of his mother, and the forced separation from his father that is being imposed on him. In essence, he is continuing to be victimized and traumatized. Let's send Elian home to his father. Let's put the interests of this little six-year-old

President Clinton
January 27, 2000
Page 2

boy ahead of any political agenda. It's time for Elian to start the process of recovering and healing. He can only do that with his father. Keeping Elian away from his father only adds to the trauma and confusion that he is experiencing.

I hope this information is helpful. I am always impressed that on issues dealing with children, such as the tragedy in Littleton, Colorado, you are always able to find the nation's pulse and offer words that give all of us the strength to do the right thing.

Very truly yours,


Harold S. Koplewicz, M.D.

HSK/jc

Handwritten:
4:45 pm

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Moya
De Rosa
456
9/10

ELIAN GONZALEZ LEGISLATIVE PROPOSALS CONGRESSIONAL BRIEFING POINTS

- The State Department is deeply concerned that Congress is considering trying to divest INS of jurisdiction over the case of Elian Gonzalez and forcing this matter into the state courts of Florida.
- The right of a child to grow up with a parent, and of a parent to raise his child, is one of the most fundamental and widely respected human rights:
- Legislation divesting INS of jurisdiction will be seen as imposing obstacles to the ability of Elian and Juan Gonzales to enjoy this right.
- International family law experts do not recognize a legitimate custody question for the state courts of Florida.
 - Juan Gonzalez is Elian's father, he provided for Elian, he has a close and loving relationship with Elian, and he has not abandoned him – he has asked appropriate officials to return his child to him.
 - The law is clear that Juan Gonzalez is legally entitled to custody of Elian and to act for Elian.
 - If Elian and his father were protected by our Constitution, there would be no constitutionally sustainable basis for governmental interference with the father's decision to take Elian to Cuba. (Our Supreme Court has said that parental rights can be terminated only when there is clear and convincing evidence that the parent is unfit.)
- It would be a dangerous international precedent to invite a domestic family court to second-guess a parent's decision to continue raising a child in the child's home country, or to decide what is best for a child when there is a parent who can do this.
- If this were an American child, we would have insisted on his immediate return to his father and would object strongly if the American parent were forced to appear in a foreign court to establish custody under these circumstances..
- Imposing impose citizenship on Elian Gonzalez would be inconsistent with international law. Other countries could and likely would refuse to recognize Elian as an American.
 - The United States has officially and publicly objected to the involuntary conferral of citizenship except in very limited situations not applicable here. We could not defend conferral of citizenship on Elian Gonzalez over his father's objections.

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

- Making Eliau a permanent resident of the United States over his father's objection would also raise serious questions under international law.
- It would be seen as interfering with the father's parental rights to decide his son's status and the right of Eliau and his father to be reunited promptly.
- The very concept – "permanent resident" – could be used to imply that we are interfering with Eliau's right to leave the United States and return to his home and his father in Cuba.
- How Congress acts will have far reaching international implications:
 - We have submitted a declaration in the litigation because we are deeply concerned that not returning Eliau to his father will damage our ability to obtain the return of American children to their American parents.
 - Our standing as a country that respects fundamental human rights will surely be damaged – involving the state courts of Florida will be seen as cruelly prolonging the separation of the father and son for political purposes.
 - The international community will use imposing US citizenship on Eliau Gonzalez or making him a permanent resident of the United States as an example of the United States disregarding fundamental international legal principles.
- We should be showing the Cuban people that we respect fundamental rights, not that we ignore them.

ELIAN GONZALEZ LEGISLATIVE PROPOSALS CONGRESSIONAL BRIEFING POINTS

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

Elian Gonzalez – Congressional Briefing Points
January 26, 2000

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

Eliau Gonzalez - Congressional Briefing Points
January 26, 2000

CONTINGENCY POINTS

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

-- Yes. There is no basis under international law for not returning Elian to his father.

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

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

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

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

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

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

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

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

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Elian Gonzalez – Congressional Briefing Points
January 26, 2000

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OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

To	From
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

Handwritten: Maria De Rosa, NSC, 456-9110

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

Drafted:
L/CA:CWBrown
1/25/2000

To be cleared w/in DOS by:
C:WSherman
H:SJacobs
S/P:JO'Brian
L:JBorek
CA:MHarty
WHA/CCA:CShapiro

DeRosa, Mary B. (LEGAL)

To: @COMM - WHSR Comm Officers; @NSA - Natl Security Advisor
Cc: @LEGAL - Legal Advisor; @MULTILAT - Multilateral and Humanitarian Affairs; @LEGISLAT - Legislative Affairs
Subject: Elian Gonzalez update

(Please include in package to be sent to Jim at the airport)

Please send to Jim S. (from Legal, Multilat, and Legislative)

Update on the grandmothers The grandmothers are in Miami now, but it is still not clear whether they will meet with Elian, and if so where. They hope to meet with him this evening. There are conflicting reports on where the grandmothers will go after this evening. Earlier we heard that they will be coming to Washington tonight and meeting with Sheila Jackson Lee (and possibly Dodd) tomorrow, but INS is now reporting that the National Council of Churches says they will not come to Washington.

Legislation Senator Mack introduced a bill today that would confer citizenship on Elian. He has 5 cosponsors: Lott, Helms, Torricelli, Graham, and Robb. Lott has told Daschle that there will be no vote on the legislation this week.

In the House, McCollum has introduced companion legislation to Mack's, which would confer citizenship, and Menendez has introduced legislation that would give Elian LPR status. There will be no vote on this legislation in the House this week.

Legislative Strategy Maria Echaveste convened an interagency conference call this afternoon to discuss legislative strategy. General view was that we should not support offering amendments -- such as the Central American Parity legislation -- to the Elian citizenship bills. There was agreement, though, that we can make rhetorical points by contrasting the reception these other pieces of legislation have received with the attention to Elian's situation.

DOJ and State are preparing a joint letter that will not react to a specific piece of legislation, but will set out in a general way the policy concerns with the attempts to confer citizenship or lawful permanent resident status on Elian. DOJ/State said they would have this letter to OMB for circulation by tomorrow afternoon.

Legal issues with the Legislation OLC reports that its preliminary conclusion is that there are no significant constitutional problems with legislation that would confer citizenship on Elian. The one question they are still reviewing is whether citizenship can be bestowed without consent. The argument would be that citizenship is a fundamental right that carries with it responsibilities, and a person must consent to take these on. We have conferred citizenship without consent in the past, however, mostly in the context of territorial acquisitions. OLC is still looking at whether those circumstances are so different from this one that they should not be considered valid precedents.

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

CONTINGENCY POINTS

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

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

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NATIONAL SECURITY COUNCIL

FAX COVER SHEET

**NATIONAL
SECURITY
COUNCIL**

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

Did you get a complete,
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(202) 456-9141

From: Wendy Patten

To: Mary DeRosa

Fax Number: 6-9110

Date/Time: 1-26-00

No. of pages to follow: 5

Message: final state talking points on Elian bill



U.S. Department of State

Office of The Counselor

Room 7509

Tel: 202 647-5529

Fax: 202 647-0247

Date: 1/26/00

Total Pages (including FAX sheet): 5



United States Department of State

The Counselor

To:

Mara Rudman

FAX Number:

456-9460

From:

Wendy Sherman

Telephone Number:

Subject:

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

Trene Bueno

→ 6-5581

~~Wendy Patten~~

Acknowledge Receipt — Yes: ☐ No: ☐

ELIAN GONZALEZ LEGISLATIVE PROPOSALS CONGRESSIONAL BRIEFING POINTS

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

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January 26, 2000

- Citizenship fundamentally defines who a person is, and imposes obligations as well as rights. In the case of a six-year-old child in Elían's circumstances, international law would recognize the right of the father to decide whether his child should be made a citizen of a foreign country.
- Making Elían a permanent resident of the United States over his father's objection would also raise serious questions under international law.
 - It would also be seen as interfering with the father's parental rights to decide his son's status and the right of Elían and his father to be reunited promptly.
 - The very concept – "permanent resident" – could be used to imply that we are interfering with Elían's right to leave the United States and return to his home and his father in Cuba.
- How Congress acts will have far reaching international implications. The Department of State is deeply concerned that not returning Elían to his father will damage our ability to obtain the return of American children to their American parents.
 - International law and practice are clear that a child in Elían's circumstances should be returned to his surviving parent.
 - If this were an American child, we would insist on his immediate return to his father and would object strongly if the father were forced to appear in a foreign court to establish custody or to defend a decision to bring the child back to the United States.
 - In international custody disputes between two parents, we push for children to be returned promptly to their "habitual residence." This is the rule we follow under the Hague Convention on parental child abduction. We also push non-Hague countries to follow it, for the benefit of American parents. Elían's habitual residence is Cuba.
 - If Elían were an American child, we would also object to making a decision based on Elían's purported views. We would say that he is too young to have a view, and that it is too easy for those with immediate physical custody to influence what he says. This principle is reflected in the Hague Convention.
- Our standing as a country that respects fundamental human rights will surely be damaged – involving the state courts of Florida will be seen as cruelly prolonging the separation of the father and son for political purposes.
- The international community will use imposing US citizenship on Elían Gonzalez or making him a permanent resident of the United States as an example of the United States disregarding fundamental international legal principles.

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January 26, 2000

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EXCERPTS FROM RELEVANT INTERNATIONAL LAW SOURCES AND INSTRUMENTS

SAMPLE PRIOR USG STATEMENTS ON CITIZENSHIP

“no State is free to extend the application of its laws of nationality in such a way as to reach out and claim the allegiance of whomever it pleases. The scope of municipal laws governing nationality must be regarded as limited by consideration of the rights and obligations of individuals and of other States.” (8 Whiteman 32)

“under international law the power of a state to confer its nationality is not unlimited.” (8 Whiteman 32)

If under Mexico’s 1857 constitution an alien acquiring land in Mexico or having children born there became ipso facto Mexican nationals, the law “would be contrary to international law.” (8 Whiteman 32)

“international law imposes certain limits on the conferring of nationality without the consent of the person concerned.” (8 Whiteman 33)

“well-established principles of international law impose certain limitations upon the conferring of nationality by a State without the consent of the person concerned. The Government of the United States would refuse to recognize and would, in fact, object to any attempt on the part of a foreign State to impose its citizenship . . . upon American citizens without their consent, save in well-recognized circumstances which have been traditionally recognized as exceptions to the general rule.” (8 Whiteman 33)

RELEVANT HUMAN RIGHTS INSTRUMENTS

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . political or other opinion, national . . . origin, property, birth or other status. . . .

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence Everyone has the right to the protection of the law against such interference or attacks.

Article 13

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Draft of January 25, 2000

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 16

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 20

2. No one may be compelled to belong to an association.

Article 26

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

Principle I

... Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of ... political or other opinion, national ... origin, property, birth or other status, whether of himself or of his family.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents ...

Principle 7

... The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. ...

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as ... political or other opinion, national or social origin, property, birth or other status.

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PART III

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression . .

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. . . .

Article 24

1. Every child shall have, without any discrimination as to . . . national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. . . .

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . political or other opinion, national . . . origin, property, birth or other status.

Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, G.A. res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53 (1985).

Article 5

1. Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligation of the State in which they are present, in particular the following rights:

. . . (b) The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence;

(e) The right to freedom of thought, opinion, . . .

(f) The right to retain their own language, culture and tradition; . . .

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2. Subject to such restrictions as are prescribed by law and which are necessary in a democratic society to protect national security, public safety, public order, public health or morals or the rights and freedoms of others, and which are consistent with the other rights recognized in the relevant international instruments and those set forth in this Declaration, aliens shall enjoy the following rights:

(a) The right to leave the country;

Article 10

Any alien shall be free at any time to communicate with the consulate or diplomatic mission of the State of which he or she is a national or, in the absence thereof, with the consulate or diplomatic mission of any other State entrusted with the protection of the interests of the State of which he or she is a national in the State where he or she resides.

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990. (US has signed but not ratified.)

PART I

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's . . . political or other opinion, national . . . origin, property, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents . . .

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. . . .

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 8

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Draft of January 25, 2000

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. . . .

Article 10 . . .

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end . . . States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. . . .

Article 14

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. . . .

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the

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upbringing and development of the child. The best interests of the child will be their basic concern. . . .

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status . . . shall . . . receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts . . . to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. . . .

Article 29

1. States Parties agree that the education of the child shall be directed to:

. . . (c) The development of respect for the child's parents . .



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

January 25, 2000

Linda Osberg-Braun, Esq.
Roger A. Bernstein, Esq.
Hackley, Bernstein & Osberg-Braun, P.L.
Turnberry Plaza
2875 N.E. 191st St., Penthouse 1B
Aventura, FL 33180

Spencer Eig, Esq.
420 Lincoln Rd., Suite 379
Miami Beach, FL 33139

BY FACSIMILE

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

As you know, the two grandmothers of Elian Gonzalez, Raquel Rodriguez and Mariela Quintana, recently met with the Attorney General and Commissioner Meissner. At that meeting, they expressed their very strong desire to visit privately with Elian, in a neutral setting, before they left the United States. They have requested the assistance of the Attorney General and the Commissioner in making such a visit possible and, through discussions with you and others, the Department has sought to implement that request.

As you know, certain religious leaders in Miami who are not affiliated with the National Council of Churches were willing to make a church property available to the family for such a visit yesterday. The offer of a facility was conditioned, however, on an expression of interest by both Lazaro Gonzalez and the grandmothers in using the site as a pastoral setting for a family reunion. Although the grandmothers did express such willingness, Lazaro Gonzalez made it clear through you that he refused. The INS then gave Lazaro Gonzalez an opportunity to propose a different neutral setting. Mr. Gonzalez declined to do so and indicated through you that he would not agree to a meeting in a neutral setting. Subsequently, upon the grandmothers' arrival in Miami yesterday afternoon, we understand that the grandmothers spoke to Lazaro Gonzalez on the telephone and asked that their visit with Elian take place at Mr. Gonzalez' brother's house. Again, Lazaro Gonzalez made clear to the grandmothers that his home was the only site at which he would allow them to visit Elian.

Linda Osberg-Braun, Esq.
Roger A. Bernstein, Esq.
Spencer Eig, Esq.

Page Two

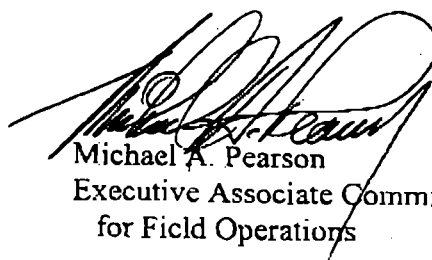
In light of the rift in the family that the recent events have caused, as well as security and publicity concerns, the grandmothers have clearly stated that they would not be comfortable visiting with their grandson in Lazaro Gonzalez' home. The grandmothers have reiterated to the Department and the INS how much they miss their grandson, with whom they have had a very close relationship, and that they overcame their apprehension about traveling to Miami -- and are willing to do so again -- for the sole purpose of having a visit with Elian.

In order to ensure that Elian has the chance to spend time alone with his grandmothers, the INS is obliged to direct Lazaro Gonzalez to make Elian available for a visit with his grandmothers on Wednesday, January 26, at 4:00p.m. at the home of Sister Jeannne O'Laughlin, at 4745 Pine Tree, Miami Beach, Florida. Sister O'Laughlin is the president of Barry University, a Dominican institution, and her residence is in a gated area where security can be assured. This site is an appropriate neutral location that would permit a private meeting. It is a reasonable distance from Lazaro Gonzalez' house, it is located within Miami-Dade County, and it entails no more travel than some of the other places Elian has visited during his stay with Mr. Gonzalez. The residence has ample room to accomodate comfortably Mr. Gonzalez and any other family members who might bring Elian to the visit.

Elian has been temporarily paroled into the United States for deferred inspection pursuant to 8 U.S.C. § 1182(d)(5)(A) (Supp. IV 1998), and 8 C.F.R. §§ 212.5, 235.2, 236.3 (1999). These provisions authorize the INS District Director to place conditions on Elian's parole. This letter is notice that District Director Wallis joins me in requiring, as a condition of Elian's continued parole for deferred inspection, that Elian's Miami relatives ensure Elian's presence at Sister Jeannne O'Laughlin's residence on Wednesday, January 26, at 4:00p.m., in order to allow him to visit with his grandmothers. In order to enable the grandmothers to make their flight plans, we request that you confirm with us today that Elian will be present at this meeting. Please contact Bob Wallis at (305) 762-3405 to provide that confirmation, and to confirm the list of those who may come to the residence with Elian. Failure to contact Mr. Wallis by 3:30p.m. today will be construed as a refusal to make Elian available for the meeting and as a breach of Elian's parole.

Please be assured that this meeting is only a visit, and will not change Elian's present placement in the care of Lazaro Gonzalez.

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
for Field Operations



IMMIGRATION AND NATURALIZATION SERVICE

OFFICE OF THE COMMISSIONER

425 I STREET, N.W.

WASHINGTON, D.C. 20536

FACSIMILE TRANSMITTAL COVER SHEET

FAX #: (202) 307-9911

TO: Mary DeRosa

DATE: 01/25/00

PHONE:

FAX #: 456-9110

NUMBER OF PAGES TO FOLLOW: 2

MESSAGE:

FROM: Cathy St. Denis, Counselor to the Commissioner
RM 7100 CAB
202-514-8195

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

FAMILY DIVISION

CASE NO: 00-00479 FC 29

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

Petitioner,

vs.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent.

TEMPORARY PROTECTIVE ORDER

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

FACTS

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

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

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

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

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

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

² The Republic of Cuba is not a state within the meaning of the Uniform Child Custody Jurisdiction Act "UCCJA," which defines state as "any state, territory, or possession of the United States; the Commonwealth of Puerto Rico; or the District of Columbia." Fla. Stat. 61.1306(10). However, Fla. Stat. 61.1348, which must be read in conjunction with Fla. Stat. 61.1308(1)(d), applies the general policies of the UCCJA to the international area and provides that a decree of a foreign nation may be recognized by Florida courts if the foreign tribunal accorded minimum due process to all affected persons prior to entering the decree. See Kallman v. Kallman, 623 So. 2d 1213 (Fla. 3rd DCA 1993).

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

ORDERED and ADJUDGED as follows:

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

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

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


ROSAM. RODRIGUEZ
CIRCUIT JUDGE

Jan-10-00 05:57P

01/10/00 17:29 FAX SUB 319 1355

CHIEF CLERK

P. 04

NO. 874

P. 179

JAN. 11. 2000 6:27AM

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

FAMILY DIVISION

CASE NO: 00-00479 FC 29

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

Petitioner,

vs.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent.

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

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

ORDERED and ADJUDGED as follows:

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

Jan-10-00 05:58P

JAN 10 17:50 FAX 202 514 1333

CHIEF JUSTICE EMBINA

P.05

JAN. 11. 2000 6:27AM

NO. 874 P. 2/3

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

2. Petitioner shall immediately serve Respondent with copies of all Orders of this Court and all pleadings filed herein, including but not limited to (i) a Notice of Hearing of the evidentiary hearing on the Verified Petition for Temporary Custody and Other Relief, which notice shall include a statement, pursuant to Fla. Stat. § 61.1324(2), directing that Respondent appear personally and that his failure to appear may result in a decision adverse to his interest, (ii) Petitioner's Verified Emergency Ex-Parte Petition for Interim Order, (iii) Petitioner's Verified Petition for Temporary Custody and Other Relief, (iv) the Court's January 10, 2000 Temporary Protective Order, and (v) this Order Setting Hearing on Verified Petition for Temporary Custody. Said service shall be made by the means set forth in Fla. Stat. § 61.1312, Fla. Stat. § 751, or in any international convention addressing service of process on individuals in foreign countries, or by private courier service. Additionally, Petitioner may seek the assistance of the Immigration and Naturalization Service which, as indicated by its January 5, 2000 letter, has the ability to communicate and meet with Respondent.

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

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

JAN-11-2000 6:20AM

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

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


ROSA I. RODRIGUEZ
CIRCUIT JUDGE

THE WHITE HOUSE
WASHINGTON

COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: _____

TOTAL PAGES (INCLUDING COVER PAGE): _____

TO: _____

Mary De Rosa

ATTN: _____

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FROM: _____

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COMMENTS: _____

Letter re: Elian Gonzalez

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30TH DISTRICT, CALIFORNIA

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Congress of the United States
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FAX (323) 757-6500

January 6, 2000

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

Dear Mr. President:

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

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

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

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

Sincerely,

Maxine Waters
Member of Congress

Barbara Lee
Member of Congress

James E. Clyburn
Member of Congress

William Clay
Member of Congress

Sheila Jackson Lee
Member of Congress

Maurice Hinchey
Member of Congress

Sanford Bishop
Member of Congress

Stephanie Tubbs-Jones
Member of Congress

Alcee Hastings
Member of Congress

Jan Schakowsky
Member of Congress

Gregory Meeks
Member of Congress

Julia Carson
Member of Congress

Neil Abercrombie
Member of Congress

Nancy Pelosi
Member of Congress

Elijah Cummings
Member of Congress

Earl Hilliard
Member of Congress

cc: **Attorney General Janet Reno**
Commissioner Doris Meissner

Additional Supporters

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

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

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

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

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

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

**Ambassador Andrew Young
GoodWorks International, LLC**

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

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

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

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



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

Washington, D.C. 20530

FAX COVER SHEET

DATE: 12/15

TO:

Mary De Rosa

NSC - Legal Dept.

PHONE NO.

456 - 9111

FAX NO.

456 - 9110

FROM:

JAMES CASTELLO

Associate Deputy Attorney General

PHONE NO.

514-3392

FAX NO.

514-6897

NO. OF PAGES: 11 (EXCLUDING COVER)

COMMENTS:

As you requested. Again, this document
should be very closely held, but I have
now determined that it is not classified

INTERVIEW WITH JUAN MIGUEL GONZALEZ QUINTANA

On December 13, 1999, at approximately 7:30 a.m., the writer Silma L. Dimmel, Officer in Charge for the U.S. Immigration and Naturalization Service (INS) at the Havana sub office accompanied by Jeffrey DeLaurentis, U.S. Interests Section in Havana arrived at Calle Cossio #170, Cardenas, Cuba, the residence of Mr. Gonzalez Quintana to conduct an INS interview. At the residence, Mr. Gonzalez Quintana was surrounded by his parents, the parents of Mrs. Elisabeth Brotons, his present "wife" although not legally married, their son, and other family members.

I introduced myself and the Political Officer and expressed our sincerest condolences for the tragic death of Ms. Elisabeth Brotons. Mr. Gonzalez Quintana was asked if we could meet in private in order to talk freely and without interruptions. Mr. Gonzalez Quintana led us to another area of the residence where he had set a table with 6 chairs in anticipation of our visit.

Again, we expressed our deepest sympathies over the tragedy on behalf of the U.S. Government, as well as our concern for the well-being of Elian Gonzalez. I also stressed that the INS, on behalf of the U.S. Government, would like to resolve the matter pertaining to Elian as quickly as possible.

Mr. Gonzalez Quintana proceeded with reading his handwritten statement which said that he preferred not to have the interview, and that he had given his mother full power of attorney in order for her to represent him. The statement indicated, however, that he was willing to proceed with the interview, but wished that his parents be present during the entire interview. Under the circumstances, and due to the fact that this would be the only opportunity INS would have to interview him on behalf of the U.S. Government, I agreed to this. However, it was made clear to Mr. Gonzalez Quintana that the questions would be asked directly to him but that any comments from the parents would be allowed later. All parties agreed.

Mr. Gonzalez Quintana continued to read his handwritten note in which he mentioned the inclusion of a variety of documents that will be identified as attachments to this statement. Once he concluded, we began the interview. The questions presented to Mr. Gonzalez Quintana had been prepared by the INS' General Counsel office in Washington, D.C. Mr. Gonzalez Quintana was also given an attachment of five questions prepared by the General Counsel's office, translated into the Spanish language, for him to answer by circling the response without any oral presentation. He completed this immediately and without any hesitations.

Questions:

1) Are you Juan Miguel Gonzalez Quintana? Can you present me with any identification documents?

Yes. He presented carnet de identidad #6MOOO300566.

2) Who has accompanied you to this interview?

My parents, Maria Mariela Quintana Garrido and Juan Gonzalez Hernandez.

3) Are you the biological father of Elian Gonzalez Broton?

Yes.

4) Do you have Elian's birth certificate?

Yes, also I'm submitting my birth certificate and his mother's birth certificate.

5) Is there any formal custody arrangement concerning Elian? If so, do you have any documents describing the custody arrangement? If not, did you and Ms. Brotons have an informal arrangement for Elian's custody? If so, please describe.

When we got divorced the laws in Cuba grant custody of a child to the mother. However, the boy practically lived with me since he attended school closer to my residence because she lived outside the city limits. She even decided not to register him at the school to which he was supposed to attend in order for him to stay here and my mother to take care of him while both of us worked. She (Ms. Brotons) sometimes argued with me because he spent more time with me in this residence than with her. He would sleep and eat here and spent most of his time here. He even slept with me and my present "wife" in the same bed while visiting because he's very close to me.

6) Under United States law, there are different ways to proceed with the case of an individual in Elian's circumstances. First, the individual may ask to voluntarily leave the United States and return to Cuba. Second, he may ask to remain in the United States in his current status, which will entitle him to become a permanent resident after a year. Finally, he may apply for asylum to become a legal resident of the United States. Asylum may be granted if the individual has a reasonable fear of

persecution upon his return to Cuba. As his father, which option would you choose for Elian?

Return immediately to Cuba. I was listening to the news and about the laws in the United States. Elian, at the age of six, cannot make a decision on his own. In the first place, he wasn't found on land, he was found at sea. I'm very grateful that he received immediate medical assistance, but he should be returned to me and my family. I am not allowing him to stay in the United States. 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.

7) Elian arrived in the United States on November 25. Were you aware that Elian was being taken to the United States? If so, at what point did you become aware? Did you agree to this?

No, I did not know that he was being taken to the United States. Neither he nor his mother lacked anything here. She worked in Varadero in the Hotel Paraiso as a steward and I provided for his sustenance. She did not need to go to the United States and there was no idea that she was thinking in that manner. As a matter of fact, neither her parents nor I had any idea what she had been planning and if so, would not have allowed her to go and take Elian.

For your information, on the prior Wednesday before her departure, I went to pick him up at the place where she lived; a room because she didn't live with her mother. He slept that night in this house and I took him to school on the following Thursday morning. Again, that day my brother went to pick him up at the school and he slept here that night because he (Elian) and my brother, Jose Antonio Gonzalez, had been making a kite to fly it on the next day after school. They had been working on that kite for days and Elian was very excited. When my brother returned on Friday to the school to pick up Elian, he was informed by the teacher that his mother had picked him up on Friday morning and that he didn't return to the school in the afternoon of that same day.

It seems that she (Ms. Brotons) had been planning this for some time without anybody's knowledge. My brother went to her house on Saturday and Sunday and didn't find Elian there. On Monday, my cousin, who is also Elian's Godmother, went to pick up Elian at school and again, the teacher informed her that he wasn't taken to the school on that day. She, cousin/Godmother, immediately came to the house to tell my father. I was working and they went to Ms. Brotons' house looking for Elian. On the way there, my father was stopped at a store by someone who told him that Ms. Brotons and Elian had left the country. They decided not to tell me until I returned from work in order not to worry me. My mother informed me of what had happened after my return from work.

We still didn't know where Elian was - until November 25, when people watched the news and told me that they saw a boy on television that looked like him. I asked my father to call his relatives in the United States to inquire about Elian's welfare.

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001. form	re: Questions [partial] (1 page)	12/13/1999	P6/b(6)

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Legal Advisor (Mary DeRosa)
OA/Box Number: 2544

FOLDER TITLE:

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2012-0371-F

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RESTRICTION CODES

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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

(b)(6)

Elian is a very bright boy. On the day he was found, I received a telephone call from the doctor in the United States, who provided care for Elian. It was Elian who had given the doctor his full name, date and place of birth, my name and my telephone number in Cuba where he (doctor) could reach me. The doctor needed to know of Elian's past medical record because he had told the doctor he had had surgery before.

8) Can you describe your relationship with Elian? How did that change since your relationship with Ms. Brotons ended?

In between relationships, Ms. Brotons and I spent 15 years together. We wanted a child very badly and she had a few miscarriages. When Elian was born he was a miracle to us. We got divorced in 1991, and got together again because we wanted to have a child together. Elian was born in 1993, and we were very happy. As a matter of fact, Elian's name is the construction of parts of our names: "Eli", for the beginning of her name Elisabeth and "an" for the latter part of my name, Juan. Elian is my life. He is my first son. Wherever I went, he went with me. I taught him how to swim, do karate, he has a parrot here, dogs, a bicycle and all kinds of toys. As a matter of fact, I haven't been to the barber because he isn't here since we always went together.

I always had a good relationship with Ms. Brotons. She would even bring Elian here and go to buy birthday gifts for my father. Even her present boyfriend would come here and talk to me and eat here. My parents also liked him a lot. I liked him also because he never mistreated my son whom he loved very much and I appreciated that from him. Ms. Brotons also had a good relationship with my present "wife".

9) A law firm has submitted documents to the INS in which they claim to represent Elian. This law firm has told the INS that Elian should be permitted to remain in the United States. Are you aware of this law firm? Have you ever spoken to any of these attorneys? Do you want this law firm to represent Elian's immigration interests?

No. I do not want any law firm to represent Elian.

I have heard such on television. I do not want to bring politics into this or for anyone to use Elian for political purposes. Can you believe that there should be a trial against me whereas I cannot claim my child?

000051

I will not accept any telephone calls from any law firm. No one has talked to me. For your information, the day after Elian was rescued, I immediately went to the Civil Registry office to obtain the necessary documents in order to reclaim my son. Please notice the dates on the birth, divorce and marriage certificate which indicate November 26, after Elian was found.

10) How often did you see Elian?

All of the time. He basically lived here, we did everything together and as already mentioned, he spent more time with me and my parents than with his own mother.

NOTE: At this point, Mr. Gonzalez Quintana excused himself and returned with an album of photographs of Elian when he was a baby and toddler with Mr. Gonzalez Quintana, his cousin and many other pictures of Elian. He also showed us pictures of Elian with his new baby stepbrother and his father as well as pictures of Elian with his grandparents and great grandmother.

11) How much time did you spend with him?

As stated, as much time as possible since we are very good friends and I miss him very much. We did everything together. I used to take him to the place where I work to use the swimming pool and we played together. He slept with me, that's how close we are.

12) Did Elian sleep at your home since your relationship to Ms. Brotons ended? If so, how often?

Yes, all of the time.

13) Did you participate in Elian's school or other activities in any way? If so, please describe your participation?

Yes, always. I attended meetings and school activities. Imagine, it was I who noticed Elian's bleeding problem and at my insistence, the doctor was contacted; that's how close we are.

14) Please describe any financial or other support that you may have provided for Elian's upbringing.

I work at the Parque Josone which is a tourist center where they have all kinds of facilities. I have been working there for over 11 years. The law requires that I pay 60 pesos (equivalent of 3 USD) a month. Instead I gave Ms. Brotons \$5.00 (USD) a month

and bought food and clothes. I even brought food to her often although I knew she didn't need it. Each time I bought something for Elian, I bought two; one for here and one for Ms. Brotons' residence.

15) Do you have any documents demonstrating your involvement in Elian's life?

Yes. I am submitting all sorts of documents which prove of my involvement in his life. I am also submitting affidavits of people which relate to my support to Elian.

16) Did you enter into marriage with Elisabeth Brotons, Elian's mother? If so, when?

Yes. I am providing the marriage certificate.

17) Did you register this marriage? If so, do you have a marriage certificate?

Yes, I am including such. Elian was born in 1993, after we were already divorced, but since we wanted to have a child together we got together again and then he was born.

18) Were you married to Ms. Brotons at the time of her death, on or about November 24th?

No.

19) If divorced, do you have a divorce decree?

Yes, I am including such.

20) Until his legal status in the United States can be determined, the Immigration and Naturalization Service has released Elian into the custody of Lazaro and Angela Gonzalez, who we understand to be family members. Can you tell us how you and Elian are related to them? Have you been in contact with them? Do you want them to represent Elian's immigration interests?

Lazaro Gonzalez is my uncle, my father's brother. He and his wife left Cuba for the United States legally over 10 years ago. They lived with us in this house and with family since I was a young child. Last August, 1998, they visited Cuba for 15 days and that's when they met Elian. They took a liking to Elian because he's such a nice boy, well behaved and well mannered; since he's such a lovable boy, they immediately liked him. Elian is very well educated.

When this whole thing started I talked to them and initially, they said that Elian should be returned immediately to me. Then all of the sudden, things changed. We had an argument over the phone because they even offered me money to leave Elian there. I do not want Elian to stay there, I want him back here in Cuba. It appears that Lazaro is under pressure. I tried to convince him rationally to let Elian return, but he says he is unable to back off because of the circumstances of what could happen.

Mr. Gonzalez Quintana's father, Juan Gonzalez Hernandez, added that his brother Lazaro told him that under the present circumstances it is impossible for him to back off because he would look bad in front of the Cuban people in Miami.

Mr. Gonzalez Quintana proceeded to say that the relatives in the United States have no rights over Elian and that they are to return him to Cuba as soon as possible.

21) You may apply for a visa to the United States to see Elian now. Visas are generally granted in situations like this. Do you wish to apply for a visa?

No, I am not interested. I want Elian to be returned as soon as possible. I do not want to speak to other people anymore. I am tired of being hounded by the press. At this moment I cannot work under these circumstances, it's impossible; I am worried for Elian.

At this point, Mr. Gonzalez Quintana's mother added that she has not returned to her job because of being distraught. She misses her grandson and wants him back immediately. The grandfather also expressed the same feelings.

Interview concluded at this point.

SUMMATION

It was this officer's observation that the residence where Elian lived, until the time he was removed by his mother, is very well kept, clean and that Elian has a very loving set of grandparents and father.

Mr. Gonzalez Quintana appeared very concerned for Elian's return to him as soon as possible without further delays because ~~his~~ misses his "buddy". Mr. Gonzalez Quintana provided for the well being of Elian and his grandparents took good care of Elian after school and during visits to the residence. Mr. Gonzalez Quintana lives with his present common-law wife, baby son, his parents and his brother. Elian's grandparents on his mother's side were also present at Mr. Gonzalez Quintana residence, but were precluded from being present at the interview.

Mr. Gonzalez Quintana was very much involved in Elian's sustenance and care. He taught Elian how to swim, do karate and did many activities together, to the point that Mr. Gonzalez Quintana has not visited the barber shop since Elian's gone because they got their haircuts together.

Elian was taken care of by his paternal grandmother more so than by his mother since she resided in a very small room and not with her mother. This is one reason why Elian spent so much time with his father, grandparents, stepmother and stepbrother.

Mr. Gonzalez Quintana, his parents and maternal grandparents expressed their request that Elian return to Cuba immediately. His paternal grandparents are greatly distraught that the emptiness that Elian's not being in Cuba has left in the family. The honesty, concern and truthfulness on the part of Mr. Gonzalez Quintana was palpable as well as his caring and wanting his son be returned to Cuba. Elian's paternal grandparents also appear to be confused and distraught. The family was hurt by the death of Ms. Broton and ~~was~~ it was obvious that Elian is deeply missed by the family.

ATTACHMENTS:

1. Written responses made by Mr. Gonzalez Quintana by circling the correct answer to questions prepared by the General Counsel office.
2. Elian Gonzalez Brotons birth certificate.
3. Juan Miguel Gonzalez Quintana birth certificate.
4. Elisabeth Brotons Rodriguez birth certificate.
5. Juan Miguel Gonzalez Quintana and Elisabeth Brotons Rodriguez marriage and divorce certificate reflected on the same document.
6. Copy of doctor's note in relation to Elian Gonzalez medical report.
7. Affidavit of Lucia Zapata Ravelo attesting to the relationship between Mr. Gonzalez Quintana with his son Elian.
8. Affidavit of Elia Baro Rivas attesting the relationship between Mr. Gonzalez Quintana and his son Elian.
9. Affidavit of Mirta Estevez Perez attesting the relationship and financial support of Mr. Gonzalez Quintana on behalf of his son Elian.
10. Affidavit of Pedro Pablo Baro Fernandez attesting the relationship between Mr. Gonzalez Quintana and his son Elian.
11. Affidavit of Alba Isabel Rodriguez Garcia attesting to the mutual activities performed by Mr. Gonzalez Quintana with his son Elian.
12. Affidavit of Maribel Reyes Casas attesting to Mr. Gonzalez Quintana's participation in activities held at Elian's school.
13. Affidavit of Family Morales Delgado attesting to Mr. Gonzalez Quintana's participation in activities held at Elian's school.
14. Affidavit of Luciano Evaristo Hernandez Gonzalez attesting to Mr. Gonzalez Quintana's concern to the well being of his son Elian.
15. Affidavit of Conrado Vicente Marrero Piloto attesting to Mr. Gonzalez Quintana's participation at activities with his son Elian.

16. Affidavit of Fidel Ernesto Ramirez Torres attesting attesting to the good working relations of Mr. Gonzalez Quintana with coworkers.
17. Affidavit of Rey Paul Ramos Riera attesting that Mr. Gonzalez Quintana sought for immediate medical care for Elian.
18. Affidavit of Gilberto Gonzalez Pena attesting to Mr. Gonzalez Quintana participation to activities with his son Elian.
19. Affidavit of Milagros Severina Cortes Alfonso attesting that Mr. Gonzalez Quintana has taken his son Elian to the hospital for surgery.
20. Family Law document number 1289 which relates to the relationship between father and son.
21. Copies of Elian's school records of his work and teacher's note.
22. Affidavit of Juan Miguel Gonzalez Quintana giving power of attorney to his mother Maria Marianela Quintana Garrido to represent him.

FAVOR DE CIRCULAR LA CONTESTACION APROPRIADA

1. ¿Está atendiendo usted a esta sesión voluntariamente? Si ☒ No
2. ¿Se siente usted ^{en} el poder hablar libremente? Si ☒ No
3. ¿Ha hecho usted su propia decisión de lo que va a contestar hoy? Si ☒ No
4. ¿Le gustaría a usted que Elian regrese a Cuba a vivir con usted o que se quedara en los Estados Unidos?
- ☒ Que regrese a Cuba Que se quede en los EEUU
5. ¿Quiere usted ir a los Estados Unidos a ver a Elian ahora? Si No ☒



HERE'S AN INTERESTING FAX...

... From the Office of Public Affairs
U.S. IMMIGRATION & NATURALIZATION SERVICE

425 I Street, NW, Washington, DC 20536



(202) 514-2648



(202) 514-1776

ate: 1/4/00

ax to: James Costello

ax Number: x43392

rom: Maria Cardona

ages (Including Cover): 3

omments: Q's + A's forthcoming -
w/in 5 or so minutes.

FINAL INS DRAFT STATEMENT (Cleared by all at INS—Tuesday, Jan. 4)

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

There is no question that Mr. Gonzalez is indeed Elian's father. Moreover, Mr. Gonzalez has had a close and continuous parental relationship with Elian. INS has not uncovered any information that might call into question Mr. Gonzalez's parental and legal rights with regards to Elian's immigration status.

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

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

After reaching a decision, INS believes there are several ways this decision can be implemented. The United States has discussed with the Government of Cuba their consideration of allowing Mr. Gonzalez, Elian's father, to travel to the United States to bring Elian home. INS also has offered Elian's great uncle in Miami and any member of his Miami family an opportunity to escort Elian back to Cuba. In addition, INS is aware of neutral third parties that have offered to assist in facilitating Elian's return to his father. INS is ready to work with them to assist as an appropriate arrangement is sought for Elian to be reunited with his father. We believe this decision can be carried out without INS' having to take physical responsibility of Elian.

During INS' interviews with Elian's father, he provided vivid details about his parental relationship with Elian and about the nature of the bond they share as father and son. He provided extensive information about Elian's schooling, his medical and health histories as well as photographs depicting the activities in which he and his other family members frequently participated with Elian. This scope of information and level of detail Mr. Gonzalez provided

helped inform INS as to the nature and closeness of the relationship Mr. Gonzalez shared with his son Elian.

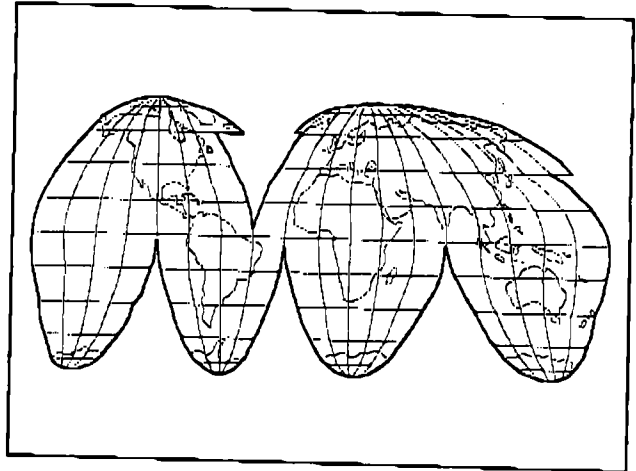
This decision has been based on the facts and the law. Both U.S. and Cuban law recognize and honor the special relationship between parent and child, and family reunification has long been a cornerstone of both American immigration law as well as INS practice. The INS has established that Juan Gonzalez is Elian's father, that they share a deep bond, and that he has the legal authority to speak on Elian's behalf. We have also determined that Mr. Gonzalez' wishes are that Elian be returned to him as soon as possible.

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

-INS-

**U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.**

**OFFICE OF THE DEPUTY
ATTORNEY GENERAL**



DATE: *January 4, 2000*

TO: *Mary DeRosa
456-9110
Charles Shapiro
736-4446
Carol Florman
5-9599
Willie Ferrer
4-1724*

FROM: *James Castello*

MESSAGE:

(TOTAL NUMBER OF PAGES INCLUDING THIS 9)

TRANSMITTED BY: *Margo A. Bruce*

**FOR VOICE COMMUNICATIONS WITH THIS OFFICE, PLEASE
TELEPHONE (202-514-3883)**

**TO TRANSMIT TO THIS OFFICE VIA TELEFAX, PLEASE
TELEPHONE (202-616-1080 Classified)**



HERE'S AN INTERESTING FAX...

... From the Office of Public Affairs
U.S. IMMIGRATION & NATURALIZATION SERVICE

425 I Street, NW, Washington, DC 20536



(202) 514-2648



(202) 514-1776

Date:

1/4/00

Fax to:

James Costello

Fax Number:

x 43392

From:

Maria Cardone

Pages (Including Cover):

5

Comments:

attached!
Q's + A's for training
within 5 or 6 minutes!

Q&As

INS Decision on Elian Gonzalez

1. **Why is INS returning Elian Gonzalez to Cuba?**
INS has determined that Elian's father, Juan Gonzalez, has sole authority to speak on Elian's behalf regarding the immigration issues involved in this case. Mr. Gonzalez has asked that his son be returned to Cuba.
2. **What about Elian's request for asylum?**
The only person with legal standing to file an asylum request on Elian's behalf is Elian's father. He has not filed any asylum request for Elian and in fact has stated that he doesn't want such an application made. Applications filed by any other persons will not be considered since those persons have no legal standing to represent Elian or to speak on his behalf regarding immigration issues.
3. **What facts and what law led to this decision?**
Answer to be provided by General Counsel
4. **Who had the final word on this decision? Was the White House involved? Was the Justice Department involved? The Attorney General? The State Department?**
This was an INS decision made in consultation with the Justice Department, including the Attorney General. The White House and the State Department were advised of the decision but were not involved in the decision-making process.
5. **Will you release the reports of your meetings with Elian's father or other documents from this case?**
Answer to be provided by GC
6. **Didn't INS say the issue of custody would be decided in state court?**
The INS decision was not a custody decision. It was a decision on who has the legal authority to speak on Elian's behalf in immigration matters. What we have said is that the custody issue may ultimately end up in the courts but that is separate from the decision INS had to make about who could legally speak on Elian's behalf regarding the immigration issues involved in his case.
7. **Doesn't this decision deny Elian the right to due process and a hearing? Why don't you let an immigration judge decide?**
There is no issue to take before an immigration judge. Mr. Gonzalez, who speaks for the child, has asked that he be returned to Cuba. Mr. Gonzalez is not asking for a hearing; he is withdrawing his application for admission to the United States.

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

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

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

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

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

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

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

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

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

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

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

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

14. **When and how will the child be returned?**

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

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

Yes.

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

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

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

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

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

(New answer coming from OGC.)

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

Absolutely not. The two situations are totally unrelated.

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

No.

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

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

22. Why has this decision taken so long?

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

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

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

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

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

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

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

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

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

xxx/xx

The Interests Section of the United States of America in Havana, Cuba, presents its compliments to the Ministry of External Relations of the Republic of Cuba and responds to the Ministry's note of November 27, 1999, regarding the matter of Elian Gonzalez Broton rescued at sea and delivered to the United States by the Coast Guard on November 25, 1999.

The Interests Section wishes to advise the Ministry that in this matter, as in any matter of an unaccompanied minor who arrives on United States shores, the primary concern is for the child. The Government of the United States of America is committed to working with the family of Elian Gonzalez Broton, including the father, as well as with all relevant officials, to achieve an appropriate resolution.

The regulations of the Immigration and Naturalization Service of the United States of America recognize the right of a parent to assert parental interests in an immigration proceeding. The Immigration and Naturalization Service will therefore be in contact with Juan Manuel Gonzalez Quintana in the near future to explain the process by which it will evaluate his rights in this matter. This process will require Juan Manuel Gonzalez Quintana to undergo an interview and present documentation at the Interests Section of the United States of America in Havana.

Juan Manuel Gonzalez Quintana will need to satisfy the Immigration and Naturalization Service that he is indeed the father of Elian Gonzalez Broton and does have lawful authority to exercise parental rights. To document paternity, he should present public documents, such as birth and baptismal certificates. If these are not available, he should present secondary documents, such as school and medical records. If secondary documents are not available, he should present written statements from persons who know of his relationship to Elian Gonzalez Broton.

Juan Manuel Gonzalez Quintana will also need to establish to the Immigration and Naturalization Service his lawful authority to exercise parental rights. To do this, he should present public documents, such as divorce decrees or court orders, that reflect his right of custody. If these are not available, he should present secondary documents to show that he has exercised parental rights, including school and medical records, for example. In its communication with Juan Manuel Gonzalez Quintana, the Immigration and Naturalization Service will furnish a detailed explanation of the types of evidence generally used to establish family relationships and explain that he is not restricted to one type of evidence. The Immigration and

Naturalization Service will consider any evidence presented regarding paternity and parental authority.

The Interests Section has the honor to request that the Ministry facilitate Juan Manuel Gonzalez Quintana in obtaining necessary documentation. The Interests Section also advises that Juan Manuel Gonzalez Quintana may have someone accompany him to portions of the interview process if he desires.

The Interests Section reminds the Ministry that the Government of the United States of America will follow a deliberate process consistent with rules and procedure, and will not be pressed into taking actions that are inconsistent with these principles. The Government of the United States of America rejects any ultimatum or deadline imposed by the Republic of Cuba for resolution of this matter.

The Interests Section of the United States of America takes this opportunity to renew the Ministry of External Relations the assurances of its highest considerations.

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

NATIONAL
SECURITY
COUNCIL

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

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To:

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FAX

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Date / Arhus

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Date/Time:

No. of pages to follow:

3

RE:

Dispute

Response to GOC

dispute

**URGENT FOR: Wendy Patten
Mary DeRosa**

FROM: Mara Rudman

**3 pages follow. Mara asks that you begin working from this fax.
Please do not wait for the official staffing via records
management.**

Thanks

Wendy

**Office of the Governor**THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001JEB BUSH
GOVERNOR

January 6, 2000

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

Dear President Clinton:

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

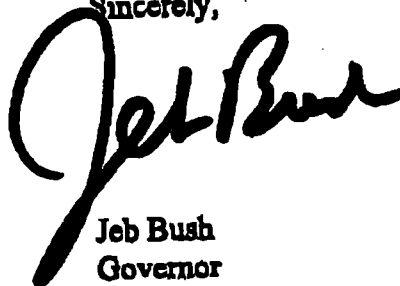
Many in the South Florida community are incensed by the failure of INS to afford Elian any hearing or appropriate due process, and are justifiably concerned about the welfare of this child. Elian's father has not been permitted to leave Cuba to visit his son here, and may not have been permitted to speak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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeb Bush", written in a cursive style.

Jeb Bush
Governor



STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

JEB BUSH
GOVERNOR

FAX COVER SHEET

Date: 1/6/2000

Please deliver the following 3 pages (including cover sheet)

To: NAME: The President

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

From: Governor Jeb Bush

Phone: (850): 488-5603

Fax: (850) 922-4292 _____

Message: _____

6TH SECTION of Level 1 printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 5, 1999 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 8 -- ALIENS AND NATIONALITY
CHAPTER I -- IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE
SUBCHAPTER B -- IMMIGRATION REGULATIONS
PART 236 -- APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS;
REMOVAL OF ALIENS ORDERED REMOVED
SUBPART A -- DETENTION OF ALIENS PRIOR TO ORDER OF REMOVAL

8 CFR 236.3

§ 236.3 Detention and release of juveniles.

(a) Juveniles. A juvenile is defined as an alien under the age of 18 years.

(b) Release. Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to:

(i) A parent;

(ii) Legal guardian; or

(iii) An adult relative (brother, sister, aunt, uncle, grandparent) who is not presently in Service detention, unless a determination is made that the detention of such juvenile is required to secure his or her timely appearance before the Service or the Immigration Court or to ensure the juvenile's safety or that of others. In cases where the parent, legal guardian, or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at a Service office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraphs (b)(1)(i) through (iii) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in Service detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in Service detention or outside the United States, the juvenile may be released to such person as is designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before

the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraphs (b) (1) (i) through (iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(c) Juvenile coordinator. The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the Service, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) Detention. In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by Service authorities or placed in any Service detention facility having separate accommodations for juveniles.

(e) Refusal of release. If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(f) Notice to parent of application for relief. If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) Voluntary departure. Each juvenile, apprehended in the immediate vicinity of the border, who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form or being allowed to withdraw his or her application for admission, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. A juvenile who does not reside in Mexico or Canada who is apprehended shall be provided access to a telephone and must in fact communicate either with a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If such juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact, the requirements

8 CFR 236.3

of this section are satisfied.

(h) Notice and request for disposition. When a juvenile alien is apprehended, he or she must be given a Form I-770, Notice of Rights and Disposition. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new Form I-770 shall be given to, and signed by the juvenile.

HISTORY:

[55 FR 30686, July 27, 1990; 59 FR 62302, Dec. 5, 1994; 60 FR 34090, June 30, 1995; 62 FR 10312, 10362, March 6, 1997]

AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104-208; 8 CFR part 2.

NOTES:

[EFFECTIVE DATE NOTE: 62 FR 10312, 10362, March 6, 1997, revised Part 236, effective April 1, 1997.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

CROSS REFERENCE: For State Department regulations pertaining to visas and Nationality and Passports, see 22 CFR, chapter I, subchapters E and F. Other regulations issued by the Department of Justice appear in title 4, chapter II, title 21, chapter II, and title 28, chapters I, III, and V. This table shows sections of title 8 of the United States Code and corresponding sections of the Immigration and Nationality Act and of parts in subchapters A, B, and C of chapter I of title 8 of the Code of Federal Regulations. Those sections of title 8 of the United States Code bearing an asterisk do not have a corresponding part in chapter I of title 8 of the Code of Federal Regulations.

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A Bumpy Path for Cuban Boy's Miami Kin

By PETER T. KILBORN

MIAMI, Feb. 8 — For more than two months the Florida family of Elián González has been a staple of the nightly news. There is Elián, the 6-year-old refugee, swinging a baseball bat in front of the little stucco house in a working-class neighborhood of Little Havana. There he is kicking a soccer ball with his great-uncle Lázaro González and hugging Marisleysis, his cousin.

But not surprisingly, a closer look provides a far more complex portrait of an immigrant family suddenly caught up in an international spectacle of a dispute over the custody of Elián, who survived a crossing from Cuba in which his mother and 10 other people drowned. It is a striving, hard-working, close-knit family that neighbors say is unassuming, helpful and easy to get along with.

The two-bedroom, one-bath home of Lázaro González, 49, his wife, Angela, and their daughter, Marisleysis, 21, is the gathering place for an extended family that itself is divided over Elián's future. And it is the focal point of a public relations struggle between Miami's Cuban-Americans and the Cuban government of Fidel Castro.

But this extended family is also one that has run afoul of the law in ways that could affect their bid to

gain permanent custody of Elián, whose father in Cuba wants him returned, experts in custody law say.

Lázaro González, an automobile mechanic who moved here from Cárdenas, Cuba, 15 years ago, has four convictions for driving under the influence of alcohol in the 1990's, according to the Florida Department of Highway Safety and Motor Vehicles. His license was revoked or suspended for a

total of three years. He completed an alcohol treatment course after his most recent conviction, in July 1997.

Mr. González's brother Delfín González, 63, a fisherman who usually lives in Marathon in the Florida Keys but who is a staunch supporter of Lázaro's custody claim and has been staying here with the family, has four convictions

for driving under the influence over the last decade, most recently in May 1997. Two of the cases involved accidents with property damage or personal injury. Delfín González had his license revoked for a total of two years.

Two other relatives who have been periodic visitors at the home have also had run-ins with the law, the weekly New Times newspaper here first reported.

Jose Cid, 32, one of Lázaro and Delfín's nephews and a son of their sister here, Georgina Cid, went to jail last month to begin a 13-year sentence for grand theft, forgery and violating probation, according to the Miami-Dade Department of Corrections. His twin brother, Luis Cid, goes on trial on Feb. 18 in connection with a robbery last September in Little Havana.

While legal problems like those of the Gonzálezes are not uncommon, lawyers say that the drunken-driving convictions, especially, create problems for Lázaro González's claims for custody and give the government a new argument in defending its decision last month to return Elián to Cuba.

"This does have an impact on the fitness of these adults to raise this child, unquestionably," said Bernard Perlmutter, a professor and expert in family law at the University of Miami.

Martin Guggenheim, a professor of law at New York University and a specialist in child and family law, said, "Increasingly in recent years, courts have been interested in any and all information that bears upon parental fitness.

"The child might be in the car and subject to an accident caused by drunk driving," Mr. Guggenheim said, "or the parent could end up injured, dead or in prison because of drunk driving."

No close González relatives in Miami could be reached for comment. Armando Gutierrez, a prominent Cuban-American political consultant here and the relatives' publicist and spokesman, said he had not heard of the driving records until today.

The driving convictions, said Spencer Eig, the relatives' lead lawyer, are less troubling than comments by one of Elián's grandmothers, who told Cuban television that she bit Elián's tongue when she visited him here last month to goad him to talk and unzip his pants.

Lázaro and Angela González live in a neighborhood of fortresses and locks. Chain-link fencing cuts across the front of most yards, with padlocked gates across the front walks and the driveways. Many houses have wrought-iron gates to protect the front door, and wrought-iron grills on the windows.

To varying degrees most households are reaping the benefits of the nation's prosperity. The most prosperous have central air conditioning, red ceramic tiles on their roofs, replacing asphalt tiles, and tall, spiked iron fences.

The González home, a 48-year-old, gray-white stucco house, is more modest than most. Except for

Elián's outdoor toys, all donated, nothing is new. It is assessed for tax purposes at \$67,298. Marisleysis shares her bedroom with Elián. Real estate agents said the rent would be \$500 to \$1,000 a month.

Only Lázaro, Angela, Elián and Marisleysis are living there now,

although Delfín often visits. William, the 27-year-old son of Lázaro and Angela González, moved out about three years ago, after marrying the granddaughter of Guillermina Ferrer, the Gonzálezes' next-door neighbor.

One member of the clan, Manuel

González, a brother of Lázaro, is not welcome in the house because he has supported Elián's repatriation.

Angela González rises before dawn each day to work in a factory sewing clothes and devotes the rest of her day to domestic activity inside the home. Lázaro González works irregularly. Now and then he comes out to tinker with a red 1988 Thunderbird, registered in his wife's name, that was bought four years ago.

Marisleysis is a loan officer at the main branch of Ocean Bank here, along with a cousin, Georgina Cid Cruz. Georgina is the sister of the Cid twins.

Mrs. Ferrer has lived next door for as long as the Gonzálezes have been there. She said she watched William and her granddaughter Jacqueline's 6-month-old son while the parents worked.

"Angela is a very quiet woman," Mrs. Ferrer said. "Even before all this started, you never even heard her talk. You never even knew when she was around."

"I've never heard of anyone in that family getting into any kind of trouble or anything," she added.

Maria Castillo, across the street, said, "They're always there to help you. That family gets along fine and is very close."

Neighbors said that for entertainment, the Gonzálezes tended to stay home with relatives, rather than go out.

Across this neighborhood, and across Little Havana, there are few signs of the epic war of words and lawsuits that have stirred Congress, the Clinton administration, Cuba and the Cuban-American leadership.

The media vans and the demonstrators, largely anti-Castro immigrants from outside the neighborhood, have the Gonzálezes to themselves. Just one household near Elián's, a block away, has taken any note of their fight still raging in court. "Back To No Future," a sign on the door reads.

But the case for holding Elián has taken another sharp turn. It is harder to argue for holding him in America, Mr. Perlmutter of the University of Miami said, in view of family's troubles with the law.

The family here is attempting to argue that it can offer Elián a better life than his father can, while the real issue is whether the father, Juan Miguel, is fit to raise his son, he said.

With the disclosure of the drunken-driving convictions, Mr. Perlmutter said, the Miami family's case is harder to make. Except for innuendo and unsubstantiated rumor, he said, no one has challenged the father's fitness to raise a child.

"He should win hands down," he said.

The New York Times

WEDNESDAY, FEBRUARY 9, 2000

Guided-Missile Ship Acquired by China Heightens Tension

By CRAIG S. SMITH

A China's first Russian-built guided-missile destroyer is expected to arrive in the East China Sea as early as this week, enhancing Beijing's ability to threaten American aircraft carriers in any future encounters over Taiwan.

Within weeks of the Sovremenny-class destroyer's arrival, Russia is expected to deliver the ship's most formidable weapon, Sunburn anti-ship missiles specifically designed to penetrate American carrier battle group defenses. The Russian version of the sea-skimming supersonic missile can carry nuclear or conventional warheads.

Conventions to prevent the spread of nuclear weapons, as well as Russia's own strategic interests, make it unlikely that the missiles will be delivered with nuclear warheads. But Russia could provide, or China could develop, technology that would enable the missiles to deliver a Chinese nuclear warhead.

The ship, expected to join China's East Sea Fleet based in Ningbo, will arrive at a time of heightened tension in the narrow strait separating the mainland from Taiwan, which Beijing has long considered a break-away province. Taiwan holds presidential elections next month and during the last elections, in 1996, Beijing fired missiles into the sea near the island. The United States responded by sending two aircraft carrier groups to the area, infuriating Beijing and embarrassing its military leaders.

Even with conventional warheads, China's new missile-armed destroyer, together with four recently purchased Kilo-class submarines from Russia, will raise the threshold for any future American intervention in the region, military analysts say.

"These two systems, in particular, are ones that give us pause and make us realize that we are in fact going in harm's way," said Eric McVadon, a retired rear admiral who was a defense and naval attaché in Beijing and is now a consultant on East Asian security affairs. "That's something the Chinese didn't possess before."

China has built its own guided-missile destroyers, but they are considered less threatening than the Sunburn-equipped destroyers from Russia. China purchased two of the Russian ships last year — the second is expected later this year — and is believed to be negotiating the purchase of at least two more.

"This is a generational leap for China into a much more advanced type of surface weaponry," said James Lilley, a former American ambassador to China and now a fellow at the conservative American Enterprise Institute for Public Policy Research in Washington.

Official American reaction to the ship's arrival has been muted.

"The U.S. military is adequately prepared" to deal with any threat posed by the destroyers, a Pentagon spokesman, Lt. Cdr. Terry Southerland, said this week. He said there has been no decision on Taiwan's request to buy American Aegis destroyers to counter the Chinese purchases. Military analysts say it could

take China years of training before its navy can handle such a sophisticated ship in an actual conflict.

China "is trying to make us sweat," one analyst said, "but one ship does not a Navy make."

Congress is currently considering expanded military ties with Taiwan. Last week the House passed the Taiwan Security Enhancement Act, which would increase coordination between United States and Taiwan forces and provide more American training of Taiwan's military officers. The Senate has yet to vote on the bill, which the Clinton Administration has threatened to veto if it does pass.

American military technology could find and sink the new Chinese destroyers in a matter of hours of any conflict. But the presence of the ships and their missiles in the Taiwan Theater complicates the delicate calculus of cross-straits relations, the most volatile flashpoint in East Asia.

Ever since the Chinese Nationalist Army retreated to Taiwan in 1949,

Beijing has threatened to occupy the island by force if its government declares independence from the mainland. Tensions increased last summer after Taiwan's president, Lee Teng-hui, declared that talks between his government and the mainland government should be on a "state-to-state basis," affording Taipei diplomatic parity with Beijing.

So far China has lacked the ability to carry out its threat of invasion — dubbed by skeptics "the million-man swim" — largely because of Taiwan's superior air force and the backing of the United States Seventh Fleet. Instead, Beijing has elected to threaten and intimidate Taipei with a formidable and steadily increasing arsenal of short-range ballistic missiles such as those used in 1996.

Under the 1979 Taiwan Relations Act, the United States is obligated to help Taiwan defend itself from a mainland attack — although in a 1982 joint communiqué with Beijing, Washington pledged not to increase the quantity or quality of arms sold to Taiwan.

The commitment to Taiwan's defense was reinforced last year when

a senior State Department official told a group of Chinese businessmen that a mainland attack on Taiwan would be "disastrous for U.S.-China relations, and could, no doubt, pit us in an actual war." Those comments were intended as a warning to Beijing, American officials say.

But China's new destroyers and their Sunburn missiles, with a range of up to 65 miles, will alter the equation. The United States Navy currently has limited defense against the missile, which Russia designed in the 1980's to sink Arleigh Burke-class Aegis destroyers guarding American carrier groups or to hit the carriers themselves. The radar-guided missiles can deliver a 200-kiloton nuclear warhead to a target beyond the horizon in about two minutes. Even one of its conventional warheads could sink a cruiser or disable a carrier, depending on where it hits, military analysts say.

China's purchase of the destroyer and its missiles is part of an emerging pattern of procurement in the wake of warming relations with Russia. With the United States and much of Europe refusing to supply China

with advanced weapons, Russia and Israel have been the country's primary options. Israel has helped China with the avionics for a fighter aircraft it is developing. But Russia, with a sophisticated arsenal and weakened economy, has been a more willing supplier.

Russia has sold China four quiet Kilo-class submarines, which carry "wake-homing" torpedoes designed to detonate beneath a ship's keel. The torpedoes are difficult to detect because they approach the ship from the rear where their sound is masked by the noise of the ship's propellers. And Russia is helping China assemble Russian Sukhoi Su-27 fighters.

Many American politicians, military officials and analysts deride these purchases, saying China is assembling a "junkyard army," cobbled together piecemeal from out-of-date, castoff weaponry that poses little threat to the United States or its allies. And many of the weapons systems China has purchased require extensive training and sophisticated electronics and software to be used effectively. The People's Liberation Army has not demonstrated prowess in mastering such technology.

But other American analysts see a sinister logic to the procurement program, suggesting that the weapons purchases meet specific tactical needs within broader strategic goals — the ability to challenge American dominance in the Taiwan Strait, for example, or to protect its claims in the resource-rich South China Sea. Some warn further that the incremental arms buildup represents the early stages of a broader armament intended to prepare China for potential conflict with the United States or to allow the country to eventually supplant the United States as the leading military power in the Asia-Pacific region.

China says it has no interest in projecting military force beyond its borders, arguing that it wants to maintain regional stability and focus on its own economic development. And, clearly, it would take decades to develop the integrated armed forces necessary to challenge American dominance in the region.

But Beijing considers Taiwan a domestic, not regional, issue. "China sees the 'Taiwan problem' as a wholly internal issue — not a matter of an aggressive action against another country," said Mr. McVadon, the former military attaché. "And, of course, enormously large and economically dynamic China believes it has a rightful place as a crucial part of East Asian security architecture."

"The trick," he said, "is to find a way to preserve U.S. interests in Asia and yet accommodate China as an emerging military and economic power in the region and the world."

The New York Times

WEDNESDAY, FEBRUARY 9, 2000