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Immigration (Elian Gonzalez) [2]

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

Thursday, January 27, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

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

SUBJECT: STATE Report on Elian Gonzales

DEADLINE: Noon Friday, January 28, 2000

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

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

Thank you.

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202 647 2782

**DRAFT**

United States Department of State

Washington, D.C. 20520

Dear Sir,

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

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

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

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

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

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travel by minor U.S. citizen children is governed, under Department of State regulations and practice, by the wishes of their parents.

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

When a young child is found in a foreign country, the accepted international practice is to attempt to identify the child's parent or 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 Elián 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. We would not expect the surviving parent to have to participate in a foreign court's custody proceedings to establish his or her right to assume responsibility for the child. We would object strongly if a foreign government declined to return an American child to its only surviving parent because other relatives sought custody of the child or because of a judgment that the child would be better off in the country in which the child was found. We also would take vigorous exception to a foreign government or court that sought to substitute its view of the "best interests of the child" for those expressed by a parent, absent a previous finding that the parent was unfit.

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

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

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

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

Sincerely,

Mary A. Ryan

Assistant Secretary for Consular Affairs

Subpena to Testify (Hearing)

By Authority of the House of Representatives of the
Congress of the United States of America

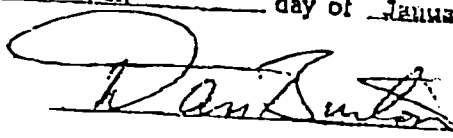
To Elisan Gonzales

You are hereby commanded to be and appear before the Full Committee on
Government Reform of the House of Representatives
of the United States, of which the Hon. Don Burton is chairman, in
Room 2154 of the Rayburn Building, in the city
of Washington, on February 10, 2000, at the hour of 10:00 am,
then and there to testify touching matters of inquiry committed to said Committee; and you
are not to depart without leave of said Committee.

To James C. Wilson, Chief Counsel

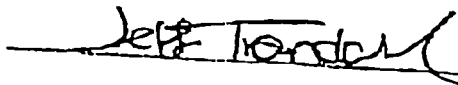
to serve and make return.

Witness my hand and the seal of the House of Representatives
of the United States, at the city of Washington, this
7th day of January, 19 2000



Chairman.

Attest:



Clerk.

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

FAMILY DIVISION

CASE NO: 00-00479 FC 29

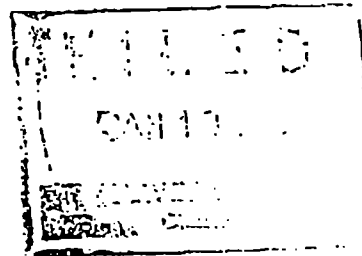
LAZARO GONZALEZ, as Custodian of
ELIAN GONZALEZ, a Minor,

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*⁴, 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 Rohlfs v. Rohlfs, 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.

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

Deputy Clerk Sharonne G. DeBose 1581



U.S. Department of Justice
Immigration and Naturalization Service

Texas Service Center

4141 N. St. Augustine
Mesquite, Texas 75185-1488

January 13, 2000

Hackley, Bernstein & Osberg-Braun, P.L.
Attorneys at Law
Turnberry Plaza
2875 NE 191st Street, Penthouse 1B
Aventura, FL 33180

Dear Mr. Bernstein:

We have received the Form I-589, Application for Asylum and for Withholding of Removal that you have submitted on behalf of Elian Gonzalez. The application is signed by the child's great uncle, Lazaro Gonzalez, and you have included a copy of a Temporary Protective Order from the family division of a Florida circuit court purporting to grant Lazaro Gonzalez legal authority to act on Elian's behalf in immigration matters as is necessary to preserve the status quo.

As you know, the Commissioner has determined that the boy's father, Juan Gonzalez, has the sole legal authority to act on behalf of his son in immigration matters. This decision was reached after careful examination of the applicable U.S. and Cuban law concerning parental authority, the facts surrounding Juan Gonzalez's relationship with the child, the allegations that the father was under coercion, and all other available information, including information relating to a possible asylum claim. After a thorough review of all the relevant and available information, the Commissioner concluded that the father has the legal authority to speak on behalf of the child in immigration matters and that he is expressing his true wishes in wanting his son returned to him. The Commissioner further concluded that, because of his tender age, Elian lacks the capacity to assert a claim for asylum on his own. Finally, the Commissioner concluded that there is no divergence of interest between Juan Gonzalez and his son because the application submitted, and other relevant available information, failed to demonstrate an objective basis for a valid asylum claim. INS is aware of no new information that would affect those conclusions.

Juan Gonzalez has clearly stated to the INS that he does not want Elian to ~~seek~~ asylum and that he should be returned to Cuba. INS previously gave effect to the father's request when, last week, it permitted the withdrawal of Elian's application for admission and determined that it would not accept the asylum application that you attempted to file under Elian's signature.

Mr. Bernstein

Page 2 of 2

The new application, filed yesterday, is accompanied by a letter from you acknowledging that the information contained in this latest submission is the same as what you submitted last month. Thus, the only new factors in this case are Lazaro Gonzalez's signature on the new application and the Florida circuit judge's temporary protective order. The Commissioner has concluded that nothing in that order alters her determination that Juan Gonzalez has sole legal authority to speak for Elian on immigration matters, and that determination is ultimately one of federal immigration law. Thus, INS has determined that neither you nor Lazaro Gonzalez represents Elian before the INS. Accordingly, INS cannot accept the enclosed asylum application and I am returning it to you.

Sincerely,


James Bilzenski
Director
Texas Service

MEMORANDUM

TO: Jim Steinberg

FROM: Wendy Patten
Cleared by Mary DeRosa

DATE: January 13, 2000

RE: Update on Elian Gonzalez

Mary and I spoke to James Castello at Justice late this morning. Because James was very protective of the information, particularly with regard to the asylum claim, I am sending this close-hold note to you in hard copy, rather than electronically.

1. status of asylum claim – INS has received the asylum claim, which James believes to be identical to the original claim. Despite the uncle's contention that the state court ruling enables him to file an asylum claim on the child's behalf, Justice expects that INS will reject the application for the same reasons that the prior application was rejected. Justice could announce its decision as early as tomorrow morning.
2. Cuban request for consular access– The Cubans have requested consular access to the child. James contended that the right to consular access is triggered when a foreign national is in custody. It is not clear that the Cubans have a right to consular access to a child who has been paroled into the U.S. and placed in the custody of relatives. Still, the Cubans are pressing for such access, and reiterated their request in a meeting yesterday. Justice is considering options that could include intermediaries, but they are concerned that any such meeting between Elian and Cuban officials would be logistically difficult and would provoke renewed protests from the Cuban-American community.
3. Burton subpoena -- OLC's preliminary view is that INS is not entirely free to act in this matter. Justice might face some difficult legal issues if INS attempted to return the child before February 10. OLC continues to analyze this issue.



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

January 12, 2000

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

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

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

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

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

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

Letter to Spencer Big, Esq., et al.

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

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

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

Letter to Spencer Eig, Esq., et al.

Page 3

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

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

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

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

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

Letter to Spencer Eig, Esq., et al.

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno", written in dark ink.

Janet Reno



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

Washington, D.C. 20530

FAX COVER SHEET

DATE: 1/12/00

TO:

Mary De Rosa

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: 4 (EXCLUDING COVER)

COMMENTS:

Per your request

May DeRosa

69110

Hackley, Bernstein & Osberg-Braun
Immigration & Consular Law

Fax

To: White House Counsel

From: Linda Osberg-Braun, Roger A. Bernstein,
& Spencer Elg

Fax: (202) 456-1647 66279

Pages: 2 Inclusive

Phone

Date: 01/05/00

Re:

CC: N/A

Urgent

For Review

Please Reply

• Comments:

Linda Osberg-Braun, Roger A. Bernstein &
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M. Keil Hackley*
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*Md. & D.C. Bars
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The Honorable Janet Reno
Attorney General of the United States
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

January 5, 2000

Dear Attorney General Reno:

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

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

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

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

Sincerely,



LINDA OSBERG-BRAUN

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



ROGER A. BERNSTEIN



SPENCER EIG
Attorney-at-Law

cc: The Counsel to the President of the United States

¹ HQINS 50/5.12 96 Act(54 of August 21, 1997 states: "When deciding whether to permit the minor to withdraw his or her application for admission, officers must also make every effort to determine whether the minor has a fear of persecution or return to his or her country. If the minor indicates a fear of persecution or intention to apply for asylum, or if there is any doubt, especially in the case of countries with known human rights abuses or where turmoil exists, the minor should be placed in removal proceedings under section 240 of the Act....

April 25, 2000

MD

FOREIGN AFFAIRS / By THOMAS L. FRIEDMAN

Reno for President

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Frankly, I liked both pictures.

Yup, I gotta confess, that now-famous picture of a U.S. marshal in Miami pointing an automatic weapon toward Donato Dalrymple and ordering him in the name of the U.S. government to turn over Elián González warmed my heart. They should put that picture up in every visa line in every U.S. consulate around the world, with a caption that reads: "America is a country where the rule of law rules. This picture illustrates what happens to those who defy the rule of law and how far our government and people will go to preserve it. Come all ye who understand that."

And I was also warmed by the picture of Elián back in his father's arms. Some things you can fake -- like a 6-year-old wagging his finger on a homemade video and telling his father to go back to Cuba without him -- and some things you can't fake. That picture of Elián and his father illustrated the very parent-child bond that our law was written to preserve.

Hats off to Janet Reno for understanding that the Elián González case was about both of these pictures: the well-being of a child and the well-being of our Constitution, on which all good things in our society rest. But hats off twice to Ms. Reno for understanding that these two noble virtues are not equal. The fear of causing some trauma to Elián by rescuing him could never outweigh the need to uphold the rule of law.

One only hopes that this affair will remind the extremists among the Miami Cubans that they are not living in their own private country, that they cannot do whatever they please and that they may hate Fidel Castro more than they love the U.S. Constitution -- but that doesn't apply to the rest of us.

One also hopes that now that Ms. Reno has ended the kidnapping of Elián by the Miami Cubans, the other hard-nosed lady in the cabinet, Madeleine Albright, will end the Miami Cubans' kidnapping of U.S. Cuba policy as well. Ms. Albright could start by relaxing the embargo on Cuba.

I share the Miami Cubans' visceral hatred of Fidel Castro's regime. It is an awful government that has taught its people to write -- and then forced its most educated to become taxi drivers and, in thousands of cases, prostitutes in order to feed their families.

But the way to hasten the end of this regime is not with embargoes and kidnappings. We have sanctioned Castro for 40 years, and so far he has outlived *nine* U.S. presidencies. Normally, such a policy would be adjusted. But this policy is not driven by strategic thinking. It's driven by blind hatred of Castro by the Miami Cubans, who, because of their perceived voting clout in the key state of Florida, have been able to impose this policy on the whole U.S. -- even though it has had the opposite effect we, and they, want. It punishes Cuba's people and

reinforces Castro's hold on power.

What ails Cuba's economy is Fidel Castro's failed Marxism. But the U.S. embargo obscures that, giving him a foreign bogeyman to blame for Cuba's travails and enabling him to argue that Cuba is under siege from America, therefore Cubans have to remain mobilized and he, Castro, has to keep a tight rein.

Forget Fidel Castro. He's a spent dictator who peddles Marxism while keeping his economy afloat with Thomas Cook tours and prostitution. As Ms. Albright knows, a wise U.S. policy today would be focused on shaping post-Castro Cuba, so that we don't have another Haiti -- where, after the regime collapses, everyone builds a raft to get to Miami -- and so the Cuban people don't have another 40 years of repression. Our best tool for shaping post-Castro Cuba is letting more Cubans study in the U.S., training their technocrats in managing a modern state and, yes, opening the way for greater U.S. investment in Cuba, and for money flows, trade and family visits. At best, this will create much greater internal pressures on Castro to open his regime, and at worst it will help ensure that whoever succeeds him will have to change.

It was precisely the ease with which the hard-line Cuban-Americans kidnapped U.S. policy on Cuba for all these years -- with the help of pandering politicians -- that made them believe they could get away with kidnapping Elián. America is a lot better off today because Janet Reno taught them otherwise, and a million Cuban children would be better off tomorrow if Madeleine Albright could administer a similar lesson in foreign policy. Go ladies!

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U.S. DEPARTMENT OF JUSTICE

OFFICE OF PUBLIC AFFAIRS

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United States District Court

SOUTHERN DISTRICT OF FLORIDA

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

RESIDENCE OF LAZARO GONZALEZ, LOCATED AT
2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE
COUNTY, FLORIDA

SEARCH WARRANT

CASE NUMBER:

TO: S/A Mary A. Rodriguez, U.S. Immig. & Natl. Service and any Authorized Officer of the United States

Affidavit(s) having been made before me by S/A Mary A. Rodriguez who has reason to
Affiant

believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

THE RESIDENCE OF LAZARO GONZALEZ, LOCATED AT 2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE COUNTY,
FLORIDA

in the SOUTHERN District of FLORIDA there is now
concealed a certain person or property, namely (describe the person or property)

THE PERSON OF ELIAN GONZALEZ, DATE OF BIRTH DECEMBER 6, 1993, A NATIVE AND CITIZEN OF CUBA.

I am satisfied that the affidavit(s) and any record testimony establish probable cause to believe that the person or property
so described is now concealed on the person or premises above-described and establish grounds for the issuance of this
warrant.

YOU ARE HEREBY COMMANDED to search on or before 5-1-0
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and
making the search (~~in the daytime 6:00 A.M. to 10:00 P.M.~~) (at any time in the day or night as I find reasonable cause
has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and
receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly
return this warrant to U. S. MAGISTRATE JUDGE HUBE as required by law.
U.S. Judge or Magistrate Judge

21 APR 01 20 P.M.
Date and Time Issued

at Miami, Florida
City and State

U. S. MAGISTRATE JUDGE
Name and Title of Judicial Officer

[Signature]
Signature of Judicial Officer

AO 93 (Rev. 8/95) Search Warrant

RETURN

DATE WARRANT RECEIVED

DATE AND TIME WARRANT EXECUTED

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

INVENTORY MADE IN THE PRESENCE OF

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

Subscribed, sworn to, and returned before me this date,

U.S. Magistrate Judge

Date

AO 106 (Rev. 7/87) Affidavit for Search Warrant

United States District Court

SOUTHERN DISTRICT OF FLORIDA

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

THE RESIDENCE OF LAZARO GONZALEZ, LOCATED AT
2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE COUNTY,
FLORIDA

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

Mary A. Rodriguez

being duly sworn depose and
s a y :

I am a(n) Senior Special Agent, U.S. Immigration and Naturalization Service and have reason to believe

that ☐ on the person of or ☒ on the property or premises known as (name, description and/or location)

THE RESIDENCE OF LAZARO GONZALEZ, LOCATED AT 2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE COUNTY,
FLORIDA,

in the SOUTHERN District of FLORIDA

there is now concealed a certain person or property, namely (describe the person or property to be seized)

THE PERSON OF ELIAN GONZALEZ, DATE OF BIRTH DECEMBER 6, 1993, A NATIVE AND CITIZEN OF CUBA.

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)
BEING UNLAWFULLY RESTRAINED AND THE SUBJECT OF AN INS ADMINISTRATIVE WARRANT OF ARREST.

concerning a violation of Title United States code,
Section(s)

The facts to support a finding of Probable Cause are as follows:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof.

☒ Yes

☐ No

Mary A. Rodriguez
Signature of Affiant

Sworn to before me, and subscribed in my presence

21 APR 2000
Date

U.S. MAGISTRATE JUDGE
Name and Title of Judicial Officer

at Miami, Florida
City and State

[Signature]
Signature of Judicial Officer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-_____

IN THE MATTER OF THE SEARCH)
OF RESIDENCE OF LAZARO GONZALEZ,)
LOCATED AT 2319 N.W. 2ND STREET,)
MIAMI, MIAMI-DADE COUNTY, FLORIDA)
)
)
)

APPLICATION OF UNITED STATES
IMMIGRATION AND NATURALIZATION SERVICE
FOR SEARCH WARRANT PURSUANT TO FEDERAL RULE OF
CRIMINAL PROCEDURE 41(b) AND MEMORANDUM IN SUPPORT THEREOF

The United States Immigration and Naturalization Service (INS), by and through its undersigned counsel, files its Application for Search Warrant Pursuant to Federal Rule of Criminal Procedure Rule 41(b) and Memorandum of Law in Support Thereof, and states:

The INS seeks a search warrant in order to seize the person of Elian Gonzalez, date of birth of December 6, 1993, who is a native and citizen of Cuba. On November 25, 1999, Elian was paroled into the temporary custody of Lazaro Gonzalez, pursuant to section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(5).

On April 12, 2000, Michael Pearson, Executive Associate Commissioner, Immigration and Naturalization Service, and Robert Wallis, Miami INS District Director, revoked Elian's parole. The Eleventh Circuit has described parole as "an act of extraordinary

sovereign generosity, since it grants temporary admission into our society to an alien who has no legal right to enter and who would probably be turned away at the border if he sought to enter by land, rather than coming by sea or air." Jean v. Nelson, 727 F.2d 957, 972 (11th Cir. 1984) (en banc), aff'd on other grounds, 472 U.S. 846 (1985). By revoking parole, Commissioner Pearson and District Director Wallis ended Elian's temporary admission into the United States.

The revocation of parole also terminated any legal basis for Lazaro Gonzalez to retain custody of Elian. On April 12, 2000, Lazaro Gonzalez was directed by the INS to turn over custody of Elian on April 13, 2000, at 2:00 p.m., at Opa Locka Airport, Miami, Florida. He failed to do so. Lazaro Gonzalez's present custody of Elian has no legal basis because it is in contravention of the INS's order and without the consent of Elian's natural father, Juan Miguel Gonzalez.

Federal Rule of Criminal Procedure 41(b) provides that a warrant "may be issued under this rule to search for and seize any . . . (4) person for whose arrest there is probable cause, or who is unlawfully restrained." Lazaro Gonzalez's retention of the custody of Elian is unlawful because it is contrary to the INS order of April 12, 2000, and without the consent of Juan Miguel Gonzalez. The instant situation is analogous to the retention of custody by a parent when a court has ordered custody

transferred to another individual. See United States v. Al-Ahmad, 996 F.Supp. 1055 (D. Colo. 1998) (Probable cause existed to establish a violation of 18 U.S.C. § 1204 where the father refused to comply with a court order changing custody to the maternal grandmother).

Inasmuch as Elian has been residing at the residence of a third-party, Lazaro Gonzalez, the INS, in an abundance of caution, requests a search warrant in order to enter that residence in order to seize the person of Elian Gonzalez and reunite him with his father, Juan Miguel Gonzalez. Federal Rule of Criminal Procedure 41 was amended in 1979 to allow a warrant to be issued to search for and seize a person who is unlawfully restrained. Wright, Federal Practice and Procedure: Criminal 2d § 664.1. The Advisory Committee Note to the 1979 amendment states in part:

This amendment to Rule 41 is intended to make it possible for a search warrant to issue to search for a person under two circumstances: (i) when there is probable cause to arrest that person; or (ii) when that person is being unlawfully restrained. There may be instances in which a search warrant would be required to conduct a search in either of these circumstances. Even when a search warrant would not be required to enter a place to search for a person, a procedure for obtaining a warrant should be available so that law enforcement officers will be encouraged to resort to the preferred alternative of acquiring "an objective predetermination of probable cause," Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), in this instance, that

the person sought is at the place to be searched.

The Advisory Committee recognized that "[i]t may be that very often exigent circumstances, especially the need to act very promptly to protect the life or well-being of the kidnap victim, would justify an immediate warrantless search for the person restrained. But this is not inevitably the case. Moreover, as noted above, there should be available a process whereby law enforcement agents may acquire in advance a judicial determination that they have a cause to intrude upon the privacy of those at the place where the victim is thought to be located." Id. at 613-14 n.3. While the INS does not necessarily need a search warrant in order to seize Elian Gonzalez, an unlawfully restrained individual, it believes there is probable cause to support the issuance of a search warrant and seeks such a warrant.

On April 21, 2000, James T. Spearman, Jr., INS Deputy Assistant District Director for Investigations, issued an Administrative Arrest Warrant for Elian. In Steagald v. United States, 451 U.S. 204 (1981), the Supreme Court held that an arrest warrant does not authorize the police to enter the home of a third person in order to effect the arrest. Instead, the police must obtain, through the "detached scrutiny of a judicial officer," a warrant before it can intrude into the privacy of a person's home. Id. at 213-14. While a judicially issued arrest

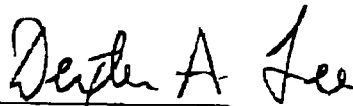
warrant is sufficient to justify an entry into the person's home to effect his arrest, Payton v. New York, 445 U.S. 573, 602-03 (1980), the Administrative Arrest Warrant is issued for Elian Gonzalez, who is residing in the home of a third-party. Accordingly, a search warrant is required before the INS may enter that residence in order to execute the Administrative Arrest Warrant by seizing the person of Elian Gonzalez.¹

The INS has probable cause to believe that Elian Gonzalez is residing at the residence of Lazaro Gonzalez, his great-uncle, which is located at 2319 N.W. 2nd Street, Miami, Miami-Dade County, Florida. Accordingly, it requests a search warrant be issued to search those premises.

Respectfully submitted,

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By:



DEXTER A. LEE
Assistant U.S. Attorney
Fla. Bar No. 0936693
99 N.E. 4th Street
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139

¹ A search warrant is also required under the Fourth Amendment because the Administrative Arrest Warrant was not issued by a judicial officer.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00- _____

IN THE MATTER OF THE SEARCH)
OF RESIDENCE OF LAZARO GONZALEZ,)
LOCATED AT 2319 N.W. 2ND STREET,)
MIAMI, MIAMI-DADE COUNTY, FLORIDA)
_____)

UNITED STATES IMMIGRATION AND NATURALIZATION
SERVICE'S MOTION TO SEAL APPLICATION FOR SEARCH WARRANT,
AFFIDAVIT IN SUPPORT OF APPLICATION, MEMORANDUM
IN SUPPORT OF APPLICATION, AND SEARCH WARRANT, PENDING
EXECUTION OF SEARCH WARRANT AND FILING OF THE RETURN

The United States Immigration and Naturalization Service (INS), by and through its undersigned counsel, files its Motion to Seal Application for Search Warrant, Affidavit in Support of Application, Memorandum in Support of Application, and Search Warrant, Pending Execution of Search Warrant and Filing of the Return, and states:

The INS requests an Order sealing the Application for Search Warrant, Affidavit in Support of the Application, the Memorandum in Support of the Application, and the Search Warrant, pending the execution of the search warrant and filing of the return. The request is based on the need to preserve the security of the operation. Knowledge that a search warrant had been issued would compromise the execution of the warrant since resistance, in the form of even larger crowds gathering outside the home of Lazaro Gonzalez, would likely increase. This could jeopardize the

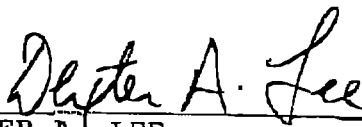
safety of Elian Gonzalez, the officers executing the warrant, and the general public.

Accordingly, the INS requests that the Application for Search Warrant, Affidavit in Support thereof, Memorandum in Support of Application, and Search Warrant, be sealed until the search warrant is executed and the return is filed.

Respectfully submitted,

THOMAS E. SCOTT
UNITED STATES ATTORNEY

By:



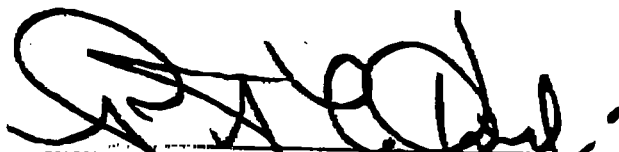
DEXTER A. LEE
Assistant U.S. Attorney
Fla. Bar No. 0936693
99 N.E. 4th Street
Miami, Florida 33132
(305) 961-9320
Fax: (305) 530-7139

DATED: April 21, 2000

ORDER GRANTING MOTION TO SEAL

For the reasons set forth above, the Immigration and Naturalization Service's Motion to Seal is hereby GRANTED.

DONE AND ORDERED at Miami, Florida, this 21st day of April, 2000.


UNITED STATES MAGISTRATE JUDGE

(REDACTED) AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared Mary A. Rodriguez,, who after being duly sworn, deposes and says:

1. I am Mary A. Rodriguez, Senior Special Agent, United States Immigration and Naturalization Service (INS).

As a senior special agent, my duties include the apprehension of aliens who are in the United States illegally; enforcement of the immigration laws; and conducting investigations into suspected violations of the criminal statutes within the Immigration and Nationality Act (INA). I am authorized by Title 8, United States Code, section 1357 to interrogate any alien or person believed to be an alien as to his/her right to be or to remain in the United States or to arrest any alien in the United States if there is any reason to believe that the alien so arrested is in the United States in violation of any law or regulation made in pursuance of

law regulating the admission, exclusion, or expulsion of aliens, or to arrest any alien in the United States if I have reason to believe that the alien so arrested is in the United States in violation of any law or regulation and is likely to abscond before a warrant can be obtained for his/her arrest.

2. On November 25, 1999, two fishermen encountered a young boy on an inner tube floating several miles off the coast of Fort Lauderdale, Florida. They rescued the boy, Elian Gonzalez, who was then five years old. The fishermen contacted the United States Coast Guard, who rendezvoused with their vessel and Elian was taken aboard the Coast Guard cutter. The Coast Guard took Elian to shore, where he was then taken to Hollywood Memorial Hospital to be treated for dehydration and exposure.

3. INS immigration inspector Edward Agundez and United States Border Patrol Agent Verne Eastwood responded to the hospital. Elian Gonzalez is a native and citizen of Cuba, who is subject to the Immigration and Nationality Act. He had departed Cuba on a boat with his mother, Elisabeth Brotons, and step-father, Lazaro Munero, on November 22, 1999, along with ten other persons. During the voyage, they encountered heavy seas. The vessel capsized. Elian's mother and step-father perished, along with eight others. Elian and two other people survived.

4. Mr. Agundez met with Lazaro Gonzalez, who was at the hospital and advised that he was Elian's great-uncle. Lazaro

Gonzalez identified a child in a photograph presented to him as Elian, and Lazaro presented his own photograph showing Elian with his natural parents. Due to Elian's continuing medical treatment, Inspector Agundez deferred Elian's immigration inspection for a period of 30 days, pursuant to 8 C.F.R. § 235.2(e). He was temporarily paroled into the custody of Lazaro Gonzalez pursuant to section 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5), and ordered to report for deferred inspection on December 23, 1999, at 9:00 a.m. Exhibit A.

5. Elian's natural father, Juan Miguel Gonzalez, contacted the Cuban Foreign Ministry and requested the return of his son Elian. Officials of the INS and the State Department interviewed Juan Miguel Gonzalez on December 13 and 31, 1999, in Cuba, to evaluate his claim that he was Elian's father and wanted his son returned. On January 5, 2000, INS Commissioner Doris Meissner determined that Juan Miguel Gonzalez was Elian's biological father and has legal custody of Elian under Cuban law. Exhibit B. Accordingly, Juan Miguel Gonzalez had the right and obligation to represent Elian in all legal transactions and acts in which Elian has an interest. Juan Miguel Gonzalez advised the INS that he did not want Elian to seek political asylum in the United States, and requested Elian's immediate return to Cuba.

6. Attorneys representing Lazaro Gonzalez asked the

Attorney General to review Commissioner's Meissner's January 5, 2000 decision. On January 12, 2000, the Attorney General upheld the Commissioner's decision that Juan Miguel Gonzalez, as Elian's father, has sole authority to speak for his son in immigration matters. Exhibit C.

7. On January 19, 2000, Lazaro Gonzalez filed a complaint in the United States District Court, Southern District of Florida, challenging the INS's decision not to consider an application for political asylum submitted on behalf of Elian. Gonzalez v. Reno, et al., Case No. 00-0206-CIV-MOORE. On March 21, 2000, the Honorable K. Michael Moore, United States District Judge, issued an Order granting the United States' motion to dismiss or, in the alternative, for summary judgment. Lazaro Gonzalez filed a notice of appeal on the same day.

8. On April 6, 2000, Juan Miguel Gonzalez arrived in the United States. He is currently residing in Bethesda, Maryland, and earnestly wants to be reunited with his son Elian.

9. On April 12, 2000, the INS, acting through Executive Associate Commissioner Michael Pearson, issued an Order to Lazaro Gonzalez to bring Elian to the Opa Locka Airport in Miami-Dade County, Florida, on April 13, 2000, at 2:00 p.m., for the purpose of transferring custody of Elian to the INS. Exhibit D. At the appointed time and place on April 13, Lazaro Gonzalez failed to appear to transfer custody of Elian.

10. On January 7, 2000, Lazaro Gonzalez filed a petition in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, Family Division, seeking temporary custody of Elian Gonzalez. Gonzalez v. Gonzalez, Case No. 00-0049-FC-28. On January 10, 2000, the Court granted, on an emergency ex parte basis, a Temporary Protective Order granting Lazaro temporary custody pending service of process upon Juan Miguel Gonzalez and a full hearing. On April 13, 2000, a successor judge issued a Final Order dismissing the petition for lack of subject matter jurisdiction due to federal preemption, and lack of standing.

11. On April 14, 2000, Michael Pearson, INS Executive Associate Commissioner for Field Operations, sent a letter to Lazaro Gonzalez to make clear that Elian's parole into his care was revoked at 2:00 p.m., Thursday, April 13, 2000, when Lazaro failed to comply with the INS's instruction that he present Elian at the Opa Locka Airport. Exhibit E. On April 21, 2000, James T. Spearman, Jr., INS Deputy Assistant District Director for Investigations, issued a Warrant of Arrest for Elian Gonzalez. Exhibit F.

12. Once the INS revoked Elian's parole, his remaining in the United States is a violation of law. Moreover, Lazaro Gonzalez has refused to return physical custody of Elian to the INS, as ordered by the INS. In his letter of April 13, 2000,

Executive Associate Commissioner Pearson advised:

Absent an order from the Eleventh Circuit enjoining Elian's transfer to his father, you have no legal basis to continue to exercise control over Elian. Moreover, you are holding Elian without the consent of his father and without the consent of the Immigration and Naturalization Service, Elian's current legal custodian under the immigration laws.

Exhibit E. When the state court dismissed Lazaro Gonzalez's petition, it terminated the Temporary Protective Order which had granted Lazaro temporary custody of Elian. Therefore, Lazaro Gonzalez has no claim of a right to custody based on the now dismissed state court proceeding. In the absence of legal authority from the INS to retain custody of Elian, or the consent of Elian's father, Juan Miguel Gonzalez to retain custody, Lazaro Gonzalez is unlawfully restraining Elian Gonzalez.

13. On April 19, 2000, the United States Court of Appeals for the Eleventh Circuit issued an Order granting Elian Gonzalez's motion for injunction pending appeal. The Court's Order expressly did not decide "where or in whose custody Plaintiff should remain while this appeal is pending. This Order only prevents Plaintiff's removal from this country." See Order at 15 n. 16.

14. Since he was paroled into his great-uncle's custody, Elian Gonzalez has resided at Lazaro Gonzalez's home located at 2319 N.W. 2nd Street, Miami, Florida. The home is a one-story,

two-bedroom, family residence located in Miami-Dade County, Florida, within the city limits of the City of Miami. The home is located on Northwest 2nd Street, bounded by Northwest 23rd Avenue on the East and Northwest 24th Avenue on the West. The persons inhabiting the residence include Lazaro Gonzalez, his wife Angela Maria, adult daughter Marisleysis Gonzalez, and Elian. In a declaration filed in the District Court proceedings, Marisleysis Gonzalez stated that she and Elian shared the same room in the house. The INS has maintained daily surveillance of the residence at 2319 N.W. 2nd Street, Miami, Florida. I have reviewed the latest surveillance reports and they indicate Elian Gonzalez is still residing at 2319 N.W. 2nd Street, Miami, Florida.

15. Based on this information, I have probable cause to believe that Elian Gonzalez is being unlawfully restrained. Further, I have probable cause to believe he is located at the Lazaro Gonzalez family residence at 2319 N.W. 2nd Street, Miami, Miami-Dade County, Florida. This affidavit requests that a search warrant be issued, authorizing United States Immigration and Naturalization Service officers to enter the residence of Lazaro Gonzalez, located at 2319 N.W. 2nd Street, Miami, Florida, to seize the person of Elian Gonzalez.

16. The undersigned also requests that the search warrant permit execution during night time hours. During the last two

weeks, large crowds, up to several thousand people, have gathered outside 2319 N.W. 2nd Street to protest the United States Government's actions to reunite Elian with his father. Large numbers of individuals have indicated to the media covering the event that they intend to form a "human chain" to prevent the INS from entering the home of Lazaro Gonzalez. The numbers of individuals outside the home dwindle during the night time hours. In order to meet the least amount of resistance from any crowd gathered outside the home, ensure the safety of Elian Gonzalez, and protect the officers executing the warrant, the INS may plan to execute the search warrant during night time hours.

FURTHER AFFIANT SAYETH NAUGHT.

Mary A. Rodriguez

MARY A. RODRIGUEZ
Senior Special Agent
United States Immigration and
Naturalization Service
Miami, Florida

Sworn to and subscribed before me this 21st day of April, 2000.

[Signature]
UNITED STATES MAGISTRATE JUDGE

JUN-15-99 01:32am From-US DEPT OF JUSTICE

+3055365220

T-621 P 33

F-583

U.S. Department of Justice
Immigration and Naturalization ServiceORDER TO APPEAR
DEFERRED INSPECTION

You, ELIAN GONZALEZ
have not established conclusively that you are admissible to the United States; therefore, YOU ARE ORDERED TO APPEAR IN PERSON AT THE BELOW INDICATED ADDRESS ON THE DATE AND TIME CITED. A final determination will be made then concerning whether and under what conditions you will be admitted to this country for the purpose you have indicated. FAILURE TO APPEAR AS ABOVE ORDERED MAY RESULT IN YOUR BEING TAKEN INTO CUSTODY BY AN OFFICER OF THIS SERVICE. ☐ Your passport has been retained. It will be returned to you in person when you report to the address indicated below.

Reporting Address:

U.S. IMMIGRATION AND NATURALIZATION SERVICE
7880 E. SCARLINE BLVD
MIA, FL 33138
ATT: DEFERRED INSP.

Reporting Date & Time

~~NOV 23~~, 1999
DEC
0900 am.

Specific Reason(s) for Deferral of Inspection:

- ☒ Documentary Deficiency: ☐ Passport ☐ Visa ☐ FORM I-151/1-551
☐ Non-bona fide Nonimmigrant (See details below)
☐ For M/S Bond Posting (See details below)

DETAILS:

Applicant Speaks SPANISH
(Language)

Above subject minor was rescued by two fisherman on 11/25/99 3 miles out to sea from the Port Everglades Port of Entry. Minor subject was taken to the Port Everglades Coast Guard Station & pickup by EMS unit. Taken to Hollywood children's Hospital on Johnson St. Subject minor had no docs on ID on him. was released to the custody of his uncle & aunt Mr. & Mrs. Gonzalez both BAL holders. Any other information required contact agent Eastwood, 954-444-2536 Special Agent with Border Patrol, on Border Patrol agent Lopez 954-768-3450-Bay. They were both onsite when minor was brought to USCG Station/PEU. Deferred AS per BDA NUMBER.

305-541-9039

Port Everglades, FL 11/25/99

Deferring Port

Date

Signature of recommending officer

Supervisory Officer

GOVERNMENT
EXHIBIT
A

04-12-99 01:32pm From-US DEPT OF JUSTICE

+3055365174

7-821 P 04/21 P-553

Admission Number

043849814 02

Immigration and
Naturalization Service

I-94
Arrival Record

Deferred
INS?
PEU #3
11/25/99

Family Name CONZALEZ	
Given (Last) Name ELIAN	
Country of Citizenship CUBA	
Passport Number SEN	
City Where You Were Born Cuba	City Where You Resided SEN
Address Within the United States (Street and Number) 2319 NW 2ND ST	
City and State MIAMI FL	

000026

JAN-05-2000 11:20

INS GENERAL COUNSEL

202 514 8044 P.02/03

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

JAN - 5 2000

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

Dear Mr. Gonzalez,

We appreciate your cooperation during our consideration of immigration matters relating to Elian Gonzalez and your meeting with us in Miami on December 20th. After careful consideration and consultation with her legal advisors, the INS Commissioner has made several determinations in this case, of which I am now prepared to inform you.

The INS has been in direct contact with Juan Miguel Gonzalez-Quintana. Mr. Gonzalez-Quintana has provided reliable documentation that he is Elian's biological father and that he now has legal custody of the child under Cuban law. As such, he has the right and obligation to represent Elian in all legal transactions and acts in which Elian has an interest. Therefore, we have determined that Mr. Gonzalez-Quintana has the authority to speak for his son in immigration matters. After carefully considering all relevant factors, we have determined that there is no conflict of interest between Mr. Gonzalez-Quintana and his son, or any other reason, that would warrant our declining to recognize the authority of this father to speak on behalf of his son in immigration matters. Further, we took steps to ensure that Mr. Gonzalez-Quintana could express his true wishes at our interviews with him, and after carefully reviewing the results of the interviews, we are convinced that he did so.

Roger Bernstein and several of his associates, attorneys in Miami, have submitted several Forms G-28, Notice of Entry and Appearance as Attorney, for Elian. Some of these Forms G-28 were signed by you on behalf of Elian. On others, Elian himself has printed his first name. After careful consideration, we have determined that we cannot recognize any of the Forms G-28 as authorizing these attorneys to represent Elian in immigration matters. Although the INS has placed Elian in your physical care, such placement does not confer upon you the authority to act on behalf of Elian in immigration matters or authorize representation in direct opposition to the express wishes of the child's custodial parent. Further, we do not believe that Elian, who recently turned six years old, has the legal capacity on his own to authorize representation. Finally, Mr. Gonzalez-Quintana has expressly declined to authorize Mr. Bernstein or his associates to represent Elian. Therefore, the INS cannot recognize them as Elian's representatives.

GOVERNMENT
EXHIBIT
B

000003

JAN-05-2000 11:21

INS GENERAL COUNSEL

202 514 8044 P.03/03

Mr. Lazaro Gonzalez

Page 2

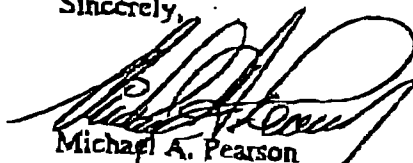
In our direct conversations with Mr. Gonzalez-Quintana, he has repeatedly informed us of his decision not to assert Elian's right to apply for asylum. Mr. Bernstein and his associates have prepared and submitted asylum applications on Elian's behalf, one of which was signed by Elian. After careful consideration, we have determined that Elian does not have the capacity to apply for asylum without the assistance of his parent. Further, neither the applications you have submitted nor any other information available indicates that Elian would be at risk of harm in Cuba such that his interests might so diverge from those of his father that his father could not adequately represent him in this matter. Therefore, given Mr. Gonzalez-Quintana's decision not to assert Elian's right to apply for asylum, we cannot accept the asylum applications as having been submitted on Elian's behalf.

Mr. Gonzalez-Quintana has also repeatedly requested that Elian be returned immediately to his custody in Cuba. We consider this to be a request to withdraw Elian's application for admission to the United States, made by Elian's custodial parent with authority to speak for Elian in immigration matters. Therefore, we have granted Mr. Gonzalez-Quintana's request to withdraw Elian's application for admission to the United States.

Upon his arrival, Elian was temporarily paroled into the United States. Arrangements should now be made within the next nine days for Elian's reunion with his father. It is our hope that you will be able to make arrangements with your nephew to ensure that Elian is returned to him and his immediate family as soon as possible. The INS is prepared to provide whatever assistance would be appropriate. We are also aware that neutral third parties have offered to facilitate Elian's return to Cuba and we are ready to work with them as arrangements are sought.

We appreciate your family's immediate willingness to care for and comfort Elian after the tragic loss of his mother and stepfather and his ordeal on the high seas. Please be assured that we would be happy to facilitate continuing contact between Elian, his father, and your family. If Elian and his immediate family wished to apply for tourist visas at some point in the future, the Consular Section at the U.S. Interests Section in Havana would, of course, consider them very favorably.

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
for Field Operations

000004



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

January 12, 2000

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

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

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

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

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

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



Letter to Spencer Eig, Esq., et al.

Page 2

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

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

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

Letter to Spencer Eig, Esq., et al.

Page 3

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

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

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

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

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

Letter to Spencer Big, Esq., et al.

Page 4

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

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

Sincerely,



Janet Reno

APR-13-2000 00:00

OFFICE OF THE COMMISSIONER

202 514 4523 P.02/03



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 12, 2000

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

Dear Mr. Gonzalez:

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

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

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

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



APR 13-2000 00:00

OFF OF THE COMMISSIONER

202 514 4623 P.03/03

Mr. Lazaro Gonzalez

Page 2

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

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

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

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
for Field Operations

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

HR-14-000 18:17

OFFICE OF THE COMMISSIONER

202 514 4623 P.02/03



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 14, 2000

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

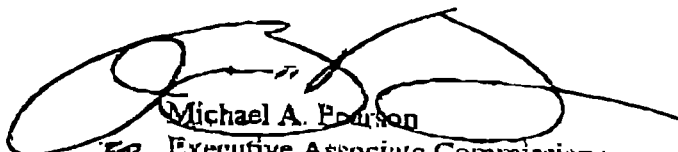
Re: Elian Gonzalez

Dear Mr. Gonzalez:

We are aware that certain of your attorneys and spokesmen have stated publicly that you believe Elian Gonzalez is still legally paroled into your care. I am writing to make clear that Elian's parole into your care was revoked at 2:00 p.m. on Thursday, April 13, 2000, when you failed to comply with the INS's instruction to present Elian at the Opa-Locka Airport to be reunited with his father. The revocation was pursuant to 8 U.S.C. §§ 1103, 1182(d)(5), 1225 (Supp. 1998); 8 C.F.R. §§ 103.1, 212.5, 235.2, 236.3 (1999). Absent an order from the Eleventh Circuit enjoining Elian's transfer to his father, you have no legal basis to continue to exercise control over Elian. Moreover, you are holding Elian without the consent of his father and without the consent of the Immigration and Naturalization Service, Elian's current legal custodian under the immigration laws.

Should you have any questions, please contact District Director Robert Wallis at 305-762-3680.

Sincerely,


Michael A. Pearson
Executive Associate Commissioner
for Field Operations



OFFICE OF THE COMMISSIONER

202 514 4623 P.03/03

cc: Linda Osberg-Braun, Esq.
Roger A. Bernstein, Esq.
Spencer Eig, Esq.
Kendall Coffey, Esq.
Manuel Diaz, Esq.
Barbara Lagoa, Esq.
Jose Garcia Pedrosa, Esq.
Juan Miguel Gonzalez
Gregory Craig, Esq.

Department of Justice
Immigration and Naturalization Service

Warrant for Arrest of Alien

File No. A77 013 761Date: April 21, 2000

I, any officer of the Immigration and Naturalization Service delegated authority pursuant
to section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

ONEAL, Elian

(Full name of alien)

An alien who entered the United States at or near Port Everglades, Florida on

(Port)

November 25, 1999 is within the country in violation of the immigration laws and is

(Date)

therefore liable to being taken into custody as authorized by section 236 of the Immigration and
Nationality Act.

By the virtue of the authority vested in me by the immigration laws of the United States and the
regulations issued pursuant thereto, I command you to take the above-named alien into custody
for proceedings in accordance with the applicable provisions of the immigration laws and
regulations.



(Signature of authorized INS official)

James T. Spearman, Jr.

(Print name of official)

Deputy Assistant District Director Investigations

(Title)

Certificate of Service

Served by me at _____ on _____ at _____
I certify that following such service, the alien was advised concerning his or her right to counsel and was
furnished a copy of this warrant.

(Signature of officer serving warrant)

(Title of officer serving warrant)

GOVERNMENT
EXHIBIT

F



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 12, 2000

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

Dear Mr. Gonzalez:

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

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

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Mr. Lazaro Gonzalez

Page 2

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

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

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

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
for Field Operations

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

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

**OFFICE OF THE DEPUTY
ATTORNEY GENERAL**

DATE: April 26, 2000

TO: Mary DeRosa
456-9110

FROM: James Castello

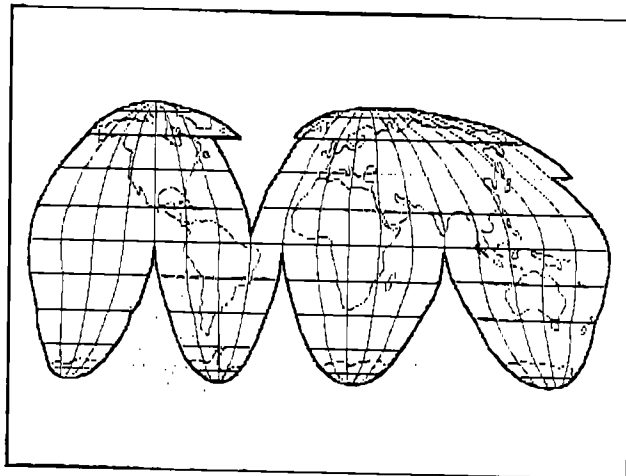
MESSAGE:

(TOTAL NUMBER OF PAGES INCLUDING THIS 34)

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)**



Attorney General for a six-point combined family-reunification process, contacted Elian's attorneys to confirm the approval of the Lazaro Gonzalez family. Exhibit "2," Affidavit of Carlos Saladrigas ¶¶ 5-23. During the course of the negotiations, Aaron Podhurst emerged as the mediator, keeping the other civic leaders as well as the Attorney General informed "of each and every adjustment to the agreement that was being proposed." *Id.* ¶ 22. Ironically in light of subsequent events, the Attorney General repeatedly expressed her concern "that she not be embarrassed during the negotiations." *Id.* ¶¶ 13, 23 and wanted documented confirmation of the family's concurrence with the six points. By mid-afternoon on Good Friday, the Lazaro Gonzalez family met with counsel and agreed to all six of the elements of the proposal. The Attorney General asked for a document to be faxed to Washington by 5:00 p.m. confirming their agreement with the apparent solution.

Before 5:00 p.m. on Friday, the negotiators, believing that they had reached an agreement in principle with the Attorney General, faxed her a written "term sheet" outlining the six points. *Id.* ¶ 23, 24. Pursuant to the Attorney General's request, the Gonzalez family later signed the term sheet and faxed it at approximately 8:30 p.m. on Friday night. *Id.* ¶ 25. A true copy of the signed term sheet is attached as Exhibit "A" to the Saladrigas Affidavit. The Gonzalez family's only addition to the unsigned term sheet that was originally faxed to the Attorney General before 5:00 p.m. was not a condition, but was simply a heartfelt, hand-written request: "We further request that a spiritual adviser be allowed to be on the premises" during the reunification process. *Id.* There would inevitably be details to be worked out concerning the agreement in principle, and the negotiators and the Attorney General "[a]ll seemed to agree" that there were details to be "dealt with later." *Id.* ¶ 27. Subsequently, during the evening and throughout the night, discussions continued among the Miami leaders, separated by various intervals as they awaited response from the Attorney General. Following the negotiators'

conversation with Mr. Podhurst and the Attorney General at about 1:30 a.m., they were confident that a deal was indeed being reached. The negotiators and the Gonzalez family waited to hear back from the Attorney General for confirmation. *Id.* ¶ 28.³

They were left to wait until about 4:00 a.m., at which time Mr. Podhurst called with the Attorney General on the other line. Mr. Podhurst "indicated that her [the Attorney General's] tone of voice had changed; that she seemed to him to be under enormous pressure; and that the deal had changed substantially." *Id.* ¶ 29. After detailing the INS's eleventh-hour demands, Mr. Podhurst called again and said that "the Attorney General had indicated to him that we had only five minutes to agree to the new conditions." *Id.* ¶ 30. The negotiators awoke the family to discuss the Attorney General's latest unexpected demands. At 4:30 a.m., during the middle of these discussions, Mr. Podhurst, who had the Attorney General on the other line, told the negotiators and the family that "we were running out of time." *Id.* ¶ 31. The negotiators informed the Attorney General, through Mr. Podhurst, that they were in the process of speaking to their abruptly awakened clients and would be recommending agreement to the INS's main sticking point. Shortly after 5:00 a.m., while negotiators were still on the phone with Mr. Podhurst and with the Attorney General on the other line, the INS forces burst through the door, filling the house with tear gas. *Id.*

It bears repeating that at the moment that INS agents clad in military-style uniforms and brandishing submachine guns, broke violently through the front door of the house, the Attorney General herself was on the phone with Mr. Podhurst, while Elian's attorneys, the Gonzalez family, and the community leaders were continuing the negotiations, stating that even the latest INS pre-condition

³ Evidently, the Magistrate's warrant had already been issued at 7:25 p.m. (Exhibit "1") It is now distressingly apparent that this law enforcement operation was proceeding inevitably throughout Good Friday into the next morning, even while some community leaders slept, believing an agreement had been reached, while others negotiated believing they were addressing the details.

would be accepted. Yet, as reported by *The Miami Herald*, by the time the Attorney General called the negotiators to pressure them and the Gonzalez family with last-minute demands in the dead of night, the INS already had put into motion hours earlier the armed raid on the Gonzalez's house.⁴ Following the attack on an unarmed household, with children inside, and no crime even being alleged, only disturbing conclusions can be rationally drawn from the process that included a documented concurrence twelve hours earlier by Lazaro and Marisleysis Gonzalez to the six-points that the Attorney General said she supported. First, this was an appalling subterfuge aimed at lulling the Gonzalez family, the negotiators, Mr. Podhurst, and the rest of the Miami community into a false sense that a peaceful, constructive manner was still the achievable goal of the INS. The ruse succeeded. Surprise was complete, and the number of supporters outside was minimal due to widespread reports that an agreement was being reached. If not a sham negotiation by original and deliberate design, it became a subterfuge nonetheless. If the Attorney General was indeed being forthright when she said she supported the documented terms negotiated between her and Miami's leadership, then the launching of an armed raid in darkness in the context of a settlement process manifests a different but also troubling scenario. Stated simply and not so implausibly, the Attorney General of the United States was unable truly to control the decisions and actions of her own department.

III. A Child's Nightmare Revisited

⁴ At 4:15 a.m., at the same time that Mr. Podhurst was communicating the Attorney General's latest demands to the negotiators in the Gonzalez house, Miami Police Chief William O'Brien "received a call at his ... home from Assistant Chief John Brooks, [advising that] [f]ederal agents would raid the house at 5:15 a.m." "How It Happened," *The Miami Herald*, April 23, 2000 1A, 14A. Concerning news reports, appellant respectfully requests that this Court take judicial notice of relevant and wisely distributed newspaper accounts and transcripts of publicly-made statements by government officials. See *Peters v. Delaware River Port Authority of Pennsylvania and New Jersey*, 16 F.3d 1346, 1355, fn. 12 (3rd Cir. 1993) (court took judicial notice of newspaper accounts in considering whether governmental entities were in competition with one another.)

After ramming down and bursting through the front door with submachine guns at the ready, the INS agents terrorized the completely unarmed children and adults in the house. None was alleged to have committed any crime and yet all were subjected to assault shock tactics ordinarily reserved for serious drug dealers and violent criminals. The heavily armed agents shot off non-incendiary tear gas as they stormed in, hurting innocent and disoriented people who offered absolutely no resistance to the grossly excessive display of force. The Affidavit of Olga M. Saladrigas (Exhibit "3") described vividly the senseless and excessive display of force used by the INS raiders. The attorneys and negotiators inside the house were blocked inside the back room by INS raiders and subjected to the gassing that flowed throughout the house. Unfortunately, this was the least of the ordeals for the home's occupants. The series of photographs attached hereto as Composite Exhibit "4" only partially show the aftermath of the agents' rampage through the house, including the gratuitous destruction of the little boy's bed.

As if merely being present during this horrific scene were not traumatic enough, the agents further terrorized Elian himself by pointing an automatic assault rifle directly at him and forcibly prying him from the arms of Donato Dalrymple, the same fisherman who rescued him five months ago from the waters off the Florida Coast. See Affidavit of Donato Dalrymple (hereinafter "Dalrymple Affidavit"), attached hereto as Exhibit "5." A photograph taken by an Associated Press photographer who rushed into the house behind the agents graphically depicts the INS's brutal conduct towards Elian himself, *Id.* ¶ 14, and is attached as an exhibit to the Dalrymple Affidavit.⁵ The weapon aimed at Elian

⁵ To deflect criticism of the INS's inexcusable conduct, Attorney General Reno has stated to the media that the photograph attached as an exhibit to the Affidavit of Donato Dalrymple actually exemplifies the INS's attempts to prevent trauma to Elian because, at the particular instant that the photograph was taken, the gunman's finger was not on the trigger of his automatic weapon. The Attorney General is correct - the gunman's trigger finger is next to, but not physically resting on the trigger. It hardly need be observed that this hair-splitting by the Attorney General made no difference to a six-year-old child with an M-5 submachine gun pointed in his face by a United States

was a submachine gun, an MP-5 not designed for ordinary police work but for "killing situations, in high-risk raids, where commands of law enforcement officers are likely to encounter opposition that must be stopped quickly and powerfully." Washington Post, April 24, 2000, "The Gun Seen Round The World," p. CO 1.

At gunpoint, an INS agent grabbed Elian by his pajama shirt away from Dalrymple's arms and literally threw him to another INS agent who covered his head with a towel and carried him away. See, Dalrymple Affidavit ¶ 16. All the while Elian screamed in English, "Help me! Help me!", and in Spanish, "Que pasa? Que pasa?" which means, "What is happening?" Unmoved by the cries and pleas of this child, INS agents, assault weapons in hand, physically carried him out of the house and into a waiting van. See Dalrymple Affidavit ¶ 16-20. As Dalrymple followed, pleading with the INS agents not to hurt Elian, he continued to be met by the barrels of INS machine guns and with the agents' threats: "Stay back, mother---er, or we'll shoot." See Dalrymple Affidavit ¶ 17.

It may never be known with certainty why the INS deliberately strategized a darkness of night ordeal to remove Elian shockingly from his American family and the mother figure in his life. Nonetheless, through its paramilitary operation, some of the core elements of Elian's tragic ordeal last November were chillingly recreated by the INS. The terrifying removal in blackness from family and

government agent in full riot gear. Equally obvious is the fact that a jittery gunman would have needed only a split-second before being able to fire a spray of bullets into the room.

Keeping to her pre-announced determination to avoid "embarrassing herself," the Attorney General wisely did not point out to the media and the United States public listening to her press conference that the wider-shot of the same scene shows a masked gunman in the background of the photograph pointing his M-5 submachine gun at Elian's five-year-old best friend and cousin -- and that this gunman has his finger on his trigger, positioned to mow down a child, hardly a threat worthy to justify this shameful display of United States military might. See Exhibit "6." That child ingested substantial portions of tear gas, was later stabilized but has remained incommunicative and withdrawn due to the obvious shock.

Marisleyxis occurred while beloved adults were incapacitated and unable to help, a haunting analogy to the lost mother and helpless, drowning refugees who surrounded Elian in those horrifying moments five months ago. Saturday's trauma of abrupt separation was followed by a lonely journey with strangers, including a helicopter ride - another frightful experience for a sobbing child, who had never been on any sort of aircraft before. From there a customs airplane flight brought Elian to Andrews Air Force Base, another journey of unknowns after rupture from a mother's arms in darkness. As is described in the psychological report being filed simultaneously under seal, the parallels between the two traumatic events of separation are extremely harmful and create a high level risk of long-term damage. Equally clear is the resulting sense of abandonment by his American family. That sense of seemingly permanent separation and total isolation, necessarily increases Elian's need for compliance with the wishes of the adult authority figures who now surround and control this child.

IV. The Aftermath

Remarkably, the Attorney General announced during a press conference later that day that "Time ran out," on the negotiations and that mediation was impossible because the Gonzalez family "kept moving the goalpost." President Clinton stated in a separate press conference that the INS's armed raid occurred after "all efforts failed." Those statements, to say the least, were not accurate. As to the settlement process undertaken by Miami's civic leaders, the Attorney General herself was on the telephone in continuing negotiations at the same time she had already ordered the raid. Indeed, Aaron Podhurst vehemently contests any claim to the contrary:

Even as agents were battering down the door to enter the Lazaro Gonzalez house at 5:10 a.m., Attorney General Janet Reno was on the telephone with one of Miami's most respected civic leaders, Aaron Podhurst, discussing the shift of Elian's custody. Mr. Podhurst and others - including University of Miami President Edward T. "Tad" Foote II and business executives Carlos de la Cruz and Carlos Saladrigas - had worked round the clock over the preceding 48 hours as mediators between the government and the Miami family to arrange for the

transfer.

They believed enormous progress had been made and that the deal was within grasp. Ms. Reno's claim that the Miami relatives "kept moving the goalpost" is vehemently contested by Mr. Podhurst, her friend for 30 years. "The goalpost were moved by them [i.e., the government]," a disconsolate Mr. Podhurst said Saturday. "I've never been more devastated in my entire life."

See Exhibit "7," "A Shocking Raid, A Call For Calm," *The Miami Herald*, April 23, 2000 A1,

A. In a separately issued statement, Mr. Podhurst stated that "productive negotiations and conversations were ongoing right up to the moment of the raid." As to the President, his statements were not only inaccurate, they were profoundly incomplete. His "all efforts failed" sound-bite ignored the truth that the INS had refused any form of judicially supervised mediation, rejecting out-of-hand even this Court's own encouragement to participate in Eleventh Circuit mediation. Moreover, nowhere did President Clinton acknowledge that three weeks earlier, in the Oval Office, he had personally assured Senator Bob Graham that there would not be any law enforcement operations under the cover of darkness.⁶

Along with the inaccurate spin about part of the events is the INS's continued stonewalling on

⁶U.S. Senator Graham, who is widely regarded as a moderate and one of the Senate's most thoughtful members, minced no words about "a clear commitment which was violated." See Exhibit "8," copy of transcript of interview of Senator Bob Graham. He also spoke compellingly about the INS's amazing professions of ignorance as to whether there might have been guns in the house, a house which was continually accessible to police officers:

The fact is that if law enforcement intelligence didn't know what was happening in that little house right in back of us for five months, didn't have an absolute 100 percent understanding of who, what and what capabilities was in that house. There was a mammoth failure of law enforcement intelligence. That fact is, they did know, and they knew that it was not necessary to come with machine guns and scare children and tear gas innocent citizens. It was a gross, excessive use of force. (Emphasis added).

the subject of Elian's present and immediate future.⁷ On Saturday afternoon, the Attorney General participated in a two-hour telephone conference, held at the offices of *The Miami Herald*, with Aaron Podhurst, Tad Foote, Carlos Saladrigas and Carlos de la Cruz during which she discussed "the case and the events of the last two days." Exhibit "2," Saladrigas Affidavit ¶ 32. During that teleconference, Mr. Saladrigas asked the Attorney General whether she could guarantee that Elian was alone with his family and outside the control of Cuban agents. *Id.* The Attorney General "replied that she had no knowledge of who was with the child and had no authority to limit access to the child." *Id.* That is a startling statement. It is deeply unsettling for the nation's chief law enforcement officer, after wrenching a six-year old from a loving household through the use of armed force, to disavow knowledge or ability concerning the protection of the child from agents of a foreign government while situated at a United States Air Force base.

Even worse, however, is the fact that, with or without the Department of Justice's knowledge, Cuban government officials have already been meeting with Elian. Thus, in yet another grim and unfathomable irony, the U.S. government is denying access to Elian's U.S. family, doctors and lawyers, while allowing agents of the Cuban government from which this appeal seeks protection, to see this child.

V. This Court Has The Ability To Enforce Its Existing Injunction

Unfortunately, the rapidly changing and dramatic circumstances of this case have made it necessary for this Court to step in to clarify and enforce its earlier Order in order to meaningfully

⁷On Saturday evening, counsel for appellant faxed a letter to the Attorney General and David J. Kline expressing concern that Elian Gonzalez might be placed in a situation in which Cuban government personnel would have control or supervision. To date, the INS has ignored the letter which is attached as Exhibit "9." *The Miami Herald*, however, on April 24, 2000, reported that "[a] Clinton administration official did say that Cuban officials have visited the family 'two or three times' since the family's arrival Saturday."

maintain the ability to proceed with this appeal. This Court's Order recognized that Elian's appeal raises a substantial case on the merits regarding his entitlement to ultimate relief in the form of an asylum hearing, and therefore enjoined Elian's removal from the United States during the pendency of the appeal. This motion seeks to enforce or clarify that Order in order to ensure that it does not become meaningless.

This Court's power to effectuate its previous Order is unquestioned. As the Supreme Court has emphasized, "federal courts are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced." *Hutto v. Finney*, 437 U.S. 678, 690 (1978). Accord *Parker v. Ryan*, 960 F.2d 543, 546 (5th Cir. 1992) (inherent authority to enforce injunctions and to preserve court's ability to render judgment) (citations omitted). Similarly, this Court enjoys inherent power to enforce and clarify its injunction when faced with changing factual circumstances and repeated threats to its jurisdiction. The Second Circuit has described the nature of this inherent power:

An injunction is an ambulatory remedy that marches along according to the nature of the proceeding. It is executory and subject to adaptation as events may shape the need, except where rights are fully accrued or facts are so nearly permanent as to be substantially impervious to change.

Sierra Club v. United States Army Corps of Engineers, 732 F.2d 253, 256 (2d Cir. 1984) (citing *Swift*, 286 U.S. at 114). See also *Augustus v. School Board of Escambia County*, 507 F.2d 152, 156 (5th Cir. 1975)⁸ (a court has inherent power to enter such ancillary orders as are necessary to carry out the purpose of its lawful authority).

This Court should act to prevent a violation not only of the letter but also of the spirit of its Order. *DeKalb County School District v. Schrenko*, 109 F.3d 680, 684 (11th Cir. 1997) (further relief

⁸ See *Bonner v. City of Pritchard*, 661 F.2d 1206 (11th Cir. 1981) (adopting as binding all decisions of the former Fifth Circuit handed down prior to September 30, 1981) (en banc)

required consistent with the letter and the spirit of the decree."); *Securities and Exchange Com'n v. Okin*, 137 F. 2d 862, 864 (2d Cir. 1943) ("The duty of the defendant was obedience not only to the letter, but to the spirit of the Order.").

VI. In Order To Protect This Court's Jurisdiction Over This Appeal, Appellant Must Be Prevented From Being Taken Onto Property Under The Control Of The Cuban Government

An essential corollary to the injunction already preventing Elian's removal from the United States is his continuous presence within the borders of this Court's jurisdiction. The same concerns requiring the injunction preventing Elian's removal from the United States mandate that he be kept out of locations within this country that are immune from this Court's power, but within the control of Cuba. Just as critical is the Court's stricture that the INS must take the "reasonable and lawful steps as necessary" to prevent removal. Any common sense adherence to this command requires that Elian not be placed even briefly in the control of Cuban government agents or instrumentalities who could abruptly remove him with impunity and immunity.

The serious risks of removal that would accompany entrustment to Cuban property or personnel are manifest. The premises of a foreign embassy are inviolable. See *El-Hadad v. Embassy of the United Arab Emirates*, 69 F. Supp.2d 69, 75 n.5 (D.D.C. 1999). The agents of the receiving state (i.e., the United States) may not enter except with the consent of the head of the diplomatic mission. See, e.g., *767 Third Avenue Associates v. Permanent Mission of the Republic of Zaire*, 988 F.2d 295, 298 (2nd Cir. 1993); *Fatemi v. United States*, 192 A.2d 525, 528 (D.C. 1963). Moreover, the "private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission." *York River House v. Pakistan Mission to the United Nations*, 820 F. Supp. 760, 762 (S.D.N.Y. 1993).

Also immune from U.S. control are Cuban government functionaries. Diplomatic immunity,

like sovereign immunity, belongs to the foreign state (i.e., Cuba) and may only be waived by that state itself. See, *Aquamar S.A. v. Del Monte Fresh Produce, N.A., Inc.*, 179 F.3d 1279, 1295 (11th Cir. 1999). Diplomatic immunity, therefore, may not be waived by the diplomat himself, but must be waived by the diplomat's state in an express writing transmitted to the United States State Department. See, *United States v. Deaver*, 1987 WL 13365 (D.C. App. 1987); *Fatemi*, 192 A.2d at 528; *United States v. Arizti*, 229 F.Supp. 53, 54 (S.D.N.Y. 1964).

If Elian were transferred to territory outside of this Court's jurisdiction, the potential ramifications are clear. The Cuban government has emphatically proclaimed on countless occasions that it wants Elian returned immediately. The U.S. proclaims Cuba to be an outlaw state. Therefore, Cuba has both the strong motive and the indifference toward U.S. laws that could simply put Elian on a plane and depart bound straight to Cuba or a third country way station. As is sadly obvious, unexpected operations in the dark of night are apparently a preferred method for imposing solutions where Elian is concerned. Certainly, it provides no comfort for the INS to state that Elian will not be allowed to leave, but that the father can depart for Cuba at any time (Exhibit "10"). Obviously, any notion that restraining Elian while his father can leave with him is untenable. In reality, if Elian is subject to Cuban control in any form, this Court would be rendered powerless to prevent his abrupt departure from the United States, and no power in the United States could compel his return from Cuba. Just as plainly, the INS is not taking such "reasonable and lawful measures as necessary" to prevent Elian's removal.

Reportedly, Elian is currently being held at Andrews Air Force Base outside of Washington, D.C. The INS has indicated that he will be moved from Andrews imminently, but has refused to disclose the location to which he will be removed. Indeed, the INS refuses to state whether Elian will be removed to areas within the U.S. that are nonetheless beyond this Court's jurisdiction because they

are controlled by representatives of the Cuban government.⁹ In light of Elian's imminent transfer to an undisclosed location, and the INS's refusal to provide any assurance about the location or the access by Cuban functionaries, it is important that this Court act to preserve its continuing jurisdiction over this appeal.

VII. In Order To Protect This Court's Jurisdiction Over This Appeal, Appellant Must Be Prevented From Being Exposed To Diplomats, Officers, Physicians, Agents Or Any Other Representatives Of The Cuban Government

In order to preserve this Court's power to order meaningful relief in the form of an asylum hearing, Elian must be protected from the very government from which he seeks asylum during the pendency of his claim. Therefore, safeguards are required preventing contact with any agents of the Cuban government while he is in the United States, including Cuban government officers, diplomats, and particularly Cuban physicians and psychiatrists with instructions to reindoctrinate him. To permit Elian to be placed in the hands of Cuban government agents amounts to the immediate infliction of the ultimate harm that this appeal seeks to avoid. Whatever may be the intentions of Juan Gonzalez, he cannot resist the directives of the police state that houses most of his family back home, even while he stands on a U.S. base.

Asylum claims, like Elian's, are anchored upon the need to be protected from a foreign government's exploitation and persecution. Harmful measures could occur wherever that country's agents can be found. Clearly, Cuban operatives sequestered with Elian in the United States are as capable of harming Elian psychologically as Cuban agents in Cuba. Indeed, the recent, unprovoked

⁹ Although the Cuban government initially suggested that it would withdraw immunity for the residence in Bethesda, Maryland, no Cuban diplomat ever delivered a formal diplomatic note renouncing that status and, according to the United States Department of State, the house in Bethesda remains "inviolable." Exhibit "10," "Dad's Temporary Home Off-Limits To U.S.," *The Miami Herald*, Saturday, April 22, 2000, 15A.

physical assault on United States citizens by Cuban "diplomats" assigned to the Cuban Interests Section demonstrates the contempt that representatives of the Cuban government have for this country's laws and process. See Composite Exhibit "11," "Radio Figure Blasted. Carrollo Links Him to Envoy," *The Miami Herald*, April 19, 2000; "A Blow for Diplomacy," *The Miami Herald*, April 19, 2000. Despite some beliefs to the contrary, Cuba is still a brutal police state. On April 18, 2000, the day before the Court issued its Order, the United Nations Commission on Human Rights adopted a resolution decrying Cuba's failure to ensure basic human rights and noting Cuba's "continued repression of members of the political opposition and about the detention of dissidents." See Exhibit "12," April 18, 2000, United Nations Press Release. Cuba had the disgraceful distinction of joining Myanmar (f/k/a Burma), Sierra Leone, the former Yugoslavia, Sudan and Iran on the list of countries condemned by the United Nations. Oddly, even as the INS has stepped up so devastatingly its effort to remove Elian to Cuba, the United States is strongly supporting the resolution that so harshly condemns that regime.

The need to prevent Elian's contact with individuals associated with the government that is the subject of his underlying asylum claim, is nowhere on the INS's present agenda. The Attorney General's surprising statement this past Saturday that she has no idea who is meeting with Elian, underscores the fact that the INS is chronically unable or unwilling to address the safeguards needed for this child. Inexplicably, an excruciating commitment to destroying Elian's asylum rights has infected this case from the moment in early December when Castro began his strident, high-decibel demands for Elian's return.¹⁰ With Saturday's pre-dawn raid, the INS's unprecedented zeal for avoiding an asylum hearing, "without having met with Plaintiff or having any evaluations done on his capacity" Order at 7,

¹⁰As described in Exhibit "C" to appellant's motion of April 14, 2000, the INS committed on December 1 to keeping Elian here so that the family courts could handle the issues of Elian. Castro's tirades began four days later and, to say the least, things have never been the same.

n.7, has taken an even more destructive turn of events.

The INS finally met Elian, at gun point, with tear gas. And now, rather than consider his rights, the INS launched a final strategy for utterly destroying them. No one should be surprised in light of the continuing Cuban control over Juan Gonzalez and its recent interactions with Elian, if the coming days see an alleged repudiation of Elian's claim, followed by a motion to dismiss the appeal for supposed mootness. If this Court is to have any meaningful ability to issue an ultimate remedy in this case to preserve Elian's potential asylum rights, Cuban agents, including government officers, physicians, and psychiatrists, must be enjoined from interacting with him. That restraint should continue during the pendency of the appeal and throughout the asylum process, should this Court eventually mandate such proceedings.

VIII. Appellant's Family, His Treating Physician and His Attorneys Must be Given Access to Him on a Regular Basis Pending the Outcome of the Appeal

Elian was abruptly and violently removed from his American family. This is the family that during the past five months, provided Elian with love, stability and safety since he was found floating alone in an inner tube off the Florida coast after having witnessed the drowning of his mother, step-father and nine other adults. As this Court repeatedly noted in its Order, the INS refused to meet and evaluate this child before stripping him of his rights. In light of Elian's Thanksgiving Day rescue, it is more than ironic, indeed it is reprehensible, that the INS chose a pre-dawn, armed, snatch-and-grab assault on Elian's home over this Easter weekend as its way of meeting Elian. For the second time in a span of five months, Elian has been deprived of a mother figure in shattering circumstances. At worst, this is cold-blooded treachery-at best, a crude insensitivity. In either case, it is further proof that the INS stumbles badly and tragically whenever it enters the unfamiliar realm of a child's well-being.

Accordingly, it is even more clear than before that the INS lacks the competency to prevent

further harm from endangering Elian's fragile emotional and mental health. Illustrating that indifference to jeopardy is the refusal to allow Lazaro Gonzalez and his family members regular access to and interaction with Elian. This would reduce the severe harm from the rupture of the bonds that he established during the past five months, bonds that were so abruptly terminated in Saturday's pre-dawn raid. Further, as stated in the most recent psychological evaluation and report, in order properly to mourn the loss of his mother and to readjust to his new family, Elian must remain in contact with his U.S. family members. Otherwise, Elian will be led to believe that he was abandoned by relatives in Miami after he tragically lost his mother and stepfather at sea. Indeed, the removal of Elian with armed force from that family's home can only reinforce dramatically his feelings of abandonment and deep anxieties. No doubt, those intensified fears may foster superficial compliance with adult wishes, while scarring even more deeply the inner psyche of a child in distress.

To facilitate a less damaging transition, Elian's treating physician must also be granted immediate and continuing access to him. It is obviously crucial that Elian receive continuity in his treatment. Therefore, he should be visited and seen by the physician who has established months of trust and communication with him. Dr. Alina Lopez-Gotardi is the only individual with the significant background knowledge necessary to evaluate what is in Elian's best interest from a psychological standpoint. Casting Elian entirely into the hands of unknown new physicians, particularly in light of the new wave of trauma from Saturday's raid, will almost assuredly effect a drastic reversal of Elian's recent progress. By ensuring continuity of treatment, Elian's physician may be able to ameliorate the trauma of being thrown at gunpoint from the arms of the very man who rescued him at sea and, if possible, ensure that the healing process of recent months is not irretrievably damaged.

Finally, Elian's attorneys need to be assured that they will have access to their client during the appellate process. Although access by Elian's family members and his treating physician is paramount

to the child's well-being, other issues here deserve great respect in our legal systems. As a result, this Court should not permit the INS to sever unilaterally the relationship between Elian, the real party in interest here, and his attorneys. Clearly, the law requires that Elian's attorneys must be granted access to Elian. See *Jean v. Nelson*, 727 F.2d 957, 983-984 (11th Cir. 1984) (*en banc*), *aff'd on other grounds*, 472 U.S. 846 (1985). See also *Committee of Central American Refugees v. INS*, 795 F.2d 1434, 1438 (9th Cir. 1986), and cases cited therein ("The key factor present in each of these cases showing a constitutional deprivation is the existence of an established, ongoing attorney-client relationship.").

IX. Need For An Independent Officer of the Court

It is recognized here, as the INS itself acknowledged on December 1, 1999, before Castro's rages began, that it is not the usual role of federal courts to supervise child custody matters. Normal principles of federation counsel strongly against such intervention. Of course, little is normal about this case, and if ever there was an occasion for direct federal involvement into issues of visitation and access by families, doctors and lawyers, this is the case. Moreover, as a people, we have for more than two centuries looked to our federal courts as the sentinel of liberty, especially in matters of conflict with one's own government. For that reason, this Court should consider clarifying and modifying its present order to state simply that reasonable access and visitation should be allowed to Elian's U.S. family, his treating medical professionals and his attorneys. Indeed, present conditions impose the distressing paradox of a U.S. Government that bars access by U.S. family and professionals while facilitating visitation by the Cuban agents of a totalitarian regime that our country consistently condemns.

And yet, in cases of great emotion and controversy, it can be all the more appropriate to rely on long-standing principles as the compass for passage through difficult passions. Therefore, on balance, the most appropriate remedy may be the appointment of a temporary guardian ad litem or other

independent judicial officer to deal with certain interim issues while this appeal is ongoing. Those issues should include, but perhaps not be limited to, issues of visitation as well as medical and legal access. Concerning family and medical issues, a neutral officer of the court might engage and rely on an independent child psychologist to mediate any difference between the INS psychologist and the child's treating psychologist. Already pending before this Court is the appellant's contention submitted over two months ago the district court should have appointed a guardian below concerning Elian's INS administrative proceedings. *Johns v. Department of Justice*, 624 F.2d 522 (5th Circuit 1980). The issue now being submitted to this Court is related, but still different, and is far more urgent. Here, a guardian ad litem is needed on a temporary basis to deal with the immediate concerns and interests of Elian in the wake of a shattering reprise of his previous loss of loved ones in the darkness of night. Irrespective of whether Rule 17(c) is directly applicable to the appellate context of the present tragic dilemma, courts have inherent authority and an ancient duty:

[t]he infant is always the ward of every court wherein his rights or property are brought into jeopardy, and is entitled to the most jealous care that no injustice be done to him.

DuPont v. Southern Nat. Bank of Houston, Tex., 771 F.2d 874, 881 (5th Cir. 1985). So powerful is this "ancient precept of Anglo-American jurisprudence" that appellate courts have decreed protection for children *sua sponte*. *Johns v. Department of Justice*, 624 F.2d 522 (5th Cir. 1980); *Wenger v. Canastota Central School Dist.*, 146 F.3d 123, 124 (2d Cir. 1998).

We believe this Court itself has the inherent authority to appoint such a guardian or other court officer, especially in light of present exigencies. Nonetheless, if this Court concludes otherwise, we would respectfully request a partial relinquishment of jurisdiction to the district court, on an emergency basis, directing the district court to appoint an interim and neutral officer of the court for the balance of this appellate proceeding.

X. Conclusion and Prayer for Relief

Wherefore, appellant respectfully requests that this Court enter an Order:

(1) preventing him from being taken to any location outside the territorial jurisdiction of this Court, including the Cuban Interests Section in Washington, the homes of Cuban diplomats, and any property and premises owned or leased by agents of the Cuban government which are immune from this Court's process;

impose order

(2) preventing him from being transferred to the custody or care of or put in the presence of any agent or instrumentalities of the Cuban government;

will Craig agree?

(3) preventing him from being handed over, visited or observed by physicians, psychologists, or other medical personnel associated or affiliated with the Cuban government; and

(4) providing that Elian and his attorneys, family, and his treating physicians and psychiatrist be given regular and reasonable access to him during the pendency of his appeal; and conjunctively and alternatively,

(5) appointing an independent guardian ad litem or other officer of the Court to assure this Court that on an interim basis, the interests of this child are being protected as it described in items (1) through (4).

Respectfully submitted,

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By: 
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Attorneys for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via facsimile and also by U.S. Mail on this 25th day of April, 2000, to:

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By: Kendall Coffey
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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Elian Gonzalez v. Janet Reno, et al

Docket No. 00-11424-D

1. Roger A. Bernstein, Esq.
2. Linda Osberg Braun, Esq.
3. James E. Castello, Esq.
4. President William Jefferson Clinton
5. Kendall Coffey, Esq.
6. Coffey, Diaz & O'Naghten
7. Gregory Craig, Esq.
8. Spencer Eig, Esq.
9. Judd J. Goldberg, Esq.
10. Elian Gonzalez
11. Juan Miguel Gonzalez
12. Lazaro Gonzalez
13. Michele Gordon
14. Greenberg Traurig, P.A.
15. Hackley, Bernstein & Osberg Braun, P.L.
16. William J. Howard, Esq.
17. Thomas Hussey, Esq.
18. David J. Kline, Esq.
19. Edwin S. Kneedler, Esq.

A condition which both the Justice Department, Juan Miguel Gonzalez and already agreed to since Elan who reunited with his father

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

Good Afternoon.

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

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

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

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

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

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

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

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

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

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

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

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

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



The Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMISSION COVER SHEET

DATE: 4/19/00

TO: Beth Nolan

OFFICE
PHONE #: _____

FACSIMILE
PHONE #: 456-6279

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

Brad Glassman

OFFICE
PHONE #: 202-514-2101

FACSIMILE
PHONE #: 202-514-0467

COVER PLUS 2 PAGES

REMARKS:

Elian

WHA Press Guidance
April 18, 2000

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

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

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

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

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

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

~~Business to government of a country~~
We simply cannot take the position that because the government of a country denies its citizens human rights, a parent in that country loses his or her right to raise ~~and~~ their child, and a family must be

broken apart.

URGENT: TO BE HELD CLOSELY

MD

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

FM: DAVE KLINE (DOJ)

RE: ELIAN GONZALEZ LETTER

Sent pursuant to Brad Glassman's
request.

Brad asks that the letter be
held closely.

URGENT: TO BE HELD CLOSELY



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

Dear Mr. Coffey:

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

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

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

-2-

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

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

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

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

-3-

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.

/ / /

/ / /

/ / /

-4-

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, sweeping 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)

(202) 616-4948 (facsimile)

cc: opposing co-counsel

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FAX (202) 434-5760
gcraig@wcl.com

March 30, 2000

BY HANDMr. Charles Shapiro, WHA/CCA
Coordinator of Cuban Affairs
Room 4906
Department of State
Washington, D.C.Re: **Application for Visas to Travel to the United States**

Dear Mr. Shapiro:

I am writing in my capacity as legal counsel for Mr. Juan Miguel Gonzalez of Cardenas, Cuba.

The purpose of my letter is, on behalf of Mr. Gonzalez and members of his family, formally to request that they be granted visas to travel to the United States. They include the following individuals:

Juan Miguel Gonzalez Quintana, father of Elian Gonzalez
Nercy Carmenate Castillo, wife of Juan Miguel Gonzalez
Hianny Gonzalez Carmenate, four month old half-brother of Elian Gonzalez
Yasmany Betancourt Valentin, favorite cousin of Elian Gonzalez

These individuals will be submitting the necessary paperwork, including their passports, to the appropriate U.S. authorities in Havana during the course of the next day or so.

I am also requesting that a visa be granted to an official from the Government of Cuba, Mr. Ricardo Alarcon, who will be traveling with Mr. Gonzalez and his family.

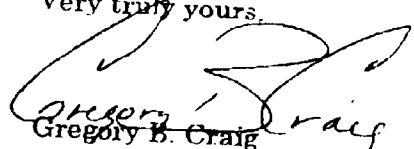
WILLIAMS & CONNOLLY LLP

Page Two
March 30, 2000

As you know, we believe that, in the event Mr. Gonzalez is required to remain in the United States for a period of time during the appeals process, it would be desirable to establish a support group of friends, classmates and professional advisors to assist in a smooth transition for Elian as he returns to his nuclear family and his father's custody. When we are informed that the United States is prepared to reunite Mr. Gonzalez with his son under these circumstances, we will be in touch with you about securing additional visas for these additional individuals.

Thank you for your assistance in this matter.

Very truly yours,



Gregory B. Craig

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106TH CONGRESS
2D SESSION

S. 2314

8:15C
11/01(a)(13)(C)(ii)
word appears
per says that a
PRA is deemed to be
during admission of
they have been abroad
from US for continuous
period of 180 days.

IN THE SENATE OF THE UNITED STATES

Mack, Graham, McCain

Mr. SMITH of New Hampshire introduced the following bill; which was read
twice and referred to the Committee on _____

A BILL

For the relief of Elian Gonzalez and other family members.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled;*

3 SECTION 1. PERMANENT RESIDENT STATUS FOR ELIAN
4 GONZALEZ AND OTHER FAMILY MEMBERS.

5 (a) GRANT OF PERMANENT RESIDENCE STATUS.—

6 Notwithstanding the Immigration and Nationality Act, or
7 any other provision of law—

8 (1) Elian Gonzalez and the family members
9 specified in subsection (b) are declared to be aliens
10 lawfully admitted for permanent residence in the

MAR 31 '00 09:51 FR SENATOR BOB GRAHAM
03/29/00
HYN00.423

TO 94569170

P.03/03

S.L.C.

2

1 United States as of the date of the enactment of this
2 Act; and

3 (2) the provisions of section 101(a)(13)(C)(ii)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1101(a)(13)(C)(ii)) shall not apply to Elian Gon-
6 zalez or any other family member specified in sub-
7 section (b), and neither he nor any such family
8 member shall be regarded as seeking an admission
9 into the United States for purposes of the immigra-
10 tion laws, if any such alien is absent from the
11 United States for any period by reason of having
12 traveled to Cuba.

13 (b) OTHER FAMILY MEMBERS COVERED.—The fam-
14 ily members referred to in subsection (a) are the following:

Elián Gonzalez

Juan Miguel Gonzalez

Nelsy Carmenate ? wife

Jianny Gonzalez } new baby

Mariela Quintana

Raquel Rodriguez } grandmothers

grandfather was added before
introduction



ALEX PENELAS
MAYOR

OFFICE OF THE MAYOR MIAMI-DADE COUNTY, FLORIDA

March 28, 2000

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

Dear Mr. President:

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

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

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

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

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

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

Sincerely,

Alex Penelas
Mayor

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

To <i>Mary</i>	From <i>Cayn</i>	# of pages <i>1</i>
Dept./Agency	Phone #	
Fax #	Fax #	

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

OPTIONAL FORM 99 (7-90)

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

NSN 7540-01-317-7388 5099-101

of pages 7

GENERAL SERVICES ADMINISTRATION

REMARKS BY DR. FIDEL CASTRO RUZ, PRESIDENT OF THE REPUBLIC OF CUBA,
AT THE INFORMATION ROUND TABLE ORGANIZED BY YOUTHS AND STUDENTS
ON MARCH 29, 2000

I apologize if for the third time in three days I find it necessary to say something here.

Finally, they had to show on screen what they did not want to show. They were certainly ashamed to show something like that but today they had no other choice. We can easily understand the decision they made yesterday because that dialogue and those questions they asked the child are a really sickening and disgusting display. However, I will not abound on that, I will rather leave it to the experts on the subject.

Look, today is the day. Everything has happened today and it is not over, yet. At this moment, the INS people are still in that meeting with the lawyers and the extended family and they have failed to reach a decision, at least, that we know of. As I said yesterday, the logic goes that they will comply, that they have to comply. Mr. Pertierra, attorney at law, has indicated the same thing. But, as they live there in such fear and hysteria, nothing is known until information is released on the discussions.

Still, there is something very significant. See that they are so helpless now, that they can only resort to a deceitful action, that is, to say that the father does not care for his son. They talk lightly about that as if there were not a thousand dangers stalking the father in Miami. They have completely forgotten what happened with the grandmothers. They seem to forget that even the police and the mayors there act in contempt of the Federal Government.

A trip by Juan Miguel to the Mafia territory would require, at least, the involvement of a battalion from the 82nd Airborne Division to protect him. But, that is not the key to this matter.

Juan Miguel is not afraid nor has he ever been afraid. I say this because I know him quite well. Theirs was a different trap: they would resort to anything, they have said so, to subpoena him, as they wanted to do with his child, to testify before a Congressional committee. This is the only great mistake they have avoided, but if they did it, an individual there would soon decide whether or not he could return because from the moment he is subpoenaed he must obey and it would be a violation of the law not to comply or to return to Cuba without their permission.

But Juan Miguel is not afraid of even that, just as the grandmothers were not afraid. They were willing to offer testimony and to tell them all the truths that should be said to those who in that Committee are capable of such brutal, arbitrary and wild actions. That

is the truth, there is no fear. It only happens that we have never done what they would like for us to do. Well, then, I shall now get right down to the issue.

While the round table proceeded, I was listening, taking notes and asking Carlitos to communicate over the telephone with various comrades, particularly, Juan Miguel. Actually, for the first time since I have been attending these debates, I also went aside to talk on the phone with Juan Miguel before making the decision to ask for a few minutes tonight to make these remarks. It will not take long; it is a short statement which I have already written down.

The Miami Mafia and the American extreme right have let all the beasts loose in the lot. The mayors in the service of the Miami Mafia have revolted. By the way, there is so much talk about the mayors but they are all from the same area in the city. The lawmakers who respond to the interests of that Mafia have been making moves and putting all kinds of pressure for an out-of-courts solution. They are trying to pass some sort of resolution or Act to take this case out of the courts, which to begin with have no legal right to consider this case because it does not correspond to the U.S. courts to decide on the issue. However, you see what is happening.

We had been planning for some time, together with Juan Miguel and Elián's grandparents, the father's trip to the United States while we waited for the right time to do it properly and with adequate guarantees against any absurd trick aimed at hurting him.

During this round table I have been in constant communication with Juan Miguel and his family and we have agreed, just today because we find this is the right moment, to release the following information:

Juan Miguel González, Elián's father, is ready to immediately travel to the United states to assume custody of his son, as the child's father with full rights recognized by the INS and Judge Moore, accompanied by indispensable people according to the criteria of medical doctors, psychiatrists and psychologists. Together, they would forthwith undertake the child's recuperation and his reinsertion to the family and school environment while case unfolds in the Atlanta Court of Appeals.

The fact is that it is now said that the process would last one and a half month, at least, and that is precisely what the INS is discussing today with the lawyers and the extended family. The INS is demanding from these people a pledge that when the court gives its ruling they will abide by such decision but they have so far refused to do even that and at this moment they are still resisting. Therefore, the purpose of the trip would be to have the child under the father's custody until that court issues its ruling on the case.

Yesterday, we heard concerns about how to resolve the problem of the child's separation from the false mother; who would be receiving him and how he would be reincorporated to his family. Then, we have found the perfect formula for his reinsertion, I would even say the best formula, which our people will better understand after listening to those dialogues between Elián and his father in the last few days.

We have seen that despite all pressures he still reacts and sustains such conversations with his father; he talks about his little brother, his cousin and the others and certainly much more spontaneously than the awful things we just saw on television: "Look, you want to go to Cuba or you would rather have your father come here to stay with you", they said to him. The child was not interested until he grew tired of all that and said: "Well, don't ask me more questions." This increases our hopes that there are true possibilities for this child to recuperate, mostly if something is done promptly. It is due to that time pressure that we are now making this statement.

Juan Miguel would be accompanied by his wife and Elián's little brother who is six months old and of whom he speaks with great affection because he loves his brother despite the fact that when he left the baby was hardly three months old. By the way, this is a very lively six-months-old. Also traveling with them would be a very dear cousin of Elián, 12 first-grade classmates chosen among his closest friends and among them, of course, Hanser, the boy who shared his school desk; also his teacher who cried so much those first days after the tragedy for the loss of her student and the sadness of his classmates and his kindergarten teacher who had previously worked with him for a whole year and knows him very well; the neonatologist who cared for him from birth, a team of psychiatrists, psychologists, pediatricians and others as well as an advisor who is familiar with the American legal and political system.

The purpose of this action is not only to preserve the child's health, as you have rightly indicated, but also to facilitate the resumption of his education so that he can pass the school tests and move to second grade.

Now they are keeping him confined to the house with a visiting teacher and, according to news we have received, there is much noise there. Just today he complained to his father that many cars stop by the house making noise and sounding their horns. It must be hell for him that he is not even attending school.

Our proposal is that we take his classroom to him there, with his classmates, his teachers and the most outstanding specialists to take care of him. At the moment, we do not know who is taking care of him.

Juan Miguel, his wife and baby, and the children will be accommodated at the residence of the head of our Interests Section in Washington, Mr. Fernando Remírez de Estenoz. We only need to make the necessary arrangements with attorney Gregory Craig with

whom we are keeping in touch. Mr. Craig talks every day with Juan Miguel and comrade Alarcón since when it was decided to retain that talented lawyer for certain undertakings he asked for the possibility to analyze with Alarcón the technicalities involved in the actions he would have to address in common agreement with Juan Miguel. So, there are daily communications between that lawyer, Juan Miguel and Alarcón. Quite often the need arises to interpret legal matters with which Juan Miguel is not familiar and then Alarcón helps him.

At the moment, certain details of the trip are still pending although this is something that we had been discussing. Anyway, we will apply for the U.S. government visas as soon as Mr. Craig has been able to make the necessary arrangements.

The only thing left before departure would be the assurances the American authorities would have to give us about their readiness to surrender custody of the child to his father or to do their utmost to obtain it. If the latter were true, their departure would have to wait for the outcome of such special efforts as would certainly be required.

This is an example of how everything can be solved, that is, the creation of the best possible conditions for the boy's reinsertion. In other words, we are offering to carry Cardenas to Washington, symbolically that is, by taking there the people closer to Elián both in kindergarten and first grade until the time when he was taken away from that environment. I would say that even the school desks can be taken by plane, at least the famous desk shared by Hanser and Elián could be taken on the plane for them to use at the residence.

We have consulted Remírez about his residence and he has said to have enough space in a meeting room area on the first floor. There, they can have the classroom and create in the house the proper conditions for the doctors to do their work. I am not saying that they will all fit in Remírez' house but other officials live in the area. Perhaps the adults will have to live somewhere else but there is plenty of space in the house to work in an orderly fashion and for the family and children to accommodate. All conditions can be created for the permanent presence of a doctor and a nurse, that is, for medical care and education in the residence.

It will be a small school and a small hospital. And, of course, if this took a month, a month and a half or two months these will be optimum conditions and I wonder who could challenge such arrangements.

As the old saying goes: If the mountain does not come to Mohamed, then Mohamed goes to the mountain. These would be perfectly ideal conditions that the child does not have where he is now surrounded as he is by rogues, noise, cameras and such disgraceful situations as we have been watching today. We are really pleased that they decided to show that, for we have been able to see it.

This offer would be our contribution to the solution of this predicament because all you can see there is a chaotic situation, a crime committed in daylight. However, the best and the ideal conditions can be created to care for the child. Of course, the children would not be prisoners there, neither would be Juan Miguel and his family. We hope their visa would allow them to visit interesting places in Washington. There are interesting places there like Capitol Hill --well, from a distance-- and the Lincoln Memorial. I have heard that there are many interesting places in Washington and its surrounding. They would not have to stay like in a small prison there. No, the residence will be their school and living quarters.

Listen, do you not think it is better to thus facilitate the child's rendezvous with his father? And this is a father whose love for his son nobody doubts; he is a particularly dotting father. There is also the love of Juan Miguel's wife for this child to whom she was very close, and his little brother that he loved; also the cousin who was his playmate and 12 of his closest school friends.

Allow me to say that when we talked to the children's parents a few days ago, the 12 couples who are the parents of the 12 children did not hesitate to given their consent for their children's trip accompanied by their teacher. They are not hearing this for the first time now, they have known it for some time, their passports are ready and they have been provided shoes, clothing, everything. And the plane, of course, is ready. They would leave as soon as the lawyer says that all the arrangements have been made.

I will add something else: some of the people here tonight would also travel so you had better not count them in for tomorrow. They are ready although the decision has yet to be made. Perhaps, some of them would speak to us from there and let us know about Elián's health and mood. Under no circumstances would we do any of the awful things that those relatives over there have been doing and use the boy for propaganda. Absolutely not.

We have already said that nobody will mobilize when the child arrives. Only his family will be waiting to welcome him home. The doctors will say whether he needs to spend a few days here and when he should go back to his school because it is not the same thing a small 12 students' school than his big school in Cardenas.

Undoubtedly, not only the people in the school but all the people in Cardenas will need certain preparation to properly deal with this new situation. But, this formula seems to us to be perfect to allow time for the boy's adaptation.

Presently, the solution is in the hands of the United States government. We hope that they have not promised to those individuals, just to please them, that the child will remain in that hell for that month and a half or two months, I mean, if they decide to take

6

the case to the Supreme Court, although they would have a hazardous road to trail. At the moment, they are forcing the government's hand as they usually operate on the basis of force and blackmail; they definitely want to force the government's hand.

They are talking about bringing the boy to Cuba but there is no need to bring him back to Cuba immediately, absolutely not. As there is no need to demonstrate at the airport, either.

In that notorious press conference they spoke about walls; we shall see which walls they have in mind. Possibly, they were referring to a wall here but the wall is really there and it opens up only to receive those who break the law putting at risk so many people's lives. People are perishing at that artificial wall they have raised there with illegal formulas like those leading the child over that wall where none of his rights have been respected.

On the other hand, Juan Miguel and even the children in Elián's school are willing to jump over that wall, legally and constructively, to save Elián.

I have made reference to guarantees. These Cubans will have the same guarantees that Imperatori had: the morale, the rightfulness, the law, the truth and also the guarantee provided by the immunity of our Interests Section in Washington. Once there, we shall see what happens and if they want to use force to have anybody do something. Perhaps, it occurs to them to invite somebody to a Committee. Anyway, that would be their problem and not the problem of those they invite because I am sure that if Juan Miguel were invited to one of those tricky hearings, there would be plenty of decent lawmakers and people willing to accompany him, and so would his advisor. As I say, if that were the case they would be inviting their own headache because there is nothing they could fairly use against these people.

Juan Miguel cannot be jailed there because he and his children would be accompanied by 11 million Cubans and 11 million Cubans cannot be easily jailed. It would be such an insanity that I do not believe such a risk even exists.

We shall see what they have to say about this offer that would allow for the recognition of the boy's rights and the possibility for him to be reunited with the people who were with him from birth, who have been rearing him and teaching him to draw. And look how amazing the boy's drawings are, an ability he acquired in kindergarten.

What we could see here is just a sample of the excellence of education in our country, the excellence of our teacher's work and their disposition not only to educate but even to give their lives for one of their students with that fraternal spirit that the parents of the other children have also exhibited.

7

Surely, the children will be happy to be reunited with Elián and so neither the U.S. government nor anyone else would have to worry that the child be sent to Cuba which for them is hell. It would actually be there, under the Washington sky, that the reunification would take place albeit with his teachers, his doctors, his psychologists and his classmates to prevent that child from continuing to get sick and for him to immediately begin recuperating his health.

This is Juan Miguel and his family's statement that I have read here on behalf of our people.

Thank you.

(APPALUSE)

From: Karen Kraushaar, Miami.

456-9118

DRAFT STATEMENT

4/3/00

Discussions are continuing at this time regarding how to begin the transfer of custody of Elian Gonzalez to his father, Juan Miguel Gonzalez. No final decision has been reached in this matter, but the discussions are continuing in good faith.

Revocation of Elian's parole tomorrow ~~has been superseded by the expected arrival of Juan Miguel Gonzalez in the United States.~~ ^{we understand that} ~~The father should be encouraged and supported in his~~ ^{want to be here} desire to be here with his son. ~~The Miami relatives have long said that they wanted the father to come here. Once Mr. Gonzalez arrives, the Immigration and Naturalization Service will transfer parole custody from Lazaro Gonzalez to the boy's father. The INS will send a letter to inform the Miami relatives of when the transfer of care will occur.~~

★ The INS and the Department of Justice ~~wish to clarify that the transfer of parole custody does not mean that the child will be immediately removed from the home of his great-uncle. Instead, it is our intention to begin a smooth and orderly process that will create as little disruption as possible for Elian. It is our intent to not add to the trauma this innocent child has already endured.~~

~~We are grateful to everyone for the patience they have shown in this highly sensitive case, which has sparked an unusually high amount of public interest.~~

We ask everyone involved who cares about this little boy to work with us to allow these talks to go forward in an orderly and respectful way in an effort to reach a cooperative solution.

hope

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

**NATIONAL
SECURITY
COUNCIL**

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

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

(202) 456-9141

From: Wendy Patten

To: Marilyn Scott-Perez - 6-9490

Caryn Hollis - 6-9130

Mary DeRosa - 6-9110

Dan Shapiro - 6-9170

Mike Hammer - 6-9270

Date/Time: 3-21-00

No. of pages to follow: 2

**Message: Attached is DOJ press statement and guidance. Justice
does not anticipate issuing another statement today.**

Marilyn - please pass to Jim. thanks -- WLP



Department of Justice

FOR IMMEDIATE RELEASE
Tuesday, March 21, 2000
WWW.USDOJ.GOV

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

**Statement by Attorney General Janet Reno
on Judge Moore's Decision
in the Elian Gonzalez Case
March 21, 2000**

WASHINGTON, DC – U.S. District Court Judge K. Michael Moore today dismissed a lawsuit by the relatives of Elian Gonzalez, which challenged the INS' decision to reunite Elian Gonzalez with his father, Juan Miguel Gonzalez. Attorney General Janet Reno issued the following statement:

"We are pleased that the court has sustained our judgement that Elian should be reunited with his father. The court's decision reaffirms our position that only Elian's father can speak for his son on federal immigration matters. The court also recognized the importance of family reunification and protecting the bond between a son and his sole surviving parent.

"This is a country where the rule of law is respected and upheld. A federal court has considered this case and has sustained our decision, a decision which was based on the facts and the law. It has been four months since Elian was separated from his father and lost his mother. It is time for this little boy, who has been through so much, to move on with his life at his father's side. I understand the very strong emotions that have surrounded this case from the very beginning, but I have every confidence that the community will accept the Court's decision and will support the process that will reunite Elian and his father.

###

Q and A
Decision by Judge Michael Moore
in the Elian Gonzalez Case

Q: Will you wait until all appeals are exhausted before removing the child from his Miami relatives?

A: We would have to evaluate that situation if it arises, but our goal is to reunite this child with his father as quickly as possible.

Q: What is the next step?

A: I do not think it would be appropriate for me to share the details of our plans, but I can say we will work with everybody concerned to achieve an orderly, fair and prompt reunion between Elian and his father.

Q: Are you worried that the relatives might hide the child or refuse to turn him over?

A: I have faith that Elian's Miami relatives will abide by the lawful decision of the Court.



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 16 2000

Mr. Charles Shapiro
Coordinator, Office of Cuban Affairs
Room 3234
Department of State
Washington, D.C. 20520

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

To	Wendy Patton	From	Bob W
Dept / Agency		Phone #	
Fax #		Fax #	
NSN 7540-01-317-7368		5099-101 GENERAL SERVICES ADMINISTRATION	

Dear Mr. Shapiro:

On February 25, your office notified the Immigration and Naturalization Service (INS) that the Government of Cuba had delivered certain materials that it believes may bear on INS' placement of Elian Gonzalez with his great uncle, Lazaro Gonzalez. The INS received these materials on February 28.

After careful consideration, we have concluded that the material provided to you by the Government of Cuba forms no basis to change the current placement of Elian Gonzalez. The information is based on unsubstantiated assertions, rumor, and speculation. Without credible evidence of abuse toward minors, the INS is not inclined to take any further action concerning this information.

As we have previously stated, Elian's placement with his great uncle is temporary. The Federal district court in which Mr. Gonzalez has challenged INS' decision to return Elian to his father in Cuba is now considering the issues in the case. We are hopeful that the court will issue a decision shortly and that Elian and his father will soon be reunited.

Should you have any questions regarding the preceding information, please do not hesitate to contact me.

Sincerely,

Michael A. Pearson
Executive Associate Commissioner
for Field Operations

Senator Spencer Abraham
Chairman
Subcommittee on Immigration
Committee on the Judiciary
United States Senate
Washington, DC 20515

Dear Mr. Chairman:

I have received your letter of March 22, 2000, requesting our report on S. 1999, a private relief bill that would provide U.S. citizenship to Elian Gonzalez. The Immigration and Naturalization Service (INS) will provide you with the requested report as soon as possible.

I am writing today to clarify INS policy on the effect of your request for a report on the authority of the INS to take appropriate action to reunite Elian Gonzalez with his father, as it has come to my attention that there may be some misunderstanding among Members of Congress and the public regarding this matter. The request for an INS report on this bill does not prevent the INS from taking action in the Elian Gonzalez case, for the reasons explained below.

As you know, it is the policy of the INS to stay temporarily the execution of a deportation or removal order on the beneficiary of a private relief bill if the Subcommittee on Immigration of the Committee on the Judiciary of either House of Congress requests an INS report on the bill. Our policy toward the 106th Congress is set forth in the attached correspondence between me and the Honorable Henry J. Hyde, Chairman of the Committee on the Judiciary of the U.S. House of Representatives. Although I have not exchanged similar correspondence with the Committee on the Judiciary of the U.S. Senate, it is our policy to extend the same courtesy and cooperation to the Senate as we do to the House.

As stated in my exchange of correspondence with Chairman Hyde, the INS will temporarily stay any unilateral final action to enforce departure under deportation or removal proceedings until action is taken on the bill or until the Congress adjourns sine die and a grace period at the beginning of the new Congress expires. This policy is an exercise of INS prosecutorial discretion, in the interest of comity and cooperation between the Executive and the Legislative Branches. To stay temporarily the forced removal of an alien who has requested such relief through legislative action, and about whom one of the Immigration Subcommittees has expressed sufficient interest in considering the claim as to request a report, serves the interests of both Branches, as well as the interest of the beneficiary of the bill who requests the relief. As with any such statement of discretionary policy, the policy of exercising prosecutorial discretion in these cases that is set forth in my correspondence with Chairman Hyde creates no legally enforceable rights, and may be subject to change as the circumstances may warrant.

There are several reasons why the prosecutorial discretion policy stated in my correspondence with the House is inapplicable to S. 1999. First, the policy applies on its face only to final action to enforce departure under deportation or removal proceedings. As Elian Gonzalez is not, and has not been, in deportation or removal proceedings, the policy does not

apply to INS action to reunite him with his father and allow him to return home to Cuba. Such action would not be final action to enforce departure under deportation or removal proceedings.

Second – and more fundamentally – Elian’s case is completely different from any other private bill situation we have considered. In any normal private bill matter, the beneficiary affirmatively seeks the relief provided by the legislation. Typically, the beneficiary is an individual facing deportation who is ineligible for relief under the immigration laws, wishes to remain in the United States, and requests Congress to provide him or her with private legislative relief. Here, in sharp contrast, the sole surviving parent and proper legal representative of a six-year-old boy has made it clear that he opposes the “relief” that S. 1999 would provide. I have determined, based upon extensive development and review of the facts, that Elian, speaking through his father, wishes to withdraw his application to enter the United States, and desires to return home. The position of the INS was recently upheld by the U.S. District Court for the Southern District of Florida.

Consequently, for the INS to refrain from facilitating Elian’s reunion with his father because a private bill report was requested would be contrary to his interests, unlike INS action to refrain from taking enforcement action to force the unwilling departure of a beneficiary in other cases when private bill reports are requested. Nor would it be in the interest of the INS, as the agency statutorily charged with administering and enforcing the immigration laws of the United States, to take the position that it should hinder, or decline to respect, Elian’s desire to withdraw his application for admission to the United States and return to his home. Such a position is neither required by any agreement or understanding between INS and the Congress, nor appropriate in this unique case. Rather, as U.S. District Judge Moore correctly stated in his thoughtful opinion, “the reality [is] that each passing day is another day lost between Juan Gonzalez and his son.” Let us work together to ensure that this child, who has suffered so much, is reunited with his father as soon as possible.

In conclusion, the request for an INS report regarding S. 1999 does not constrain the authority of the INS to take appropriate action in this case. I trust that you will understand that this position does not stem from any disrespect for the Congress or any of its Committees or Members, but rather from the fact that this unique situation was not reasonably contemplated within any agreement or understanding regarding INS prosecutorial discretion policy toward beneficiaries of private bills, that the case is entirely unique and distinct from the situations to which that policy applies, and that to refrain from action on the basis of the report request would be inconsistent with the clearly expressed wishes of the legal representative of the beneficiary, and therefore inappropriate. I look forward to a continued record of cooperation and success in applying our fair and mutually beneficial policies toward beneficiaries of private relief bills.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

DRAFT—Not For Release

Doris Meissner
Commissioner

March 29, 2000

Shipwrecked on Dry Land

By GABRIEL GARCIA MARQUEZ

On Friday, when Juan Miguel González went to school to pick up his son Elián for the weekend, he was told that Elizabet Brotons, his ex-wife and the boy's mother, had taken Elián at midday and had not brought him back in the afternoon. In his routine as a divorced father, this seemed normal to Juan Miguel. From the time when he and Elizabet had separated two years earlier, on the most amicable terms, the boy had lived with his father and spent every other day at his mother's house. But Elizabet's door was padlocked over the weekend and on Monday as well, and Juan Miguel began to make inquiries. This was how he learned the bad news that was already becoming common knowledge in the city of Cárdenas: Elián's mother had left with him for Miami, with 12 other people, in an aluminum boat 5 1/2 meters long, with no life preservers and a decrepit motor.

It was Nov. 22, 1999. "My life ended that day," Juan Miguel said four months later. After their divorce, he and Elizabet had maintained a relationship that was cordial but rather unusual: they continued living under the same roof and sharing their dreams in the same bed, hoping to produce as lovers the child they had not been able to have as a married couple. It seemed impossible. Elizabet would conceive but miscarry in the first four months of pregnancy. After seven miscarriages, the child they had longed for was born. They had decided on a unique name for him: Elián, composed of the first three letters of Elizabet and the last two letters of Juan.

Elizabet was 28 years old when she left with the boy for Miami. She was an amiable and hard-working chief housekeeper at a hotel in Varadero. Her father says that at the age of 14 she was already in love with Juan Miguel González, and married him when she was 18. "We were like brother and sister," says Juan Miguel, a calm, deliberate man who works as a cashier. After their divorce, Juan Miguel and Elizabet continued living together with their son in Cárdenas -- where all the protagonists in this drama were born, and where they lived -- until she fell in love with Lázaro Rafael Munero, a neighborhood tough. Juan Miguel subsequently married Nelsy Carmeta and had a son, who is now 6 months old.

Juan Miguel did not have to waste time finding out where Elián was, because in the Caribbean everybody knows everything -- "even before it happens," as one of my informants told me. Everyone knew that the leader of the adventure was Lázaro Munero, who had made at least two clandestine trips to the United States to prepare the way. He had the contacts and nerve to take along not only Elizabet and her son, but also a younger brother, his father, who was over 70, and his mother, who was recovering from a heart attack. Lázaro's partner in the enterprise took his entire family. At the last moment, because each of them paid \$1,000, three more people came on board: 22-year-old Arianne Horta, her 5-year-old daughter, Esthefany, and Nivaldo Vladimir Fernández, the husband of one of her friends.

An infallible formula for being well-received as an immigrant in the United States is to be shipwrecked in her territorial waters. Cárdenas is a good departure point: it is close to Florida, and its coves are protected by mangrove swamps. Moreover, the regional art of making small craft for fishing in the nearby Zapata Swamp and Del Tesoro Lagoon provides raw materials for illegal boats, in particular the aluminum pipes used for irrigating citrus groves. People say that Munero must have spent some \$200 and an additional 800 Cuban pesos on the motor and the boat's construction. The result was a kind of lifeboat, with no roof and no seats. Three inner tubes were put on board as life preservers for 14 people. There was no room for more. Before they left, most of the passengers injected themselves with Gravinol to prevent seasickness.

It appears they set out on Nov. 20 but had to go back when the motor broke down. They remained hidden for two days, waiting for it to be repaired, while Juan Miguel thought his son was already in Miami. This first emergency convinced Arianne Horta that the risks were too great for her daughter, and she decided to leave her with her family, to be brought over later by a safe route. It has been said that Elián also became aware of the dangers of the crossing and screamed to be left behind.

They finally set off at dawn on the 22nd, with favorable seas but a wretched motor. The stories the survivors recounted in the Florida press after their rescue, and expanded on in phone calls to their families in Cárdenas, revealed terrifying details. According to them, at midnight on the 22nd, the men in charge dismounted the hopeless motor and dropped it in the ocean to lighten the weight. But the unbalanced boat flipped over on its side, and all the passengers fell into the water. This may have broken the fragile soldering on the aluminum pipes and caused the boat to sink.

It was the end, in darkness and an inferno of panic. The older people who did not know how to swim probably drowned immediately. The Gravinol, which causes drowsiness, must have worked against most of them. Arianne and Nivaldo clutched at one inner tube; Elián, and perhaps his mother, held onto the other. Nobody knows what happened to the third. Elián can swim, but Elizabet could not, and she may have let go in her confusion and terror. "I saw when Mama got lost in the ocean," the boy would later tell his father on the phone. What is difficult to understand, though it deserves to be true, is that she had the presence of mind and the time to give the boy a bottle of fresh water.

His information was erroneous, but Juan Miguel had a premonition of the tragedy. He called his uncle several times -- Lázaro González has lived in Miami for years -- and asked about clandestine arrivals or recent shipwrecks, but was told nothing. At last, at dawn on Thursday, Nov. 25, the news broke in a sequence of events. The body of an older woman was discovered on the beach by a fisherman. Later, Arianne and Nivaldo were found alive. Not long afterward a small boy appeared in the water off Fort Lauderdale, unconscious and badly sunburned, lying across an inner tube, face up. It was Elián, the last survivor.

When he heard the news, Juan Miguel was determined to speak to the boy on the phone but did not know where he was. On Nov. 25 a doctor in Miami called him to ask about Elián's medical history. Juan Miguel learned to his great joy that Elián himself had given his father's name in the hospital, and his phone number and address in Cárdenas.

The next day Juan Miguel talked to Elián. Troubled, but in a steady voice, Elián told his father he had seen his mother drown. He also said he had lost his backpack and school uniform, which Juan Miguel interpreted as a symptom of his disorientation. "No, Baby," he said. "Your uniform is here, and I have your backpack ready for when you come home." But it is possible that Elián had had another pack at his mother's house, or that one had been bought for him so he would not insist on returning to his house. His fondness for school, as well as his desire to return to class, were clearly demonstrated a few days later, when he told his teacher on the telephone, "Take good care of my desk."

From the earliest calls, Juan Miguel realized that someone in Miami was disrupting his conversations with his son. "You should know that from the very beginning they've done everything they could to sabotage us," he told me. "Sometimes they shout at the boy while we're talking, or turn the volume all the way up on television cartoons, or put a candy in his mouth so it's hard to understand what he's saying." These kinds of stratagems were also suffered in person by Raquel Rodríguez and Marcela Quintant, Elián's grandmothers, during their turbulent trip to Miami. Their visit with him, scheduled to last two days, was reduced to 90 minutes, with all kinds of intentional interruptions, and they said they spent no more than a quarter of an hour alone with Elián. They returned to Cuba shocked at how much he had changed. "This isn't the same boy," they said, saddened by the timidity of a child they remembered as lively, intelligent, and with a remarkable talent for drawing. "We have to save him!"

Nobody in Miami seems to care about the harm being done to Elián's mental health by the cultural uprooting to which he is being subjected. At his 6th birthday party, celebrated on Dec. 6 in his Miami captivity, his hosts took a picture of him wearing a combat helmet, surrounded by weapons and wrapped in the flag of the United States, just a short while before a boy of his age in Michigan shot a classmate to death with a handgun.

In other words, the real shipwreck of Elián did not take place on the high seas, but when he set foot on American soil.

Gabriel Garcia Marquez, the Nobel laureate in literature, is the author, most recently, of "News of a Kidnapping." Edith Grossman translated this article from the Spanish.

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