

FOIA MARKER

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Folder Title: Immigration (Elian Gonzalez Filings) [4]				
Staff Office-Individual: Legal Advisor-Derosa, Mary				
Original OA/ID Number: 2543				
Row: 39	Section: 4	Shelf: 3	Position: 2	Stack: V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	re: Questions [partial] (1 page)	12/13/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
Legal Advisor (Mary DeRosa)
OA/Box Number: 2543

FOLDER TITLE:

Immigration (Elian Gonzalez Filings) [4]

2012-0371-F

rs2162

RESTRICTION CODES

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

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

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

REPÚBLICA DE CUBA
MINISTERIO DE JUSTICIA
NOTARIA ESPECIAL

DOCUMENTO No. _____

Vigencia de Ley

NOTARIO *Lic. Bernardo Murisay Pinairo*

FECHA *10 de Diciembre* DE 19 *99*

COMPARECIENTES

000204

DRN-27



REPUBLICA DE CUBA
MINISTERIO DE RELACIONES EXTERIORES
DIRECCION DE ASUNTOS CONSULARES Y DE
CUBANOS RESIDENTES EN EL EXTERIOR

[illegible][illegible]

EN FE DE LO CUAL AUTORIZO A FIRMAR CON LA
FIRMA Y EL SELLO DE ESTE MINISTERIO.

DEC 1 6 1955

LA 44-1987

EW

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-----VIGENCIA DE LEY-----

LICENCIADO BERNARDO MUSIBAY PINZIRO, NOTARIO CON
COMPETENCIA NACIONAL Y SEDE EN LA NOTARÍA
ESPECIAL DEL MINISTERIO DE JUSTICIA DE LA
REPÚBLICA DE CUBA. -----

DOY FE: Que los siguientes artículos de la Ley
número 1289 "Código de Familia", aprobada en
fecha 14 de febrero de 1975, y que entró en vigor
el día 8 de marzo del propio año, se encuentran
vigentes y redactados hoy día de la siguiente
forma: -----

Título II. DE LAS RELACIONES PATERNO-FILIALES.
Capítulo I. DEL RECONOCIMIENTO DE LOS HIJOS.
Sección Primera. DEL RECONOCIMIENTO Y SU
INSCRIPCIÓN.

"ARTÍCULO 65. Todos los hijos son iguales y por
ello disfrutan de iguales derechos y tienen los
mismos deberes con respecto a sus padres,
cualquiera que sea el estado civil de éstos."

Capítulo II. DE LAS RELACIONES ENTRE PADRES E
HIJOS. Sección Primera. DE LA PATRIA POTESTAD, Y
SU EJERCICIO.

"ARTÍCULO 82. Los hijos menores de edad estarán
bajo la patria potestad de sus padres."

"ARTÍCULO 83. El ejercicio de la patria potestad
corresponde a ambos padres, conjuntamente.

Corresponderá a uno solo de los padres, por
fallecimiento del otro o porque se le haya
suspendido o privado de su ejercicio."

"ARTÍCULO 84. Los hijos están obligados a
respetar, considerar y ayudar a sus padres y,
mientras estén bajo su patria potestad, a
obedecerlos."

"ARTÍCULO 85. La Patria potestad comprende los
siguientes derechos y deberes de los padres:

- 1) tener a sus hijos bajo su guarda y cuidado;
esforzarse para que tengan una habitación
estable y una alimentación adecuada; cuidar de
su salud y aseo personal; proporcionarle los
medios recreativos propios para su edad que

000206

estén dentro de sus posibilidades; darles la debida protección; velar por su buena conducta y cooperar con las autoridades correspondientes para superar cualquier situación o medio ambiental que influya o pueda influir desfavorablemente en su formación y desarrollo;

2) atender la educación de sus hijos, inculcarles el amor al estudio; cuidar de su asistencia al centro educacional donde estuvieren matriculados; velar por su adecuada superación técnica, científica y cultural con arreglo a sus actitudes y vocación y a los requerimientos del desarrollo del país y colaborar con las autoridades educacionales en los planes y actividades escolares;

3) dirigir la formación de sus hijos para la vida social; inculcarles el amor a la patria, el respeto a sus símbolos y a la debida estimación a sus valores, el espíritu internacionalista, las normas de la convivencia y de la moral socialista y el respeto a los bienes patrimoniales de la sociedad y a los bienes y derechos personales de los demás; inspirarles con su actitud y con su trato al respeto que les deben y enseñarles a respetar a las autoridades, a sus maestros y a las demás personas;

4) administrar y cuidar los bienes de sus hijos con la mayor diligencia; velar porque sus hijos usen y disfruten adecuadamente los bienes que les pertenezcan; y no enajenar, permutar, ni ceder dichos bienes, sino en interés de los propios menores y cumpliendo los requisitos que en este Código se establecen;

5) representar a sus hijos en todos los actos y negocios jurídicos en que tengan interés; completar su personalidad en aquéllos para los que se requiera la plena capacidad de obrar, ejercitar oportuna y debidamente las acciones que en derecho correspondan a fin de defender sus intereses y bienes."

En la Ciudad de La Habana, a los 10 días del mes de diciembre de 1999.

000207



Immigration and Naturalization Service

Office of the General Counsel

425 I Street NW
Washington, DC 20536

DEC 14 1999

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

Dear Mr. Bernstein,

I have received your letter of December 8, and the two attached Forms G-28, Notice of Entry of Appearance as Attorney or Representative. In your letter you assert that you represent Elian Gonzales, that you do not intend to withdraw Elian's application for admission to the United States, and that you intend to file an application for asylum on his behalf. Both Forms G-28 are signed by Lazaro Gonzales, as the person consenting to representation on behalf of Elian Gonzales. As you are undoubtedly aware, Juan Miguel Gonzales-Quintana, the father of Elian Gonzales, has submitted a written request that the child be returned to his custody in Cuba.

Under 8 CFR 292.4(a), "[a] notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service." That provision also states that "[f]urther proof of authority to act in a representative capacity may be required." To assist us in determining whether you are authorized to represent Elian Gonzales in immigration matters, please inform us:

- 1) whether you have been in contact with Mr. Gonzales-Quintana, the father of Elian Gonzales;
- 2) whether Mr. Gonzales-Quintana has consented to your representation of Elian Gonzales; and
- 3) if so, how Mr. Gonzales-Quintana has provided his consent. Also please inform us whether you represent Lazaro Gonzales, and what legal authority you understand Lazaro Gonzales to have with respect to Elian Gonzales. In addition, please provide us with an analysis of the legal basis of your representation of Elian Gonzales, in light of the written wishes of Mr. Gonzales-Quintana that the child be returned to Cuba. Please respond to us by close of business on Wednesday, December 15, 1999, so that we may advise the agency of your position.

Sincerely,

Bo Cooper
General Counsel

000208

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

ATTORNEYS AT LAW

Turnberry Plaza
2575 NE 191st Street - Penthouse 1B - Aventura, FL 33180
Miami-Dade (305) 692-8888 - Broward (954) 349-4994
Facsimile (305) 692-8838 - www.visitattorneys.com

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

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

December 15, 1999

Owen Cooper
General Counsel
Immigration and Naturalization Service
425 I Street NW
Washington, DC 20536

RE: Elian Gonzalez A77 013 761

Dear Mr. Cooper:

Spencer Eig, Linda Osberg-Braun and I represent Elian Gonzalez in all immigration, consular, diplomatic and related matters.¹ Enclosed please find Form G-28's signed by Elian Gonzalez as required by regulation. Our legal representation of Elian Gonzalez is by direct consent, as well as through the consent of Lazaro Gonzalez, Elian's custodian, who is currently his sole legal guardian in the United States.

Any alien who is physically present in the United States, irrespective of immigration status and age, may apply for asylum. In this process, Elian is entitled to representation. 8 C.F.R. §§ 208.9, 292. Contact and/or consent of the biological father is irrelevant, particularly because Mr. Gonzalez-Quintana is under the control and jurisdiction of a foreign regime from which Elian has requested asylum. Moreover, since the father outwardly supports the regime that Elian asserts persecution, he cannot represent the child's best interests. Juan Miguel Gonzalez-Quintana, with whom we have had no direct contact, cannot divest or withdraw the asylum claim which must be fully considered by the Attorney General pursuant to her rules and regulations in due course.²

¹ Note that we have authorization to represent Elian because we are all "Attorneys in the United States" as defined in § 1.1(f), for which you are entitled to further proof if desired. 8 C.F.R. §§ 292.1, 292.4. Additionally, we are authorized to represent Elian pursuant to 8 C.F.R. §208.9, 292, etc. regardless of the answers to the three questions you pose to us in your letter dated December 14, 1999.

² You point out that Juan Miguel Gonzales-Quintana has submitted a written request that the child be returned to his custody in Cuba. However, any statements originating under these circumstances are inherently suspect, unreliable and cannot form the basis for any legal determination.

HACKLEY, BERNSTEIN & OSBERG-BRAUN, P.L.
Turnberry Plaza, 2575 Northeast 191st Street, Penthouse 1B, Aventura, Florida 33180

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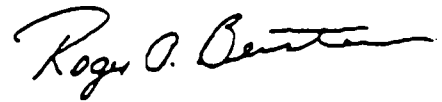
ELIAN GONZALEZ
A77 013 761

Page 2

We view Elian's right to be heard and to be represented as fundamental due process rights which we will vigorously defend.¹ Any effort by the United States to return Elian to the country from which he seeks protection would be in violation of its treaty obligations under the UN Convention Relating to the Status of Refugees, a violation of INS regulations, and its own policy guidelines.

We look forward to working closely with you to resolve this matter in Elian's best interests. Kindly feel free to contact us at any time.

Sincerely,



Roger A. Bernstein

RAB:sc
Enclosure Form G-28's

¹ Cf. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Olivera v. INS*, 504 F.2d 1372 (5th Cir. 1974) (A foreign national has a right to representation by competent counsel); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990) (The right to obtain counsel at a person's own expense is "fundamental" and a "due process" right that "must be respected in substance as well as in name").

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: All immigration, consular, diplomatic and related matters	DATE
	December 14, 1999
	FILE No.
	A77 013 761

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s).

NAME	☐ Petitioner	☒ Applicant
<u>Elian Gonzalez</u>	☐ Beneficiary	☐
ADDRESS (Apt. No.) (Number & Street) (City) (State) (Zip Code)		
2319 NW 2nd St Miami FL		
NAME	☐ Petitioner	☐ Applicant
	☐ Beneficiary	☐
ADDRESS (Apt. No.) (Number & Street) (City) (State) (Zip Code)		

Check Applicable Item(s) below:

☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia	
<u>Florida</u>	and am not under a
<u>State of Court</u>	court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.
☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:	
☒ 3. I am associated with <u>Spencer Eig, Esq.</u>	
The attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)	
☐ 4. Others (Explain fully.)	
SIGNATURE	COMPLETE ADDRESS
<u>Roger A. Bernstein</u>	Hackley, Bernstein & Osberg-Braun
NAME (Type or Print)	2875 NE 191st St, PH 1-B
Roger Bernstein	Aventura, FL 33180
	TELEPHONE NUMBER
	(305) 692-8888

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

Roger Bernstein

(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:
All matters as stated above.

NAME OF PERSON CONSENTING	SIGNATURE OF PERSON CONSENTING	DATE
<u>Elian Gonzalez</u>		12/14/99
<u>ELIAN</u>		

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re. All immigration, consular, diplomatic and related matters	DATE
	December 14, 1999
	FILE No.
A77 013 761	

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s).

NAME	☐ Petitioner	☒ Applicant
<u>Elian Gonzalez</u>	☐ Beneficiary	☐
ADDRESS (Ap. No.)	(Number & Street)	(City) (State) (Zip Code)
<u>2319 NW 2nd St Miami FL</u>		

NAME	☐ Petitioner	☐ Applicant
	☐ Beneficiary	☐
ADDRESS (Ap. No.)	(Number & Street)	(City) (State) (Zip Code)

Check Applicable Item(s) below:

- ☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia
- Florida and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.
- ☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:
- ☒ 3. I am associated with Spencer Eig, Esq.
- The attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)
- ☐ 4. Others (Explain fully)

SIGNATURE	COMPLETE ADDRESS
<u>Linda Osberg-Braun</u>	Hackley, Bernstein & Osberg-Braun
NAME (Type or Print)	2875 NE 191st St, PH 1-B
Linda Osberg-Braun	Aventura, FL 33180
	TELEPHONE NUMBER
	(305) 692-8888

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

Linda Osberg-Braun

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:
All matters as stated above.

NAME OF PERSON CONSENTING	SIGNATURE OF PERSON CONSENTING	DATE
<u>Elian Gonzalez</u>	<u>Eli A N</u>	12/14/99

NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.

In re: All immigration, consular, diplomatic and related matters

DATE

December 14, 1999

FILE No.

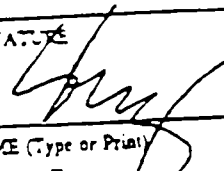
A77 013 761

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s).

NAME <u>Elia Gonzalez</u>	☐ Petitioner ☐ Beneficiary	☒ Applicant ☐
ADDRESS (Apt. No.) (Number & Street) (City) (State) (Zip Code) <u>2319 NW 2nd St Miami FL</u>		
NAME	☐ Petitioner ☐ Beneficiary	☐ Applicant ☐
ADDRESS (Apt. No.) (Number & Street) (City) (State) (Zip Code)		

Check Applicable Item(s) below:

- ☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia
Florida and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.
- ☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:
- ☐ 3. I am associated with _____
The attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)
- ☐ 4. Others (Explain fully.)

SIGNATURE 	COMPLETE ADDRESS Law Offices of Spencer Eig 420 Lincoln Road, Suite 379 Miami Beach, FL 33139
NAME (Type or Print) Spencer Eig	TELEPHONE NUMBER (305) 672-2770

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

Spencer Eig

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:
All matters as stated above.

NAME OF PERSON CONSENTING <u>Elia Gonzalez</u>	SIGNATURE OF PERSON CONSENTING <u>ELIAN</u>	DATE 12/14/99
---	--	------------------

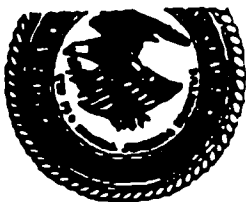
(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

Form C-23
(Rev. 10-25-77)

(Over)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

TOTAL P.
000213



Office of the District Director

7880 Biscayne Boulevard
Miami, Florida 33138

December 17, 1999

Mr. and Mrs. Lazaro Gonzalez
2319 N.W. 2nd Street
Miami, Florida

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

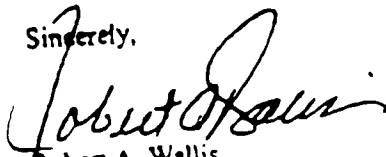
Roger Bernstein
Hackley, Bernstein & Osborg-Braun
Turnberry Plaza
2875 191st Street, Penthouse 1B
Aventura, Florida 33180

Dear Mr. and Mrs. Gonzalez, Mr. Eig and Mr. Bernstein,

As you may be aware, representatives of the Immigration and Naturalization Service (INS) have spoken directly with Juan Miguel Gonzalez-Quintana, the father of Elian Gonzalez, to verify his relationship to Elian, to explore whether he has the authority to speak for his son in immigration matters, and to determine his wishes with respect to Elian's immigration interest. There is no need to bring Elian to our meeting. We would like to meet with you as well, to ensure that you have the opportunity to provide any information you may have that would be relevant to INS consideration of the immigration issues involved in Elian's case. You are welcome, of course, to bring any documents you would like us to consider, although this is not necessary.

Please contact me or my Deputy District Director, Jack Bulger, to make an appointment at the INS District Office in Miami. You may contact us through the INS command center at (202) 616-5000. To facilitate your participation in this process, we are available to meet with you at any time over the weekend, or Monday morning if necessary. We would like the meeting to occur no later than Monday.

Sincerely,


Robert A. Wallis
District Director

The Florida district at its best: proudly serving our community with competence, fairness, dignity and respect.

000214

TOTAL P. 02

SPENCER FIG

ATTORNEY-AT-LAW
420 LINCOLN ROAD
SUITE 379
MIAMI BEACH, FLORIDA 33139

ADMITTED IN:
FLORIDA
GEORGIA
DISTRICT OF COLUMBIA

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

December 17, 1999

Owen B. Cooper, Esq.
General Counsel
U.S. Department of Justice
Immigration and Naturalization Service
425 I Street, N.W., Room 6100
Washington, D.C. 20536

BY FACSIMILE
(202) 514-0455

Re: Elian Gonzalez, A77 013 761

Dear Mr. Cooper:

As Roger Bernstein, Linda Osberg-Braun and I are awaiting your response to Roger Bernstein's December 15, 1999 letter concerning our authority to represent Elian Gonzalez, I would like to bring three other matters to your attention.

First, we request specific information about what INS' plans are for next week, particularly for Elian's deferred inspection on December 23rd. Previously, on November 30, 1999, I was told by Ron Whitney of your staff, who was returning my call to you, that the December 23rd appointment was the routine processing of Elian's indefinite parole. If that has changed, or any other significant action is planned, it is most important that I and the Gonzalez family be informed.

This need is compelling because we must prepare the family, and the family must prepare Elian emotionally for whatever is to occur. It would be horrible if the government were to surprise and terrify this small boy, particularly after the traumas he has already experienced.

Therefore we also request that Elian's presence be waived in writing as soon as possible for the deferred inspection on December 23, 1999.

000215

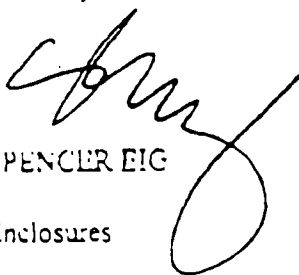
Letter to Owen B. Cooper, Esq., Page Two
Re: *Eliau Gonzalez*, A77 013 761

Second, we are forwarding to you a copy of an additional signature page for Eliau's asylum application. The page has been filed with the complete I-589 at the Service Center. Eliau now has identical applications filed by himself and by his custodian, Lazaro Gonzalez on his behalf.

Finally, we wish to make you aware that Eliau Gonzalez has filed a FOIA request in Miami, and we would request to be provided immediately all documents in the A-file.

As always, thank you for your kind attention to these matters.

Sincerely,



SPENCER EIG

Enclosures

DECLARATION OF JORGE L. ROIG

I, Jorge L. Roig, declare that:

1. I am the Port Director for the United States Immigration and Naturalization Service ("INS") at the Port of Miami. As Port Director, I oversee all port operations relating to immigration matters. During my eleven years as an officer of the INS, I have conducted countless interviews.

2. This declaration is based on my personal knowledge.

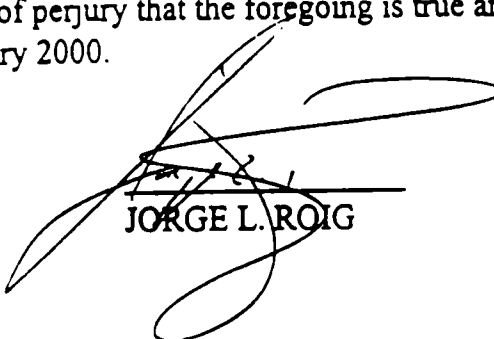
3. On December 20, 1999, at approximately 3:00 p.m., I interviewed Lazaro Gonzalez in the District Director's Office of the INS' Miami District Office. The purpose of this interview was to question Mr. Gonzalez regarding his relationship with Elian Gonzalez and his recent contacts with Elian's father, Juan Gonzalez, who presently resides in Cardenas, Cuba. In addition, I was to gather information regarding the basis upon which Mr. Gonzalez believes Elian should remain in the United States rather than being returned to his father in Cuba. During this interview, I was accompanied by Dan Vara, District Counsel for the INS' Miami District Office, and Ron Whitney, Associate General Counsel from INS Headquarters in Washington, DC. Mr. Gonzalez was accompanied by his niece, Marisleysis Gonzalez, as well as Spencer Eig, Roger Bernstein, and Lina Osberg-Braun, attorneys who asserted that they represent Elian Gonzalez.

4. While I am fluent in the Spanish language, the interview was conducted in English with Marisleysis Gonzalez translating my questions into Spanish. Mr. Gonzalez's replies were translated into English by Marisleysis Gonzalez. I had no difficulty understanding Mr. Gonzalez, and Mr. Gonzalez gave me no reason to believe that he could not understand me. All conversations among Mr. Eig, Mr. Bernstein, Ms. Osberg-Braun, and myself were conducted in English.

5. On December 21, 1999, I prepared and submitted a report to INS Headquarters regarding my interview with Mr. Gonzalez. A copy of the report is attached to this declaration. The report was written from my personal recollection of the interview. The report accurately summarizes what occurred during my interview of Mr. Gonzalez. The report was drafted and has been maintained in the course of regularly conducted business of the INS. The observations I recounted in my report were made pursuant to the duties imposed upon me by the law as an officer of the INS.

000217

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 6 day of January 2000.



JORGE L. ROIG

Interview of Lazaro Gonzalez

On December 20, 1999, at 3:00pm, the writer Jorge L. Roig, Port Director for Immigration and Naturalization Service ("INS") at the Port of Miami, interviewed Lazaro Gonzalez at in the Office of the District Director in INS's Miami District Office. Lazaro Gonzalez arrived at the office with Marisleysis Gonzalez, the cousin of Elian Gonzalez, as well as Spencer Eig, Roger Bernstein, and Linda Osberg-Braun, attorneys who assert that they represent Elian Gonzalez. Also present were Dan Vara, District Counsel for INS's Miami District Office, and Ron Whitney, Associate General Counsel from INS Headquarters. The interview was conducted in English, with Marisleysis translating the questions into Spanish, and the responses into English. The interview was not under oath, and it was not recorded.

Initially, the attorneys met with the officials from INS out of the presence of Lazaro and Marisleysis Gonzalez. The attorneys inquired as to the purpose of the interview, and Ron Whitney and Dan Vara explained to them that this was a fact-finding effort to obtain any relevant information that Lazaro may have and to give him the opportunity to offer any information that he believes would be helpful. They further explained that the information might be helpful for INS to determine who may act on behalf of the child, and, moreover, to determine how INS will proceed. Osberg-Braun emphasized that she and the other attorneys represent Elian alone, not Lazaro or the family.

Next, Roger Bernstein offered information, orally, concerning Elian's claim for asylum and why it would be in his best interests to remain in the United States. Bernstein has interviewed 20 witnesses and 10 family members, and he says that there is a consensus that the father is being coerced and that his true wishes are for the boy to remain in the United States. He noted changes in the tone of telephone conversations between the family in Miami and the father in Cuba, and that the father initially did not ask that Elian be sent back, but that he be taken care of by the family in Miami. Bernstein described the boy's family history, which included imprisonment, as a political prisoner, of the father's stepbrother for three months. Bernstein says that Elian's mother's niece had been interrogated and harassed by the Communist Party and that her loyalties were questioned.

Redacted

000219

Bernstein added that he was contacted by a reporter in Cuba who said that the father had previously written letters to the United States Interest Section asking permission to leave. He also said that, according to persons who recently came from Cuba, the father now has no freedom of movement because Cuban officials are at his home and won't let him leave.

Eig offered that there is a Cuban legal doctrine, known as *pater protesta*, whereby the state is the ultimate custodian of all children. He asked us to take notice that the mother's dying wish was for Elian to be permitted to live in the United States. Finally, Eig asked that if Elian is returned to Cuba, that he not be separated from family members at any time. Bernstein added that the child has a right to apply for asylum without the consent of his father under paragraph 22 of the Convention on the Rights of the Child, and under paragraph 14 of the International Declaration on Human Rights.

Lazaro and Marisleysis Gonzalez then entered the room, and I explained to them that I would be asking Lazaro a number of questions that relate to the matter of Elian Gonzalez.

- Q. As you are aware, U.S. officials have met personally with Mr. Gonzalez-Quintana, the father of Elian Gonzalez, to verify his relationship to Elian, to explore whether he has the authority to speak for his son in immigration matters, and to determine his wishes with respect to Elian's immigration interests. We have requested this interview with you in order to address fully those issues and to give you an opportunity to provide any relevant information you may have.
- A. [Lazaro acknowledged in the affirmative.]
- Q. What is your relationship to Elian?
- A. I am his great uncle. I am brothers with Elian's grandfather.
- Q. Do you have any reason to doubt that Juan Miguel Gonzalez-Quintana is the biological father of Elian? If so, please explain.
- A. No.
Marisleysis: He is the father.
- Q. Do you have any knowledge of any arrangement, whether formal or informal, between Mr. Gonzalez-Quintana and Elizabet Broton, Elian's mother, over the custody of Elian? If so, please describe.
- A. To my knowledge (because I have been living in Miami) the custody always was with the mother. He always was with his mother.
- Q. Was there any written agreement concerning the custody of the child?

- A. To my understanding, the court, when they got divorced, gave custody to the mother.
- Q. Is there something in writing to that effect?
- A. I don't have papers, but the mother should have been given that.
- Q. Do you have any reason to question Mr. Gonzalez-Quintana's assertion of parental rights over Elian? If so, please explain.
- A. [This question could not be translated]
- Q. Do you have any reason to question the father's right to act on behalf of the child?
- A. The boy left Cuba with his mother. Juan said that if the boy made it to this country safe and sound that we should protect him by whatever means available. I spoke to both the father and the grandfather.
- Q. When?
- A. Two to three days before we found Elian. [It was] On that same Monday that they called.
- Q. Are you aware of any decision by a Cuban court depriving or suspending the right of Elian's father to exercise parental authority?
- A. No. If it happened, I do not know. To my knowledge, no.
- Q. Please describe Elian's relationship with his father.
- A. To my understanding, normal like with any other parent. The kid was not constantly with his father, because he lived with his mother. On the occasions that he was not with his mother, he was with his grandparents, which are my brother and his wife. To my understanding, based on what I've seen, he didn't have a stable life in his house. I've been able to appraise this because of how he's adjusted since he's been here in my home.
- Q. What do you base your answer on?
- A. I've seen him change since he's been with us.
- Q. But how do you know he was not in a stable situation?

- A. When there's been a divorce between two parents, logically, they aren't together. There was one custody that was true and another one that wasn't.
- Q. Do you have any knowledge of the time Elian spent between his different parents?
- A. The stepfather and Elian got along well.
- Q. What about time with the father?
- A. I don't live there so it's hard for me to tell. What I know is what I've found out through the family.
- Q. Do you have any specific reason to believe that Mr. Gonzalez-Quintana's request that Elian be returned to Cuba is not genuine, i.e. that he is being coerced in some way?
- A. We all think he's under pressure from the government. Because of his change in sentiment, and I'm amazed about this. In our conversations over the phone, he says that Elian hasn't lost anything in his country. I have this recorded.
- Q. Do you have any proof of this coercion?
- A. What more proof do you want when someone from the Cuban government is at his house and won't let him leave? He's definitely being pressured. Getting extra protection.
- Q. How do you know he's being guarded?
- A. Several calls made from Cuba, and family that lives in Cuba has told us. Whoever knows about the Castro system, knows this is how it works there.
- Q. Do you have any specific or objective reason to believe that Elian would be harmed if he were returned to Cuba? If so, please specify the type of harm to which you are referring, and the reason that Elian might be in danger.
- A. During the time he's been here, everything he has, if he goes back, it's all changed. His activities here are different from those that he would have over there.
- Q. It has been reported in the press that Mr. Gonzalez-Quintana may have been aware of Elian and his mother's departure from Cuba. Do you have any information concerning Mr. Gonzalez-Quintana's knowledge of or consent to Elian's departure? If so, please explain.
- A. I cannot tell you this. He called.

Q. Can you describe the phone conversation?

A. That the son had left with his mother.

Q. Did the father say how he found out about this?

A. No.

Q. Did he know who was on board, did he give other information about the trip?

A. No, we found out after from the Coast Guard that there had been 11 to 13 people on board.

Q. Did the father indicate how he know that Elian and his mother had left Cuba?

A. No.

Q. Do you have any information concerning Mr. Gonzalez-Quintana's knowledge of or consent to Elian's departure?

A. I have heard this but don't know because the father hasn't said anything about whether he gave consent.

Eig: The father is not exactly in a position to speak freely on this.

Marisleysis: The father is being pressured. His tone of voice is different, like people are telling him what to say. The phone sounds like it's being tapped.

Q. Have you spoken to Elian's father since November 25? If so, please describe the nature of those conversations.

A. Yes, a little, but he speaks more to the kid.

Q. Can you describe your conversations with the father?

A. To return Elian. This has changed. Before, we called him from the hospital. Juan said again to take care of him, thankful that we were taking care of him.

Q. Can you be more specific about that conversation?

A. When the kid arrived, the doctor called Cuba to find out if the kid was allergic to anything. I spoke to the father who said the same thing as before.

Q. You spoke earlier about the conversation before Elian arrived, and the conversation from the hospital where the father said "the same thing." What do you mean when you say that he said the same thing?

A. To take care of the kid. To protect him.

This concluded the interview with Lazaro Gonzalez. Spencer Eig then asked Marisleysis to say a few words about how Elian is doing in their home. She described Elian as very able to cope with the tragedy that he has experienced and to adapt to his new surroundings. She is the person that Elian has most bonded with and she has concerns about his well-being if he is separated from her. She said that Elian does not ask to go back to his father. When asked whether he wanted to go back, Elian replied that his father should come and live with them in Miami. Elian questions Marisleysis about what will happen, but she doesn't know how to answer him because she doesn't know what will happen.

The meeting concluded at this point.

HACKLEY, BERNSTEIN & OSBERG

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

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

December 27, 1999

Owen Cooper
General Counsel
Immigration and Naturalization Service
425 I Street NW
Washington, DC 20536

Dear Mr. Cooper:

Linda Osberg-Braun and I spoke with Kelly Ryan and Ron Whitney on December 23, 1999. One issue raised was whether Elian's father is free from coercion and intimidation. They requested we provide any evidence regarding this issue.

The INS should take notice of the endemic and gross violations of human rights which exist in Cuba. Cuba citizens do not have the right to freely express their views, particularly on an issue which has been placed at such a high level of national importance. Fidel Castro has visited Elian's father, personally attended his son's birthday party, and wears a pin of Elian on his lapel. He has mobilized his citizenry with the objective of returning Elian and making him a symbol of the Communist Party. Taking this into consideration, it must be recognized that Juan Miguel Gonzalez, or for that matter any relative of Elian in Cuba, cannot express their wishes for Elian freely, without justifiable fear of retribution.

At the Monday December 20, 1999 meeting with Ron Whitney, Lazaro Gonzalez, Elian's great paternal uncle, stated that on or about November 22, 1999 he received a phone call from Elian's father, Juan Miguel Gonzalez, in Cuba and was asked, "please take care of my boy." Juan Miguel did not request Elian's return to Cuba or, as would be expected from a father separated from his son, inquire as to when Elian would be sent home. Juan Miguel simply asked his uncle to care for his son.

Both Lazaro and Marysleisis, stated at the interview with INS, that after this first conversation, Juan Miguel's tone drastically changed, and he was without question under the influence of the government.

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Additionally, relatives in Miami who have spoken with neighbors and family in Cardenas have stated that Juan Miguel's movement is restricted, that a speaker phone was installed in Juan Miguel's home and that his actions and words are being strictly monitored.

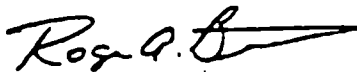
Moreover, William, Lazaro and Delphin Gonzalez, visited and stayed in Cardenas at Juan Miguel's home last year. Juan Miguel discussed with William; his first cousin, his desire to come to the United States. He said if necessary, "I would come to the United States in a toilet bowl."

We have also received information from an independent Cuban journalist, Jesus Zuniga, who writes for the Cuba Free Press Project, which is frequently published on CubaNet. Zuniga stated to me, through an interpreter, in a taped phone conversation, that Juan Miguel twice attempted by mail to apply for an immigrant visa through the US Interest Section during the past two years. Given common practice in Cuba, it is likely the request never reached the US Interest Section. Zuniga maintains that Juan Miguel was aware and consented to Elian's departure. The family believes this to be the case, but if queried, Juan Miguel could not possibly acknowledge the veracity of this statement without harm to his person. A taped copy of the conversation with Zuniga will be provided upon General Counsel's request.

Additionally we would like you to consider the degree to which family members of the Gonzalez family have been harmed, and consider whether the loyalty Juan Miguel has displayed to Castro's regime is reasonable considering the treatment he and his family have received. Two of Juan Miguel's uncles were long time political prisoners in Cuba. Others fled political repression. Elian's stepfather was imprisoned and beaten in prison. Elian's mother was intimidated and harassed by the government. The degree of harm which has befallen Juan Miguel's family, does not engender any degree of loyalty to Castro. Juan Miguel's actions in requesting his son's return to a country which the majority of his family have fled, and which he has expressed the desire to flee, are inconsistent.

We are willing to provide written affidavits in order to corroborate this proffer of evidence. The evidence demonstrates that Juan Miguel Gonzalez is not able, without dire repercussions to his person and family, to express his true wishes regarding the future of Elian. Thank you for your consideration.

Sincerely,


Roger Bernstein

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TOTAL P.

U.S. Department of Justice
Immigration and Naturalization Service
Office of the District Director



7880 Biscayne Boulevard
Miami, FL 33138

December 22, 1999

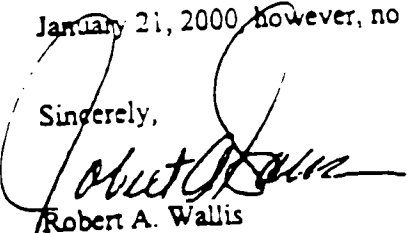
Elián González
c/o Lázaro González
2319 NW 2 Street
Miami, Fl. 33125-5207

Dear Elián:

The U.S. Immigration and Naturalization Service (INS) has postponed the deferred inspection of Elián González until January 21, 2000 at 9:00 a.m. There are no plans to alter your current care and living arrangements.

While the deferred inspection has been set for January 21, 2000, this deferred inspection has no bearing on the timing of the decision INS will make on who can speak on your behalf regarding the immigration issues involved in this case. A decision could be made before, on, or after January 21, 2000, however, no decision will be made this week.

Sincerely,


Robert A. Wallis
District Director

PC/ Spencer Eig, Esq.
Spencer Eig Law Firm

Linda Osberg-Braun, Esq. and Roger Bernstein, Esq.
Hackley, Bernstein & Osberg-Braun, P.L.

The Florida district at its best proudly serving our community with competence fairness dignity and respect

000227

DECLARATION OF SILMA L. DIMMEL

I, Silma L. Dimmel, declare that:

1. I am the Officer in Charge of the United States Immigration and Naturalization Service ("INS") sub-office at the U.S. Interests Section of the Embassy of Switzerland in Havana, Cuba. As the Officer in Charge, I am responsible for INS operations in the Havana sub-office, including INS' role in the administration of the in-country refugee program and the Special Cuban Migration Program. I have had extensive experience interviewing persons concerning immigration matters, and have conducted thousands of refugee interviews, both at the Athens sub-office and on circuit rides.
2. This declaration is based on my personal knowledge.
3. Pursuant to my duties as Officer in Charge, on December 13, 1999, at approximately 7:30 a.m., I interviewed Juan Gonzalez-Quintana at his home in Cardenas, Cuba. During this interview, I was accompanied by Jeffrey DeLaurentis, First Secretary and Chief of the Political/Economic Section at the U.S. Interests Section of the Embassy of Switzerland in Havana. I am bilingual in the Spanish and English language and, thus, no interpreter was used. I had no difficulty understanding Mr. Gonzalez, and it was apparent from the conversation that Mr. Gonzalez understood me. When the interview commenced, Mr. Gonzalez read a prepared statement and provided me with several documents which I attached to my final report. In addition, I read Mr. Gonzalez a prepared statement advising him of the purpose of the interview.
4. During the interview Mr. Gonzalez did not appear at all nervous or intimidated. Based on his demeanor, I had no reason to believe he was being coerced. In addition to talking with him, I provided Mr. Gonzalez with documents to read and sign. He read these documents silently and unhesitatingly marked them in a manner indicating that he was speaking freely.
5. Shortly after the interview concluded, I prepared a detailed report of the answers provided by Mr. Gonzalez. A copy of this report is appended to this declaration. The report accurately summarizes what occurred during my interview of Mr. Gonzalez. Prior to submitting my report to the INS' General Counsel's office, I showed the report to Mr. DeLaurentis who reviewed and verified that it is a true and accurate summary of the interview.
6. The report I submitted was based on my personal knowledge as the person who interviewed Mr. Gonzalez. The report was drafted and has been maintained in the course of regularly conducted business of the INS. The observations I recounted in my report

000225

were made pursuant to the duties imposed upon me by the law as an officer of the INS.

7. Pursuant to my duties as the Officer in Charge, I conducted a second interview of Mr. Gonzalez on December 31, 1999, at approximately 4:00 p.m. I was again accompanied by Mr. DeLaurentis of the U.S. Interests Section in Havana. Mr. Gonzalez was accompanied by his parents. This second meeting took place at the private residence of a representative from the United Nations International Children's Emergency Fund (UNICEF) in Havana. The interview was conducted in the Spanish language and I had no difficulty understanding Mr. Gonzalez, and it was apparent from the conversation that Mr. Gonzalez understood me.

8. I asked questions in an effort to clarify some of the answers Mr. Gonzalez provided during the December 13, 1999 interview. While Mr. Gonzalez answered the all the questions personally, there were times when Juan Gonzalez Hernandez, Mr. Gonzalez's father, would add additional information regarding his personal conversations with Lazaro Gonzalez. As in his first interview, Juan Gonzalez did not appear at all nervous. In addition, at no time was I left with the impression that Mr. Gonzalez was in any way being influenced by some unknown person or persons.

10. After the interview concluded, I prepared a detailed report of the answers provided by Mr. Gonzalez and his father. A copy of this report is appended to this declaration. The report accurately summarizes what occurred during my second interview of Mr. Gonzalez. Prior to submitting my second report to the INS' General Counsel's office, I showed the report to Mr. DeLaurentis who reviewed and verified that it is a true and accurate summary of the second interview.

11. The second report I submitted was based on my personal knowledge as the person who interviewed Mr. Gonzalez. The second report was drafted and has been maintained in the course of regularly conducted business of the INS. The observations I recounted in my second report were made pursuant to the duties imposed upon me by the law as an officer of the INS.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of January, 2000.


SILMA L. DIMMEL

000229

CERTIFICATION OF TRANSLATION

I hereby certify that the translation bearing LS number _____ was prepared by the Office of Language Services for the Department of State and that it is a correct translation to the best of my knowledge and belief.

Dated:

Mary Bird

Chief, Translating Division

000230

(6) When you requested the visa, did you want to:

_____ visit the United States?

_____ stay in the United States?

(7) Please describe how you requested a visa.

_____ By filling out U.S. Government forms.

_____ By sending a paper to the U.S. Interests Section on which you wrote your name,
date of birth, I.D. number, address, marital status, name of spouse, and number of children under
21 years of age.

_____ Other _____

(8) Did you receive a reply from the Interests Section?

Yes

No

(9) If you received a reply from the Interests Section, what did it say?

000232

Favor de circular la contestación corre:

1) Su tío contó a Servicio de Inmigración y Naturalización que el cree que Vd. quiere que Elián se quede en los Estados Unidos.

Es verdad que Vd. quiere que Elián se quede en los Estados Unidos?

Si

No ☒

2) Su tío cree que sus acciones son restringidas por el gobierno de Cuba. Es verdad eso?

Si

No ☒

3) Se ha informado al Servicio de Inmigración y Naturalización que ud. solicitó 2 veces una visa para viajar a los Estados Unidos. Ha solicitado permiso de la Sección de Intereses de Los Estados Unidos (SINA) para ir a los Estados Unidos, o en persona o por correo?

Si

No ☒

Si su respuesta a la pregunta 3 es "No", no necesita responder a las preguntas siguientes.

4) Cuantas veces solicitó Vd. una visa?

_____ veces

5) Hace cuanto tiempo hizo la solicitud? Si solicitó mas que una vez, favor de poner en lista todas las fechas que solicitó una visa.

6) Cuando la solicitó, Vd. deseaba:

_____ Visitar a los Estados Unidos

_____ Permanecer en los Estados Unidos

7) Describa, por favor, como solicitó la visa.

_____ Llenar formularios del gobierno estadounidense.

_____ Mandar una hoja a la SINA en la cual escribió su nombre, fecha de nacimiento, numero de cedula, dirección, estado civil, nombre de su cónyuge, y el numero de hijos menores de 21 años de edad.

_____ Otro _____

8) Recibió una respuesta de la SINA?

Si

No

9) Si recibió una respuesta de las SINA, que dijo?

000233

SECOND INTERVIEW WITH JUAN MIGUEL GONZALEZ QUINTANA

On December 31, 1999, at 4:00 p.m., the writer Silma L. Dimmel, Officer in Charge for the U.S. Immigration and Naturalization Service (INS) at the Havana sub office accompanied by Jeffrey DeLaurentis, First Secretary and Chief of the Political/Economic Section at the U.S. Interests Section in Havana met with Mr. Gonzalez at the private residence of the representative for the United Nations International Children's Emergency Fund (UNICEF) in Havana. This place was selected and agreed upon by the U.S. Interests Section and the Ministry of External Relations (MINREX) for the Republic of Cuba as being neutral and private. The UNICEF representative showed the writer around the house in order to select the most private and comfortable room to conduct the interview. This writer selected a private study located on the third floor of the residence. Mr. Gonzalez was accompanied by his parents, Juan Gonzalez Hernandez and Maria Mariela Quintana Garrido.

Before the interview was initiated, Mr. Gonzalez wanted to apologize to this writer and Mr. DeLaurentis for the misunderstanding as quoted by the press after our first meeting on December 13, 1999. The press had quoted Mr. Gonzalez as saying that INS had indicated that as a result of the interview, the child was going to be returned immediately, which was not correct. It had been made clear to Mr. Gonzalez, on December 13, that the meeting was being held to gather information from him as to his being the parent of Elian and collect evidence as proof of his claim. Both he and his parents were very apologetic and concerned lest we feel any reproach towards them. We stated that we in no way felt that way and that the misunderstanding was corrected and clarified by INS' Headquarters press office. We said that our concern was for the well being of Elian as well as his family, and that we desired to facilitate matters so that a decision could be made as soon as possible.

Mr. Gonzalez also expressed that he felt offended by the INS concerning the purpose and necessity for this second interview. He said that he had already submitted the necessary documentation as evidence of his paternity of Elian and that his parental rights are also being violated and ignored by the INS. He accused INS of dismissing his parental rights and of not granting him the courtesy of a response as to whether or not this agency has concluded that he is the father of Elian. He pointed out that the necessary evidence was presented over 18 days ago. He indicated that he also wishes to have responses from the INS as to why it has taken so long to decide the issue of turning the child over to him. He understands, he said, that INS has the responsibility over Elian and has placed him under the temporary custody of the relatives in the U.S. However, in the meanwhile, he continues to have to rebut the allegations of others while distant relatives in Miami do not need proof of their relationship to his son. He feels offended, insulted by this and does not trust the U.S. Government.

000234

He continues to maintain that his meetings with U.S. representatives are without coercion or obligation from any individuals or government, and are voluntary. He wishes to provide all the necessary answers at this point since he does not see an alternative to the additional interview. He is willing to answer all the questions presented to him and again, he is doing so without the feeling of being obligated to do so and/or of being coerced by anybody. He wants his son back with him and his family and this is the primary reason he consented to meet with us again. Mr. Gonzalez Hernandez, Elian's grandfather, questioned whether "INS has the notion that Mr. Gonzalez is Elian's father?"

Mr. Gonzalez pointed out that when he heard that Elian had been taken out of Cuba by his mother, he immediately went to the different civil registry to apply for and obtain the necessary documentation such as birth certificates, marriage and divorce certificate to prove his paternity. He indicated that the date the documents were issued, November 26, 1999, was the day after Elian was found. He stated that he obtained the documents so promptly because he wanted his son back immediately and knew that he would need those documents as proof. Mrs. Elizabeth Brotons, the mother of Elian, took the boy out of the country without his consent, knowledge and/or permission. Elian lived with him most of the time and the fact that he attended school in the district where Mr. Gonzalez lives and not where the mother lived, is clear proof that the boy lived with him and was under his care.

Before this writer initiated the interview, Mr. Gonzalez was given the attached nine-question sheet prepared by the General Counsel's office which he was to answer in writing. Mr. Gonzalez did so without any hesitation nor questions to their meaning.

Upon his finishing the questionnaire the interview was begun. This writer read the statement prepared by the General Counsel's office that had been translated into the Spanish language. The writer also made clear to Mr. Gonzalez the purpose for the interview so there would be no misunderstanding on his part. The writer added that she was not involved in the decision process, but that the decision would be made by INS Headquarters. This writer wanted Mr. Gonzalez to understand perfectly her role in representing INS and acting as a facilitator on behalf of the Service. Also, on behalf of the INS and U.S. Interests Section, concern was expressed for the well-being of Elian as well as an understanding of Mr. Gonzalez' desire for the process to move as quickly as possible.

000235

QUESTIONS:

- 1) Can you go over for me, once again, when you first learned of Elian's arrival in the United States? The last time we talked, you told me that you initiated contact with your relatives in Miami after people saw a boy on the news who looked like Elian. Your uncle says that you called him before Elian was rescued.

Elian was in my home all the time. I went to work on Friday, November 19 at 7:30 a.m. The day before, Elian and my brother had been working on making a kite to fly after school on Friday and over the weekend. So that morning my brother, Jose Antonio Gonzalez, said that he'd be picking up Elian at school. When he arrived at the school the teacher told him that the mother had picked up Elian early and that he did not return to the school in the afternoon on that same day.

On Saturday, before I went to work, I asked my brother to check on Elian at his mother's residence. My brother went there and did not find him or her. He (brother) again went to the house on Sunday and did not find them. On Monday, my cousin who is Elian's Godmother, went to the school to look for Elian. The teacher told her that Elian had not come to school. She immediately came to my house and told my father. On my cousin's way to work, a friend told her that there were comments that Elisabeth Brotons had left for the United States and had taken Elian with her. In turn, my father also went out and on his way to Mrs. Brotons house, he also heard on the street that Mrs. Brotons had left for the U.S. In the meantime, I still did not know anything about it because my father decided not to call me at work, in order not to worry me. So when I returned from work that is when they told me. I became upset.

Immediately I asked my father to call his brother, Lazaro Gonzalez, in Miami to find out if they knew anything about Elisabeth Brotons and Elian arriving in the U.S. They responded that they did not know anything and denied knowing that Mrs. Brotons had left Cuba. They said that if they heard anything, they would immediately contact us here in Cuba. The next morning Lazaro Gonzalez called my father and told him that not even Mrs. Brotons' family, two (2) uncles on her mother's side and a niece, knew anything about her going to the U.S. No one knew about them going to the U.S. but they said that they would be checking.

In the meanwhile, I went to the Cuban Customs authorities to check if they knew of a boat leaving the country or being intercepted by the U.S. Coast Guard. I didn't know what else to do, so I proceeded to check about what was needed in order to reclaim my son in the event they ended up in the United States or the Coast Guard picked them up. The authorities told me to wait.

On Thursday, November 25th, relatives of friends at work called us to say that they had heard on television about a boat. The boat was carrying three (3) children and one was saved so I wondered whether it was Elian. I still didn't know if it was Elian. I asked my father to call the family in Miami to ask them to go to the hospital to check if the child that survived was Elian. My father talked to his sister Caridad Gonzalez.

At this point, this writer let Mr. Juan Gonzalez Hernandez, Elian's grandfather, explain the conversation between him and his relatives in Miami.

Juan Gonzalez said that he called his sister Caridad Gonzalez and asked her to check the hospital to see if the boy who was found alive was Elian. She said that she would call Lazaro Gonzalez to check this out and that they would get back to the family in Cuba.

Mr. Gonzalez continues: In the meantime, I returned home from work and at that moment the phone rang. On the phone was the doctor from the hospital in Miami asking for me. Elian had already given him his full name, his date of birth, my address and phone number. By the time Lazaro Gonzalez and family arrived at the hospital, my father and I had already talked to the doctor. Lazaro concluded that the boy in the hospital was Elian, since he had met the boy last year during his visit in Cuba. He talked to my father and told him not to worry that they would take care of Elian. As family we did not need to tell him to watch over my son.

On Friday when Elian was released from the hospital, the family in Miami called and started talking about me and my family going to the U.S., that I'd have a job, that Elian was fine and they would take care of him.

On Thursday, between the brother's conversation, my father told Lazaro that we did not want cameras taking pictures of the boy and not to let the boy be used as a pawn for political purposes.

Subsequently, Lazaro and I had several fights over the phone because he continued to insist on our going to the U.S. He offered us all kind of money.

I immediately began arrangements in order to obtain the necessary documents to get my child back. I want my son back.

- 2) Your uncle has told us that, during his first telephone conversations with you, you did not ask that Elian be returned to Cuba and that you asked him to take care of your son. During our last meeting, you told me that, while you were grateful for the immediate medical attention Elian received upon his arrival in the United States, you wished him to be returned to you. Can you recall those first telephone conversations with your uncle? If so, do you remember asking

000237

- 4) During our last talk, you and your father mentioned that your uncle is under considerable pressure from the Cuban community in Miami and, as a result, cannot overtly support Elian's return to you. Your father said that your uncle has actually told him that under present circumstances it is impossible for him to "back off" because it would make him look bad in front of the Cuban community. Can you tell me when this particular conversation occurred? Did your uncle make any other statements regarding the pressure he is under?

I asked my father to speak with Lazaro, brother to brother, to ask him to return Elian since he and I were not on good speaking terms. Lazaro told my father that he would like to return Elian, but now, he cannot because he would look bad.

People are saying that I am being coerced by the Cuban Government. However, you can see that they are the ones being coerced by the Cuban community in Miami. I am not being coerced to meet with you, I want to do so and am doing it voluntarily.

He (Lazaro) is being pressed by the Cuban community. He has five (5) attorneys, I don't. What bothers me the most is that I must prove paternity of my son and what have they (INS) asked the relatives in the U.S. to present as proof of relationship? They just showed up at the hospital and stated that they were relatives without any proof or evidence and INS grants them custody of my son. I, on the other hand, have to prove my relationship.

They have neither my consent nor my permission to be taking the child here or there. Imagine their insensitivity, in taking that child to Disneyworld and putting him on a boat ride when he already suffered such an ordeal. They forced him on the ride while he was crying and screaming; not wanting to do so. My son is suffering, my son needs me and needs his grandparents; and I need him. They don't even let him speak to us. When we call and Elian starts saying "Grandma I want to be with you" or "Daddy I want to go with you", they immediately make him cry, or give him a candy or start tapping on the lines saying that the lines are getting bad and hang up the phone. They don't let him talk to us and always have an excuse for not letting him speak to us. In the background you can hear them telling Elian to say he wants to stay in the United States, whereas the child is saying the opposite to us over the phone. It's abusive what they are doing to Elian. The boy needs me. He already experienced the worst, he's only six years old and needs his father and they (relatives in Miami) are not taking that into consideration and INS is still making me wait for my son; it's been a month. Can you believe that the Mayor of New York invited Elian to go there, with who's permission? I have not granted such permission; he is my son.

They even went to the extreme of wrapping Elian in the American flag when they know that is not his flag; he is Cuban.

It is beyond belief that somebody named Armando Gutierrez is the one giving consent and permission about my child and I, the father, have no rights over my son; I am not asked.

Tonight (December 31st) they are taking Elian to a camp and I will not be able to speak with my son. They don't let me speak to him and constantly have excuses and when he says he misses us and wants to come back with us, they take the boy away and hang up the telephone or say there is something wrong with the lines.

When they speak with my father and me sometimes over the phone, they say Elian should be returned to Cuba, but when they are in front of the television cameras, they change their story.

Mr. Gonzalez asked this writer, why INS had not decided that Elian should be with him. The writer responded that INS is trying to have all the bases covered in order to be able to defend whatever decision is made.

I heard through the grapevine, that Elisabeth and her boyfriend, Lazaro Rafael Monero, had a stormy relationship. He mistreated her, but I did not know that. People say that she was being kidnapped by him. I don't know for a fact, that is what people say. Elian did not want to go and his father told her with a knife in hand, "either you or I will shut him up". I was told that he threatened Elian. As a matter of fact, the other woman that went with them decided to leave her daughter behind and she said that Elisabeth did not want to go, she was forced to go. Why won't the INS authorities speak to her to get that information? So you see, she took my son without my permission and she apparently, did not want to go.

5) Last time, you told me that you've worked at the Parque Josone, a tourist center, for more than 11 years. Could you tell me a little about this center and the type(s) of work you do? Have you always had the same job as you do now?

I have been at the Parque Josone for over 11 years. I started as an electrician, then moved on to other areas i.e. cashier, bartender, park attendant and now I am the cashier at the park entrance. I am presently holding the position as a cashier which is responsible for the collection of monies from tourist and balancing at the end of the day. I have been in this position for the past two (2) years.

The park is a tourist center with swimming pool, bars, restaurants, animals, boating area and other recreational facilities in the Varadero area. It's beautiful and is visited by many tourists. It is located on First Avenue, between 60 and 64 Streets before the Hotel Centro Palmas, it is located over 9 acres of land.

6) We understand that you have not been at work since Elian's departure. Why?

Since Elian was found I have not been able to return to work because of the pressure. People at work have been very supportive so they understand and have not put any pressure for my return. I am on paid vacation right now and have been since Elian's departure. Actually, I have vacation until January 15, 2000, but since I still have many days left of paid vacation, I can return at any time.

7) I remember that you told me that Elian's mother worked at the Hotel Paraiso in Varadero as a steward. How long had she worked there? Was she employed there at the time that she left Cuba?

She started work there a year after me, so she worked there for 10 years. She was working when she left, but was on vacation. Initially she was on vacation and then she took sick leave.

8) Were you speaking freely to me on December 13th?

Yes.

9) Are you speaking freely today?

Yes.

10) Is there any answer you wish to explain or further information you wish to provide?

A few days ago I saw three (3) attorneys in the U.S.A. on television talking about the paternity of a man and a child. Don't I have the paternal rights over my son? Don't the laws apply just like that in my case? I still don't have a response from INS, I don't have rights over my son. Still they (INS) are questioning my paternity over others that have no rights. They (INS) are giving more rights to others than me although they have no authority over Elian.

I want Elian here and have received no response from INS.

I want my son back. The response that I want (from INS) is that Elian is coming.

Maria Mariela Quintana Garrido, Elian's grandmother, adds that she suffers because Elian is suffering. The relatives in the U.S. are not his immediate family and she along with Elian's father and grandfather want an immediate response from INS for the benefit of Elian.

000241

Mr. Gonzalez proceeds to add: I won't be changing my mind, I want my son back as soon as possible.

Interview concluded at this point.

/ Attachment

000242

SUMMATION:

It is this officer's observation that Mr. Juan Miguel Gonzalez Quintana is deeply concerned for the well being of the child. He repeatedly mentioned the way in which the relatives in Miami are using his son for their own benefit without concern for the emotional stability of the child. He as well as his parents are emotionally distressed and became emotional several times during the interview.

Mr. Gonzalez did not appear to be forced or coerced to speak with us and claim he wants his son. Both he and his parents appeared honest and concerned for the well being of the child and in wanting the child with them in Cuba immediately. The longer the child remains in the U.S., the more they will continue to suffer. Their emotional stress and pressure is the reason for their not returning to work.

Mr. Gonzalez met with us voluntarily and spoke truthfully and honestly. He misses and wants his son back and the grandparents cannot mention Elian's name becoming emotional. This is an honest, genuine and unified family thoroughly engaged in Elian's life, that has been under distress since the taking of the child by his mother. It is obvious to this officer that the mother took the child without Mr. Gonzalez' knowledge, consent and/or permission.

This is the last interview granted to INS by Mr. Gonzalez and he expects an immediate resolution to this matter so he can have his son returned to him promptly and without further delays. It is unquestionable that the well being of the child is the primary concern of this family.



EMBASSY OF SWITZERLAND
United States of America
Interests Section

LA HABANA,
Calzada entre L y M
Vedado
Tel.: 32-0551/52
32-9700

Ref:

DECLARATION OF JEFFREY DELAURENTIS

I, Jeffrey DeLaurentis, declare that:

1. I am a Foreign Service Officer serving as First Secretary and Chief of the Political/Economic Section at the U.S. Interests Section ("USINT") of the Embassy of Switzerland in Havana, Cuba, a position I assumed in September 1999. I read and speak Spanish. In addition to having been trained at the U.S. Department of State's Foreign Service Institute in 1991 and having received a "3/3" (reading/speaking) in the final examination — a level indicating professional level proficiency — I have used Spanish in most of my assignments since then. These include a prior assignment to Cuba, from 1991 to 1993. As a result of my now two assignments to Cuba, I am particularly familiar with Spanish as spoken in Cuba.
2. While Cuba and the United States do not have diplomatic relations, the governments of the two countries have agreed that the consular and other interests of the United States in Cuba may be represented by the Government of Switzerland through the Swiss Embassy in Havana. The U.S. Interests Section accordingly is part of the Swiss Embassy. USINT is located in the building that once housed the United States Embassy, and is staffed by U.S. State Department officials and representatives of the U.S. Immigration and Naturalization Service (INS), among others. Within USINT there is the political/economic section which I head and an INS office, among other sections and offices. The INS office is headed by an INS "Officer in Charge" (OIC), who is Silma L. Dimmel.
3. On December 13, 1999, I accompanied Ms. Dimmel when she met with Juan Miguel Gonzalez Quintana at his home to interview him about his claim that he was the father of Elian Gonzalez, and about his request that Elian Gonzalez be returned to Cuba. The street was deserted when we arrived at the house although a number of persons, including some with television cameras, quickly appeared in front after we entered the house. To the best of my knowledge, only family members were present in the house.
4. Ms. Dimmel conducted the interview in Spanish. We met with Mr. Gonzalez Quintana alone briefly in a back room of the house and then agreed to his request that his parents, Juan Gonzalez Hernandez and Maria Mariela Garrido, join him. I was present for the entire interview and understood everything that was said. I have read Ms. Dimmel's report of the interview, which is attached to this declaration. It is a true and accurate summary of the interview.
5. Mr. Gonzalez Quintana was not aware of the specific questions that would be asked of him prior to the interview, although he had been informed that he would have to establish that he

000244

was Elian Gonzalez's father and provide information about his relationship to Elian. At all times during the interview, it appeared to me that Mr. Gonzalez Quintana spoke freely about his relationship with his son and his desire that Elian be returned to Cuba. Based on my observations, I saw no evidence of coercion or hesitation as he answered Ms. Dimmel's questions. With the exception of his brief opening statement, his responses appeared unrehearsed, extemporaneous and sincere. It was clear to me that he had been through an emotional ordeal but he appeared genuine in expressing the desire to be reunited with his son in Cuba. The documents he provided to INS appeared to substantiate his genuine relationship to Elian and his involvement in parental decisions concerning Elian. While I had no knowledge of the facts beyond what I learned from the documents and from attending the interview of Mr. Gonzalez Quintana, all of the information available to me caused me to conclude that Elian's family in Cuba is a close and loving one, and that Mr. Gonzalez Quintana was actively involved in Elian's life as his father. His anecdotes of their life together were particularly poignant.

6. On December 31, 1999, I again accompanied Ms. Dimmel when she met with Juan Miguel Gonzalez to obtain additional information for INS deliberations on the case of Elian Gonzalez. The meeting was held at the private residence of the representative for the United Nations International Children's Emergency Fund (UNICEF) in Havana and lasted approximately two hours. Mr. Gonzalez came to the interview with his parents, and we met with the three of them in a room on the third floor selected by Ms. Dimmel. No one else was in the room, and to my knowledge only the UNICEF representative was in the residence. I was again present for the entire interview and understood everything that was said. I have read Ms. Dimmel's report of the interview, which is also attached to this declaration. It is a true and accurate summary of the interview.

7. Mr. Gonzalez Quintana was, once again, not aware of the specific questions that would be asked of him prior to the interview. He appeared to respond decisively, openly and without coercion or hesitation to the questions posed by Ms. Dimmel. Both he and his parents were candid and emotional during the interview, expressing considerable frustration as to why the process was taking so long and why INS had not yet responded to his claim of paternity. I drew the same conclusions I expressed above after the December 13 meeting. I witnessed a close, unified family in pain. These three individuals love this child, were thoroughly engaged in his life, remain very concerned for his welfare, and want him returned as soon as possible.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 5, 2000.


JEFFREY DELAURENTIS

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

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

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

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

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

000246

Questions:

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

Yes. He presented carnet de identidad #6MOOO300566.

2) Who has accompanied you to this interview?

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

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

Yes.

4) Do you have Elian's birth certificate?

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

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

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

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

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

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

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

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

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

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

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

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. form	re: Questions [partial] (1 page)	12/13/1999	P6/b(6)

COLLECTION:

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FOLDER TITLE:

Immigration (Eliau Gonzalez Filings) [4]

2012-0371-F

rs2162

RESTRICTION CODES

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

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

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

(b)(6)

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

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

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

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

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

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

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

000051

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

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

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

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

Yes. I am providing the marriage certificate.

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

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

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

No.

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

Yes. I am including such.

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

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

000251

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

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

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

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

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

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

Interview concluded at this point.

SECOND INTERVIEW WITH JUAN MIGUEL GONZALEZ QUINTANA

On December 31, 1999, at 4:00 p.m., the writer Silma L. Dimmel, Officer in Charge for the U.S. Immigration and Naturalization Service (INS) at the Havana sub office accompanied by Jeffrey DeLaurentis, First Secretary and Chief of the Political/Economic Section at the U.S. Interests Section in Havana met with Mr. Gonzalez at the private residence of the representative for the United Nations International Children's Emergency Fund (UNICEF) in Havana. This place was selected and agreed upon by the U.S. Interests Section and the Ministry of External Relations (MINREX) for the Republic of Cuba as being neutral and private. The UNICEF representative showed the writer around the house in order to select the most private and comfortable room to conduct the interview. This writer selected a private study located on the third floor of the residence. Mr. Gonzalez was accompanied by his parents, Juan Gonzalez Hernandez and Maria Mariela Quintana Garrido.

Before the interview was initiated, Mr. Gonzalez wanted to apologize to this writer and Mr. DeLaurentis for the misunderstanding as quoted by the press after our first meeting on December 13, 1999. The press had quoted Mr. Gonzalez as saying that INS had indicated that as a result of the interview, the child was going to be returned immediately, which was not correct. It had been made clear to Mr. Gonzalez, on December 13, that the meeting was being held to gather information from him as to his being the parent of Elian and collect evidence as proof of his claim. Both he and his parents were very apologetic and concerned lest we feel any reproach towards them. We stated that we in no way felt that way and that the misunderstanding was corrected and clarified by INS' Headquarters press office. We said that our concern was for the well being of Elian as well as his family, and that we desired to facilitate matters so that a decision could be made as soon as possible.

Mr. Gonzalez also expressed that he felt offended by the INS concerning the purpose and necessity for this second interview. He said that he had already submitted the necessary documentation as evidence of his paternity of Elian and that his parental rights are also being violated and ignored by the INS. He accused INS of dismissing his parental rights and of not granting him the courtesy of a response as to whether or not this agency has concluded that he is the father of Elian. He pointed out that the necessary evidence was presented over 18 days ago. He indicated that he also wishes to have responses from the INS as to why it has taken so long to decide the issue of turning the child over to him. He understands, he said, that INS has the responsibility over Elian and has placed him under the temporary custody of the relatives in the U.S. However, in the meanwhile, he continues to have to rebut the allegations of others while distant relatives in Miami do not need proof of their relationship to his son. He feels offended, insulted by this and does not trust the U.S. Government.

000253

He continues to maintain that his meetings with U.S. representatives are without coercion or obligation from any individuals or government, and are voluntary. He wishes to provide all the necessary answers at this point since he does not see an alternative to the additional interview. He is willing to answer all the questions presented to him and again, he is doing so without the feeling of being obligated to do so and/or of being coerced by anybody. He wants his son back with him and his family and this is the primary reason he consented to meet with us again. Mr. Gonzalez Hernandez, Elian's grandfather, questioned whether "INS has the notion that Mr. Gonzalez is Elian's father?"

Mr. Gonzalez pointed out that when he heard that Elian had been taken out of Cuba by his mother, he immediately went to the different civil registry to apply for and obtain the necessary documentation such as birth certificates, marriage and divorce certificate to prove his paternity. He indicated that the date the documents were issued, November 26, 1999, was the day after Elian was found. He stated that he obtained the documents so promptly because he wanted his son back immediately and knew that he would need those documents as proof. Mrs. Elisabeth Brotons, the mother of Elian, took the boy out of the country without his consent, knowledge and/or permission. Elian lived with him most of the time and the fact that he attended school in the district where Mr. Gonzalez lives and not where the mother lived, is clear proof that the boy lived with him and was under his care.

Before this writer initiated the interview, Mr. Gonzalez was given the attached nine-question sheet prepared by the General Counsel's office which he was to answer in writing. Mr. Gonzalez did so without any hesitation nor questions to their meaning.

Upon his finishing the questionnaire the interview was begun. This writer read the statement prepared by the General Counsel's office that had been translated into the Spanish language. The writer also made clear to Mr. Gonzalez the purpose for the interview so there would be no misunderstanding on his part. The writer added that she was not involved in the decision process, but that the decision would be made by INS Headquarters. This writer wanted Mr. Gonzalez to understand perfectly her role in representing INS and acting as a facilitator on behalf of the Service. Also, on behalf of the INS and U.S. Interests Section, concern was expressed for the well-being of Elian as well as an understanding of Mr. Gonzalez' desire for the process to move as quickly as possible.

000254

QUESTIONS:

- 1) Can you go over for me, once again, when you first learned of Elian's arrival in the United States? The last time we talked, you told me that you initiated contact with your relatives in Miami after people saw a boy on the news who looked like Elian. Your uncle says that you called him before Elian was rescued.

Elian was in my home all the time. I went to work on Friday, November 19 at 7:30 a.m. The day before, Elian and my brother had been working on making a kite to fly after school on Friday and over the weekend. So that morning my brother, Jose Antonio Gonzalez, said that he'd be picking up Elian at school. When he arrived at the school the teacher told him that the mother had picked up Elian early and that he did not return to the school in the afternoon on that same day.

On Saturday, before I went to work, I asked my brother to check on Elian at his mother's residence. My brother went there and did not find him or her. He (brother) again went to the house on Sunday and did not find them. On Monday, my cousin who is Elian's Godmother, went to the school to look for Elian. The teacher told her that Elian had not come to school. She immediately came to my house and told my father. On my cousin's way to work, a friend told her that there were comments that Elisabeth Brotons had left for the United States and had taken Elian with her. In turn, my father also went out and on his way to Mrs. Brotons house, he also heard on the street that Mrs. Brotons had left for the U.S. In the meantime, I still did not know anything about it because my father decided not to call me at work, in order not to worry me. So when I returned from work that is when they told me. I became upset.

Immediately I asked my father to call his brother, Lazaro Gonzalez, in Miami to find out if they knew anything about Elisabeth Brotons and Elian arriving in the U.S. They responded that they did not know anything and denied knowing that Mrs. Brotons had left Cuba. They said that if they heard anything, they would immediately contact us here in Cuba. The next morning Lazaro Gonzalez called my father and told him that not even Mrs. Brotons' family, two (2) uncles on her mother's side and a niece, knew anything about her going to the U.S. No one knew about them going to the U.S. but they said that they would be checking.

In the meanwhile, I went to the Cuban Customs authorities to check if they knew of a boat leaving the country or being intercepted by the U.S. Coast Guard. I didn't know what else to do, so I proceeded to check about what was needed in order to reclaim my son in the event they ended up in the United States or the Coast Guard picked them up. The authorities told me to wait.

000255

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On Thursday, November 25th, relatives of friends at work called us to say that they had heard on television about a boat. The boat was carrying three (3) children and one was saved so I wondered whether it was Elian. I still didn't know if it was Elian. I asked my father to call the family in Miami to ask them to go to the hospital to check if the child that survived was Elian. My father talked to his sister Caridad Gonzalez.

At this point, this writer let Mr. Juan Gonzalez Hernandez, Elian's grandfather, explain the conversation between him and his relatives in Miami.

Juan Gonzalez said that he called his sister Caridad Gonzalez and asked her to check the hospital to see if the boy who was found alive was Elian. She said that she would call Lazaro Gonzalez to check this out and that they would get back to the family in Cuba.

Mr. Gonzalez continues: In the meantime, I returned home from work and at that moment the phone rang. On the phone was the doctor from the hospital in Miami asking for me. Elian had already given him his full name, his date of birth, my address and phone number. By the time Lazaro Gonzalez and family arrived at the hospital, my father and I had already talked to the doctor. Lazaro concluded that the boy in the hospital was Elian, since he had met the boy last year during his visit in Cuba. He talked to my father and told him not to worry that they would take care of Elian. As family we did not need to tell him to watch over my son.

On Friday when Elian was released from the hospital, the family in Miami called and started talking about me and my family going to the U.S., that I'd have a job, that Elian was fine and they would take care of him.

On Thursday, between the brother's conversation, my father told Lazaro that we did not want cameras taking pictures of the boy and not to let the boy be used as a pawn for political purposes.

Subsequently, Lazaro and I had several fights over the phone because he continued to insist on our going to the U.S. He offered us all kind of money.

I immediately began arrangements in order to obtain the necessary documents to get my child back. I want my son back.

- 2) Your uncle has told us that, during his first telephone conversations with you, you did not ask that Elian be returned to Cuba and that you asked him to take care of your son. During our last meeting, you told me that, while you were grateful for the immediate medical attention Elian received upon his arrival in the United States, you wished him to be returned to you. Can you recall those first telephone conversations with your uncle? If so, do you remember asking

000256

your uncle to take care of Elian? If you do remember making this request, what did you mean by it? — — —

At all times I asked that Elian be returned to me. During that time, we did not know anything about the whereabouts of Elian's mother.

Mr. Juan Gonzalez Hernandez, Elian's grandfather, interjects that at no time during his conversation with his brother did he ask him to take care of Elian. As family they did not have to say such a thing. It's humane and as family, it is an obligation.

This writer again asks Mr. Gonzalez whether in the course of conversation he had made it clear to the relatives in Miami to return Elian to him.

Mr. Gonzalez responds that his father, Juan Gonzalez Hernandez, told Lazaro that he was very grateful for their unconditional care given to Elian, but that Elian was to be returned to Cuba with his father and family. Lazaro responded that this would not be a problem and that "If I have to take a plane to return Elian to Cuba, I will do so."

Mr. Gonzalez said that there was an interview on television, of which he has a copy, in which Lazaro, who was flanked by two (2) attorneys stated that neither I nor my father knew that Elian had been taken to the United States. "If they would have known, they would have never agreed." He (Lazaro) also affirmed that everything would be solved.

- 3) You told me last time that your uncle had offered you money to leave Elian in the United States. Can you provide me with additional information regarding this offer, such as, the sum of money offered you or when this offer was made?

On Saturday they called and that is when they started offering me \$2 million, a house and a car. Also that a church had offered \$4 million to Elian so he would be set for life. Caridad, my father's sister, told my father that the church would take care of us. I could go there with all my family and would be taken care and could have a job if I wanted to work, but with the money offered I would not need to do so. That is when I hung up the telephone.

They (relatives in Miami) always wanted us to go to the U.S.A., but we are not interested. My father has two (2) sisters and three (3) brothers there.

This writer asked: Did they ever say where all that money was coming from?

They said the church because they (relatives in Miami) don't have that kind of money. The money they have is just enough to live on. I should add that when they came to Cuba last year, they did so on borrowed money.

000257

- 4) During our last talk, you and your father mentioned that your uncle is under considerable pressure from the Cuban community in Miami and, as a result, cannot overtly support Elian's return to you. Your father said that your uncle has actually told him that under present circumstances it is impossible for him to "back off" because it would make him look bad in front of the Cuban community. Can you tell me when this particular conversation occurred? Did your uncle make any other statements regarding the pressure he is under?

I asked my father to speak with Lazaro, brother to brother, to ask him to return Elian since he and I were not on good speaking terms. Lazaro told my father that he would like to return Elian, but now, he cannot because he would look bad.

People are saying that I am being coerced by the Cuban Government. However, you can see that they are the ones being coerced by the Cuban community in Miami. I am not being coerced to meet with you, I want to do so and am doing it voluntarily.

He (Lazaro) is being pressed by the Cuban community. He has five (5) attorneys, I don't. What bothers me the most is that I must prove paternity of my son and what have they (INS) asked the relatives in the U.S. to present as proof of relationship? They just showed up at the hospital and stated that they were relatives without any proof or evidence and INS grants them custody of my son. I, on the other hand, have to prove my relationship.

They have neither my consent nor my permission to be taking the child here or there. Imagine their insensitivity, in taking that child to Disneyworld and putting him on a boat ride when he already suffered such an ordeal. They forced him on the ride while he was crying and screaming; not wanting to do so. My son is suffering, my son needs me and needs his grandparents; and I need him. They don't even let him speak to us. When we call and Elian starts saying "Grandma I want to be with you" or "Daddy I want to go with you", they immediately make him cry, or give him a candy or start tapping on the lines saying that the lines are getting bad and hang up the phone. They don't let him talk to us and always have an excuse for not letting him speak to us. In the background you can hear them telling Elian to say he wants to stay in the United States, whereas the child is saying the opposite to us over the phone. It's abusive what they are doing to Elian. The boy needs me. He already experienced the worst, he's only six years old and needs his father and they (relatives in Miami) are not taking that into consideration and INS is still making me wait for my son; it's been a month. Can you believe that the Mayor of New York invited Elian to go there, with who's permission? I have not granted such permission; he is my son.

They even went to the extreme of wrapping Elian in the American flag when they know that is not his flag; he is Cuban.

000258

It is beyond belief that somebody named Armando Gutierrez is the one giving consent and permission about my child and I, the father, have no rights over my son; I am not asked.

Tonight (December 31st) they are taking Elian to a camp and I will not be able to speak with my son. They don't let me speak to him and constantly have excuses and when he says he misses us and wants to come back with us, they take the boy away and hang up the telephone or say there is something wrong with the lines.

When they speak with my father and me sometimes over the phone, they say Elian should be returned to Cuba, but when they are in front of the television cameras, they change their story.

Mr. Gonzalez asked this writer, why INS had not decided that Elian should be with him. The writer responded that INS is trying to have all the bases covered in order to be able to defend whatever decision is made.

I heard through the grapevine, that Elisabeth and her boyfriend, Lazaro Rafael Monero, had a stormy relationship. He mistreated her, but I did not know that. People say that she was being kidnapped by him, I don't know for a fact, that is what people say. Elian did not want to go and was crying and he told her with a knife in hand, "either you or I will shut him up". I was told that he threatened Elian. As a matter of fact, the other woman that went with them decided to leave her daughter behind and she said that Elisabeth did not want to go, she was forced to go. Why won't the INS authorities speak to her to get that information? So you see, she took my son without my permission and she apparently, did not want to go.

- 5) Last time, you told me that you've worked at the Parque Josone, a tourist center, for more than 11 years. Could you tell me a little about this center and the type(s) of work you do? Have you always had the same job as you do now?

I have been at the Parque Josone for over 11 years. I started as an electrician, then moved on to other areas i.e. cashier, bartender, park attendant and now I am the cashier at the park entrance. I am presently holding the position as a cashier which is responsible for the collection of monies from tourist and balancing at the end of the day. I have been in this position for the past two (2) years.

The park is a tourist center with swimming pool, bars, restaurants, animals, boating area and other recreational facilities in the Varadero area. It's beautiful and is visited by many tourists. It is located on First Avenue, between 60 and 64 Streets before the Hotel Cuatro Palmas, it is located over 9 acres of land.

6) We understand that you have not been at work since Elian's departure. Why?

Since Elian was found I have not been able to return to work because of the pressure. People at work have been very supportive so they understand and have not put any pressure for my return. I am on paid vacation right now and have been since Elian's departure. Actually, I have vacation until January 15, 2000, but since I still have many days left of paid vacation, I can return at any time.

7) I remember that you told me that Elian's mother worked at the Hotel Paraiso in Varadero as a steward. How long had she worked there? Was she employed there at the time that she left Cuba?

She started work there a year after me, so she worked there for 10 years. She was working when she left, but was on vacation. Initially she was on vacation and then she took sick leave.

8) Were you speaking freely to me on December 13th?

Yes.

9) Are you speaking freely today?

Yes.

10) Is there any answer you wish to explain or further information you wish to provide?

A few days ago I saw three (3) attorneys in the U.S.A. on television talking about the paternity of a man and a child. Don't I have the paternal rights over my son? Don't the laws apply just like that in my case? I still don't have a response from INS, I don't have rights over my son. Still they (INS) are questioning my paternity over others that have no rights. They (INS) are giving more rights to others than me although they have no authority over Elian.

I want Elian here and have received no response from INS.

I want my son back. The response that I want (from INS) is that Elian is coming.

Maria Mariela Quintana Garrido, Elian's grandmother, adds that she suffers because Elian is suffering. The relatives in the U.S. are not his immediate family and she along with Elian's father and grandfather want an immediate response from INS for the benefit of Elian.

000260

Mr. Gonzalez proceeds to add: I won't be changing my mind, I want my son back as soon as possible.

Interview concluded at this point.

Attachment

000261

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January 3, 2000

The Honorable Janet Reno
United States Attorney General
10th and Constitution Avenue, N.W.
Washington, D.C. 20536

The Honorable Doris Meissner
Commissioner, Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

BY FACSIMILE

Dear Attorney General Reno and Commissioner Meissner:

We write to urge you to schedule a prompt asylum interview for Elian Gonzalez. That is the only way to restore this case to the proper path of due process of law. INS has been pursuing an unstructured investigation, which will force you to have to make an arbitrary decision. I'm certain that is not your desire.

An example of the irregularity of this investigation is a phone message left on my office voicemail by a senior INS official on 9:30 in the morning on New Year's Day, telling me that INS had reinterviewed Juan Miguel Gonzalez in Cuba the day before. While we appreciate the call, we should have received advance notice, with the opportunity to participate by taking Juan Miguel Gonzalez' deposition.

In the spirit of cooperation, we and the Gonzalez family have responded to all of your agency's inquiries. We do not believe that a secret interview with Juan Miguel Gonzalez, in Cuba, will produce any decisive evidence. We have proffered facts that prove that Elian's father is under duress in Cuba. It is settled law that statements made under duress are not given legal effect. The U.S. government should formally request that Juan Miguel Gonzalez come here.

000262

Letter to Attorney General Reno and Commissioner Meissner, January 3, 2000, page two.

The asylum context is the proper one for a full and fair examination of all the issues in the case. It would present an appropriate forum to present witnesses on the duress Juan Miguel Gonzalez is under, as well as on the issue of Elian's capacity to have lawyers, to file applications, and, most importantly, on the merits of his asylum claim. We would urge your agency to conduct a formal hearing, where witnesses may be sworn, where their veracity may be evaluated, and where INS can make a truly informed decision.

We request that the U.S. government serve Juan Miguel Gonzalez and Elian's grandparents with notice that their presence is requested at such a hearing, and to provide visas, so that they and their own families can be present. The full, free cooperation of Elian's family members is crucial to a determination of his best interests. That cannot occur while they are under duress in Cuba. They should come to the United States.

Elian has an absolute right to an asylum hearing. INS should indefinitely extend his parole into the United States at his January 21st inspection, and schedule an asylum interview shortly thereafter. This country must ensure that Elian is not forcibly returned to a country where his freedom will be threatened. The asylum process will provide the clear and orderly due process of law that this case requires.

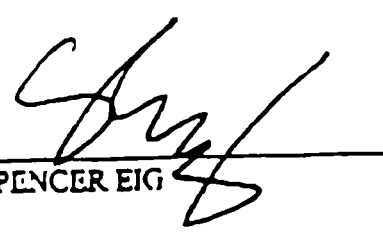
We look forward to working closely with you to bring about such a fair and open process.

Sincerely,

SPENCER EIG
Attorney at Law

LINDA OSBERG-BRAUN
ROGER A. BERNSTEIN
Hackley, Bernstein & Osberg-Braun, P.L.L.C.

BY:


SPENCER EIG

cc: The Counsel to the President of the United States

000263

17.15 Expedited Removal.

(a) Inadmissibility. An alien found to be inadmissible solely under section 212(a)(6)(C) or 212(a)(7) of the Act may be ordered removed by a Service officer at the port-of-entry without a hearing before an immigration judge. Referred to as expedited removal, this procedure was added to section 235(b)(1) of the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208. The provision itself became effective April 1, 1997. This new process gives immigration officers a great deal of authority over removal of aliens and will remain subject to serious scrutiny by the public, advocate groups, and Congress. All officers should be especially careful to exercise objectivity and professionalism when refusing admission to aliens under this provision. Because of the sensitivity of the program and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her.

Arriving aliens who are inadmissible under section 212(a)(6)(C) or (7) are subject to expedited removal under section 235(b)(1) of the new Act. If 212(a)(6)(C) and 212(a)(7) are the only charges lodged, the alien must be processed under expedited removal and may not be referred for an immigration hearing under section 240. If additional charges are lodged, the alien may be referred for a section 240 hearing, but this should only occur in extraordinary circumstances. Generally speaking, if an alien is inadmissible under 212(a)(6)(C) or (7), additional charges should not be brought and the alien should be placed in expedited removal. Aliens charged with grounds other than 212(a)(6)(C) or (7) should be referred for a hearing under section 240. There will be very few instances where it will be advantageous to the Service to lodge additional charges and institute section 240 removal proceedings if a solid expedited proceeding can be concluded. Even in criminal cases, an expedited proceeding will normally be the preferred option.

If the alien appears to be inadmissible under the provisions of section 235(c) of the Act as a terrorist or other special interest case, refer to Chapter 17.7 or, in appropriate circumstances, detain the alien for removal proceedings conducted by the Alien Terrorist Removal Court under Title V of the Act.

The authority to formally order an alien removed from the United States, without hearing or review, carries with it the responsibility to accurately and properly apply the grounds of inadmissibility. Any immigration officer issuing an expedited removal order and any designated supervisory officer concurring on an expedited removal order must have completed Phase I of the official 96 Act Training Program prepared by the Training Division. Phase I training was also incorporated into the curriculum of all IOBTC classes which were graduated on or after June 3, 1997 (class numbers IOBTC-264 and above).

The Service retains the discretion to permit withdrawal of application for admission in lieu of

issuing an expedited removal order. Provisions for withdrawal are now contained in both statute and regulation, with specific guidance in the IFM and should be followed by all officers with authority to permit withdrawals. As an example, in cases where a lack of proper documents is the result of inadvertent error, misinformation, or where no fraud was intended (e.g. an expired nonimmigrant visa), Service officers may consider, on a case-by-case basis and at the discretion of the Service, any appropriate waivers, withdrawal of application for admission, or deferred inspection to resolve the ground of inadmissibility rather than issuing an expedited removal order.

All officers should be aware of precedent decisions and policies relating to the relevant grounds of inadmissibility. Section 212(a)(6)(C) is an especially difficult charge to sustain, unless the case involves obviously fraudulent or counterfeit documents. Misrepresentation is even more difficult to determine. Also keep in mind that an alien who is determined to be inadmissible for fraud or misrepresentation is barred forever from the United States, with few waivers available. Any one or several of the following points should be considered in determining if an alien has committed fraud or misrepresentation.

- To support a charge of having procured a document by fraud or misrepresentation, the procuring must have been done from a government official, not from a counterfeiter, and any misrepresentation must have been practiced on a U.S. Government official.
- The procurement by fraud must relate to a person who has done so to obtain his or her own admission, not someone else's.
- The fraud or misrepresentation must be material, i.e., the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility.
- In general, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, in most cases at the first opportunity.
- Silence or failure to volunteer information does not in itself constitute a misrepresentation.
- Aliens who are determined to be mentally incompetent and small children judged to be incapable of independently forming an intent to defraud should not be ordered removed using section 212(a)(6)(C) as the inadmissibility charge. The preferred charge in such cases would be section 212(a)(7).

All expedited removal orders require supervisory approval before service upon the alien. By regulation, this approval authority is not to be delegated below the level of a second line supervisor. Each district may determine at what level (second line supervisor or above) this review authority should be delegated. The expedited removal provisions are not applicable in preclearance or preinspection operations. If the Service wishes to proceed with expedited removal of an alien inspected during an en route inspection of a vessel, action on the case will be

000265

deferred until the vessel has arrived in the United States. The alien may then be processed as an expedited removal case.

Port directors are responsible for ensuring that all U.S. Customs officers who are cross-designated to perform immigration inspections are adequately trained in the expedited removal provisions. Customs officers shall not issue expedited orders of removal, even in ports where there is only a Customs officer on duty. Such cases must be referred to an INS officer if a decision is made to pursue expedited removal.

See Appendix 17-3 for a flow chart mapping the entire expedited removal process.

(Paragraph (a) amended 8/21/97; IN97-05)

(b) **Preparing a Case.** The steps to be taken when ordering an alien removed under the expedited removal provisions differ somewhat from those in normal removal proceedings. As when referring an alien for a removal hearing before an immigration judge, it is important that a complete, accurate record of removal be created, and that any expedited removal be justifiable and non-arbitrary. Numerous Service forms have been revised or newly created to conform with IIRIRA. The revised forms are listed in 8 CFR 299.1 and 299.5 of the interim regulations. A separate IIRIRA wire details the list of forms and how to obtain them. Districts may request these forms from the Service Forms Centers. In addition, the forms are being incorporated in electronic format into numerous automated forms-generation systems.

The following steps must be taken in each case in which an order of expedited removal is contemplated or entered against an alien:

(1) Clearly explain to the alien, in a language he or she understands, the serious nature and impact of the expedited removal process. Read the statement of rights and consequences contained on the first page of Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, to the alien. Explain that you will be taking a statement from him or her, and that any information given or discovered will be used in making a decision on the case and may result in his or her prompt removal. Advise the alien that if he or she is found to be inadmissible and a decision is made to order the alien removed, he or she will be immediately removed from the United States. Explain that there is no appeal to this decision and that this will be his or her only opportunity to provide any information or state any fear of return or removal that he or she may have.

(2) In every expedited removal case, you must use Form I-867A&B to take a complete sworn statement from the alien concerning all pertinent facts. The information discussed in paragraph (1) above is printed on the form and should be carefully explained to the alien. If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other Service forms, you must immediately advise the alien of the rights and warnings on Form I-867A once you determine that the expedited removal proceedings will apply.

The sworn statement will usually be done in question and answer format, but a narrative format may be used in simple, straightforward cases not involving potentially sensitive or contentious issues. The sworn statement should cover several general areas of inquiry:

Identity - including true name, aliases, date and place of birth and other biographical data.

Alienage - determine citizenship, nationality, residence. Cover any possible claim to U.S. citizenship through parents.

Inadmissibility - questions should cover the alien's reason for coming to the United States, information about the specific facts of the case and the specific suspected grounds of inadmissibility.

Fear of persecution or torture - if the alien indicates in any fashion that he or she has a fear of persecution, or that he or she has suffered or might suffer torture, you are required to refer the alien to an asylum officer for a credible fear determination. One of the significant differences between expedited removal proceedings and regular removal proceedings is that the inspecting officer has a responsibility to ensure that anyone who indicates a fear of persecution is referred to an asylum officer for a credible fear determination. Inspectors should consider verbal as well as non-verbal cues given by the alien. The obligatory questions on the Form I-867B are designed to help in determining whether the alien has such fear. In some cases, this area of discussion might arise during the main body of the sworn statement (i.e., before you reach the jurat page, Form I-867B) and you may have already asked these specific questions. If the exact questions have already been asked and answered, you may elect to line out the identical questions on the jurat page. Otherwise, ask the questions as they appear on the I-867B at the end of the sworn statement. If the alien indicates an intention to apply for asylum or a fear of harm or concern about returning home, the inspector should ask enough follow-up questions to ascertain the general nature of the fear or concern. Do not go into detail on the nature of the alien's fear of persecution or torture; leave that for the asylum officer. If an alien asserts a fear or concern which is clearly unrelated to an intention to seek asylum or a fear of persecution, then the case should not be referred to an asylum officer. In determining whether to refer the alien, inspectors should not make eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien's statements. The inspector should err on the side of caution and apply the criteria generously, referring to the asylum officer any questionable cases, including cases which might raise a question about whether the alien faces persecution. Do not make any evaluation as to the merits of such fear; that is the responsibility of the asylum officer. Immigration officers processing aliens for expedited removal may contact the asylum office point(s) of contact when necessary to obtain guidance on questionable cases involving an expression of fear or a potential asylum claim.

Impact of decision - once you have gathered all the facts, you will decide, usually in consultation with a supervisor, the best course of action. Depending on the circumstances, you may admit the alien, allow the alien to apply for any applicable waivers, defer the inspection or otherwise parole the alien, permit the alien to withdraw his or her application for admission, issue an expedited removal order, or refer the alien for a credible fear determination. Whatever

000267

decision is made, clearly advise the alien of the impact and consequences of the determination and record this in the statement.

You must use Form I-867B as the final page of the sworn statement and jurat. Be sure to obtain responses from the alien regarding the closing questions contained on the form. If the alien in any way indicates a fear of removal or return, follow the procedures in paragraph (d) of this section. Collect any additional evidence relevant to the case which is discovered during the inspection process. Provide a copy of the completed statement, upon signature, to the alien. Retain a copy for the Service file and copy for the port file.

(3) Prepare three copies of Form I-860, Notice and Order of Expedited Removal. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. 212(a)(6)(C)(i)), and insert a narrative description of each charge. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters should not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded either in the sworn statement or as an addendum to the statement.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second line supervisor) or person acting in that capacity, for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The expedited removal order must be signed legibly by the preparing officer.

(4) Obtain the photograph and fingerprints of the alien on FD-249 fingerprint cards (three sets-- see chapter 18.9(c) for distribution). Be sure to complete the entire form and to properly code the fingerprint cards with the proper United States Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

- 18 U.S.C. 1544 Photo substitutions
- 18 U.S.C. 1546 Counterfeit immigrant visa
- 8 U.S.C. 1306 Counterfeit INS documents, such as alien registration
- 18 U.S.C. 911 False claims to U.S. citizenship (imposters, photo substitution of U.S. passport)

(5) Obtain forensic analysis, if appropriate. In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required. Due to the expedited nature of the proceedings, actual forensic examination of the document by the Forensic Document Laboratory (FDL) may not be feasible. This does not mean that it is permissible to "rush to judgement", or that it is permissible to expeditiously remove an alien based on incomplete evidence. If forensic analysis is required to establish that the alien is inadmissible, such analysis must be obtained before the Form I-860 is executed. If necessary, the alien should be detained until the analysis is performed, and then the I-860 can be executed. (On the other hand, if the alien's inadmissibility under section 212(a)(7) has been established, there is little or no reason to delay the expedited removal process in order to also establish the 212(a)(6)(C) charge.) Offices with photophones or other communications devices for transmitting quality images should use that technology whenever possible or necessary. [See Chapter 32 for details on using FDL services and for contributing documents or intelligence information concerning the fraud.]

(6) Unless an "A" number already exists for an alien placed into expedited removal, an "A" number must be assigned to every expedited removal case at the port-of-entry in order to ensure proper tracking of the case from the onset.

New codes have been created for entry of expedited removal cases into the Central Index System (CIS). Those new codes are:

ERF - Expedited Removal case has been initiated under section 235(b)(1) INA and a final decision is pending a credible Fear determination by an asylum officer or immigration judge.

ERP - Expedited Removal case has been initiated under section 235(b)(1) INA and a final decision is Pending for reasons other than referral for credible fear interview before an asylum officer.

ERR - Expedited Removal case has been initiated and alien has been Removed from the United States under that program

Entry of cases into CIS should be accomplished as quickly as possible in accordance with district policy. To ensure prompt data entry, "A" files for expedited removal cases should be separated from other files and flagged as expedited removal cases.

New codes are also being created to designate expedited removal cases in the National Automated Immigration Lookout System (NAIIS) and the Interagency Border Inspection System (IBIS). The new IBIS disposition codes have recently been posted in the IBIS Daily News. Field offices will be notified as new codes are finalized.

Search for existing Service records in CIS and other appropriate automated systems. If an "A"

file exists, create a temporary file and request the permanent file. After the file is received, update it with all relevant documents completed or collected during the expedited removal process, and forward it to the proper files control office. If no previous file exists, create a new "A" file relating to the alien.

(7) Consult 8 CFR 236.1(e) to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official. This normally will only be necessary when removal of the alien cannot be accomplished immediately and the alien must be placed in detention for longer than 24 hours. When you contact a consular official, never mention any asylum claim which may have been filed, or give any indication that the alien has expressed a fear of persecution or torture.

(8) If criminal prosecution of the alien is contemplated in addition to expedited removal, the criminal action must be completed before the alien is ordered removed. [See Chapter 18 for procedures for criminal prosecution]. Once the warning of rights has been given to the alien, questioning of the alien can only occur with the alien's consent. If the alien permits questioning and processing to proceed, complete the sworn statement and the Form I-860. Do not serve the I-860 on the alien, but place it in the "A" file pending the criminal processing. If the alien is to be turned over to another law enforcement agency, serve a Form I-247, Immigration Detainer - Notice of Action, on the other agency. Once the alien is returned to INS custody, the I-860 may be served and the alien removed under the expedited removal order.

(9) Serve the original Form I-860 on the alien, unless the alien is to be deferred to an onward office, in which case the service is accomplished by the onward office. Place a copy of the I-860 in the "A" file. The third copy may be retained at the port.

(10) Serve Form I-296, Notice to Alien Ordered Removed. You must check the appropriate box to indicate the period during which the alien must obtain permission to reenter: 5 years for the first removal under section 235(b)(1); 20 years in the case of a second or subsequent removal; at any time if the alien has been convicted of an aggravated felony (even though the alien is not being charged as an aggravated felon in this proceeding). At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on a copy of the I-296, the alien should sign the form, and the particulars of the departure entered on the form for retention in the file.

(11) Cancel the alien's visa or border crossing card, if appropriate, and complete and distribute Form I-275 as described in Chapter 17.2. Note the passport with the file number and action taken, for example: "Ordered Removed 12/1/97 NYC/Section 212(a)(6)(C)(i)". Forward a copy of the expedited removal order with the I-275 to the Department of State.

(12) Prepare a new Form I-94. If the alien applied for admission at a land border, annotate the Form I-94 to read: "Form I-860 Removal Order issued pursuant to section 235(b)(1) of the Act. (Date), (Place), (Officer)". If the alien applied for admission at an airport or seaport, use the parole stamp and endorse the I-94 to read: "For removal from the U.S. by (carrier name).

Form I-860 Removal Order issued pursuant to section 235(b)(1) of the Act. (Date), (Place), (Officer)".

(13) Detain the alien, as appropriate. Follow local procedures to obtain detention authorization and arrange for detention. Aliens placed into expedited removal proceedings must be detained until removed from the United States. Parole may be permitted only if there is a medical emergency or if it is necessary for legitimate law enforcement purposes, such as for criminal prosecution or to testify in court. Once an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria.

If there is insufficient detention space to detain an alien in expedited removal who is arriving at a land port-of-entry and who claims a fear of persecution, that alien may be required to wait in Canada or Mexico pending a final determination of his or her claim. This option should be taken only as a last resort and should only be used for aliens who claim a fear of persecution that is unrelated to Canada or Mexico. Aliens who make false claims to U.S. citizenship, or false or unverified claims to lawful permanent resident, asylee, or refugee status, and aliens who claim a fear of persecution that is related to Canada or Mexico must be detained. Aliens arriving at a land border port-of-entry who do not claim lawful status in the United States or a fear of persecution should normally be processed immediately and either returned to Canada or Mexico or detained until removed. These aliens should not be required to wait in Canada or Mexico pending issuance of an expedited removal order.

Credible fear interviews will normally take place at Service or contract detention facilities. Each port-of-entry and detention facility will be provided with a point or points of contact at the asylum office having responsibility for that geographical area. It is the responsibility of the referring (Inspections) officer to provide the alien being referred for a credible fear interview with both a Form M-444, Information about Credible Fear Interview, and a list of free legal services, as provided in 8 CFR parts 3 and 292. It is the responsibility of the detention or deportation officer to notify the appropriate Asylum office point of contact when an alien subject to the expedited removal process requires a credible fear interview, and is being detained in Service custody pending this interview. That officer should also provide any additional information or requirements of the alien, such as whether the alien requires an interpreter or other special requests or considerations. When aliens are detained in non-Service facilities or at remote locations, the referring officer must notify the appropriate Asylum Office. If the alien is subsequently transferred to another detention site, the detention or deportation officer must ensure that the appropriate Asylum Office has been notified.

Normally the credible fear interview will not take place sooner than 48 hours after the alien arrives at the detention facility. If the alien requests that the interview be conducted sooner, the referring officer, or any other officer to whom the alien makes the request, should immediately convey that information to the appropriate Asylum office.

(14) Remove the alien from the United States. Most aliens removed under the expedited removal provisions will be turned over to the carrier of arrival for prompt removal; however,

000271

some aliens, such as those who claim asylum or LPR status, may be detained pending a decision on their claim. At the land border, ensure the alien's departure to the contiguous foreign territory. At air and seaports, serve the carrier with Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to order the carrier to remove the alien when the removal process is finished, or if the case has not yet been completed, to advise the carrier of potential liability.

(15) Every case in which an expedited removal order is issued must be entered into the Deportable Alien Control System (DACS). Entry of data for those aliens detained by the Service will be handled by the Detention and Deportation section responsible for the detention facility. Entry of data for aliens not requiring detention who are removed directly from the port-of-entry is the responsibility of the Inspections section. A separate memorandum issued by the Office of Field Operations on March 18 details the procedures for entry of data into DACS for expedited removal cases. Cases initiated at the ports-of-entry and referred for removal proceedings under section 240 will continue to be entered into DACS by Detention and Deportation.

The expedited removal process will be the subject of extensive inquiry and will require appropriate tracking of specific case data. A separate memorandum regarding tracking of expedited removal cases at ports-of-entry explains how this data collection will be accomplished.

(16) The Inspections Workload Report, Form G-22.1 is being revised to include data relating to expedited removal cases, and is expected to be available October 1, 1997.

(c) Withdrawal of Application for Admission in Lieu of Expedited Removal Order. The Service has the discretion to allow an inadmissible alien to withdraw his or her application for admission and depart the United States. See Chapter 17.2 for a full discussion of withdrawal considerations. This discretion also applies to aliens subject to expedited removal, and should be applied carefully and consistently, since your decision to allow withdrawal or issue a removal order is final. Officers should keep in mind that an order of expedited removal carries with it all the penalties of an order of removal issued by an immigration judge (including a bar to reentry of at least 5 years following removal). Follow the guidelines and considerations contained in Chapter 17.2 in determining whether granting withdrawal of application for admission is in the best interest of justice.

(d) Fear of Persecution or Request for Asylum. Aliens who indicate an intention to apply for asylum or a fear of persecution may not be ordered removed until an asylum officer has interviewed the alien to determine whether the alien has a credible fear of persecution and warrants a full asylum hearing before an immigration judge.

When questioning or taking a sworn statement from any alien subject to the expedited removal provisions, you need not directly solicit an asylum claim. However, to ensure that an alien who may have a genuine fear of return to his or her country is not summarily ordered removed without the opportunity to express his or her concerns, you should determine, in each case, if the alien has any concern about being returned to his or her country. Further, you should fully explore any statement or indications, verbal or non-verbal, that the alien actually may have a fear

of persecution or return to his or her country. You must fully advise the alien of the process, as indicated on the Form I-867A, and of the opportunity to express any fears.

Keep in mind that the alien need not use the specific terms "asylum" or "persecution" to qualify for referral to an asylum officer, nor does the fear of return have to relate specifically to one of the five grounds contained within the definition of refugee. The United States is bound by both the Protocol on Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, except under extraordinary circumstances, may not return an alien to a country where he or she may face torture or persecution.

The alien may convey fear of violence or harm, a need for protection, an indication of harm to, or disappearance of, relatives or associates, or dangerous conditions in his or her country. Even disputes of a personal nature sometimes may relate to asylum, such as domestic violence, sexual or child abuse, child custody problems, coercive marriage or family planning practices, or forced female genital mutilation. All officers should recognize that sometimes unusual cases have been found eligible for asylum that may not have initially appeared to relate to the five grounds contained in the definition of refugee, such as AIDS victims who face government persecution, land or money disputes with wealthy persons or persons in power, whistle blowers, witnesses to crimes and even organized crime connections. Do not make judgement decisions concerning any fear of persecution, torture, or return. If in doubt, refer to an asylum officer for a determination. Any alien who by any means indicates a fear of persecution or return may not be removed from the United States until the alien has been interviewed by an asylum officer.

If the alien indicates an intention to apply for asylum or asserts a fear of persecution or return, and is being referred for a credible fear interview with an asylum officer:

- (1) Create an "A" file, if one does not already exist.

- (2) Fully process the alien as an expedited removal case, if that is not already being done. Establishing inadmissibility cannot be left to the asylum officer. Record a description of the particulars of the interview and the alien's initial claim to asylum or fear of return by means of a sworn statement. Form I-867A and B must be used for all expedited removal cases. Follow the instructions in paragraph (b)(1) above to ensure that the alien understands the proceedings. Although you need not pursue the asylum claim in detail, enough information should be obtained to inform the asylum officer of the alien's initial claim to asylum or fear of persecution or return. If the alien answers the closing questions on Form I-867B in the affirmative, several other questions may be necessary to determine the nature of the fear or concern.

If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other Service forms, you must immediately advise the alien of the rights and warnings on Form I-867A once you determine that the expedited removal proceedings will apply and then use Form I-867B for the closing questions and jurat. The sworn statement will usually be done in question and answer format, but a narrative format may be used in simple, straightforward cases not involving potentially sensitive or contentious issues.

(3) Complete the Determination of Inadmissibility portion of the Form I-860, including sufficient information to support the charges of inadmissibility should the asylum officer find that alien does not have a credible fear of persecution. Sign only the Determination portion of the form. The removal part of the order will be signed by the asylum officer only after it is determined that the alien does not have a credible fear of persecution. Refer also to Chapter 43.3 for documenting any potential fines issues.

(4) Advise the alien of the purpose of the referral and that the alien may consult with a person or persons of his or her choosing, at no expense to the government and without delaying the process, prior to the interview. The Form M-444, Information about Credible Fear Interview, must be given to the alien and explained in a language the alien understands. The alien should sign two copies, acknowledging receipt of the information. One copy should be placed in the A file, and the other retained by the alien.

(5) Arrange for detention of the alien according to local procedures. According to local procedures, you must advise the appropriate asylum office that an alien being detained requires a credible fear interview. The asylum office should also be advised whether the alien requires an interpreter and of any other special considerations. Forward the "A" file to the location where the credible fear interview will take place. Prepare Form I-259 and serve it on the affected carrier. Complete Form I-94 for NTIS entry notated "Detained at _____ pending credible fear interview pursuant to section 235(b)(1)(B) of the Act. (Date), (Place), (Officer)".

An asylum officer will conduct an interview to determine if the alien has a credible fear of persecution, either at the detention facility or at a location arranged through the asylum office having jurisdiction over the place of apprehension, depending on location. In some cases, credible fear interviews may be conducted by other asylum-trained immigration officers. If the alien is determined to have a credible fear of persecution, the asylum officer will refer the alien for a well-founded fear hearing before an immigration judge under section 240 of the Act. If the alien is found not to have a credible fear of persecution, following review by a supervisory asylum officer, the asylum officer will order the alien removed pursuant to section 235(b)(1), unless the alien requests that the determination of no credible fear be reviewed by an immigration judge. If the alien makes such a request, the asylum officer will use Form I-863, Notice of Referral to Immigration Judge, checking box #1, to refer the alien to the immigration judge for review of the credible fear determination. If the immigration judge determines that the alien does not have a credible fear of persecution, the Service will present the alien for removal to the carrier on which he or she arrived. There may be some situations where the actual carrier of arrival and port of embarkation cannot be ascertained. Such cases may require additional processing, including detention, in order to arrange for travel documents and transportation at government expense (User Fee).

(e) Claim to lawful permanent resident, asylee, or refugee status, or U.S. citizenship. (1) General. Cases in which an alien who is subject to expedited removal claims to be a U.S. citizen, claims to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208, should be handled very cautiously to ensure that the rights of the individual are fully protected. The expedited

removal authority provided by IIRIRA is a powerful tool and there are significant interests at issue where such a claim is made. You should be extremely aware of those interests when you are using this tool. There are grave consequences (for the person involved, for the Service, and for the individual officer) involved in incorrectly processing a bona fide citizen, LPR, refugee or asylee for removal. Although the statute and regulations provide certain procedural protections to minimize the risk of such consequences, you should never process a case for expedited removal which you would not feel satisfied processing for a hearing before an immigration judge.

If the alien falsely (or apparently falsely) claims to be a U.S. citizen, lawful permanent resident, refugee, or asylee, and is not in possession of documents to prove the claim, make every effort to verify the alien's claim prior to proceeding with the case. This can be accomplished through a thorough check of the Service data systems, manual request to the Records Division, careful questioning of the alien, or review of Service issued and other documentation presented. Use whatever means at your disposal to verify or refute a claim to U.S. citizenship, including verification of birth records with state authorities, etc.

(2) Verifiable Claim. When inspecting an alien whose claim to lawful permanent resident status has been verified, determine whether the alien is considered to be making an application for admission within the meaning of section 101(a)(13). [See discussion in Chapter 13.4.] Although the lawful permanent resident may not be considered to be seeking admission, he or she is nonetheless required to present proper documents to establish his or her status as a lawful permanent resident. If the claim is verified and the alien appears to be admissible except for lack of the required documents, consider a waiver under section 211(b) for a lawful permanent resident, or consider accepting an application for a refugee travel document in accordance with 8 CFR 223.2(d)(2)(ii) for a refugee or asylee. Refer to Chapters 13.2 and 17.5 for a discussion of this and other options for admitting returning residents.

If the claim is verified, but a waiver is not available or is not clearly warranted, such as when fraud was committed in obtaining status or upon entry, or in cases where the alien appears to have abandoned his or her residence, you may initiate removal proceedings under section 240 of the Act. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. Although the charging document, Form I-862, Notice to Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a port-of-entry are authorized to issue a Notice to Appear only to arriving aliens, as defined in 8 CFR 1.1(q). If a lawful permanent resident is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in 8 CFR 239.1, such as the ADDE or ADDI, in accordance with local policy.

(3) No Verifiable Claim. If no record of the alien's lawful admission for permanent residence, grant of refugee status, admission as an asylee, or citizenship can be found after a reasonably diligent search, advise the alien that you are placing him or her under oath, or take a declaration as permitted in 28 U.S.C. 1746, and warn the alien of the penalties for perjury. Section 1746 of the Title 28 United States Code reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

The penalties for perjury contained in 18 U.S.C. 1621 (Perjury generally) provide for fine and imprisonment of not more than five years, or both. The penalties for perjury contained in 18 U.S.C. 1546 (Fraud and misuse of visas, permits, and other documents) provide for fine and imprisonment of not more than 10 years, or both.

If the alien declares under oath, pursuant to the advice above, that he or she is a citizen, lawful permanent resident, refugee, or asylee, order the alien removed under section 235(b)(1)(A) and refer to the immigration judge for review of the order. Complete Form I-860 after completing all procedures in this chapter. Serve the Form I-860 on the alien. Serve Form I-259 on the affected carrier, if appropriate. Use Form I-863, checking Box #4, to refer the removal order to the immigration judge for review. The alien should be detained pending review of the order by the immigration judge. In the event an alien who has made a verbal claim to citizenship or to LPR, refugee, or asylee status declines to make a sworn statement, conclude the expedited removal process in the same manner as any other nonimmigrant in the same situation.

If the immigration judge determines that the individual is not a citizen or is an alien who has never been admitted as a lawful permanent resident, refugee, or asylee, the expedited removal order will be affirmed and the alien removed. There is no appeal from the decision of the immigration judge. If the judge determines that the individual is a citizen, the process is completed and the citizen is released. If the judge determines that the alien was once admitted as a lawful permanent resident, refugee, or asylee, and that status has not been terminated, the judge will vacate the expedited removal order and the Service may initiate removal proceedings under section 240.

(f) Special Treatment of Minors.

(1) General Policy. When an unaccompanied minor (a person under the age of eighteen)

000276

appears to be inadmissible under section 212(a)(6)(C) or (7) of the Act, officers should first try to resolve the case under existing guidelines. Existing guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, if applicable, including withdrawal of an application for admission.

(2) **Withdrawal of Application for Admission by Minors.** Whenever appropriate, the INS should permit unaccompanied minors to withdraw their application for admission rather than placing them in formal removal proceedings. In deciding whether to permit an unaccompanied minor to withdraw his or her application for admission, every precaution should be taken to ensure the minor's safety and well-being. Factors to be considered include the seriousness of the offense in seeking admission, previous findings of inadmissibility against the minor, and any intent by the minor to knowingly violate the law.

Before permitting a minor to withdraw his or her application for admission, the INS officer must be satisfied either that the minor is capable of understanding the withdrawal process, or that a responsible adult (relative, guardian, or in cases where a relative or guardian is not available, a consular officer) is aware of the actions taken and the minor's impending return. Officers must attempt to contact a relative or guardian either in the United States or in another country regarding the minor's inadmissibility whenever possible. A minor brought to the United States by a smuggler is to be considered an unaccompanied minor, unless the smuggler is an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. If the smuggler is not a relative or guardian, he or she should not be consulted concerning the disposition of the minor's case.

The true nationality of the minor must be ascertained before permitting the minor to withdraw. Another factor to consider is whether the port of embarkation to which the minor will be returned is the country of citizenship of the minor. A minor may not be returned to or be required to transit through a country which may not be willing or obligated to accept him or her. If the minor is being returned to a third country through a transit point, officers must ensure that an immediate and continuous transit will be permitted.

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. If there is no possibility of a fear of persecution or return and the INS permits the minor to withdraw his or her application for admission, the consular or diplomatic officials of the country to which the minor is being returned must be notified. Safe passage can then be arranged, and after all notifications to family members and government officials have been made, the minor may be permitted to withdraw.

(3) **Minors Referred for Section 240 Proceedings.** Except as noted below, if a decision is made to pursue formal removal charges against the unaccompanied minor, the minor will normally be placed in removal proceedings under section 240 of the Act rather than expedited

000277

removal. The unaccompanied minor will be charged under both section 212(a)(7)(A)(i)(I) of the Act as an alien not in possession of proper entry documents and section 212(a)(4) of the Act as an alien likely to become a public charge. This additional charge renders the minor subject to removal proceedings under section 240 of the Act. Other charges may also be lodged, as appropriate. As a general rule, minors should not be charged with section 212(a)(6)(C) of the Act, unless circumstances indicate that the alien clearly understood that he or she was committing fraud or that the minor is knowingly involved in criminal activity relating to fraud.

Minors who are placed in section 240 proceedings and who are not in expedited removal may either be released in accordance with the parole provisions, or placed in a Service-approved juvenile facility, shelter, or foster care in accordance with existing juvenile detention policies and the Flores v. Reno settlement. At all stages of the inspection and removal process, officers should take every precaution to ensure that the minor's rights are protected and that he or she is treated with respect and concern. [See Appendix 17-4, policy memorandum discussing the Flores settlement.]

(4) Expedited Removal of Minors. Under limited circumstances, an unaccompanied minor may be placed in expedited removal proceedings. The minor may be removed under the expedited removal provisions only if the minor:

- has, in the presence of an INS officer, engaged in criminal activity that would qualify as an aggravated felony if committed by an adult;
- has been convicted or adjudicated delinquent of an aggravated felony within the United States or another country, and the inspecting officer has confirmation of that order; or
- has previously been formally removed, excluded, or deported from the United States.

If an unaccompanied minor is placed in expedited removal proceedings, the removal order must be reviewed and approved by the district director or deputy district director, or person officially acting in that capacity, before the minor is removed from the United States. This is in addition to the normal supervisory approval required of all expedited removal cases.

(5) Treatment of Minors during Processing. Officers should treat all minors with dignity and sensitivity to their age and vulnerability. Processing of minors should be accomplished as quickly as possible. As with all persons being detained at ports-of-entry, officers must provide the minor access to toilets and sinks, drinking water and food, and medical assistance if needed. Minors may not be placed in short-term hold rooms, nor may they be restrained, unless they have shown or threatened violent behavior, they have a history of criminal activity, or there is a likelihood the juvenile will attempt to escape. Unaccompanied minors should not be held with unrelated adults. Any detention following processing at the port-of-entry must be in accordance with the Flores v. Reno settlement.

(6) Minors Accompanied by Relatives or Guardians. If formal proceedings are initiated against an accompanying adult relative or legal guardian, the minor should be placed in the same

type of proceeding (i.e. expedited removal or 240 proceedings) as the adult. However, withdrawal of application for admission by the minor should be considered whenever appropriate, even though the relative or guardian may remain subject to formal removal proceedings.

(Paragraph (f) added 8/21/97; IN97-05)



HQD'S 50/5.12 96 Act. 066

Subject:

Withdrawal of Application for
Admission (EN 98-05)

Date:

DEC 22 1997

To: Management Team
Regional Directors
District Directors
Officers-in-Charge
Chief Patrol Agents
Asylum Office Directors
Port Directors
ODTF Glynn
ODTF Artesia

From: Office of Programs

This memorandum is being issued as a review and revision of Chapter 17.2 of Inspector's Field Manual (IFM), relating to withdrawal of application for admission.

Section 235(a)(4) of the Immigration and Nationality Act (INA), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), gives the Attorney General the express authority to permit an alien to withdraw his or her application for admission in lieu of being placed in formal removal proceedings. In the past, the alternative to withdrawal was a full exclusion hearing before an immigration judge. With the implementation of expedited removal in which some inadmissible aliens are not entitled to a full removal hearing, the judicious and uniform exercise of this discretionary authority has become increasingly important. Accordingly, Chapter 17.2 of the IFM is revised to read as follows:

17.2 Withdrawal of Application for Admission

(a) General. A nonimmigrant applicant for admission who does not appear to the inspecting officer to be admissible may be offered the opportunity to withdraw his or her application for admission rather than be detained for a removal hearing before an immigration judge or placed in expedited removal. An alien cannot, as a matter of right, withdraw his or her application for admission, but may be permitted to withdraw if it is determined to be in the best interest of justice that a removal order not be issued. Before allowing an alien to withdraw, you must be sure that the alien has both the intent and the means to depart immediately from the United States. See section 235(a)(4) of the Act and 8 CFR 235.4.

Withdrawal is strictly voluntary and should not be coerced in any way. It may only be considered as an alternative to removal proceedings when the alien is not clearly admissible. Occasionally, POE workload, personnel resources, and availability of detention space may affect whether you will allow withdrawal or pursue removal proceedings before an immigration judge. However, in cases where the alternative to withdrawal is expedited removal, workload and detention space are less significant considerations.

000280

In exercising your discretion to permit withdrawal, you should carefully consider all facts and circumstances related to the case to determine whether permitting withdrawal would be in the best interest of justice. Or conversely, that justice would be ill-served if an order of removal were issued. In light of the serious consequences of issuing an expedited removal order, which includes a 5-year bar to reentry, the decision of whether to permit withdrawal should be based on a careful balancing of relevant favorable and unfavorable factors in order to reach an equitable decision. Such factors might include, but are not limited to:

- (1) The seriousness of the immigration violation;
- (2) Previous findings of inadmissibility against the alien;
- (3) Intent on the part of the alien to violate the law;
- (4) Ability to easily overcome the ground of inadmissibility (i.e., lack of documents);
- (5) Age or poor health of the alien; and
- (6) Other humanitarian or public interest considerations.

An expedited removal order should ordinarily be issued, rather than permitting withdrawal, in situations where there is obvious, deliberate fraud on the part of the applicant. For example, where counterfeit or fraudulent documents are involved, an expedited removal order is normally the appropriate response. On the other hand, in a situation where an alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa, withdrawal should ordinarily be permitted. Where a not considered information during the course of the inspection, withdrawal should ordinarily be permitted. Where a immigration violation has not yet occurred, and the determination of inadmissibility is based on the alien's ignorance of permissible activities or on a judgment of the alien's future intent, the factors listed above should be carefully weighed in deciding whether to permit withdrawal or issue an expedited removal order. Where the travel documents are prima facie valid, you should consider whether the violation warrants the serious consequences of a formal removal order. If the alien may readily overcome the inadmissibility by obtaining proper documents, the alien may be permitted to withdraw his or her application for admission and should also be appropriately advised of the necessary forms and requirements to overcome the grounds of inadmissibility.

Under section 235(c) of the INA, as amended by EIRCA, when an alien has remained in the United States beyond period of his or her authorized stay, the alien's visa is considered to be void, even though no action may have been taken to physically cancel the visa. In a case where an alien could not have been reasonably expected to know that his or her visa is void, but the alien is otherwise admissible except for the lack of valid nonimmigrant visa, withdrawal of application for admission may be considered. However, if the facts of the case indicate particularly egregious immigration violations, such as long-term or repeated previous overays, unauthorized employment in the United States, or that the alien is again likely to remain beyond his or her authorized stay or otherwise violate his or her status, an expedited removal order may be appropriate.

An applicant who withdraws his or her application for admission is not considered formally removed and therefore does not require permission to reapply for admission to the United States. Once the reason for the inadmissibility is overcome, the alien may be eligible to apply for a new visa or admission to reenter the United States.

(b) Jurisdiction. Generally, a withdrawal will be taken at the port-of-entry or following a deferred inspection. If there will be instances where a detained alien, prior to or during the expedited removal credible fear process, is permitted to withdraw his or her application for admission. Any INS officer involved in the continuing process of the arriving alien may, after obtaining authorization in accordance with local procedures, offer withdrawal if the alien warrants. Withdrawal during the later stages of the expedited removal and credible fear process should be the exception rather than the normal course of action. All facts, circumstances, and factors relating to the case should be carefully considered. In expedited removal cases, several units within INS may have already invested considerable time.

000281

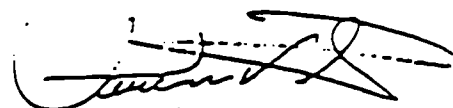
removal is pending expedited removal of the alien. In order to preserve a unified expedited removal process and uniformity of decision, asylum officers may wish to consult with other units involved to obtain any additional information concerning the case which may affect the decision to permit withdrawal.

(c) Withdrawal procedures If, after obtaining supervisory concurrence in accordance with local procedures, you decide to permit an applicant to withdraw, complete the necessary paperwork. Once an applicant is granted permission to withdraw, prepare Form I-275, Withdrawal of Application for Admission/Consular Notification. The I-275 must clearly state the reasons for inadmissibility in the remarks block. A sworn statement should be taken and attached to the I-275. If the alien is inadmissible under section 212(a)(6)(C) or (7) and would have been subject to expedited removal if not permitted to withdraw, the sworn statement should be taken using Form I-567 A&B. Check any appropriate boxes on the I-275. The alien must sign the I-275, acknowledging that the action is entirely voluntary. The alien should be given a copy of the I-275 and any sworn statement taken, unless the Form I-275 contains classified or sensitive information. Prepare and serve an I-259 on the appropriate carrier to effect removal. Complete the I-94, endorsing both sections with: "WD - Application for Admission Withdrawn. (Stamp number), (Port), and (Date)." On the reverse of the I-94, indicate the file number, if appropriate, in Block 20. In Block 26, under Itinerary/Comments, write the grounds of inadmissibility, and "I-275 served. To be removed via (flight number) on (date)". Also include removal flight information on the front of the departure portion of the I-94. Cancel the nonimmigrant visa, and note the visa page "21 CFR 41.122(h)(3)." In a case where the alien may, through ignorance, bad advice, or misinformation, have inadvertently arrived with inadequate documents or an improper visa, and there was no fraud involved and you are satisfied that the alien will depart in order to comply with admissibility requirements, a visa may be left intact for future use.

Prepare a packet in a sealed envelope for immigration officials in the country to which the alien is being returned, containing the alien's travel document and a copy of the Form I-275 or other relevant information that may be needed by the immigration officials in the ongoing country. Where practical, advise INS offices overseas by phone or fax of aliens moving through their jurisdiction. Forward the original of the I-275 and sworn statement to the consulate where the visa was issued. Route the arrival I-94 for data entry and deliver the departure I-94 to the carrier to be submitted with other departure I-94s for the outbound flight. Maintain a copy of all relating documents, including the pertinent passport pages and other evidence at the port of arrival for 6 months. Refer to Chapter 21.2 for special Canadian border procedures and to Chapter 17.15(9) for specific instructions relating to withdrawal of application for admission by aliens.

(d) Return transportation arrangements An alien who is permitted to withdraw must depart immediately from the United States, or as soon as return transportation can be arranged. If the alien arrived at an airport or seaport, arrange for departure on the next available transportation either back to the country where the alien boarded the flight or vessel, or to another country if the alien is denied to enter that country. In instances where the alien is being returned to a third country through a foreign transit point, every possible effort must be made to ensure that an immediate and continuous transit will be ensured. If the alien does not have either a return ticket or the carrier has not otherwise agreed to transport the alien, removal proceedings should be instituted. If the alien has an open ticket, make sure satisfactory confirmed return transportation arrangements are made. If the alien arrived at a land border port-of-entry, he or she is not permitted to enter the United States, and is simply returned to the contiguous territory from which he or she arrived.

The above revisions to the IFM will be incorporated into future releases of the INS Easy Research and Transmittal System (INSERTS).



Paul Virtue
Executive Associate
Commissioner, Programs

000282

DECLARATION OF MICHAEL D. CRONIN

I, Michael D. Cronin, declare that:

1. I am the Acting Associate Commissioner for Programs for the United States Immigration and Naturalization Service ("INS") assigned to INS Headquarters in Washington, DC. I have held my current position for 1 year and have been an employee of the INS for a total of 27 years. Presently, my responsibilities include programs and policy oversight for the Inspections, Adjudications, Investigations, and Detention and Deportation Divisions. I am very familiar with the practices of the INS relating to minors who arrive in the United States either in the company of family members or unaccompanied.
2. This declaration is based on my personal knowledge and on information provided to me by members of my staff.
3. INS records indicate that during fiscal year 1999, the INS inspected a total of 345,000,000 non-immigrant aliens at United States ports of entry. The vast majority of minors who were inspected appeared in the company of their parents or some other responsible adult.
4. In accordance with Section 235(a) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(a), every person seeking to enter the United States must be inspected by an immigration officer. Pursuant to 8 C.F.R. § 235.1(d)(1) (1999), an INS inspection officer examines all documents an alien presents in an effort to determine if the alien qualifies for admission to the United States or is subject to removal. Depending on the grounds for removal, an inadmissible alien may be: (A) placed in removal proceedings under INA § 240, 8 U.S.C. § 1229a; (B) removed on an expedited basis under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1); or (C) simply permitted to withdraw his or her application for admission under INA § 235(a)(4), 8 U.S.C. § 1225(a)(4). Withdrawing one's application for admission permits an alien to leave the United States without undergoing Section 240 or expedited removal proceedings which, under INA § 212(a)(9)(A)(i), 8 U.S.C. § 1182(a)(9)(A)(i), can result in a 5-year ban on reentry. Chapter 17.2 of the INS Inspector's Field Manual advises INS inspectors to consider the circumstances of the case (e.g., the alien's immigration and criminal history, if any; the alien's intent to obey or evade the law; the alien's ability to overcome the grounds of inadmissibility; the alien's age and health; other humanitarian factors) when determining whether to permit an alien to withdraw his application. Chapter 17.15 of the Inspector's Field Manual advises permitting an alien minor to withdraw his or her application for admission whenever possible and thereby avoid the negative consequences of being removed.
5. When a minor arrives at a port of entry in the company of an adult, Section

000283

235(d)(3) of the INA, 8 U.S.C. § 1225(d)(3), authorizes the inspecting officer to question the accompanying adult regarding his or her relationship to the minor, and Chapter 28.4 of the Inspector's Field Manual advises the inspecting officer to do so. In order to combat child abduction, Chapter 28.4 of the Inspector's Field Manual advises the inspector to focus on several questions, including determining the relationship between the adult and minor, determining who has legal custody, and establishing whether the adult has written authorization to have custody.

6. When dealing with accompanied minors who lack sufficient capacity to understand the immigration process, INS policy is to make every effort to preserve family unity. This policy is generally accomplished by placing the child in the same form of immigration proceedings as the accompanying adult family member in accordance with Chapter 17.15(f)(6) of the Inspector's Field Manual. However, subsection (f)(6) of Chapter 17.15 also permits the minor's application for admission to be withdrawn while the accompanying adult remains in proceedings. This typically occurs where the accompanying adult family member determines that it would be in the child's best interests to return to his or her native country without undergoing removal proceedings. In any event, nearly all decisions made regarding an incompetent minor's immigration status are left to the accompanying parent. However, if there is an objective basis to support a claim for asylum for an incompetent minor, the child will be placed in removal proceedings under Section 240 of the INA, 8 U.S.C. § 1229a, despite any contrary desire of the parent.

7. When an inadmissible unaccompanied minor arrives in the United States, the INS may resolve the situation by granting a waiver of inadmissibility, deferring inspection, or by other discretionary means including permitting the child to withdraw his or her application for admission. Inspector's Field Manual, Chapter 17.15 (f)(1). Subsection (f)(2) of Chapter 17.15 contains the INS policy that an unaccompanied minor should be permitted to withdraw his or her application for admission whenever appropriate. At both the Canadian and Mexican borders, unaccompanied minors are frequently permitted to depart the United States without facing removal proceedings. Before permitting an unaccompanied minor to withdraw his or her application for admission, Chapter 17.15(f)(2) of the Inspector's Field Manual directs that the INS officer first be satisfied that either the minor possesses sufficient capacity to understand the withdrawal process or that a responsible adult is aware of the action taken and the minor's impending return. Pursuant to Chapter 17.15(f)(2), if an unaccompanied minor has sufficient capacity to indicate a fear of persecution in his or her home country, the INS will place the child in Section 240 removal proceedings rather than permitting him or her to withdraw the application for admission.

8. Where the unaccompanied minor is very young and lacks sufficient capacity to understand the withdrawal process, it would be standard practice for the inspecting officer to make all attempts to locate a parent or, if the parents are unknown or unavailable, another adult relative. If the INS is unsuccessful in locating a parent or relative within a reasonable period, the INS will make arrangements to place the juvenile in shelter care (at INS expense) or in the care of a relative in the United States, pending either a withdrawal of the minor's application for admission by the parent or relative or placement of the minor in removal proceedings to determine admissibility. Chapter 28.5 of the Inspector's Field Manual establishes that it is INS policy to place an unaccompanied minor in the least restrictive surroundings appropriate for the child's age and special needs. As with an accompanied minor, nearly all decisions made regarding an unaccompanied minor's immigration status are left to the child's parent(s) or, if the parents are unknown or unavailable, another adult relative. If there is an objective basis to support a claim for asylum, the child will be placed in removal proceedings under Section 240 of the INA, despite any contrary desire of the parent.

9. If an unaccompanied minor lacks the capacity to understand the immigration process and has no parent to speak for him or her, Chapter 17.15(f)(2) of the Inspector's Field Manual instructs the inspecting officer to make every effort to determine whether the child's safety would be threatened in his or her homeland. This provision further directs that if there is an objective basis to support a claim for asylum, the minor should be placed in removal proceedings under Section 240 of the INA.


MICHAEL D. CRONIN
24 Jan 00



United States Department of State

*Assistant Secretary of State
for Consular Affairs*

Washington, D.C. 20520

DECLARATION OF MARY A. RYAN

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

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

000286

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

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

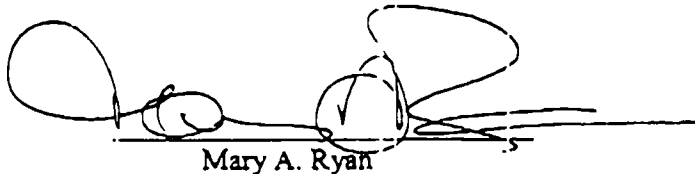
7. The United States is at the forefront in the provision of consular services to its citizens abroad and in its advocacy on behalf of parents seeking the return of their children to the United States. Because other countries carefully scrutinize the practices of the United States, our credibility and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

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

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

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

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



Mary A. Ryan

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

FAMILY DIVISION

CASE NO: 00-00479 FC 29

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

Petitioner,

vs.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent.

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

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

ORDERED and ADJUDGED as follows:

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

000291

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

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

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

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

service or Respondent, of their respective positions regarding whether a social investigation, pursuant to Fla. Stat. § 81.20, should be ordered in this matter.

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


ROSA L. RODRIGUEZ
CIRCUIT JUDGE

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

FAMILY DIVISION

CASE NO: 00-00478 FC 28

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, 1998. 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, 1998, 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. 61.1308(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 Kalimen v. Kaliman, 623 So. 2d 1213 (Fla. 3rd DCA 1993).

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

Under Florida law, where a Florida Court, even one which may otherwise lack jurisdiction over a visiting child, is presented with allegations of imminent harm or physical or emotional danger to a child, it is empowered, under the doctrine of *parens patriae*, to issue a temporary protective order which will preserve the status quo pending a full hearing on a petition to alter temporary or permanent custody. See Bohls v. Bohls, 666 So.2d 568 (Fla. 3d DCA 1996); Kennedy v. Kennedy, 558 So.2d 713 (Fla. 5th DCA 1990); Nelson v. Nelson, 433 So. 2d 1015, 1018 (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 Eilan 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 Eilan may be subject to imminent harm if emergency relief is not granted. Accordingly, it is hereby

ORDERED and ADJUDGED as follows:

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

1. The Court finds that Petitioner has established a *prima facie* case that Elian may be subject to imminent harm if temporary relief is not granted.

2. The status quo shall be preserved until such time as a full hearing on the Verified Petition for Temporary Custody and Other Relief is held.

3. The minor child, Elian Gonzalez, shall not be removed from this jurisdiction pending a full hearing on the Verified Petition for Temporary Custody and Other Relief.

4. In furtherance of this Court's exercise of emergency authority and in order to effectuate the requirements of this Court's Order, Petitioner is granted such limited legal authority as is necessary to preserve the status quo and prevent the child's removal from this jurisdiction, including, but not limited to, the authority to assert and protect such rights as the child may have under United States immigration law and to retain counsel to assert and protect such rights.

5. Pursuant to Fla. Stat. § 61.403, a guardian ad litem for the minor child shall be appointed by separate order, to act as next friend of the child, evaluator and investigator, with such powers, privileges and responsibilities as are necessary to advance the best interest of the child.

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


ROSA M. RODRIGUEZ
CIRCUIT JUDGE

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

FAMILY DIVISION

CASE NO.

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

Petitioner,

v.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent

VERIFIED PETITION FOR TEMPORARY CUSTODY AND OTHER RELIEF

Petitioner, LAZARO GONZALEZ, as Custodian of the Minor Child, ELIAN GONZALEZ,
alleges:

1. This is a Petition for temporary custody pursuant to Chapter 751, Fla. Stat., and to invoke the jurisdiction of this Court pursuant to Fla. Stat. §61.1308(c)(d).

JURISDICTION

2. Petitioner invokes the jurisdiction of this Court pursuant to Fla. Stat. §61.1308(c) and (d). The Department of Immigration and Naturalization Services (hereinafter "INS") has entrusted care and custody of the Minor Child, ELIAN GONZALEZ (hereinafter "Minor Child" or "ELIAN"), whose date of birth is December 6, 1993, to Petitioner, LAZARO GONZALEZ. The Minor Child has physically resided with the Petitioner since shortly after his arrival in South Florida on Thanksgiving Day, November 25, 1999.

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3. ELIAN is a six-year-old native and citizen of Cuba, whose mother was lost at fleeing Cuba together with him and twelve others. It appears that no other state¹ would have jurisdiction under the prerequisites of the UCCJA because no other state is the home state of the Minor Child and there is not other state in which the Minor Child and his parents have significant connections.

4. This Court also has jurisdiction pursuant to Fla. Stat. §61.1308(c), as the Minor Child is physically present in this State, and there currently exists an emergency which requires this Court to invoke jurisdiction to protect the Minor Child because he currently faces the threat imminent harm by being summarily removed from the State of Florida and returned to Fidel Castro's Communist regime, which would place the Minor Child in an environment in which will cause the child's mental and emotional health to be significantly impaired as more fully set forth in this Petition, and in which environment he would be deprived of food, clothing shelter, medical treatment, and which environment. Further, his removal without further legal proceedings will deprive him of his due process rights resulting in irreparable harm to the Minor Child.

STATEMENT OF THE FACTS

5. ELIAN GONZALEZ, miraculously arrived in the United States of America and was found floating on a inner tube by two fishermen off the coast of Florida. He fled the oppressive totalitarian regime of Cuba. Upon being rescued at sea, he was immediately rushed to a South Florida hospital where he began to recover, both physically and emotionally, from the horrific trauma of watching his mother disappear at sea as he was left alone clinging to a tire inner tube.

¹ Cuba is not a "state" as defined by Fla. Stat. §61.1308 of the UCCJA. A foreign nation may be considered a "state" pursuant to §61.1348 for purposes of recognizing a decree of a foreign court or nation, which decree would accord minimum due process when ruling on the issue of the best interests of a child. *Cowman v. Cowman*, 63 So.2d 1213 (Fla. 3d DCA 1993). Notwithstanding, the issue of recognition of foreign decrees is not applicable to the instant

6. ELIAN was transported to the Joe DiMaggio Hospital in Hollywood, Florida, by the U.S. Coast Guard, where LAZARO and ANGELA GONZALEZ, together with their daughter, MARISLEYSIS, arrived to determine whether or not the Minor Child was their great nephew.

7. After ELIAN's father found out that the Minor Child had left Cuba with his mother, he contacted LAZARO GONZALEZ to notify him that ELIAN and his mother had left Cuba on a small boat and asked LAZARO to see to it that ELIAN be taken care of in the United States.

8. After speaking with the father by telephone from the hospital, and in light of Petitioner's desire to care for the Minor Child, and given the fact that the Petitioner was the closest blood relative to the Minor Child, INS gave physical custody of the Minor Child to Petitioner.

9. In short order, the traumatized child who had been plucked from the sea, began counseling for post traumatic stress, was offered a full scholarship at a local private school which he currently attends, has flourished and has, in large part, recovered due to the generosity of the Petitioner, friends, neighbors and the people of this State at large, who have so abundantly given to this child to overcome the horror of the circumstances of his arrival.

10. As any alien arriving to the United States, ELIAN GONZALEZ, became eligible to apply for asylum in the United States under 8 U.S.C. 1158. In order to protect ELIAN's rights, two petitions for asylum have been filed with INS, to-wit: one petition signed by ELIAN, and one petition signed by LAZARO GONZALEZ as his custodian.

11. On January 5, 2000, INS determined that neither ELIAN GONZALEZ nor the Petitioner, LAZARO GONZALEZ, have the capacity to apply for asylum because the biological father, JUAN MIGUEL GONZALEZ-QUINTANA, was the only person who allegedly requested the

case as there has been no decree from the judicial branch of the government of Cuba concerning the care, custody or control of the Minor Child in the instant case.

return of the Minor Child to Cuba. A copy of the January 5, 2000, letter from INS is attached hereto as Exhibit "A".

12. The specific purpose of Chapter 751 of the Florida Statutes is to "...recognize that many minor children in this state live with and are well cared for by members of their extended families..." and that "...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. That section also provides that appointment of a temporary custodian may be made "to enable the custodian to... (d) Do all other things necessary in the care of the child." Id.

13. In accordance with Fla. Stat. §751.03, the Petitioner, to the best of his knowledge and belief, states:

a. The Minor Child's name is ELIAN GONZALEZ, his date of birth is December 6, 1993, and he currently resides at 2319 Northwest 2nd Street, Miami, Florida.

b. The Minor Child's mother's name is ELISABET BROTON RODRIGUEZ, who had legal custody of the Minor Child and was lost at sea, and the Minor Child's father is JUAN MIGUEL GONZALEZ-QUINTANA, who currently resides at Cassio 170, % Calvo y Soubel Ville, Cardenas, Cuba.

c. The names and current addresses of the persons with whom the Minor Child has lived during the past five (5) years are:

(i) ELISABET BROTON RODRIGUEZ and her common law husband, LAZARO RAFAEL MUNERO-GARCIA, both of whom are believed to have perished at sea en route to the United States in November, 1999.

(ii) The Minor Child's father is Juan Miguel Gonzalez-Quintana, whose current resident address is Cossio 170, % Calvo y Soubel Villa, Cardenas, Cuba. Additionally, residing at said address were Antonio Gonzalez, ELIAN's paternal uncle, MARIELA QUINTANA, ELIAN's paternal grandmother, and JUAN GONZALEZ, ELIAN's paternal uncle.

(iii) The Petitioner, LAZARO GONZALEZ, his wife, ANGELA GONZALEZ, and their daughter MARISLEYSIS GONZALEZ, currently reside at 2319 Northwest 2nd Street, Miami, Florida:

d. During the past five (5) years, the Minor Child has resided at the following addresses:

(i) From birth to age 3 years, at Cossio 170, % Calvo y Soubel Villa, Cardenas, Cuba.

(ii) From age 3 years to November 25, 1999, at Coronel Oerdugo, % Ayllon y Ruiz, Cardenas Matanzas, Cuba.

(iii) From November 26, 1999 to the present, at 2319 Northwest 2nd Street, Miami, Florida.

e. The Petitioner does not know of any other proceeding concerning the custody of ELIAN GONZALEZ in this or any other State with respect to the Minor Child.

f. The residence and post office address(es) of the Petitioner is 2319 Southwest 2nd Street, Miami, Florida.

g. The Petitioner's relationship to the Minor Child is that of Paternal Great Uncle.

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

RELIEF REQUESTED

14. The Petitioner seeks an evidentiary hearing, an Order awarding temporary custody of ELIAN for a period of time sufficient to adjudicate the application for asylum with INS. Exigent circumstances exist as a result of INS's arbitrary decision that no one other than the father in Cuba is legally authorized to speak on behalf of the Minor Child, a decision which led to the withdrawal by the father of the application for asylum and admission previously filed by ELIAN and by Petitioner. As a result, INS has decided that the Minor Child should be returned to Cuba. Petitioner also seeks an Interim Order to be entered on an ex-parte basis awarding interim custody, pending evidentiary hearing in order to prevent the imminent removal of ELIAN from the jurisdiction of this Court. Filed simultaneously herewith is a Verified Emergency Ex-parte Petition for Interim Order specifically outlining the nature of the emergency and the reasons requiring immediate action by this Court to prevent imminent harm to the Minor Child. Consequently, Petitioner requests authorization from the Court for the Petitioner, as legal custodian for the Minor Child, to apply for admission to the United States, to apply for political asylum in the United States, and to seek any other relief that may be needed in connection with the immigrant status of the Minor Child including the retention of counsel and the commencement of appropriate legal proceedings.

MEMORANDUM OF LAW

In accordance with the mandate of Chapter 751, "Unless the minor child's parents object, the Court shall award the temporary custody of the child to the Petitioner when it is in the best interest of the child to do so." *Fla. Stat. § 751.05 (2)*. Clearly and unequivocally, ELIAN's mother's consent to the granting of temporary custody in order to process ELIAN's asylum application was demonstrated by her courageous desire to deliver ELIAN to the United States with the expectation that upon arrival ELIAN would be eligible to apply for asylum. The question of the biological father's consent or objection to the granting of temporary custody is not as unequivocal. The Petitioner does not deny that ELIAN's father, while present in Cuba, has demanded the return of ELIAN. Notwithstanding his oral statements, this Court must first conclude whether his objection, if properly made to this Court, is in fact a free and voluntary expression of his wishes in the best interest of ELIAN.

I. THE FATHER'S INABILITY TO OBJECT OR CONSENT

The series of events occurring since November 25, 1999 surrounding the father's demands for the return of ELIAN cannot under any circumstance be compared to the desires of a parent who freely and willing consider the best interest of his child, free of coercion, duress or threat of persecution and who pursuant to the fundamental principals of the Florida Constitution which protects the parent/child relationship. Such rights, however, do not exist in Cuba.

The Castro government has seized the plight of ELIAN as a mechanism to promote the communist agenda and continued degradation of the United States. In order to determine the validity of the consent or objection of ELIAN's father while present and under the control of the oppressive totalitarian regime existing in Cuba, this Court must analyze not only the existence of duress, coercion and manipulation by the Cuban government but also the familial rights, duties and obligation of a parent and child in Cuba.

The Constitution of the Republic of Cuba as amended in 1992, Chapter IV, Family provides:

"Article 35 - The State protects the family, motherhood and marriage. The State recognizes in the family the fundamental organism of society and assigns its responsibilities and functions essential in the education and formation of a new generations. (emphasis added)

Article 38 - The parents must feed their children and assist in the defense of their legitimate interest and in the fulfillment of their aspirations; as well as actively contribute to their education and their becoming useful and prepared citizens for life in a socialist society.

Children, in turn, must respect and help their parents.²

In Cuba, parental rights (Patria Potestad) belong to the State and not to the parents. The practice is even worse than the laws. Children are separated from their families, and the State exerts all power over the children, from early childhood circles through primary education, center for scholars, "voluntary" work camps and required military service, until college. It cannot be asserted that in Cuba a father can freely speak in what he believes is the best interest of his child; rather, a father can only express the mandates of the government.

The Cuban Constitution merely assigns to the parents of children responsibilities and functions essential to the education and formation of children in accordance with the mandates of the State. The Cuban government governs the method and manner in which children will be raised regardless of the wants or desires of the parents or the best interest of the children. The only standard recognized by the Cuban government under Fidel Castro is "the best interest of the Republic". A parent refusing to recognize the communist ideology will lose all custody and contact with his children³. The mandatory allegiance to the communist manifesto is shockingly, yet unabashedly, evidenced in the Cuban penal code. There are at least seven articles (91, 92, 93, 94, 97, 98 and 102)

² Attached hereto as Exhibit "D" is a true and accurate copy of the Cuban Constitution along with the Certificate of Yanli Fenton Espinosa, aid to U.S. Congress, Lincoln Diaz-Ballard attesting to the literal translation of Article 35 and 38, Chapter IV of the Constitution of the Republic of Cuba, 1992.

each with its own clauses, establishing the various "political crimes" under which a person can be sentenced to death. Article 97, Clause 3, provides an example of the Cuban government's right to invoke the death penalty:

"Whoever engages in recognizance, takes photographs, solicits or obtains information in detriment to State security and without proper authorization, is subject to a prison sentence of 10 to 20 years or the death penalty."⁴

Since his arrival in Florida, ELIAN's father was catapulted to the unquestionable status of Castro's newest symbol of communist ideology. The Castro regime has taken control of ELIAN's father, removed him from his home of many years and placed him in the custody of the Ministry where his every action is dictated by the Cuban Ministry to assure that the role model that they have so carefully contrived, speaks, acts and portrays the image that the regime dictates. ELIAN's father calls ELIAN daily and speaks to Petitioner and other family members residing in the United States. His spoken words carried through the telephone lines contradict his tone and abrupt change of topic and frustration when the conversation leads to the issue of ELIAN remaining in the United States. To be clear, the change in tone and frustration do not depict anger or frustration over the absence of ELIAN, but rather the undeniable frustration that every telephone call is monitored and that he is accountable with his very life as to what he says and does in regard to the issue of ELIAN which regrettably the Castro government could advance its employable cause.

For the foregoing reasons and further evidence that will be presented at evidentiary hearing, this Court should not and cannot consider any objection of JUAN MIGUEL GONZALEZ-QUINTANA, the child's father unless he is removed from his coercive environment and appear in this Court so that he may speak openly concerning the best interests of the Minor Child.

⁴ Fourcra.

II FORCED RETURN TO CUBA WILL SUBMIT ELIAN
 TO ABUSE AND NEGLECT

Assuming *arguendo*, that upon receipt of this Petition JUAN MIGUEL GONZALEZ-QUINTANA, ELIAN's father objects to this Petition for Temporary Custody, and this Court accepts the objection, this Court should nonetheless grant the Petition upon a finding, by clear and convincing evidence, that he is unfit to provide for the care and control of ELIAN. In determining that he is unfit, the Court must find that he has abused, abandoned or neglected ELIAN, as defined in Chapter 39, Fla. Stat. § 751.05 (3).

Florida Statute §39.01 defines abuse and neglect as follows:

(2) " 'Abuse' means any willful act or threatened act that results in any physical, mental or sexual injury or harm that causes or is likely to cause the child's physical, mental or emotional health to be significantly impaired. For purpose of protective investigations, abuse of a child includes the acts or omissions of the parent, legal guardian, caregiver, or other person responsible for the child's welfare..."

"(46) 'Neglect' occurs when the parent or legal custodian of a child or, in the absence of a parent or a legal custodian, the caregiver deprives a child of, or allows a child to be deprived of, necessary food, clothing, shelter, or medical treatment or permits a child to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person...."

Assuming *arguendo* that ELIAN's father truly desires that ELIAN leave the United States, such decision will likely cause the child's physical, mental or emotional health to be significantly impaired. This is so for many reasons, including the fact that ELIAN will be required to repudiate his mother, whom the Castro regime has already branded as a traitor. Throughout his young life, ELIAN

* The Status of Human Rights in Cuba, a critical analysis, Geneva, Switzerland, March 1997 by the Cuban American

will be forced to live in substandard and overcrowded housing, and will be deprived of food substances essential to his growth; he will be subjected to deprivation of his basic human needs and to an environment which will damage ELIAN's physical, mental and emotional health or at a minimum will place ELIAN in danger of having his physical, mental and emotional health impaired by his environment. While it is true that his father, JUAN MIGUEL GONZALEZ-QUINTANA, is not responsible for the environment existing in Cuba or the violations of humanitarian rights commonplace in Cuba, by insisting that the boy be placed in the aforesaid environment, the father is engaging in conduct that constitutes abuse and neglect, as referred to in Fla. Stat. §751.05(3) and as defined in Fla. Stat. Chapter 39. Conversely, allowing the boy to remain in the custody of Petitioner will effectively eliminate the threatened harm to which ELIAN will be subjected if returned to Cuba.

The Petitioner is prepared to present evidence, personal accounts and well documented violations of civil rights, humanitarian rights and the killing, imprisonment and condemnation of those who dare to oppose or speak against Castro's regime. Little ELIAN, at age 6, has already experienced the difference of existence in Cuba's totalitarian and oppressive regime and the life and liberty (not to mention the material differences) of life in the United States. At age 6, he will not have the wisdom to refrain from expressing his dislike and other hatred of the Cuban environment if he is not able to present his application for political asylum in the United States and is returned to Cuba. *ELIAN has repeatedly state to his father that he does not want to be returned to Cuba.*

Petitioner is prepared to provide testimony by psychologists in accordance with the rules of evidence concerning the hearsay statements of a child regarding ELIAN's views of his life in Cuba and his genuine fear of returning to a world that can only be described as a living hell. Sadly, the humanitarian violations occurring in Cuba affect not only adults, but also children. There are well

National Foundation at page 6.

1/6/2000		Post-It brand fax transmittal memo 7871	# of pages 18
Mr. Guy Lewis		Katherine F. Randle	
Dept.		Phone 305-547-0535	
Fax 305-530-6144		Fax 0	

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

FAMILY DIVISION

CASE NO.

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

Petitioner,

v.

JUAN MIGUEL GONZALEZ-
QUINTANA,

Respondent.

VERIFIED EMERGENCY EX-PARTE PETITION FOR INTERIM ORDER

Petitioner, LAZARO GONZALEZ, as Custodian of the Minor Child, ELIAN GONZALEZ, alleges:

1. Petitioner has simultaneously herewith filed a Verified Petition for Temporary Custody pursuant to Fla. Stat. §751.01 *et seq.*, the facts of which are incorporated by reference in this motion.
2. Service of the Verified Petition for Temporary Custody is being effectuated pursuant to the provisions of Fla. Stat. §751.04. Due to Respondent's residence in Cuba, personal service of process cannot be made and constructive service of process is the only means of obtaining service. As Petitioner seeks immediate ex-parte relief on an emergency basis, in accordance with the mandate of *Glockron v. Manna*, 711 So.2d 1322 (Fla. 2d DCA 1998), Petitioner has given Respondent the only form of notice available, which is telephonic notice.

000311

Gonzalez v. Gonzalez-Quintana

Case No. _____

3. Prior to the filing of the within Petition and Emergency Motion, the Petitioner, LAZARO GONZALEZ, has given telephonic notice to JUAN MIGUEL GONZALEZ-QUINTANAS, of the filing of the Petition and this emergency motion and the purpose therefor.

4. The nature of the emergency is that while the Petitioner, LAZARO GONZALEZ, and the Minor Child, ELIAN GONZALEZ, each individually filed petitions for asylum with the Department of Immigration and Naturalization Services ("INS"), on January 5, 2000, INS determined that the only person who has legal authority to speak on behalf of ELIAN regarding U.S. immigration matters is the father in Cuba. The father then withdrew the pending application for political asylum and his application for admission to the United States and decided that the boy should be returned to Cuba.

5. In essence, the INS has denied ELIAN's due process rights in refusing to allow him to apply for asylum, admission to this country and by refusing to permit Petitioner or the counsel retained by Petitioner to speak or act on behalf of the boy. This action was taken without any hearing and despite the fact that INS had, on November 26, 1999, released ELIAN into the custody of Petitioner and Petitioner's wife. The appropriate jurisdiction and manner under which LAZARO GONZALEZ may obtain legal standing lies within this Court pursuant to authority of Fla. Stat. §751.01 *et seq.*

6. The INS has publicly issued a statement that ELIAN should be returned to Cuba on or before January 14, 2000. Due to the father's residence in a Communist totalitarian regime which does not recognize the authority of any jurisdiction other than its own, service of process must be made by constructive service of process.

7. The Petitioner believes that the foregoing matters are properly before this Court; at one time, INS concurred, although it subsequently changed its position. Attached hereto as

Gonzalez v. Gonzalez-Quintana

Case No. _____

Exhibit "A" is a press release of the Department of Immigration and Naturalization Services concerning ELIAN GONZALEZ dated December 1, 1999, wherein INS stated:

"Although INS has no role in the family custody decision process, we have discussed this case with State of Florida officials who have confirmed that the issue of legal custody must be decided by its State Court. However, Elian will remain in the U.S. until the issues surrounding his custody are resolved. If Elian's family is unable to resolve the question of his custody, it is our understanding that the involved parties will have to file in Florida Family Court. Either Elian's father in Cuba or his U.S. based family members may initiate proceedings..."

8. The INS's summary reversal of its own decision and policy has placed ELIAN at imminent risk of losing all due process rights to which he is entitled. Said rights are discussed in greater detail in the Petition for Temporary Custody and Other Relief and, having been incorporated herein, need not be realleged.

9. Petitioners believe that the return of ELIAN to Cuba on or before January 14, 2000, will result in grave and serious harm to the physical and mental health and emotional well being of the Minor Child. As set forth in the Petition for Temporary Custody and Other Relief, Petitioner fears that ELIAN will be thrust into an environment which, based upon the facts and circumstances of this case, will place the Minor Child in imminent danger of harm.

10. If this Court should fail to enter an interim order granting interim temporary custody of ELIAN GONZALEZ to Petitioner and ELIAN is returned to Cuba, the entire Petition which has been filed will be moot, as the Cuban government will not recognize a decree of this State if, upon further evidentiary hearing, this Court determines that Petitioner is entitled to the relief requested therein.

WHEREFORE, the Petitioner prays that this Honorable Court enter an immediate ex-parte Order awarding interim custody pending further evidentiary hearing, and for such other and further relief as is just and proper.

Gonzalez v. Gonzalez-Quintana

Case No. _____

VERIFICATION

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

) ss:

BEFORE ME, the undersigned authority, personally appeared, LAZARO GONZALEZ, who after being duly sworn deposes and says that he is the Petitioner in the foregoing Verified Emergency Ex-Parte Petition for Temporary Order, that all the allegations in the foregoing Petition are true and correct to the best of his own personal knowledge.

LAZARO GONZALEZ, Petitioner

SWORN AND SUBSCRIBED TO before me this ____ day of _____, 2000.

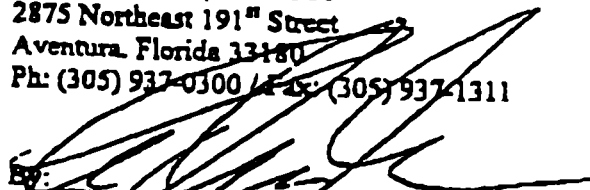
(Signature of Notary Public - State of Florida)

Personally known _____ Produced Identification _____
Type of Identification Produced _____

DATED this 7th day of January, 2000.

Respectfully submitted:

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Turnberry Plaza, Suite 500
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By: 
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FLORIDA BAR NO. 646326

Gonzalez v. Gonzalez-Quintana

Case No. _____

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January 11, 2000

United States Department of Justice
Immigration & Naturalization Service
Texas Service Center
4141 St. Augustine Road
Dallas, Texas 75227

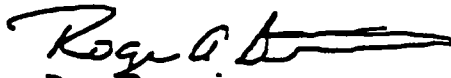
Re: Elian Gonzalez
A#: 77 013 761
Form I-589, Application for Asylum and for Withholding of Removal

Dear Madam or Sir:

Please find enclosed Form I-589, Application for Asylum and for Withholding of Removal. This letter also serves to inform you that the 11th Circuit Court of Miami Dade County, Florida has conveyed upon Mr. Lazaro Gonzalez, "... authority to assert and protect such rights as the child may have under United States immigration law and to retain counsel to assert and protect such rights." See attached Temporary Protective Order by the Honorable Rosa Rodriguez, Circuit Court Judge. This application is identical to the previously filed applications for asylum which were signed by Elian himself, and by Lazaro Gonzalez as his custodian. Although we still maintain that Elian has an independent right to apply for asylum, kindly note that this application is signed by Lazaro Gonzalez as his duly-appointed legal custodian.

Please also find G-28's signed by Lazaro Gonzalez, as Elian's duly appointed legal custodian, authorizing Spencer Eig, Linda Osberg-Braun and myself to represent Elian Gonzalez in all immigration, consular, diplomatic and related matters. Additionally, we reserve the right to supplement this application with supporting documentation.

Sincerely,


Roger Bernstein

RBjc
Enclosure: Temporary Protective Order, G-28's & Form I-589

cc: Robert Wallis, District Director

000316



U.S. Department of Justice
Immigration and Naturalization Service

Texas Service Center

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

January 13, 2000

Hackley, Bernstein & Orberg-Braun, P.L.
Attorneys at Law
Tumberry 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.

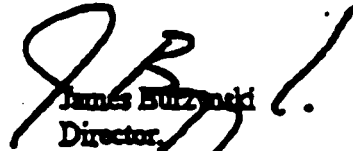
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Mr. Bernstein

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 Burzynski
Director
Texas Service

000318