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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

Appellants,

v.

JANET RENO, Attorney General of the
United States, *et al.*,

Appellees.

No. 00-11424-D

[District Court Case
No. 00-0206-CIV-MOORE]

APPELLEES' OPPOSITION TO
APPELLANT'S EMERGENCY
MOTION FOR AN
INJUNCTION PENDING
APPEAL OR ALTERNATIVELY
FOR STAY OF
ADMINISTRATIVE ACTION

Appellees, Janet Reno, *et al.* ("the government"), hereby oppose the motion by Lazaro Gonzalez, filed in his asserted capacity as next friend of Elian Gonzalez, for an injunction prohibiting the government from transferring Elian Gonzalez to the care and custody of his father, Juan Gonzalez and preventing Elian's return to Cuba or to any place under Cuban government control during the pendency of this appeal. The Court should deny the motion. There is no basis in law under the Immigration and Nationality Act or in the principles of equity governing injunctive relief for this Court to prevent the reunion of a father and son at the behest of a mere distant relative into whose care Elian was only temporarily placed under federal law.

As we explain below, appellant Lazaro Gonzalez has failed to make the showing

required to obtain the extraordinary remedy of injunction pending appeal. First, appellant has failed to establish a substantial likelihood of success on the only issue on appeal, which is whether the Commissioner of the INS, ratified by the Attorney General and sustained by the district court, permissibly decided to give effect to the determination of Juan Gonzalez, Elian's sole surviving parent, not to file an application for asylum for Elian in the United States. That decision respects the bond parent and child that is sacred in human history and experience, protected by the Constitution of the United States, given expression in the laws and practices of this Nation since its founding, and recognized as a fundamental principle in the international community — including the goal of family reunification under both U.S. immigration laws and international conventions.

Second, the balance of equities weighs heavily against the granting of an injunction pending appeal. Juan Gonzalez, who has had a major role in raising Elian for the first six years of his life, is now in the United States. He wants to be with his son again. Elian has lost his mother at sea. His father is his sole surviving parent, and he has a close extended family in Cuba who have also cared for him. The Attorney General, in whom Congress has vested responsibility for interpreting and implementing the immigration laws, has concluded that Juan Gonzalez properly speaks for his son under the immigration laws, and Juan and Elian therefore should be reunited. It is, moreover,

~~essential to our United States' place in the world community that the requirement of~~

prompt reunification of parent and child be respected by this Nation, in order to promote

reciprocal respect for that requirement by other countries to which U.S. children travel or are taken.

We recognize the relationship that has developed between Elian and his Miami relatives, their love for him, and the care they have given him. But Elian has a father who also loves him, and an extended family that does as well, and they have been with Elian for the first six years of his life. It is not uncommon for more distant relatives, like Lazaro Gonzalez and his family in Miami, to form a strong emotional attachment to a child at a particular time. But under the Constitution, laws and human experience of this country, that attachment does not give the relatives a right to keep the child from his parent, or allow a court to impose such a separation. Elian Gonzalez has been in the care of Lazaro Gonzalez and his family since his arrival in the United States only because he was temporarily paroled into Lazaro Gonzalez's care by the INS under federal law. That parole was subject from the outset to such conditions and instructions as the INS might impose, and it was subject to revocation at any time. Governing regulations provide that the first priority in releasing a juvenile alien from INS custody in the United States is to the juvenile's parent. Now that Elian's father is in the United States, the purposes of his temporary parole into the care of Lazaro Gonzalez and his family have ended, and federal law requires that Elian be transferred to his father.

The expert psychiatrists and psychologist who have advised the Commissioner and the Attorney General in this matter have all concluded that, now that Juan Gonzalez is in

the United States, it is very important to Elian's long-term well being that Elian be transferred to his father's care as soon as possible, that the transfer be unambiguous, that his care-givers since his arrival in the United States prepare him for and participate in the transfer in a supportive manner, and that the transfer occur at a neutral location. The Commissioner and the Attorney General have gone to extraordinary lengths to bring about that result in a cooperative manner over the past week. But Elian's Miami relatives have refused to agree to those simple, clear undertakings. That refusal was most striking on April 13, when, after efforts at a cooperative arrangement failed, Lazaro Gonzalez defied an INS directive to present Elian to the INS at an airport in Miami so he could be transferred to his father's care. The temporary parole of Elian into Lazaro's care under federal law has therefore been revoked. In these circumstances, Lazaro Gonzalez comes to this Court with very unclean hands in seeking the extraordinary equitable relief of injunction pending appeal.

For the foregoing reasons, and as more fully explained below, we believe there is no basis for granting an injunction pending appeal. The principle concern reflected in the motion appears to be that if Elian and Juan are reunited, Juan Gonzalez might leave the United States with Elian during the pendency of the appeal. But aliens normally have the right to leave the United States and return home, and there is no reason under our laws

~~why Juan Gonzalez should not be free to do so — especially given the decision by the~~

Commissioner and the Attorney General, which is unchallenged by Lazaro Gonzalez in

this case, to allow Juan to withdraw the application for Elian's admission to the United States for the very purpose of allowing his return to Cuba to be with his father and extended family there. In a parallel situation involving a U.S. child abroad, the U.S. Government would object to any requirement imposed by a foreign government that the U.S. parent travel to the foreign country as a condition to having his child returned to him, much less that the parent remain in the other country with his child during the pendency of legal proceedings brought by more distant relatives to keep the child there. Freedom from such a requirement is a basic human right that the United States seeks both to honor and protect around the world. And here, because there is no merit to Lazaro Gonzalez' underlying appeal on the narrow issue of the asylum applications submitted by Lazaro Gonzalez, it is especially clear that Juan Gonzalez and Elian Gonzalez should not be compelled to remain in the United States, away from extended family, friends, and a familiar life, during the pendency of an appeal.

However, if the Court nevertheless believes that an assurance that Juan Gonzalez will remain in the United States pending the decision of this Court on the appeal is necessary and justified in these proceedings, that assurance is at hand. In a letter to the Attorney General dated April 13, 2000, counsel for Juan Gonzalez has formally notified the Attorney General that his client is willing to remain in the United States during the pendency of the appeal, so long as he has custody of his son, Elian. He further states that once Elian is turned over to him, Juan Gonzalez would not oppose and would not

challenge the imposition of a departure control order issued by the INS requiring Elian to remain in the United States until the appeal is decided. The INS is authorized to issue such an order under Immigration and Nationality Act Section 215, 8 U.S.C. § 1185. If restrictions are to be placed on the travel of Juan and Elian Gonzalez once Elian is placed in Juan's care, those restrictions should be imposed by the Executive Branch, not the courts, pursuant to the statutory provision Congress has enacted for that purpose. But the United States would impose such an order only with substantial reluctance, because of serious concerns that other nations might impose similar restrictions on U.S. parents and children.

The fundamental and most pressing requirement in this matter is that Elian be reunited with his father in the United States. Indeed, as a response to Lazaro Gonzalez' concerns, a departure control order would be called for as a means of assuring that Elian will remain in the United States pending appeal only if Elian is in Juan Gonzalez' custody. Moreover, as noted above, Lazaro Gonzalez comes to this Court with very unclean hands in seeking the extraordinary equitable relief of an injunction pending appeal after refusing to agree to reasonable conditions for a cooperative transfer, then defied a specific INS directive that he present Elian to the INS at the Opa-Locka Airport on April 13, for transfer to Elian's father, and now continues to keep Elian with him despite the revocation of parole of Elian into the care of his father by federal law. One principle submission is that there is no basis for an injunction pending appeal at all. At the very least, however, there is no

basis for imposing restrictions on the departure of Elian with his father unless Lazaro Gonzalez first cleanses his unclean hands by presenting Elian Gonzalez to the INS, as directed by the INS, for re-parole into the care of his father.

Accordingly, if the Court concludes that some greater assurance that Elian will remain in the United States is necessary and justified, then due to the particular circumstances of this case, the appellees consent to the entry by the Court of an order requiring the appellees to issue a departure control order barring the departure of Elian Gonzalez from the United States (and barring the departure of Juan Gonzalez with Elian Gonzalez) pending the issuance of a decision by this Court on the instant appeal, conditioned upon the Court's entry of an order directing Lazaro Gonzalez to present Elian Gonzalez to the INS, as directed by the INS, for transfer of care to Juan Gonzalez. The departure control order shall be effective upon the presentment of Elian Gonzalez by Lazaro Gonzalez, as directed by the INS.

I. BACKGROUND

Lazaro Gonzalez, asserting next friend status on behalf of appellant six-year-old Elian Gonzalez, comes to this Court seeking an injunction pending this Court's consideration of the appeal. The government hereby opposes Lazaro Gonzalez' motion for an injunction pending appeal or in the alternative for stay of administrative action.

~~Lazaro Gonzalez seeks to enjoin defendants from revoking Elian Gonzalez's parole and~~
reuniting him with his father, Juan Gonzalez, by re-paroling Elian into his father's care in

Maryland and further to prevent Elian Gonzalez from leaving the United States during this appeal.

As the Supreme Court made clear in Reno v. Flores, 507 U.S. 292, 310 (1993), however, INS regulations governing the release of juvenile aliens from INS custody pending immigration proceedings require that such juveniles be released to their parents, see 8 C.F.R. § 236.3(b)(1) (1999), “whom our society and this Court’s jurisprudence have always presumed to be the preferred and primary custodians of their minor children.” 507 U.S. at 310. By contrast, Lazaro Gonzalez falls in the last category of adults to whom juveniles may be released from INS custody, and release to such adults is entirely discretionary with the INS. See 8 C.F.R. § 236.3(b)(4) (1999). Elian Gonzalez has been in the temporary care of Lazaro Gonzalez only because he was paroled by the INS, and that parole has at all times been subject to such conditions as the INS might require — including the requirement that Lazaro present Elian to the INS as directed by the INS for transfer of care. Thus, quite aside from the issue on this appeal of whether the Commissioner of the Immigration and Naturalization Service and the Attorney General permissibly determined that Juan Gonzalez properly speaks for his son with respect to asylum, the regulations governing the release of juvenile aliens from INS custody while they are in the United States unambiguously authorize the Attorney General to revoke the temporary parole of Elian into Lazaro Gonzalez’s care in Florida, require that Lazaro present Elian to the INS in Florida, and re-parole him into the care of his father in

Maryland.

Lazaro seeks this injunction pending his appeal of the district court's March 21, 2000, decision in this matter granting appellees' motion to dismiss or alternative motion for summary judgment. *See Gonzalez v. Reno, et al.*, 86 F. Supp. 2d 1167 (S.D. Fla. 2000). He had brought suit, challenging the decision of the Commissioner, a decision the Attorney General ratified, to honor Juan Gonzalez' decision not to pursue the asylum applications submitted on Elian's behalf by Lazaro Gonzalez. *See* Exhibit One, Memorandum for INS Commissioner Meissner, January 3, 2000; Exhibit Two, Letter from the Attorney General to appellant's counsel, January 12, 2000. Lazaro Gonzalez did *not*, however, challenge the Commissioner's separate decision, under 8 U.S.C. § 1225(a)(4) (Supp. IV, 1998), ratified by the Attorney General, to allow Juan Gonzalez to withdraw the application for the admission of Elian to the United States in order to give effect to Juan's desire that Elian be returned to him in Cuba. A decision allowing the withdrawal of an application for admission is, in any event, discretionary, and judicial review of such decisions therefore is barred by 8 U.S.C. § 1252(a)(2)(B)(ii) (Supp. IV, 1998). Thus, insofar as appellant seeks an order from this Court barring Juan Gonzalez from returning to Cuba with his son, that relief is barred by appellant's failure to challenge the decision of the INS Commissioner and the Attorney General allowing the withdrawal of the application for admission for that very purpose, and by the statutory prohibition of review of that decision in any event. This appeal is directed instead to the distinct and

narrow issue of the disposition of the asylum applications submitted by Lazaro Gonzalez for as long as Elian remains in the United States.

The Commissioner refused to accept the asylum applications because she concluded that only Juan Gonzalez could speak for Elian on immigration matters, and he had refused to assert Elian's statutory right to apply for asylum. The Commissioner also determined that there was not an objective basis for adjudicating those asylum applications notwithstanding his father's decision. In sustaining the Commissioner's decision, the district court observed:

In light of the Attorney General's clearly articulated views on the matter of whether Elian Gonzalez should return home, as well as the reality that each passing day is another day lost between Juan Gonzalez and his son, the Court can only hope that those on each side of this litigation place the interests of Elian Gonzalez above all others.

86 F. Supp. 2d at 1194.

Since the district court's decision on March 21, 2000, appellees have exercised patient restraint, and made extraordinary efforts to resolve this matter in a prompt, fair, and orderly manner. Their efforts have been repeatedly and aggressively rebuffed. On March 23, 2000, before Juan Gonzalez arrived in the United States, the government proposed an agreement wherein it would withhold enforcement action and continue the present temporary parole arrangement during the instant appeal, and Lazaro Gonzalez would agree to turn the care of Elian Gonzalez over to the INS (for the return of Elian to Cuba) in a prompt and orderly manner if this Court affirmed the district court's decision (and barring

any stay from the Supreme Court). The agreement failed, however, because Lazaro Gonzalez refused to provide even this basic assurance to produce Elian as directed by the INS, which is a long-standing requirement of federal law with respect to any alien who is paroled into the United States and any adult to whom a juvenile alien is released pending immigration proceedings. See 8 C.F.R. §§ 212.5, 236.3(b)(4) (1999).

Although INS was willing to leave the temporary care of Elian with Lazaro Gonzalez pending appeal if Lazaro made that basic commitment, The INS made it clear at the same time that if a material change occurred in the circumstances surrounding the temporary parole -- most particularly, if Juan Gonzalez came to the United States for his son -- the temporary parole would change. This is what occurred when, on April 6, 2000, Juan Gonzalez, his wife, and their infant son, Elian's half-brother, came to the United States.

The Attorney General personally met with Juan Gonzalez and his wife and son without the presence of any Cuban officials on April 7, 2000. Juan Gonzalez reiterated that he wanted his son back and wanted to return to Cuba. After that meeting, the Attorney General expressed her intent to move forward with the reunification of father and son in the United States. Also on April 7, 2000, the INS informed Lazaro Gonzalez that it was moving forward with steps to transfer Elian's parole to Juan Gonzalez; that it sought the advice of two eminent psychiatrists and a prominent psychologist to assess, evaluate, and facilitate the transfer; and that these experts were to meet separately with Juan Gonzalez

and Lazaro Gonzalez and his family. See Exhibit Three, April 7, 2000 letter. These experts met with Juan Gonzalez on April 9, 2000, and with Lazaro Gonzalez on April 10, 2000.

On Wednesday, April 12, the Attorney General and the INS Commissioner flew to Miami to meet with Lazaro Gonzalez. The Attorney General and the Commissioner sought to "work out a cooperative agreement" to "resolve this matter in a way least damaging to the child." See Statement of Attorney General Janet Reno, April 12, 2000. She met with Lazaro Gonzalez and his family for two and a half hours, but was unable to reach an agreement. Shortly thereafter, the INS transmitted a letter by facsimile to Lazaro Gonzalez that directed him to bring Elian to the Opa-Locka Airport at 2:00 p.m., April 13, 2000, at which time he had two alternatives: he could either (a) travel to Washington, D.C. with Elian, his daughter Marisleyxis, and members of his family, in the company of an INS officer experienced in immigration matters involving children for a meeting with Juan Gonzalez, after which parole of Elian would be transferred to Juan Gonzalez; or (b) if he did not want to meet with Juan Gonzalez, present Elian at the Airport at the same time, at which point Elian's care would transfer to the INS officer who would then escort Elian to Washington, D.C., and thereafter parole would transfer to Juan Gonzalez. See Exhibit Four, April 12, 2000 letter.

In the aftermath of the unsuccessful meeting, Lazaro Gonzalez spoke to the news media. He characterized appellees' lawful directive as "a traitorous act," and he

challenged appellees to send federal officers to his home to take Elian "by force," stating "Our position is that we will not turn over the child — anywhere." See Andres Viglucci, Jay Weaver and Ana Aclé, *Reno Wants Elian Today, Great-Uncle Challenges U.S. to Take Boy 'By Force,'* Miami Herald, April 13, 2000 (available on the World Wide Web at <http://herald/archive/news/rafters99/docs/087403.htm>).

Lazaro Gonzalez has now sought an injunction from this Court preventing appellees from enforcing the INS's lawful directive and preventing Elian from returning to Cuba once he is reunited with his father. Notwithstanding the March 21, 2000, decision of the district court that sustained the Attorney General's decision and left her free to order the revocation of temporary parole even before Juan Gonzalez had arrived in the United States — and notwithstanding the Attorney General's clear pronouncement on April 7, 2000, that Elian would be promptly reunited with his father now that he is in the United States — Lazaro Gonzalez waited until less than one hour before the scheduled time at which he was required to present Elian to the INS at Opa-Locka Airport on April 13, 2000, to seek relief from this Court. The Court should deny Lazaro Gonzalez's last-minute request to delay once again the reunion of Elian with his father, after he refused to comply with the clear requirement of federal law that he both agree to present Elian to the INS as directed and then, at 2:00 p.m. yesterday, actually present Elian when ordered to

¹⁴ Approximately two hours before appellant filed his emergency application in this Court, the state family court dismissed the action appellant filed in that court in an effort to mount a

II. THE COURT SHOULD DENY APPELLANT'S REQUEST FOR AN INJUNCTION PENDING APPEAL

A. STANDARD OF REVIEW FOR GRANTING INJUNCTION PENDING APPEAL

An injunction pending appeal, like a stay pending appeal, is considered "extraordinary relief" for which the moving party bears a "heavy burden." *Winston-Salem/Forsyth County Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J., in chambers). "Such relief should be sparingly granted." *Atlantic Richfield Company v. Federal Trade Commission*, 398 F. Supp. 1 (S.D. Texas 1975) (citing *F.M.C. v. New York Terminal Conference*, 373 F.2d 424, 426 (2d Cir. 1967)). "The burden on those seeking an injunction pending appeal is a heavy one, much heavier than when an interlocutory injunction is sought in the trial court before the trial court has entered judgment." *Overbrook Egg Nog Corporation v. Miller, Secretary of Treasury*, 488 F. Supp. 156, 176 (D. Md. 1980) (citing *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Manufacturing Co.*, 550 F.2d 189, 194 (4th Cir. 1977)).

In determining whether to grant an injunction pending appeal, a court must

collateral attack on the Attorney General's decision to give effect to Juan Gonzalez's desire to be reunited with his son in Cuba. The family court held that the state court action was preempted by federal law, which gives the federal government exclusive authority to determine when an alien will return to another country. See In Re: Lazaro Gonzalez, as Custodian of Elian Gonzalez, a Minor, Petitioner, and Juan Miguel Gonzalez Quintana, Case No. 00-05479-FQ-28 (Circuit Court, 11th Judicial Circuit in and for Miami-Dade County, Florida) (Order and Opinion attached). Although that case had been pending in family court for more than three months after the court issued a temporary custody order on January 10, 2000, appellant sought to revive the case on an emergency basis on the evening of Saturday, April 8, by filing a motion for a full trial on the question of whether Elian should be with his father in Cuba. *Id.* at 5-6.

examine the following factors: (1) whether the movant has made a strong showing that he is likely to prevail on appeal; (2) whether the movant will suffer irreparable injury; (3) whether granting the injunction will substantially injure the nonmoving parties; and (4) where the public interest lies. See *Hilton v. Braunskill*, 481 U.S. 770 (1987); *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), *cert. denied*, 479 U.S. 889 (1986); *Belcher v. Birmingham Trust National Bank*, 395 F.2d 685 (5th Cir. 1968); *Johnson v. Mortham*, 926 F. Supp. 1540, 1541 (N.D. Fla. 1996). An injunction may be issued on a lesser showing of a "substantial case on the merits" when "the balance of the equities weighs heavily in favor of" the moving party. *Isaly Co. v. Kraft, Inc.*, 622 F. Supp. 62, 63 (M.D. Fla. 1985) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981));² see also *Garcia-Mir*, 781 F.2d at 1453.

**B. LAZARO GONZALEZ HAS NOT DEMONSTRATED THAT HE IS
LIKELY TO PREVAIL ON THE MERITS OF HIS APPEAL**

**(1) Appellant Must Make A "Strong Showing" That The Agency Decision
Is Not "Facially Legitimate And Bona Fide" or An Abuse of Discretion**

Lazaro Gonzalez has fallen far short of making the required "strong showing," *Hilton*, 481 U.S. at 776, that he is likely to succeed on the merits. In order to consider the question of likelihood of success on the merits, it is important to bear firmly in mind both what the narrow issue on appeal is and the narrow standard of review that applies to that

² In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981), this circuit adopted as binding precedent all decisions of the former Fifth Circuit rendered before October 1, 1981.

issue.

(a) The appeal of the district court's decision concerns the permissibility of the Attorney General's determination that the asylum provisions of the Immigration and Nationality Act, 8 U.S.C. § 1158, permit her to conclude that a sole surviving parent speaks for his or her child with respect to an asylum application when the child is too young to comprehend the significance of those matters.

In order even to be eligible for asylum, an alien must make a specific type of showing: the alien must show that he is a "refugee," *see* 8 U.S.C. § 1158(b)(1) — i.e., that he is unable or unwilling to return to his country of nationality, and to avail himself of the protection of that country, because of past persecution or a well-founded fear of future persecution based on one of five factors, including political opinion. *See* 8 U.S.C. § 1101(a)(42)(A).³ Lazaro Gonzalez' arguments concerning whether it would be in the best interests of Elian to return to Cuba with his father, general standards of living in Cuba, and Elian's relationship with Lazaro or Marisleysis Gonzalez are simply not relevant to the narrow issue on this appeal concerning the Commissioner's and Attorney General's disposition of the asylum applications submitted by Lazaro Gonzalez.

Furthermore, this appeal furnishes no basis for the Court to enjoin INS's transfer of temporary parole and care of Elian from Lazaro Gonzalez to Elian's father, Juan

Gonzalez, as is required by INS regulations governing the transfer of parolee aliens in the

³The other criteria are race, religion, nationality, or membership in a particular social group.

United States. And the pendency of this appeal furnishes no basis whatever for Lazaro Gonzalez to defy a directive of the INS that he present Elian to the INS for that purpose. Again, the question on this appeal concerns the disposition of the asylum applications submitted by Lazaro Gonzalez in Elian's name; the pendency of that issue in this Court in no way affects whose care Elian will be in while he is in the United States. Lazaro's submission of an asylum application in Elian's name has no bearing on the responsibility of the Commissioner and the Attorney General under the governing regulation to place Elian in his father's care now that Juan Gonzalez is in the United States, no bearing on Juan Gonzalez' compelling claim to receive Elian into his care under that regulation, and no bearing on Lazaro Gonzalez' duty under federal law to present Elian to the INS as required by the INS, so that he can be transferred to his father.

For the foregoing reasons, the likelihood-of-success prong of the showing Lazaro Gonzalez must make in order to obtain the extraordinary relief of an injunction pending appeal can be satisfied only if he establishes a substantial likelihood that this Court will reverse the district court's judgment sustaining the Commissioner's and the Attorney General's decisions on the asylum application issue.

(b) The standards governing judicial review of the decision of the Commissioner, ratified by the Attorney General, concerning the asylum applications are well established.

Under *Kleindienst v. Mandel*, 408 U.S. 753 (1972), the Court of Appeals can set aside

the Commissioner's decision only if it is not "facially legitimate and bona fide."⁴ Reliance on the *Kleindienst* standard is appropriate because both that case and this case involve agency decisions relating to aliens seeking admission to the United States.

However, even under the more exacting (but still highly deferential) standard of review that is generally applicable under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559, 701-706, the INS decision at issue before the Eleventh Circuit should be upheld. As the district court observed regarding APA review, "courts hold agency findings and decisions unlawful only if they are 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Gonzalez*, 2000 WL 289604, at *25 (quoting 5 U.S.C. § 706(2)(A)) (citation omitted). "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicles Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983). "The task of the reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency decision based on the record the agency presents to the reviewing court." *Florida Power & Light Company v. Lorion*, 470 U.S. 729, 743-44 (1985).

The record this Court will review in considering the district court's entry of

⁴ Although the district court did not apply the *Kleindienst* standard to Count 2 because it found that *Kleindienst* applies only when a plaintiff "asserts a constitutional challenge to agency action," *Gonzalez*, 2000 WL 289604, at *31 n.32, the government respectfully points out that Eleventh Circuit case law is to the contrary. See, e.g., *Perez-Perez v. Hanberry*, 781 F.2d 1477 (11th Cir. 1986) (applying *Kleindienst* standard, in absence of constitutional challenge, to INS parole denial), *Sidney v. Howerton*, 777 F.2d 1490, 1491 (11th Cir. 1985) (same).

summary judgment on Count 2 depends on whether that court reviews the decision under the *Kleindienst* standard or the APA standard. If the Court applies the *Kleindienst* standard, it should review only the three letters from the INS to Juan Gonzalez, to Lazaro Gonzalez, and to Lazaro's attorneys; the Commissioner-approved INS memorandum, at pages one through twenty-three of the administrative record; the Attorney General's letter responding to the request by counsel that she review the Commissioner's decision, at pages twenty-four through twenty-eight; and the asylum applications filed under seal. See Defendant's Motion to Dismiss or Alternative Motion for Summary Judgement, Administrative Record and Exhibits. Again, all that is necessary to sustain an agency decision reviewed under the *Kleindienst* standard is "a facially legitimate and bona fide reason." 408 U.S. at 770.

If, on the other hand, the Court applies the APA standard, review of the 318-page record the government submitted with its dispositive motion, minus the declarations the government asked the district court to consider only in connection with the equitable bases of plaintiff's motion for preliminary injunctive relief,⁹ is appropriate. A *de novo* review of the facts underlying the Commissioner's decision is not appropriate, although the Court may "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Motor Vehicles*,

⁹ The government asked the district court not to consider any declarations it had submitted, except in connection with the equitable bases of appellant's motion for injunctive relief. See Defendants' (appellants') Concise Summary Of Position On Pending Motions And Review Of Administrative Record, at 1-3.

463 U.S. at 43 (citing *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 286 (1974); *Cooperative Services, Inc. v. HUD*, 562 F.2d 1292, 1295 (D.C. Cir. 1977)).

To the extent the Commissioner's decision involves questions of statutory interpretation, "[c]onclusions of law rendered by summary judgment are subject to the same standard of review as any other question of law raised on appeal." *Lipscomb v. United States*, 906 F.2d 545, 548 (11th Cir. 1990) (citing *Erwin v. Westfall*, 785 F.2d 1551, 1552 (11th Cir. 1986), *aff'd*, 484 U.S. 292 (1988)). Because what is involved here is the interpretation of an asylum statute the INS administers, the applicable principles of statutory interpretation are described in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984), and *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999). *See also* 8 U.S.C. § 1103(a) (stating that the Attorney General's determinations of all questions of law under the INA "shall be controlling").

Under *Chevron*, where Congress has not addressed the issue, a court must defer to the agency's interpretation if it is permissible or reasonable. *Lipscomb*, 906 F.2d at 545 (citing *Chevron*, 467 U.S. at 843-44). "A finding of reasonableness does not require a finding that the agency interpretation was the only possible construction, or that the agency made the same finding the court would have made." *Id.* (citing *Curse v. Director,*

Office of Workers' Compensation Programs, 843 F.2d 456, 460 (11th Cir. 1988) (quoting *Chevron*, 467 U.S. at 843 n.11)). Moreover, the Supreme Court observed in *Aguirre-*

: ;

Aguirre that "judicial deference to the Executive Branch is especially appropriate in the immigration context where officials 'exercise especially sensitive political functions that implicate questions of foreign relations.'" *Aguirre-Aguirre*, 119 S. Ct. at 1445 (quoting *INS v. Abudu*, 485 U.S. 94, 110 (1988)).

The Supreme Court's recognition of immigration law as occupying a unique status for judicial review dates back more than a hundred years. "Our cases 'have recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952)) (collecting cases). "The judiciary is not well positioned to shoulder primary responsibility for assessing the likelihood and importance of such diplomatic repercussions." *Aguirre-Aguirre*, 119 S. Ct. at 1445; *see also Fiallo v. Bell*, 430 U.S. at 792 (Supreme Court "has repeatedly emphasized that 'over no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens"); *Mathews v. Diaz*, 426 U.S. 67, 79-82 (1976) ("In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens"); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) ("any policy toward aliens is vitally and intricately interwoven with

contemporaneous policies in regard to the conduct of foreign relations"). Thus, the

Commissioner's interpretations of the Immigration and Nationality Act are entitled to

more deference than what is accorded other agencies in their interpretations of laws not occupying a similar status.

Appellant's third and fourth claims in the complaint to the district court allege violations of INS asylum regulations at 8 C.F.R. §§ 208.9 and 208.14(b). The district court dismissed these Counts based on its analysis of Count 2 and its "determination that the decision of the Attorney General is controlling both on the issue of Plaintiff's capacity to file an application for asylum and on the question of who may speak for Plaintiff in the face of Plaintiff's incompetence," and conclusion that in light of Elian's lack of capacity to apply for asylum, "no asylum applications are pending." *Gonzalez*, 2000 WL 289604, at **21, 30. Judicial review of the district court's dismissal of Counts 3 and 4 is *de novo*, as is judicial review of the district court's conclusion that the Count 5, the mandamus count, fails as a matter of law.

(2) Lazaro Gonzalez Has Not Made The Required "Strong Showing" With Respect to His Appeal of The District Court's Dismissal of His Due Process Count

The district court dismissed Count 1 of the complaint for failure to state a claim. In dismissing this Count for failure to state a claim, the district court found that plaintiff lacked a "constitutionally protected liberty interest"; that he is an unadmitted alien, standing, as it were, "on the threshold of initial entry"; and that his status as an alien who

has been paroled into the United States makes no difference from the standpoint of his inability to assert constitutional rights with respect to his admission to the United States.

Gonzalez, 2000 WL 289604, at **21-22 (citations omitted). In this regard, the district court relied primarily on *Jean v. Nelson*, 727 F.2d 957 (11th Cir. 1984) (*en banc*) (affirmed on other grounds, 472 U.S. 846 (1985)), noting, among other things, that there the Eleventh Circuit had held that unadmitted aliens cannot challenge INS decisions on their "applications for admission, asylum, or parole on the basis of rights guaranteed by the United States Constitution." *Gonzalez*, 2000 WL 289604, at *22. In light of Elian's status as an unadmitted alien, the district court concluded, "no set of facts will support Plaintiff's claim for a denial of constitutional due process under Count 1, and this Count must be dismissed." *Id.*

In *Jean v. Nelson*, a class action brought on behalf of Haitian aliens being held in INS detention pending adjudication of their asylum claims, the Eleventh Circuit, sitting *en banc*, had occasion to examine whether unadmitted aliens have constitutional rights with respect to their applications for admission. *See, e.g., Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958) (although physically present within this country's borders, unadmitted and excludable alien not "within the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 215 (1953) (inadmissible aliens are "treated as if stopped at the border" and as being merely "on the threshold of initial entry").

This Court concluded that, "As to such persons, the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Jean*, 727 F.2d at 967 (quoting *Nishimura Ekiu v. United States*, 142

U.S. 651, 660 (1892)) (collecting cases).⁹ The Eleventh Circuit's holding in this regard is settled law. Aliens "on the threshold of initial entry" have no more constitutional rights in connection with their applications for admission than would an alien physically located in another country. See *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (An alien on the threshold of entry "has no constitutional rights regarding his application [for admission], for the power to admit or exclude aliens is a sovereign prerogative."); *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953) (Bill of Rights a futile authority for applicant for admission); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned")¹⁰; *id.* at 600 (denial of removal hearing "raises no constitutional conflict if limited to 'excludable' aliens who," again by virtue of their status, "are not within the protection of the Fifth Amendment"); *Gisbert v. U.S. Attorney*

⁹ This Court has made clear, however, that "aliens can raise constitutional challenges to deprivations of liberty or property outside the context of entry or admission, when the plenary authority of the political branches is not implicated." *Jean*, 727 F.2d at 972. See also *Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987) ("outside the context of admission and exclusion procedures, excludable aliens do have due process rights.") (emphasis added).

¹⁰ The Supreme Court further stated,

[A]n alien who seeks admission to this country may not do so under any claim of right. . . . Such privilege is granted to an alien only upon such terms as the United States shall prescribe. It must be exercised in accordance with the procedure which the United States provides. . . . [I]t is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the government to exclude a given alien.

Knauff, 338 U.S. at 542.

General, 988 F.2d 1437, 1442 (5th Cir. 1993) (excludable aliens entitled only to those due process rights as are provided by law); *Lynch v. Cannatella*, 810 F.2d 1363, 1373 (5th Cir. 1987) ("'entry fiction' that excludable aliens are to be treated as if detained at the border . . . determines the aliens' rights with regard to immigration and deportation proceedings").

As for the specific question of whether unadmitted aliens may assert a right to asylum based on the Fifth Amendment's Due Process Clause, the Eleventh Circuit was explicit. "[E]xcludable aliens . . . have no constitutional rights with respect to their applications for . . . asylum" 727 F.2d at 984. Rejecting an argument that the Refugee Act created a constitutionally protected "liberty" or "property" interest in asylum, it found that it is "clear that the Refugee Act does not create an entitlement to asylum" but only provides that asylum may be granted in the Attorney General's discretion. *Id.* Therefore, the Eleventh Circuit concluded, "[t]he grant of asylum does not . . . create an interest protected by the due process clause." *Id.* at 981-82.⁹ Other circuits also have found that the INA's asylum provisions do not create a constitutionally protected liberty or property interest. *See, e.g., Garcia v. INS*, 7 F.3d 1320, 1326 (7th Cir. 1993); *Ramirez-*

⁹ In affirming the *en banc* decision in *Jean*, the Supreme Court stated that the Eleventh Circuit should not have reached constitutional issues because the issues on appeal could have been resolved on statutory and regulatory grounds. *Jean*, 472 U.S. at 854-55. Nevertheless, the Eleventh Circuit later found that "our *en banc* holding in *Jean* regarding the constitutional issue remains viable as the Supreme Court did not vacate the opinion but affirmed and remanded on alternative grounds." *Cuban American Bar Ass'n v. Christopher*, 43 F.3d 1412, 1428 n.20 (11th Cir. (1995)).

Osorio v. INS, 745 F.2d 937, 942-43 (5th Cir. 1984).

Appellants base their first count on an assertion that Elian's parole entitles him to the constitutional protections afforded "all persons within the territorial jurisdiction of the United States." Complaint at ¶ 36. The Eleventh Circuit in *Jean* expressly rejected this contention, saying, "The Supreme Court has consistently rejected claims that the parole or detention of an excludable alien has an effect on his status under the law." 727 F.2d at 969 (citing *Leng May Ma*, 357 U.S. at 188; *Mezei*, 345 U.S. at 215; *Kaplan*, 267 U.S. 228, 230-31 (1925); *United States v. Ju Toy*, 198 U.S. 253, 263 (1905); *Nishimura Ekiu*, 142 U.S. at 661; *Ahrens v. Rojas*, 292 F.2d 406, 410-11 (5th Cir. 1961)). "The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status." *Id.* (quoting *Leng May Ma*, 357 U.S. at 190).⁹ Clearly, Lazaro Gonzalez' motion for an injunction pending appeal prohibiting enforcement of the INS parole revocation and reparole of Elian into his father's care — as is expressly provided for in regulations governing the release of alien juveniles — lacks the required "strong showing" as to Count 1.

⁹ In any event, even if the Due Process Clause were applicable, the Attorney General has afforded more than whatever process could be required with respect to the application for asylum or admission. The Commissioner of the INS did not arbitrarily deny or extinguish any interest or ability to submit such applications. She gave effect to Juan Gonzalez' decision to withdraw those applications only after providing for two interviews of him in Cuba and after affording Lazaro Gonzalez an opportunity to be heard, and she personally met with Juan Gonzalez on April 7 and Lazaro Gonzalez and his family on April 12.

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Nor has Lazaro made the required showing to obtain an injunction based on Counts 2 through 5. At issue in these counts is the question of whether the Commissioner and Attorney General reasonably construed Section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, not to require a full adjudication of an asylum application filed on behalf of a six-year-old child by a distant relative where (1) the child's own father (whom the Commissioner has found to enjoy a close and loving relationship with his son (*see* Exhibit One at 4, 5-6, 7)) has decided not to file such an application, *and* (2) the Commissioner and the Attorney General have not found an objective basis for asylum in any event after reviewing the applications and other evidence submitted. *Id.* at 10-11. Elian has a right under the statute or regulations to apply for asylum.

Lazaro Gonzalez, of course, disputes the district court's reliance on *Chevron* deference, arguing that the language of 8 U.S.C. § 1158(a) is plain and affords Elian the right to apply for asylum. But Lazaro continues to miss the point. Section 1158(a)(1) provides that "any alien" in the United States may apply for asylum. But the question here is not whether Elian *may* apply for asylum: the INS has always acknowledged that he may. *See* Defendant's Motion to Dismiss, Administrative Record and Exhibits at 16

(agreed decision recognizing that "asylum statute clearly invests a child with the right to seek asylum"). Rather, the question is whether Elian *has applied* for asylum: the INS

concluded that because of his tender years he cannot do so for himself, and that the person

through whom Elian could apply — his father — expressly declined to do so. The INS apprised Lazaro Gonzalez of that conclusion before Lazaro filed his lawsuit. *See, e.g.,* Administrative Record and Exhibits at 4-5 (Jan. 5, 2000, INS letter to Lazaro Gonzalez, refusing to accept Lazaro's asylum applications for Elian because "Elian does not have the capacity to apply for asylum without the assistance of his parent," and Elian's father "has repeatedly informed us of his decision not to assert Elian's right to apply for asylum"); *id.* at 6 (Jan. 5, 2000, INS letter to Lazaro's attorneys) (same); *id.* at 15 (agency decision analyzing, "[i]s Elian truly seeking asylum?"). Lazaro's plain meaning arguments overlook this point. As the INS decision put it, "While the asylum statute clearly invests a child with the right to seek asylum, the question of capacity to assert that right is unresolved." *Id.* at 16.

Finding that the capacity of a six-year-old to apply for asylum is a question of law, the district court upheld the INS conclusion that Elian lacked sufficient capacity. Section 1103(a)(1) of Title 8 supports this because there Congress directed that the Attorney General's determinations and rulings on all questions of law "shall be controlling." And Section 1158 of Title 8 supports this, for, as the district court aptly observed, to accept Lazaro's argument that all children have a right to apply for asylum independent of what their parents may want for them "requires the Attorney General to adjudicate asylum

applications from all children — no matter how young in age, no matter who claims to

speak for them, and no matter what their mental condition." *Reno v. Gonzalez*, 86 F.

Supp. 2d at 1192. Lazaro's brief to the Eleventh Circuit challenges the Court's conclusion regarding the competency issue, insisting that "if a young child is medically qualified to speak . . . his words should at least be considered." Appellant's Opening Brief at 27. But as the Seventh Circuit observed in *Polovchak v. Meese*, 774 F.2d 731, 736 (7th Cir. 1985), where the INS had granted asylum to a twelve-year-old Soviet boy against his parents' wishes, Polovchak "was presumably near the lower end of the age range in which a minor may be mature enough to assert certain individual rights that equal or override those of his parents." Polovchak was twelve. Elian is half that age.

Because the Commissioner, ratified by the Attorney General, permissibly concluded that Elian lacks the legal capacity to apply for asylum on his own, the question then is which of two adults -- his father, who has raised him for six years in a close and loving relationship and who is his sole surviving parent with full legal authority to act on his behalf -- or a distant relative in whose care Elian was only temporarily paroled, pending completion of immigration matters and reunion with his father. The decision of the Commissioner and the Attorney General that the parent properly speaks for the child in these circumstances is consistent with longstanding legal principles and practices in this country and is firmly grounded in the Constitution, as the Supreme Court recognized in Reno v. Flores. The sacred bond between parent and child is also a universally shared principle in the international community. Respecting that bond here also furthers the family-reunification principles of the immigration laws and international agreements,

including those governing refugees. And, finally, adherence to that rule of law in this case is of central importance to the United States in the world community, in order to ensure that other nations to which U.S. children travel will return U.S. children to this country promptly under comparable circumstances. *See the 1980 Hague Convention on Civil Aspects of International Child Abduction.*

To the extent that Lazaro's motion for injunctive relief and Eleventh Circuit brief go beyond questions of law to other aspects of the agency decision, he must make a strong showing that the decision is not facially legitimate and bona fide or at most that it is arbitrary and capricious. He claims the INS did not assess Elian's interests or whether those interests may diverge from his father's. Opening Brief at 25-34. But the agency's decision clearly reflects that it considered the question of whether Elian's interests diverge from his father's. *See* Administrative Record and Exhibits at 7 ("The INS must determine whether the father has an interest that conflicts with his ability to represent the immigration interests of the child. Specifically, the INS must consider whether the possibility of coercion precludes Elian's father from making his true intentions known and speaking on behalf of Elian and whether Elian's asylum application represents a divergence of interests between the father and child"). The INS reasoning on that issue satisfies both the *Kleindienst* and the APA standard.

Moreover, the Commissioner and the Attorney General did not rest their decisions solely on Juan Gonzalez's decision not to file an asylum claim on behalf of Elian. Before

giving effect to that decision, the Commissioner and the Attorney General specifically considered whether, notwithstanding Juan Gonzalez's decision not to file an asylum application on Elian's behalf, there nevertheless was an objective basis for such an asylum claim. After reviewing the applications and other information submitted by Lazaro Gonzalez, they concluded that there was not. *See* Administrative Record at 10-11. In taking that approach, the Commissioner relied on the practice in analogous situations where an accompanied minor arrives in the United States. *Id.* at 8-11.

In addition, through its investigation and two interviews of Juan Gonzalez, the INS developed a significant administrative record demonstrating that Juan Gonzalez had a long-standing, affectionate, parental relationship with Elian throughout the boy's life. *See* Defendant's Motion to Dismiss, Administrative Record and Exhibits at 48-55, 72-107, 118-99, 228-43. Juan Gonzalez has been an involved and caring father whether it came to parental participation in a child's education and activities (*Id.* at 72-107); his medical treatment and care — Juan Gonzalez was the listed parental point of contact in Elian's hospital records (*Id.*); or whether it involved the simpler and happier activities like teaching a boy to swim, ride a bike, do karate, or get a haircut (*Id.* at 51). Beyond the fact of his parents' divorce and the problems attendant on that for any family, Elian enjoyed a happily normal life in the nurturing bosom of his Cuban family. This record further supported the conclusions by the Commissioner and the Attorney General that Juan Gonzalez is a proper representative of Elian in immigration matters.

The implementation of Immigration and Nationality Act Section 208 by the Commissioner in these unusual circumstances is fully consistent with the statutory text and plainly satisfies both the Kleindienst and APA standards. As we have said, the fundamental question on this appeal is not whether Elian can apply for asylum, but whether he has done so. The Commissioner concluded that a juvenile of such tender years as Elian lacks the legal capacity to apply for asylum. The question then, in determining whether Elian has filed an application for asylum, is which of two adults speaks for Elian -- his father, or a far more distant relative. The decision of the Commissioner and the Attorney General that Elian's father speaks for him, and that therefore Elian should not be regarded as having filed an asylum application, was consistent with background principles governing the parent-child relationship -- principles that in this country are rooted in the Constitution as well as universally accepted norms. Section 208(b)(1) of the Immigration and Nationality Act, 8 U.S.C. 1158(b)(1), specifically provides that the Attorney General "may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General." Here, the Commissioner, affirmed by the Attorney General, adopted the reasonable "requirement" that when an asylum application is sought to be submitted on behalf of a minor of tender years, who lacks the legal capacity to file an application on his own behalf, the application must be filed by the person who lawfully and properly speaks for the child and that, in the present circumstances, that person is Elian's father.

Furthermore, Section 208(d)(1) provides for the Attorney General to establish a procedure for the consideration of asylum applications that are filed under subsection (a). Even if Lazaro Gonzalez were correct that the applications he submitted on behalf of Elian should in some sense be deemed to have been "filed," the Commissioner and the Attorney General adopted a sensible and permissible procedure for "consideration" of those applications. As stated above, the Commissioner provided for two interviews of Juan Gonzalez in Cuba and one of Lazaro Gonzalez in Miami, and the Commissioner also considered the allegations made in the applications themselves as well as numerous declarations and other materials that were submitted. The Commissioner also drew from practices in analogous circumstances in fashioning her approach to considering the applications that had been submitted in Elian's behalf by someone other than his father. Those procedures, involving full and repeated consideration by the Commissioner and the Attorney General of the United States, were far more than ample as a basis for concluding that the applications Lazaro Gonzalez sought to file against the wishes of Elian's father would not be regarded as having been filed by Elian and did not in any event furnish an objective basis for asylum independent of his father's wishes. Section 208(d)(7) of the Immigration and Nationality Act provides that nothing in subsection (d) creates any procedural or substantive right that is legally enforceable against the United States or any of its officers. Section 208(d)(7) thereby bars judicial review of the adoption or implementation of procedures by the Attorney General for the consideration of asylum

applications in these circumstances. But to the extent judicial review is available, the Attorney General's approach plainly satisfies Kleindienst and the APA.

Finally, relying on *Johns v. INS*, 624 F.2d 522 (5th Cir. 1980), Lazaro seeks reversal of the district court's decision because the Court did not appoint a guardian ad litem. Opening Brief at 53-55. He has not made the required "strong showing" here either. *Johns* did not require the appointment of a guardian ad litem for Elian. The analysis of the guardian ad litem issue in *Johns* rested on application of the Fifth Amendment Due Process Clause, a constitutional protection, as the district court recognized in its analysis of Count 1, that does not apply here on account of Elian's status as an unadmitted alien. 86 F. Supp.2d at 1187. In any event, the district court recognized Lazaro as Elian's "next friend." 86 F. Supp. 2d at 1186. Whatever the precise differences were between a next friend and a guardian ad litem before Congress adopted Rule 17(c), the distinction has been eliminated.¹⁹ See Wright & Miller, *Federal Practice and Procedure* § 1572; see also Fed. R. Civ. P. 17(c) (infant may sue by next friend or by a guardian ad litem).

C. THE BALANCE OF EQUITIES WEIGHS HEAVILY AGAINST AN INJUNCTION

¹⁹ If Lazaro's complaint is that the district court did not appoint a guardian with expansive powers as an advisor, such an appointment would have exceeded Rule 17(c)'s authority, and would have circumvented legal restrictions on the proper use of the Court's review of the Attorney General's decisions in this area. See Defendants' Motion To Dismiss at 67-80; Defendants' Concise Summary Of Position On Pending Motions And Review Of Administrative Record at 1-3.

(1) The Equities of Juan Gonzalez and Elian in Prompt Reunification Far Outweigh Those of Lazaro Gonzalez in Preventing Reunification

In assessing the balance of equities in this case, it is essential to recognize that this is not a suit brought by Elian, who is a six-year-old child lacking the legal capacity to sue. Rather, it is, fundamentally, a suit arising out of a disagreement between two adults over who should speak for and have custody of Elian. Specifically, it is a suit by Lazaro Gonzalez — who has had Elian in his care since November only because the INS temporarily paroled Elian into his care under federal law during the pendency of immigration proceedings — that seeks to keep Elian with Lazaro Gonzalez in the United States against the express wishes of the boy's father and against the express determination of the Commissioner and the Attorney General (sustained by the district court) that Elian's father properly speaks for him in immigration matters. Although we recognize the affection for and attachment to Elian that Lazaro and his family feel, that affection and attachment do not constitute equities that can outweigh the constitutionally and historically protected interests of Juan Gonzalez in being reunited with his son and returning with him to their home among extended family and friends.

Furthermore, the interest in reuniting father and son, and the equities weighing heavily in favor of allowing the Attorney General to bring it about in accordance with her considered judgment, are not Juan's alone. The respect for the special privileges and responsibilities of parenthood under our constitutional heritage derive as well from the recognition that children benefit from the special bond, nurturing, guidance, and learning

that they experience with their parents from the moment of birth. It is a fundamental premise of society that the entrusting of children to the care of their parents will result in the most fitting course of their development and decisions about their lives, even if others might disagree with a parent's choices. In this case, Elian's father and extended family in Cuba raised him for the first six years of his life. The relief Lazaro Gonzalez seeks would deprive Elian of the most basic opportunity to experience that relationship with his father and extended family once again. that is decidedly an equity weighing strongly in favor of immediate effectuation of the Attorney General's decision that Elian should be reunited with his father.

Finally, it is essential to the freedom and autonomy of both parent and child that society honor their shared relationship and sacred bond. the very foundation of society in turn rests on those basic relationships and a broadly shared affirmation of their importance. Respect for the bond between parent and child therefore is still another equity weighing against an injunction barring effectuation of the Attorney General's decision.

(2) Elian Will Be Harmed If Reunification Is Delayed

The district court, in fact, trenchantly noted that "Even this well-intended litigation has the capacity to bring about unintended harm." *Gonzalez*, 2000 WL 289604, at *30.

The district court's observations respecting the Attorney General's clearly articulated views on the matter of whether Elian should return home, [and] the reality that each

passing day is another day lost between Juan Gonzalez and his son" (*id.*) go to the heart of this question. Since November 22, 1999, over 140 days have been lost between Elian and Juan Gonzalez. It is time to staunch that loss.

Elian will suffer irreparable harm if the Court grants an injunction pending appeal. Dr. Paulina Kernberg, who together with Dr. Jerry M. Weiner and Dr. Lourdes Rigual-Lynch, interviewed Juan Gonzalez and his wife, as well as Lazaro Gonzalez (on April 9 and April 10, 2000, respectively), advised the INS Commissioner Meissner concerning the "impact of a continued delay in the transfer of Elian Gonzalez into the custody of his father, Juan Gonzalez." See Exhibit Five, Declaration of Dr. Paulina Kernberg ; concurrences of Dr. Jerry M. Weiner, Exhibit Six, and Dr. Lourdes Rigual-Lynch, Exhibit Seven. It was Dr. Kernberg's opinion that "it is crucial for Elian to clear about who has authority for him, namely his father." She continued, "Not to return to his father as soon as possible may make him feel that he has lost not only one parent, but two parents." See Exhibit Three, page 2. She stated, "It is my opinion that the immediate, definitive, and unambiguous transfer of Elian into the custody of his father, Juan Gonzalez, preferably in a neutral setting, would make an essential contribution to Elian's mental and emotional well-being. This is especially so given that Elian is aware that his father has been in the United States for nearly one week . . . Any further delay in reuniting Elian with his father or any action that would create a sense of ambiguity or uncertainty as to who will be responsible for Elian's care and well-being could be expected to cause

increasing stress and psychological harm to Elian." *Id.* at page 3. She opines that "a transfer in a neutral setting would be preferable," but "the most important consideration at this time is Elian's immediate and unambiguous reunion with his father." *Id.*

Finally, as Judge Bailey of the Florida family court so eloquently observed in her opinion dismissing Lazaro Gonzalez' state court action, the equities must take into account the broader social context and intense media scrutiny in which this young child finds himself during every day that his return to his father is delayed. *See In Re: Matter of Lazaro Gonzalez*, at 18-21. It is time for that delay to end.

This is not an appeal by Elian, but an appeal by Lazaro Gonzalez, who insists on vindicating his own asserted rights through full appeals and collateral attacks. All parents would be greatly upset by the prospect of a distant relative asserting rights on behalf of their child despite the parent's contrary desires and the considered judgment of the officials responsible for administering those laws by which their decisions must be given legal effect. Ultimately, the purpose of the injunction Lazaro Gonzalez seeks is to prevent the defendants from reuniting Elian with his father. The expert medical opinions obtained by the government clearly confirm that a definitive and unambiguous transfer of Elian's custody to his father works to Elian's benefit, not to his irreparable harm. Those same experts have opined that any actions taken to delay the reunion between Juan Gonzalez and Elian, particularly now that Juan Gonzalez is in the United States and Elian is aware of that fact, will signal continued conflict among the adults in Elian's life, and

will complicate the child's psychological situation. See Exhibits Five, Six, and Seven.

3. Lazaro Gonzalez Has Failed to Show That Appellees Will Not Suffer Substantial Harm From The Issuance of The Injunction

Lazaro Gonzalez has failed to show that the issuance of an injunction will not substantially harm appellees' interests. To the contrary, an injunction would harm appellees' interests at multiple levels: it would substantially interfere with appellee's ability to honor Juan Gonzalez' legitimate demand that his son Elian be immediately returned to him, and Elian's interests in being reunited with his father. Concomitantly, it harms Elian's psychological condition. See discussion above. It substantially interferes with the Attorney General's ability to implement the immigration parole regulations that expressly require that the parole of an unaccompanied minor be to the minor's parent if that parent is in the United States. See 8 C.F.R. §§ 212.5, 236.3(b)(1) (1999); *Reno v. Flores*, 507 U.S. 292, 310 (1993). In addition, an injunction would harm the INS' interest in adhering to the family reunification policy that is reflected throughout the Immigration and Nationality Act and its regulations. See Government's Administrative Record and Exhibits at 284 (Declaration of Michael D. Cronin, Acting INS Associate Commissioner for Programs). Moreover, an injunction would harm the INS' interest in being able to give effect to immigration decisions made by parents on their children's behalf. *Id.* Last fiscal year, INS inspectors inspected a total of 345,000,000

nonimmigrant aliens at our points of entry. *Id.* at 283. A large percentage of these aliens

were children, many them children of tender years like Elian. *Id.*

4. Lazaro Gonzalez Has Not Shown That The Injunction Will Serve The Public Interest

The United States would suffer substantial harm in its international standing in protecting parental rights in cases involving American children wrongfully removed from this country if the Attorney General were prevented from effecting her decision that Elian should be reunited with his father. *See Id.* at 286 (Declaration of Assistant Secretary of State for Consular Affairs Mary A. Ryan). It would disserve the public interest to undermine the principle that parents should decide what is best for their children. It would disserve the public interest to undermine the ability of immigration inspectors to look to parents or other responsible adults to make immigration decisions for minors. *Id.* at 283. And it would disserve the public interest to ignore accepted international practice in cases involving a sole surviving parent located in the United States, where we would expect a foreign country to return the child to the surviving American parent immediately. *Id.* at 287.

The admission of aliens is a sovereign power reserved to the political branches of the government. *Fong Yue Ting v. United States*, 149 U.S. 698, 707-11 (1893); *Jean v. Nelson*, 727 F.2d at 964. The immigration laws, regulations, and policies of the United States all entail consequences that may extend beyond a particular alien to touch upon such vital government interests as international relations. *See INS v. Aguirre-Aguirre*, 119 S. Ct. at 1449 ("in the immigration context . . . officials 'exercise especially sensitive political functions that implicate questions of foreign relations.'") (quoting *INS v. Abudu*,

485 U.S. 94, 110 (1988)). The interests of this Nation and of the international community thus are firmly aligned with those of Juan Gonzalez and Elian in being reunited with one another.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for an injunction pending appeal or in the alternative for a stay of administrative action pending appeal, because appellant has not demonstrated a substantial likelihood of success on the narrow asylum issue that is presented on appeal and the balance of equities weighs heavily against that extraordinary relief.

If the Court nevertheless concludes that some assurance that Elian will not leave the country while the appeal is pending is necessary, the appellees consent to the entry by this Court of an injunction requiring the appellees to issue a departure control order barring the departure of Elian Gonzalez from the United States pending the issuance of a decision by this Court on the instant appeal, conditioned upon the Court also entering an order directing Lazaro Gonzalez to present Elian Gonzalez to the Immigration and Naturalization Service (INS), as directed by the INS, for transfer of care to Juan Gonzalez. The departure control order shall become effective upon the presentment of Elian Gonzalez to the INS by Lazaro Gonzalez, as directed by the INS. The departure control order that would be applicable in that event is attached .

THOMAS E. SCOTT
United States Attorney
Southern District of Florida

DEXTER E. LEE
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April 14, 2000

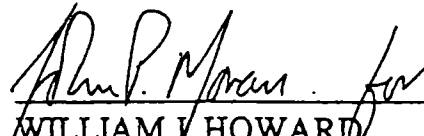
Respectfully submitted,

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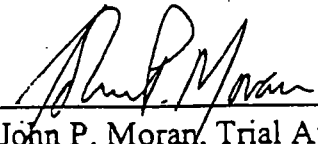
CERTIFICATE OF SERVICE

I certify that on this 14TH day of April 2000, I served a copy of APPELLEES' OPPOSITION TO APPELLANT'S EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL OR ALTERNATIVELY FOR STAY OF ADMINISTRATIVE ACTION upon plaintiffs and intervenor-applicant by facsimile transmission and first-class mail to the following:

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John P. Moran, Trial Attorney

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

The purpose of this letter is to state the views of the Department of Justice on pending legislation that would declare Elián González to be a naturalized citizen of the United States or, alternatively, to confer lawful permanent residence upon Elián González and/or certain of his relatives. We oppose these proposals.

Elián González is a six-year-old child who has lost his mother. He is too young to make legal decisions for himself. The INS's decision that Elián's father and sole surviving parent, Juan González, has the legal authority to speak for him in immigration matters is consistent with INS practice and with the legal principle that parents have the fundamental right to make decisions for their children, which includes speaking for them in matters of legal significance. This basic right emanates from the longstanding conviction of our experience and of our law that, as a general matter, no one is better situated than parents to protect their children, advance their welfare, and direct their upbringing. Parents have the presumptive authority to maintain custody of their children and to make significant decisions about how, where, and under what conditions their children will grow up. The fact that a child is temporarily out of a parent's care does not abridge this right.

The primacy of parental rights is a universal principle expressed in the domestic laws of many nations and is a central premise of international treaties regarding the care and treatment of children. Our disagreement with a parent's choices, or our dislike of the political values of his home country, does not weaken our commitment

to safeguard the bonds between parents and their children.

As you know, the INS's decision that Juan González has the legal authority to speak on behalf of his son in immigration matters was recently upheld by the U.S. District Court for the Southern District of Florida. In that regard, Juan González has made clear to U.S. Government officials in Cuba that he wants Elián to be returned to him in Cuba, that he desires to withdraw Elián's application for admission to the United States, and that he does not want to pursue immigration benefits of any kind. The proposed private relief bills were not requested -- nor are they supported -- by any of their proposed beneficiaries.

We address first the Elián González naturalization legislation. In view of the facts stated above, a grant of citizenship to Elián would constitute the involuntary naturalization of an individual. Conferring involuntary citizenship on a child who does not meet the statutory requirements for naturalization, and whose sole surviving parent does not request U.S. citizenship for his child, would be an unprecedented and, in our view, unwise use of Congress' power under Article I, section 8 of the U.S. Constitution to "establish a uniform rule of naturalization." The Department opposes enactment of the pending legislation.

In the past, private relief bills providing U.S. citizenship to individuals who did not meet the requirements for naturalization have been enacted from time-to-time, but such measures have been rare. They have been particularly unusual since the 1960's, when several changes to the Immigration and Nationality Act led to dramatic reductions in the number of such bills. For example, a frequent purpose of private relief bills was to restore U.S. citizenship to individuals who had unknowingly expatriated themselves by such actions as voting in foreign elections; however, this equitable basis for relief was mooted by new requirements that expatriation can only occur as a result of a voluntary act of renunciation evidencing a specific intention to relinquish U.S. citizenship.

In general, this country does not use the precious privilege of U.S. citizenship for honorary or political ends, or waive generally applicable citizenship requirements in order to provide a private benefit. Policy G of the Rules of Procedure and Statement of Policy for Private Immigration Bills of the Subcommittee on Immigration and Claims of the Committee on the Judiciary of the U.S. House of Representatives accurately states our national policy with respect to private citizenship bills:

The Subcommittee will require that any bill expediting naturalization be accompanied by evidence indicating that such action would be in the national interest, as opposed to personal interest. There are few precedents for favorable action on bills waiving any naturalization requirements or granting posthumous or honorary citizenship. It is the Subcommittee's intent generally to view unfavorably legislation of this type. More appropriate mechanisms for rewarding individuals may be in the form of medals, awards, or ceremonies.

We are unaware of any precedent for legislatively conferring the rights and obligations of citizenship upon a specific living individual who has not sought that benefit or who, as in this case, actually resists it. The House Immigration Subcommittee's rules recognize how important it is that the beneficiaries of private relief bills actively seek the benefit by requiring, in Rule of Procedure 1(i), that the author of the bill submit "[a] signed statement by each beneficiary, or the beneficiary's guardian, that he or she desires the relief sought by the bill."

Requiring voluntary assent to private immigration relief is consistent with the naturalization provisions of the Immigration and Nationality Act (INA). Although, by definition, private immigration bills create exceptions to the uniform rules applicable to other individuals, the greater a private bill's departure from the normal requirements of the law, the more questionable it is as a sound and supportable action. Section 337 of the INA requires persons who have applied for naturalization to take the oath of allegiance. By taking this oath, new citizens publicly undertake the obligations of U.S. citizenship, including the obligation to bear allegiance to the Constitution and laws of the United States, to renounce allegiance to any other nation, and to bear arms or perform other national service when required by law. The oath acts as the new citizen's voluntary assumption of these obligations.

Under the INA, the acquisition of U.S. citizenship by a child who is not born a U.S. citizen depends upon the actions of his or her parents. The child may acquire U.S. citizenship derivatively through the naturalization of his or her parent, or a U.S. citizen parent may apply for naturalization on behalf of his or her child born abroad. In neither case may an alien child become a U.S. citizen without his or her parent's active involvement. Naturalizing a child without the consent of the child's only parent would be an extreme departure from current law, and one which greatly exceeds the type of waiver typical of private immigration relief legislation. An individual's citizenship is a fundamental attribute of his or her identity, and to confer it on a child

without the parent's consent would fundamentally interfere in the relationship between parent and child.

Elián does not meet the normal requirements for either adult or child naturalization, with the exception of that of good moral character. He has suffered a terrible loss under unimaginable circumstances. The best thing this nation can do is return Elián to a loving parent as soon as possible. A grant of involuntary citizenship to this child, contrary to the wishes of his sole surviving parent and with a view toward preventing -- or even just further delaying -- the child's return to that parent in Cuba, is not the proper course of action.

With respect to the lawful permanent resident legislation, although lawful permanent resident alien status does not change an individual's nationality, and does not involve the taking of an oath or an assumption of obligations to the same degree as does citizenship, a grant of that status to an alien who does not request it is still objectionable. We believe that the lawful permanent residence legislation would similarly be a most unwise use of Congressional authority, for the same reasons of voluntariness discussed above with respect to citizenship. House Immigration Subcommittee Rule of Procedure 1(i), cited above, does not distinguish between naturalization and other forms of immigration relief when it requires a written statement from the beneficiary of a private bill that he or she desires the relief. In our view, the policy concerns that underlie this rule of voluntariness are similar in either case and counsel strongly against enactment of the pending legislation.

In addition, legislation involuntarily conferring citizenship upon an individual child whose sole surviving parent objects to it raises novel questions regarding substantive due process limitations upon the authority of Congress to legislate in the area of immigration and naturalization. Courts generally recognize Congress's plenary power in this area and defer to its policy choices on such matters. This situation, however, is unprecedented. Although, as a result, no court has ever had reason to address the question, the political branches have, on various occasions and in various contexts, taken positions that suggest that involuntarily conferring or continuing citizenship may implicate fundamental rights. See, e.g., Expatriation Act of 1868, 15 Stat. 223, R.S. § 1999 (note to 8 U.S.C. § 1481) (complete denial of the right to renounce U.S. citizenship is "inconsistent with the fundamental principles of the Republic."); Right of Expatriation, 8 U.S. Op. Atty. Gen. 139, 166 (Oct. 31, 1856) (doctrine of absolute and perpetual allegiance and denial of any right of emigration "is inadmissible in the United States."); 8 Whitman, Digest of International Law 32 (1967) ("The Government of the United States would refuse to recognize and would,

in fact, object to any attempt on the part of a foreign state to impose its citizenship, with attendant rights and obligations, upon American citizens without their consent, save in well recognized circumstances which have been traditionally recognized as exceptions to the general rule.”). We note, moreover, that involuntarily conferring U.S. citizenship upon a citizen of Cuba raises questions of particular complexity regarding the possible effect of such a statute as applied, given statutory limitations and penalties that restrict the activities of U.S. citizens and residents vis-a-vis Cuba. See, e.g., 22 U.S.C. § 6021 et seq.; 31 C.F.R. Part 515.

* * * * *

We believe that enactment of any of the pending Elián González private relief legislation would be inconsistent with longstanding United States immigration policy, would send an unfortunate and highly inaccurate message to the rest of the world regarding our willingness, or lack thereof, to adhere to widely-shared international legal principles, and would set a highly undesirable precedent. For these reasons, and as noted previously, we strongly oppose enactment of any of the pending González private relief legislation.

Thank you for considering our views in this matter. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration’s program to the presentation of this views letter.

Sincerely,

Robert Raben
Assistant Attorney General

TALKING POINTS FOR ATTORNEY GENERAL JANET RENO

Good afternoon.

Earlier today, I met with Elian's father, Juan Miguel Gonzalez -- a man who expressed in no uncertain terms his sincere desire to have his son returned to him. It was a heartfelt plea, and one most people can understand and appreciate. He obviously loves Elian very much.

The meeting was with a very small group of people. Mr. Gonzalez was joined by his wife and their 6 month old baby boy. They were accompanied by his lawyer, Gregory Craig. I, in turn, was joined by INS Commissioner Doris Meissner, Deputy Attorney General Eric Holder, a member of his staff, and an official U.S. government translator. There were no Cuban officials present. I would not have had it any other way.

During the hour-long meeting, Mr. Gonzalea and I were able to have a very open and honest discussion. Throughout, he repeated what he has stated time and time again -- he wants his son back -- and he added that he wants the people of the United States to help him in that process.

The story of Elian is a story of which most Americans are fully aware.

Four months ago, Elian Gonzalez came to our shores after his mother perished at sea. While his immigration status was being resolved, he was placed in the temporary care of his great uncle who lives in Miami. As with any similar arrangement, Elian's temporary care was conditioned on the understanding that the care-providers will abide by the instructions of the INS.

In December, INS officials -- on two different occasions -- interviewed Mr. Gonzalez in Cuba. There again, no Cuban officials were present. Both times, Mr. Gonzalez asserted his plea to have his child returned to him -- and that he had no desire to live in the United States. Today he noted that some people think his true desire is to live permanently in our country -- to which he said -- quote -- "my desire is exactly the opposite."

I wholeheartedly reject Cuba's system of government.

Mr. Gonzalez and I do not share the same political beliefs. But it is not our place to punish a father for his choice of where he wants to raise his child. Indeed, if we start to judge parents on the basis of their political beliefs, and if we start judging who should be parents, we will change the concept of family for the rest of time.

After meeting with Mr. Gonzalez in Cuba, INS officials also met with relatives in Miami. We wanted to give the relatives an opportunity to provide any information that could be relevant to INS' decision.

In January, after the interviews, the INS Commissioner announced her decision that, not only did the father speak for the son, but that the father's wishes were indeed to have his son by his side.

From that moment, nothing prevented the United States government from immediately taking action to reunite the two. No court order. No stay. No injunction. But instead of moving hastily, we gave the relatives in Miami a chance to challenge our decision in federal court. In short order, a federal court sustained our judgement, stating that "each passing day is another day lost

between Juan Gonzalez and his son.”

Thereafter, we again remained willing to postpone the reunion because we wanted to give the relatives every chance to argue their case in the federal appellate court. All we asked for in return was a pledge that -- at the end of the day -- when the appeals process had run its course, the Miami relatives would turn over Elian to his father voluntarily. They were unwilling to provide us with that assurance.

For the past several weeks we have engaged in discussions with the relatives to try to come to a cooperative arrangement for reuniting Elian with his father. But instead of discussing how Elian should be reunited, the attorneys for the relatives continued to demand that we re-visit the issue of whether Elian should be reunited. That is not what the law provides.

It has been nearly twelve weeks since the Commissioner's decision, and four months since Elian was found at sea. It is time for this little boy, who has been through so much, to move on with his life by his father's side.

As Attorney General, I make many difficult decisions every day. But this case has troubled me more than most. Not because the law is unclear. The law is very clear. And not because it's unclear as to what is right. Clearly, a child who has lost his mother belongs with his sole surviving parent, especially one with whom the child has shared a close and continuous relationship since birth.

Instead, this case is troubling for me because I understand the Cuban exile community and I respect the deep-seated beliefs which

they hold so dear. Cuba is a repressive society. A society governed by a dictator from whom thousands have fled. Over the past four decades, Cubans have come to the United States to seek freedom and a better way of life. As a result, Miami -- like many other cities -- has prospered and grown to the great city it is today. It is a city I call home. It is a community I love.

I know most people in the Cuban-American community who differ with my decision have the best interest of Elian at heart. Many of them risked their lives to come to this country. They want Elian to share in the wealth of opportunity that life in America affords. But in the end, I believe they also understand that this is a nation of laws by which all must abide.

Our law -- and common decency -- recognize that there is a sacred bond between a father and his son. It is a view that I know

they share with me -- and a principle I intend to uphold.

Yesterday, Mr. Gonzalez came to our country to be reunited with his son. And because the relatives remain unwilling to cooperate with the reunification, we intend today to move the process forward.

Later today, we will inform the relatives that early next week we will give them instructions on when and where Elian is to be turned over to his father. *At the time of that physical transfer, the INS will formally transfer parole care to the father, as well.*

Today's letter will also ask the relatives to meet on Monday with two renowned psychiatrists and one renowned psychologist.

Patten, Wendy L. (MULTI)

From: Hollis, Caryn C. (INTERAM)
Sent: Tuesday, April 04, 2000 2:54 PM
To: Patten, Wendy L. (MULTI)
Subject: This is your life!!! [UNCLASSIFIED]

^BC-Cuban Boy-Chronology,0877

^Dates in custody battle over Elian Gonzalez

^By The Associated Press=

Dates in the Elian Gonzalez case.

1999:

Nov. 22 Elian and 13 others leave Cardenas, Cuba, for United States aboard 16-foot motor boat.

Nov. 23 Boat capsizes.

Nov. 25 Ariane Horta and Nivaldo Fernandez come ashore at Key Biscayne, Fla. Elian rescued short time later about three miles from Fort Lauderdale and taken to hospital. Elian's mother is among 11 people killed.

Nov. 26 Elian released from hospital. Immigration and Naturalization Service releases him to great-uncle Lazaro Gonzalez until agency can determine immigration status.

Nov. 27 Juan Miguel Gonzalez, Elian's father, demands his son's return to Cuba.

Dec. 8 Robert Wallis, INS director in Miami, writes father that agency needed to meet with him to obtain proof he was Elian's father.

Dec. 10 Lazaro Gonzalez applies for asylum for Elian.

Dec. 13 INS officer with Juan Miguel Gonzalez at his home in Cardenas.

Dec. 20 Lazaro Gonzalez and attorneys meet with INS to respond to father's assertion that only he can speak for Elian.

Dec. 31 INS interviews Juan Miguel Gonzalez in Havana.

2000:

Jan. 3 National Council of Churches officials meet with father and promise to press U.S. for Elian's return to Cuba.

Jan. 5 INS Commissioner Doris Meissner sends letter to Juan Miguel Gonzalez, Lazaro Gonzalez that Elian "belongs with his father" and must be returned to Cuba by Jan. 14. Attorneys for Florida relatives ask Attorney General Janet Reno to reconsider.

Jan. 6 INS sends letter to Lazaro Gonzalez's attorneys indicating asylum applications for Elian were being returned per wishes of boy's father.

Jan. 6 Hundreds of Cuban-Americans block intersections in Miami and cut off access to Port of Miami in protest of decision.

Jan. 7 Lazaro Gonzalez files petition for temporary custody in state court. Elian is subpoenaed to appear before a committee of the U.S. House.

Jan. 10 State court sets March 6 hearing on petition.

Jan. 12 Reno upholds father's right to custody of Elian.

Jan. 19 Lazaro Gonzalez files federal lawsuit to challenge INS ruling.

Jan. 21 Elian's grandmothers arrive in New York City from Cuba.

Jan. 22 Grandmothers meet with Reno to appeal for Elian's return to Cuba.

Jan. 24 Senate Majority Leader Trent Lott and group of Florida lawmakers begin attempts to give citizenship to Elian without father's consent.

Jan. 26 Grandmothers meet Elian in Miami.

Jan. 27 Nun who was host of Elian's meeting with grandmothers, originally neutral, says Elian should stay in United States.

Jan. 28 U.S. asks judge to dismiss relatives' federal lawsuit.

Feb. 4 Father asks Reno to return boy to Cuba and says in meantime Elian should be moved to home of another relative in Miami.

Feb. 4 Lazaro Gonzalez files complaint with police over meeting with grandmothers, citing a report from one of the grandmother on Cuban

television that she playfully bit his tongue and unzipped his pants during their reunion.

Feb. 10 Justice Department says it is reviewing whether alcohol-related driving violations or other actions by Miami relatives warrant moving him to temporary custodian.

Feb. 14 Lawyers for Miami relatives argue that INS can't send Elian back to Cuba without asylum hearing; ask U.S. District Judge William Hoeveler to deny federal motion to dismiss lawsuit.

Feb. 18 Reno visits Miami, refuses to meet with Elian or his relatives. INS refuses father's request to move Elian to another relative.

Feb. 22 U.S. District Judge K. Michael Moore gets case after Hoeveler suffers mild stroke.

March 3 Government lawyers ask Moore to dismiss lawsuit.

March 9 Moore hears arguments on whether to interfere with INS decision to send Elian back to Cuba.

March 21 Moore dismisses political asylum lawsuit.

March 23 Reno says Elian will be returned in an orderly, fair and prompt manner.

March 25 Cuban President Fidel Castro says Miami relatives and their anti-Communist backers might kill Elian or abduct him instead of returning him to Cuba.

March 26 Miami-Dade mayor says he won't let police help federal officials remove Elian.

March 27-29 Elian describes in first TV interview how the boat sank. He says he doesn't believe his mother is dead, says he doesn't want to return to Cuba but also doesn't like Miami.

March 30 Breaking with the administration, Vice President Al Gore says he supports legislation to allow Elian to remain in U.S. while custody is resolved in family court.

April 3 State Department approves visas for Elian's father and other close relatives, along with a cousin, his pediatrician and kindergarten teacher. One hundred protesters outside the relatives' Little Havana home practice forming a human chain, vowing to stop at nothing to keep the boy from returning to Cuba.

April 4 Gore says father should be allowed to return son to Cuba "if the father says on free soil that he believes that the son should go back to Cuba with him." He says the boy's fate should be left to a family court, not to the INS.

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file - Elran

**NEWS**

Published Friday, May 12, 2000, in the Miami Herald

Excerpts of the appeals court discussion

What follows are excerpts from the exchange between the three-judge appellate court panel hearing the Elian Gonzalez case and attorneys arguing the case. The judges are James Edmondson, Charles Wilson and Joel Dubina. The lawyers are Kendall Coffey, for the Miami relatives; Edwin Kneedler, the deputy solicitor general of the United States, for the government; and Gregory Craig, for Elian's father, Juan Miguel Gonzalez. The transcript from which these excerpts were taken was prepared by Donna C. Keeble, the official court reporter.

Questions for Kendall Coffey

EDMONDSON: Mr. Coffey, come around and speak to us, please.

COFFEY: Good morning, your honor. This is Kendall Coffey for the appellant.

Few things can be more compelling in either law or life itself than the cause of a child, and before you this morning for the rights of a young boy to be protected from potentially serious harm of a police state.

The United States Congress has, without qualification, or reservation of any kind, established asylum laws with arms that enforce young children within their protection.

The mandatory will of the Congress and the mandatory statements of the regulations should have been enough for any responsible agency but, instead, the INS has done everything possible to avoid the required hearing.

WILSON: Mr. Coffey, is it your contention that the INS has absolutely no discretion whatsoever to determine whether an asylum application is properly submitted?

COFFEY: Your honor, it does not. . . .

WILSON: No discretion whatsoever?

COFFEY: None, your honor. In fact --

WILSON: Well, let me pose a hypothetical to you. . . . Let's say a teenage baby sitter for a 2-year-old alien child takes that child downtown to the INS office while his parents are at the movies and has him scribble his first name on an asylum application and the parents come running down an hour or two later screaming, "I speak for my child, this baby sitter doesn't speak for my child," you're telling me that the INS doesn't have any discretion whatsoever, they have to go through the time and the expense of having a formal asylum hearing?

COFFEY: Your honor, if the form is facially sufficient, on its face, their own regulations say that there shall be a hearing. . . .

WILSON: Can there be an application, though, if the child does not have the capacity to fill out the form?

COFFEY: Well, your honor, of course, that's not the case. We have a 6-year-old and I think the guidelines, the INS's own announced procedures, are very clear that a 6-year-old can seek asylum. . . .

DUBINA: It seems to me that the government in its brief has conceded that the district court got the statutory interpretation wrong and that any alien could include a child such as Elian. . . . The problem then is, though, and as they framed the issue in their brief, did he apply in this case. Do you agree that that is the way the issue ought to be framed?

COFFEY: That's the issue now, in their brief.

DUBINA: Do you agree that's the way the issue ought to be framed?

COFFEY: No, your honor, I don't. I think he did apply. . . .

WILSON: What if you have multiple applications on behalf of a child, someone has got to decide who speaks for the child, right?

COFFEY: That's right, your honor.

WILSON: Well, then who makes that decision?

COFFEY: You look at the guidelines. And what the guidelines say is that the child can speak for the child if the child is acting voluntarily. . . . This child, according to the evidence, was more than sufficiently competent to express his desire to invoke a chance to stay in this country.

WILSON: But I've reviewed this asylum application and I'm sure Elian Gonzalez is a very bright and intelligent 6-year-old but he didn't even have the ability to sign his last name on that asylum petition.

COFFEY: Your honor, many aliens, many aliens have to rely on adults, lawyers, Catholic services, a range of folks to help them with the process . . .

WILSON: I'm going to read one of the questions or one of the questions on a standard form asylum application. . . . One of the questions is, "Have you or any member of your family ever belonged to or been associated with any organization or groups in your home country such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organizations, ethnic group, human rights group or press or the media?"

You're telling me that a 6-year-old is competent to answer that?

COFFEY: Your honor, I don't think a 6-year-old can answer in detail all of the questions, but what the law says is that there is an age-appropriate process for 6-year-olds. . . .

WILSON: Well, I've read the answers, the answers on this asylum application, and they all appear to be written in the third person and reflect maybe a fear of persecution on behalf of someone else, like maybe the person who is submitting the asylum application on behalf of Elian Gonzalez. Doesn't it appear that this is really an expression of a fear of persecution on behalf of someone other than the petitioner himself?

COFFEY: Well, your honor, you can certainly have, in a sense, situations where

a child can be subjected to harm because of identification with family members . . . and here you have a child who was identified with a stepfather, a mother who gave her life to bring him to this country, as well as now the U.S. relatives, all of whose actions are crimes in Cuba . . .

WILSON: Well, the Supreme Court ruled . . . that an asylum seeker . . . must offer evidence of four things: Number One, that he has been a victim of persecution; secondly, that he holds a political opinion; thirdly, that his political opinion is known to his persecutors; and fourth, that the persecution has been or will be on account of his political opinion. And you're telling me that the INS does not have the discretion to take a look at this asylum application and determine that this 6-year-old is unable to meet those four prongs of the test?

COFFEY: Your honor, they can't do that. . . .

WILSON: So the INS's hands are tied? If a kidnapper brings in a 6-month-old child, they got to go through the time and the expense of an asylum hearing?

COFFEY: Your honor, I think that if a kidnapper comes in with a 6-month-old child --

WILSON: And a prior criminal record.

COFFEY: And a prior criminal record, then the INS officer can make . . . a determination that this is not the will of the child . . . But that is far from the case here.

WILSON: Well, there is some discretion on the part of the INS then?

COFFEY: Your honor, I guess what I would say is the issue is did this child seek asylum? . . . The evidence that we have before you is that this child did want to stay here. . . .

Questions for Edwin Kneedler

EDMONDSON: Mr. Kneedler, would you come up and speak on behalf of the government, please?

KNEEDLER: Thank you, your honor.

EDMONDSON: Let me call your attention to a couple of things that worry me.

KNEEDLER: Yes, sir.

EDMONDSON: Let's assume for the sake of argument, that the INS has considerable discretion about determining what is an application at all. And let's assume, for the sake of argument, that the INS has some discretion as to who may file on behalf of a 6-year-old child. . . . The first problem I have is this: . . . the adult who applied for Elian Gonzalez is not some stranger; he is a blood relative. . . . The parent, on the other hand, resided out of the country altogether. I have a question . . . about the idea that the INS can have a discretionary policy that where the sole natural parent is not within the jurisdiction of the United States himself, that he does not have the exclusive right to file, or that he does have. I guess your policy is, as I understand it, absent certain special circumstances, the sole surviving parent has the exclusive right to either apply or not apply.

The problem we're talking about [is] . . . in American courts, I think a wider variety of people can act as next of friend other than the natural parent, even if the natural parent is present. . . .

Here is what the other problem I have is: I worry about whether there is inherently a conflict of interest that is substantial where the child is within the jurisdiction of the United States and the sole parent is not only beyond the jurisdiction of the United States but is a resident in what I understand our State Department calls a communist totalitarian state. . . .

KNEEDLER: With respect to the first, on whether the parent who is outside the country . . . you look to the relationship of parent and child and you look to the relationship under the law of the domicile, or the law where the relationship arose. . . . I think both in U.S. law and in the international community the sacred bond between parent and child does not depend on where the parent or the child happens to be at any particular moment in time. . . .

It is true that people other than parents can be next friends when circumstances require but the sequence under the law and under practice is that the parent presumptively speaks for a young child in making life decisions.

EDMONDSON: Let me tell you what I think . . . that there are a wide variety of relations that may come into a court and claim to be next friend and can lawfully serve without even accounting for what the natural parent's wishes are. . . . OK. So let's talk about the conflict of interest.

KNEEDLER: I do not think that that . . . is not the sort of conflict of interest that would disqualify the parent from presumptively having a say. . . . Under our constitutional system, difficult choices as well as easy choices are vested in the parent.

DUBINA: You seem to concede in your brief that the district court erred in its interpretation of any alien. So then we get to the question of the capacity, did Elian have a capacity. . . . What did the INS base its decision on that Elian did not have the capacity to file a petition for asylum?

KNEEDLER: What it based its decision on is that Elian at age 6 was far below the range of age suggested in the Polavchak decision. . . . And then secondly . . . there has been no indication in the evidence that was submitted to her [INS Commissioner Doris Meissner] that Elian Gonzalez possessed or articulated . . . subjective fear of persecution on the grounds identified within the statute; and the third, that Elian Gonzalez was unable to swear or affirm to the truth of the contents of the application on which the asylum was sought.

DUBINA: If Elian's mother had survived this tragic journey, is there any doubt in your mind that her petition as well as her son's petition for asylum would have been granted by the INS?

KNEEDLER: If his mother had survived, it probably would not have been necessary to invoke the asylum process, because there is a special statute in the Cuban Adjustment Act and parole policies that build on that that would have allowed them to stay, because there, you would have had a parent who said, "I want to stay here." And the great majority of Cuban Americans who have come to this country and gotten protection under that general statute, not under the asylum statute. And, in fact, those that are interdicted, the great majority of them are found not to be refugees within the meaning of the Act and are returned.

WILSON: The appellant relies very heavily upon the fact that there are certain INS guidelines that are in effect that were not followed in this particular case.

KNEEDLER: Those guidelines . . . presuppose that there has been an application filed and they discuss what an asylum officer should do. . . . They do not speak to the antecedent question of whether there has been a valid asylum application filed. . . . They . . . do not speak to the situation of whether a minor child can apply for asylum over the objections of the parent.

Questions for Gregory Craig

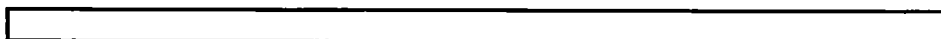
EDMONDSON: Mr. Craig, would you come up and speak to us, please?

CRAIG: Thank you, your honor . . .

DUBINA: I have but one question and then I'll leave you alone. . . . Will you explain to us why it took your client five months to leave Cuba, to come to the United States to see his son, after he learned that his son had survived?

CRAIG: His position throughout this was that if I was confident that I would be given my son the day I arrived in the United States, I would have been there immediately. . . . The ground rules of the battle had been set within two or three days after this poor boy's arrival and the politics had intruded into what should have been essentially a family affair, and it may well have deterred Juan Miguel's willingness to go. I begin with that little history that the signals that were coming down to Cuba from Miami were, "We're not going to let this boy go, no matter what."

The second thing to point out is that these are two very hostile bureaucracies and this is a simple man who lives in Cardenas. It is not an easy thing for any Cuban national to get a visa approved either by his government or the government of the United States. . . .



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file -
Eli

Not everyone qualifies.



NEWS

Posted at 4:15 p.m. EDT Thursday, April 27, 2000

Text of federal appeals court ruling in Elian Gonzalez case

The following is the text of the 11th U.S. Circuit Court of Appeals' order Thursday denying a request by Miami relatives of Elian Gonzalez for visits with him or for an outside guardian.

Before EDMONDSON, DUBINA and WILSON, Circuit Judges.

BY THE COURT:

Plaintiff, Elian Gonzalez, by his next friend, Lazaro Gonzalez, has filed an "emergency motion for enforcement or, alternatively, clarification of injunction pending appeal." Plaintiffs motion is DENIED in all respects, except that the part seeking clarification of the scope of our previously issued injunction is GRANTED to the extent of the clarification set out in the single-judge Order of 25 April 2000. We ratify that clarification. Briefly stated, we ORDER the Plaintiff not to go to any place in the United States that enjoys diplomatic immunity.

The Government represents that they have faithfully taken steps to see that Plaintiff does not pass out of the jurisdiction of this Court. We fully credit these representations. Our clarified injunction is intended to fortify the steps that the Government has taken. The clarification is a criticism of no one; we just want no misunderstandings. The entire injunction remains in force.

The Government has offered to supply the Court with biweekly reports from a psychiatrist, retained by the Government to monitor and examine Plaintiff, regarding Plaintiff's well-being, health, and condition. In addition, the Government represents that they are enlisting a social worker to monitor the care and condition of Plaintiff in his current custodial arrangement. The Government offers to provide the Court with biweekly reports from this social worker, once this arrangement has been confirmed. The Court accepts these offers and requires the Government to submit these reports.

MOTION GRANTED IN PART, and DENIED IN PART.

IT IS SO ORDERED.

Not everyone qualifies.



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SUTS - Cwba

4-28-00

Migration talks - no response to our 2 proposed
dates - so occupied w/ 677 Summit
+ Elian - so appear not so int'd in early talks
next regularly sched'd.
talks sh be in June - US ^{turn to} hold

Changes to call USUN + reserve dates
for June

Elian

① airspace over Wye

Marshall's reg'd airspace
order Wed 14:15 pm
1.5 mi radius up to 1500' above ground
in effect to further notice

std decision by Marshall's Svc for reasons of
security - not unusual.

(FAA confirms its SOP - ~~not~~ far less restrictive
than one we had over Camden Yards).

② Living Arrangements at Wye all run by Marshall's

INS contributing person power to Marshall's (so)
I was deputized - under Mar's direction

all decisions made by Marshals Svc →
Bob Finan — 307-9707
203-475-9561 (cell)

410-827-0580 — Wye Command Ctr
Mr. ~~Ed~~ George Walsh

③ Travel by CUBINT to Wye

State / DFM proposal on rules for Wye only:

- modify travel protocol
- all travel ^{to Wye} needs approval (regardless of 72 hr rule)
- no overnight stays
- 7am leave DC (or later) + leave Wye 7pm latest
- only vehicles w/ CUB dip plates
- 2 consular officers per day
- can seek ↑ # if valid reason for partic activity.

outgrowth of conv b/w Wendy S + James C.

not told Cubans yet — Braunkfeld will tell them
this aft. — will call them in.

④ Weekend actors / travel by Ethan + playmates can go wherever want only issue is if CUBINT tags along

Patten, Wendy L. (MULTI)

From: Patten, Wendy L. (MULTI)
Sent: Wednesday, April 26, 2000 3:55 PM
To: @NSA - Natl Security Advisor
Cc: @MULTILAT - Multilateral and Humanitarian Affairs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs; @INTERAM - Inter-American
Subject: revised update on Elian Gonzalez case [CONFIDENTIAL]

Please pass to Jim. cc: Mara. thanks.

From Wendy and Mary. Cleared by Interam.

Jim,

Here is an update on several issues related to Elian:

1. visits to Wye by CUBINT officials

Officials from the Cuban Interests Section must seek State's permission (through the Office of Foreign Missions) to travel beyond a 25 mile radius of D.C. if they intend to travel within 72 hours. If the request is made more than 72 hours in advance of the travel and does not involve meeting public officials, they need only notify State of their plans. We could impose further conditions on CUBINT travel even outside of 72 hours, but would need to inform them of the new restrictions via a dip note.

Yesterday, State granted permission to a group of 6-7 officials from the Cuban Interests Section to visit Wye this morning. (The visit has taken place, and involved setting up cots for the new arrivals coming from Cuba). Pending with State are two additional requests:

- a CUBINT official and his wife to leave DC today at 4pm and spend the night at Wye
- Head of CUBINT Remirez and three others from his staff to leave DC late this afternoon. They would not stay overnight.

We share Justice/INS concerns about visits by large groups of Cuban officials, and we oppose overnight visits. Today, we discussed with State and Justice/INS whether to limit numbers of officials who can visit Wye and ban overnight stays, but did not reach a conclusion.

State will be discussing the issue, as well as the two pending requests for travel today, with Pete Romero and Wendy Sherman. I asked them to ensure they consult with James Castello at Justice and with us before making any final decisions on the

DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006

By W NARA, Date 9/16/11
212-0371-f

pending requests, which, given the hour, will most likely be considered for travel to Wye tomorrow instead of today.

2. Activity in the 11th Circuit

Justice will file a brief at 3:30 today in the 11th Circuit. The brief will respond to several requests by the Miami family, filed yesterday, for court-imposed restrictions. The family first asked the 11th Circuit to construe its current injunction to bar Elian from entering diplomatic property within the United States. Justice will not oppose this, and has already imposed such a restriction. The family has also asked the court to (1) restrict meetings between Elian and Cuban officials, psychologists, and physicians; (2) grant access to Elian by the treating physician who saw him in Florida and by "his" lawyers from Miami; and (3) appoint an independent official to make decisions about with whom Elian should meet. Justice will oppose these requests on grounds that they are well outside of the court's authority based on the case before it, and are an inappropriate intrusion on parental authority.

3. FAA ban on flights over Wye

The FAA is considering, based on a request from the U.S. Marshals, ordering a ban on general aviation overflights at Wye in order to ensure privacy for Elian and his father. Such a ban would cover low-flying aircraft, such as demonstrators and press, but not commercial flights. Some at Justice and State have concerns about how such limitations would be perceived. We share these concerns, but also feel that a ban might have some value in demonstrating to the GOC our efforts to prevent the boy's overexposure to media and others, as we work to ensure that they will do the same should Elian return to Cuba. This issue remains under discussion.

4. arrival of teacher and cousin

The kindergarten teacher and Elian's 11-year-old cousin, who were previously issued visas, are arriving today. They will enter the U.S. on an Aeromexico flight from Mexico City to New York. They will spend tonight in DC and travel to Wye tomorrow. They have been issued visas valid for 3 months.

5. visas for schoolmates

USINT/Havana has just received visa requests for the 4 schoolmates and accompanying family members who will be approved for travel if they are otherwise eligible for visas. The visas will be valid for maximum two weeks. State will coordinate with INS to ensure that INS officials at the port of entry give them permission to visit for only two weeks. Current plans are for the group to arrive tomorrow at 2:30pm at Dulles on a charter flight.

Patten, Wendy L. (MULTI)

From: Crowley, Philip J. (PRESS)
Sent: Wednesday, April 26, 2000 1:12 PM
To: Patten, Wendy L. (MULTI)
Cc: @PRESS - Public Affairs; @MULTILAT - Multilateral and Humanitarian Affairs
Subject: RE: Elian press guidance [UNCLASSIFIED]

Happy to chat with you about this.

I think the bottom line here is that we should be in a mode of affirmatively producing guidance when our equities are in play, as opposed to when the story is political, as it has largely been since last Friday. But, to take yesterday as a point, both the issue of our dialogue with the Cuban Interest Section on assurances and the question of visas for the playmates are factual national security and diplomatic issues that we would need from you. Other information and perspective is always welcome, regarding technical points such as whether Cuban diplomats have access to the Gonzalez family, etc.

Outside that realm, WH Press is getting the political aspects from others.

On process, we talk to our State PA colleagues several times a day and ask questions of them, just as we ask questions of you -- largely to compare notes on whether we are saying the same things. Part of our role here is to ensure that State, WH, Defense and others in the national security realm are on the same page. Beyond that, I don't know specifically what you are referring to in getting questions from different places within WH Press.

Let me know what we need to fix and we'll fix it.

PJ

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

From: Patten, Wendy L. (MULTI)
Sent: Wednesday, April 26, 2000 10:38 AM
To: Crowley, Philip J. (PRESS)
Cc: @PRESS - Public Affairs; @MULTILAT - Multilateral and Humanitarian Affairs
Subject: Elian press guidance [UNCLASSIFIED]

PJ et al. --

There appears to be a breakdown in the process of crafting WH press guidance on the Elian matter. I'd love to talk to you about it when you get a chance this morning.

As you know, NSC has had the lead in preparing Elian guidance since the case began, and I have been the person responsible for doing it since I came on board on January 3. Over the weekend, however, the guidance was clearly being written elsewhere; I did not receive any calls regarding guidance. Then, on Monday morning, I came in and prepared guidance as I always do, and turned on the TV to discover that Lockhart was in the middle of briefing. I was not informed by NSC press that early guidance was needed, so I therefore concluded that someone else in the WH had taken over responsibility for handling the guidance. I came to your office Monday morning to ask for clarification as to who was now responsible for Elian guidance. You said you would speak to WH press about it and get back to me.

Late yesterday, we discussed the idea that I could do press guidance "as needed" -- whenever there was a question. I think, though, that this morning's events demonstrate that this approach is not the best. Questions will need immediate answers, which are difficult to produce if I am not working on guidance on a regular basis. After you and I worked out the Q&A on GOC assurances about Elian's treatment after his return, I got on the 9am conference call on Elian guidance. (We have had these calls to coordinate guidance with State and Justice/INS since January). A State staffer had to jump off the call in order to field a call from WH Press, asking what POTUS should say on the issue of assurances about Elian's treatment in Cuba. (!)

Needless to say, this doesn't make much sense. My role has been to be in close touch with State and Justice to monitor the situation and then craft guidance. State should not have to provide the same information twice to two different parts of the WH press operation, and I have plenty of other work to do if guidance from me is no longer needed.

It seems that we need to sit down with WH press asap and clarify roles and responsibilities. I am more than happy to

continue to prepare guidance; I am also quite happy to have someone else do it. The present lack of clarity, however, is not workable.

Please give me a call when you get a chance and we can figure this out.

thanks -- WLP

Cuba SVTS**April 26, 2000****AGENDA****I. Cuban Access Issues at Wye**

- A. USG policy in response to requests for Travel Notification Exemptions**
 - 1. Frequency of travel
 - 2. Purpose (EG: food, clothing, recreation, interpreting)
 - 3. Numbers
 - 4. Do weekends make a difference?
- B. USG policy to normal Travel Notifications by Cubint**
- C. Who can request access? (Father, father's attorney, GOC)**
- D. Are there consular access issues?**

II. Visa Policy

- A. Absence of geographical or travel restrictions on non-official travelers**
- B. Permanent presence of non-official Cubans at Wye**
- C. Can Cuban-licensed professionals (e.g., doctors, child psychologists, psychiatrists, etc.) on B1/B2 visas access Wye, practice their professions in the U.S.?**

Op-Ed**The New York Times**
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April 25, 2000

FOREIGN AFFAIRS / By THOMAS L. FRIEDMAN •

Reno for President

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Frankly, I liked both pictures.

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

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

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

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

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

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

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

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

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

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

file - Elian

Patten, Wendy L. (MULTI)

From: WHSR
Sent: Thursday, April 13, 2000 4:58 PM
To: Clarke, Richard A. (TNT); Crowley, Philip J. (PRESS); DeRosa, Mary B. (LEGAL); Hammer, Michael A. (PRESS); Hollis, Caryn C. (INTERAM); McCarthy, Mary O. (INTEL); Patten, Wendy L. (MULTI); Rosshirt, Thomas M. (SPCHW); Schwartz, Eric P. (MULTI); Sigler, Ralph H. (WHSR); Stockwell, David B. (PRESS); Valenzuela, Arturo A. (INTERAM)
Subject: COURT ISSUES TEMPORARY STAY KEEPING ELIAN IN U.S.

Classification: UNCLASSIFIED
Distribution: SIT: CLARKER CROWLEY Derosa HAMMER HOLLIS MCCARTHY PATTEN ROSSHIRT
Schwartz SUM2 STOCKWELL VALENZUELA
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Identifier: Af626710
Originator: AP/East
Precedence: RUSH
TimeOfReceipt: 04/13/2000 15:59:25 ET

a0742

^PM-Cuban Boy, 16th Ld-Writethru, a0732,1339

^URGENT

^Court issues temporary stay keeping Elian in U.S.

^Eds: COMBINES pvs; UPDATES with spokeswoman saying halt could last three of four days; trims older material.

^AP Photos FLMIH106, MSGX107, NY115, FLWL101

^With sidebars

^By BRIAN BERGSTEIN= ^Associated Press Writer=

MIAMI (AP) A federal appeals court issued a temporary stay today that keeps Elian Gonzalez in the United States while the government and his relatives fight over whether he will be returned to his father and sent home to Cuba. The government said it expected the order would delay any showdown for "three or four days."

The order came barely an hour after the passing of a government deadline for the boy's Miami relatives to hand him over.

Deputy Court Clerk Chris Basnett said the stay was issued shortly after 3 p.m. EDT. It was not immediately clear how long the stay would be in effect.

The Justice Department, however, said it had agreed to wait to reclaim the boy until the court could review the emergency petition filed by Elian's great-uncle Lazaro Gonzalez. The government had said through most of today that it would act to take custody of the boy after its 2 p.m. deadline passed a deadline the Miami relatives ignored.

The appeals court asked the Department of Justice to forestall any enforcement action while they review a motion for a temporary injunction by attorneys for Lazaro Gonzalez, the agency said in a statement.

"We agreed to this with a time frame in mind of three or four days," Justice spokeswoman Carole Florman said.

The stay was granted by a single judge from the three-judge panel because it was an emergency. The government was given until 9:30 a.m. Friday to respond in court.

Earlier, Attorney General Janet Reno said the government would act in a "reasonable, measured way" and not try to remove the boy immediately after the government-announced deadline.

"We have the authority to take action," Reno said. "But responsible authority means not only knowing when to take action, but how and when to take that action."

After failing to reach an agreement with the family Wednesday during a dramatic 2@1/2-hour meeting attended by Elian, Reno ordered them to bring him to Opa-locka airport outside Miami at 2 p.m. for a flight to Washington.

Lazaro Gonzalez has insisted he would not relinquish custody of the boy he has cared for since Elian's mother drowned off the Florida coast nearly five months ago. "We will not turn this child over not in Opa-locka, not in any locka," he said. "They will have to take this child from me by force."

Gregory Craig, attorney for Elian's father, Juan Miguel Gonzalez, said after the deadline passed that Elian was being held "unlawfully ... against his father's will."

"Juan Miguel asks that the laws of this nation be enforced," Craig said.

Outside Lazaro Gonzalez's house this morning, police chained barricades together and thousands braced for Elian's departure. "War! War! War!" some shouted in Spanish. Others renewed pledges of nonviolence. Many demonstrators headed to a side street that some feared the government would use to sneak in. Actor Andy Garcia and singer Gloria Estefan, both Cuban-Americans, spent time with demonstrators and inside the house.

"We want no violence. We are a peaceful community," Estefan said after the deadline passed. "We urge every Cuban-American watching to join us in the effort."

Lazaro Gonzalez addressed the growing crowd with a bullhorn this morning and called for peaceful demonstrations. "We're going to set an example so that they do not take the child Elian, and we're not going to fight with anyone," he said. The crowd cheered wildly.

Government sources have said that if the relatives didn't deliver the boy, the Justice Department would be prepared to eventually send U.S. marshals and immigration agents into the Little Havana house to remove Elian.

Protesters have repeatedly said they would link arms and form a human chain around the house to block federal agents from going in.

Reno had said there was no intention of going into the house immediately if the boy was not produced by 2 p.m. She also proposed that the Miami relatives fly to Washington without Elian and meet with his father.

"We are trying to do this fairly, straightforwardly, without playing games with people," Reno said. "I am trying to work through an extraordinary tragedy without having to cause further disruption to the little boy."

Family attorney Manny Diaz bristled at what he called government demands. "Let the families speak to each other," he said. "Who knows what will come out in a family meeting?" It was unclear what was stopping the Miami relatives from doing so.

President Clinton also weighed in. "I've tried to do everything I can to stay out of it," he said in Washington. "But it is our obligation to uphold the rule of law."

Meanwhile, Elian, speaking in Spanish on a home video, addressed his father, saying: "I don't want to go to Cuba. ... I want to stay here." The video was obtained by the Spanish-language network Univision.

Craig called on the news media to stay away from the boy because he "has been exploited enough."

The government plan had called for a plane to take Elian, and any Miami relatives who wanted to come, to Washington for a retreat at a neutral site with the boy's father. No Cuban diplomats would be present. After the meeting, the government said, "care and parole of Elian will be transferred to Juan Miguel Gonzalez."

In Florida Family Court, meanwhile a judge today rejected as expected the family's request filed earlier this week to intercede and prevent the INS from taking the boy. Judge Jennifer D. Bailey said she had no jurisdiction.

Reno's meeting Wednesday with Lazaro Gonzalez, the boy's cousin, Marisleysis Gonzalez, and other relatives, was held at the gated Miami Beach home of Sister Jeanne O'Laughlin, the nun who was host of a January meeting between Elian and his grandmothers from Cuba.

Elian moved from lap to lap at the table, and left the room only when the subject matter was too sensitive.

Marisleysis, the 21-year-old cousin who has regarded herself as a mother figure to Elian, reminded the protesters that Elian's mother gave her life to try to bring him to the United States. She said in a quiet voice, "They're going to have to come get him."

Elian was rescued by two fishermen while clinging to an inner tube in the Florida Straits on Thanksgiving Day. His mother and 10 other people fleeing Cuba drowned when their boat sank.

His Miami relatives have been caring for him ever since and have been fighting in court for an asylum hearing. The Clinton administration has ordered Elian back to his father in Cuba, saying only he can speak for the boy on immigration matters.

Elian's father, who has met with Reno and remained in the Washington area since coming to America last week, indicated Wednesday he was finished negotiating. A planned meeting in Washington with the Miami relatives was abruptly canceled this week after Lazaro Gonzalez said Elian did not want to go.

At the Cuban Interests Section in Washington late Wednesday, Juan Miguel Gonzalez told an ABC News anchor he had spoken to Elian twice, and only briefly, since arriving in Washington.

"I've tried to forgive them so many times already," he said of his relatives in today's New York Daily News. "After this I don't think I can do it again."

Jose Pertierra, an immigration lawyer who met with Juan Miguel, said the father had no plans to defect. "He said, 'I like Cuba,'" Pertierra told "The Early Show."

^=

EDITOR'S NOTE AP Writer Michael J. Sniffen contributed to this report from Washington.

^=

On the Net:

Immigration and Naturalization Service: <http://www.ins.usdoj.gov>

Miami relatives: <http://libertyforelian.org>

APE- 04/13/00 15:56:33

File - Elian

From: Lisa J. Macecevic on 04/11/2000 04:48:55 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Newsweek article on Elian Gonzalez

The Long Road Home

The endgame: "Let's do it that way," Castro finally told the American lawyer. After tense talks in Havana Elián's dad flew to the United States to reclaim his son. Behind a father's battle for a little boy trapped in an epic custody brawl.

By Joseph Contreras And Evan Thomas
Newsweek, April 17, 2000

It was past midnight, and the American lawyer was bluffing, a bit. Gregory Craig had flown to Havana to persuade his client Juan Miguel González to go to the United States to get his son Elián. "We can't wait any longer," Craig insisted. The U.S. government was prepared to turn Elián over to the boy's father. But if he did not go now, Craig warned, "you may not get him back." Juan Miguel was visibly anxious. "He wanted guarantees," said Craig. Though well connected with the Clinton administration, Craig had no hard and fast assurances from Washington, only a letter from the U.S. Immigration and Naturalization Service promising to "begin the process" of transferring the child's care to the father. Juan Miguel did not look convinced. At 4 a.m., Craig finally went to bed, worried that Juan Miguel was not going home with him.

In the morning, Craig met with Fidel Castro himself in an office at the National Assembly. Castro was reluctant to let Juan Miguel accompany Craig to the United States. "It looks like a rescue mission," the Cuban dictator told the American lawyer. "I don't care what it looks like," Craig says he responded. "I want Juan Miguel to come to the U.S. now. Now is the time." For three and a half hours, the American lawyer and aging Cuban dictator wrangled. Finally, Craig suggested a compromise: he would travel home alone. Juan Miguel would go separately. But it had to be soon: Craig wanted Juan Miguel in the United States by 9:30 the next morning, Thursday, when lawyers from the Justice Department would be sitting down again with the lawyers of Lázaro González—one of Elián's great-uncles—in Miami to discuss turning over the boy. "Let's do it that way," said Castro. Craig looked at his client Juan Miguel. Elián's father flashed a thumbs-up.

Last Thursday, just after dawn, Juan Miguel González stepped off a private plane at Washington's Dulles Airport, just in time for the morning talk shows. He appeared somber and stiff, but convincing in his pained desire to be reunited with his shipwrecked 6-year-old boy. Suddenly, the international crisis over Elián González seemed to be heading toward a resolution—a messy one, perhaps, with a real risk of unrest or riot, but an outcome that will reunite father and son at last.

The new NEWSWEEK Poll shows that Americans believe, 53 percent to 30 percent, that Elián should be returned to his father, but by 59 to 23 percent they believe that he would have a more normal life if he stayed in the United States. In truth, Elián's chances for a normal life are not good no matter where he lives. Since his mother died at sea last November fleeing Castro's Cuba, leaving him floating in the Atlantic, little Elián has become a pawn in an extraordinary international game laced with ancient cold-war rivalries and the raw emotions of a custody fight. The Elián melodrama is no doubt gripping, providing fodder for the media and for politicians, but one thing is for sure: this is no way to treat a child.

The endgame remains uncertain. Having recklessly declared that he would refuse to help the Feds enforce the law two weeks ago, Miami-Dade County Mayor Alex Penelas more sensibly called for calm last week. But the hotheads were still linking arms outside the modest bungalow where Elián lives, and his two great-uncles and their phalanx of lawyers were in effect daring Attorney General Janet Reno to brave the mob. By midweek, the INS will transfer legal custody of Elián to his father, and order his Miami relatives to turn the boy over at a still-unspecified time and place.

Political passions and legal skirmishing may dominate the headlines again this week, but the less obvious story—a broken family's struggle over a winning little boy—may be the more compelling tale. It can be reconstructed from the father's own testimony to American government officials—and from the story told by his great-uncle Manuel González to NEWSWEEK in a series of interviews during the course of the long standoff. It is a drama of disaffection and confusion, but also of devotion and a genuine desire, missing from so much of the public carrying-on, to protect Elián.

Last December, some three weeks after fishermen found Elián floating in an inner tube off the Florida coast, an official of the U.S. Immigration and Naturalization Service called on Juan Miguel at his home in the coastal city of Cardenas, about two hours outside Havana. Silma Dimmel, who runs the small INS office in Havana, later wrote in the official report that Juan Miguel "did not appear at all nervous or intimidated." Although Juan Miguel, who is 31, asked to be interviewed in the presence of his own parents, he did not seem "in any way influenced," as the INS put it in bureaucratese, "by some

unknown person or persons." Juan Miguel proceeded to tell a tortured, but affecting, story of fatherhood.

"In between relationships," Juan Miguel recounted, he spent a good deal of the previous 15 years with the boy's mother, Elisabet Brotons. "We wanted a child very badly, and she had a few miscarriages," he said. Though divorced in 1992, Juan Miguel and Elisabet "got together again because we wanted to have a child." When Elián was born in 1993, "it was a miracle... we were very happy," said Juan Miguel. The couple split up again, but remained friendly. Juan Miguel paid more than the legally required child support and provided extra food and clothes for his son and ex-wife. Elisabet and her new boyfriend came over for dinner. Elián spent more nights with Juan Miguel than with his mother, in part because she lived in a tiny single room and he had his own apartment.

Elián is my life," Juan Miguel told the INS. "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... He slept with me. That's how close we are." Juan Miguel was stunned when his ex-wife and her boyfriend fled Cuba in a small and unseaworthy boat, along with Elián and 11 others.

Juan Miguel told the INS that he did not want asylum in the United States for his son, who had been turned over to his great-uncle Lázaro after his rescue on Thanksgiving Day. He wanted him back in Cuba. At first, he went on, his uncles Lázaro and Delfín González agreed that "Elián should be returned immediately to me. Then all of a sudden," he said, "things changed." His uncle Lázaro began arguing that Elián should stay in Miami and even offered Juan Miguel money (reportedly \$2 million) to give up his claim to the child. "I tried to convince him rationally," said Juan Miguel, but Lázaro replied that he couldn't "back off." Why? Because he would "look bad in front of the Cuban people in Miami."

Juan Miguel had another uncle in Miami, Manuel González. Slight and intense, Manuel, who works as a bus mechanic, is what the Latinos call *muy recto*—a straight arrow. He was, at least until tragedy overtook the family, in effect the patriarch among the three González brothers who fled Cuba for Miami in 1984. His nieces and nephews called him "grandfather" because he was the father figure who could be counted on to tell them to be dutiful, to do the right thing and not just run with the crowd.

Over the phone from his home in Cuba, a tearful Juan Miguel pleaded with Manuel to reason with Lázaro and Delfín. Manuel had gone to Spain on vacation right after Elián was rescued, so he had missed the early frenzy in

Little Havana over Elián, who was being quickly transformed into a heroic and religious icon. Manuel readily agreed to help Juan Miguel get his boy back, in part because he could empathize: he had lost a son of his own, to cancer, at the age of 14. Manuel went to Lazaro's house on Northwest Second Street in Little Havana, but was rudely rebuffed. Instead, Lazaro and Delfin publicly castigated their brother as a secret Castro sympathizer.

About once a week during the four-month standoff over Elián, Manuel spoke by telephone to Juan Miguel. (Castro had moved the father from his home in Cardenas to an apartment outside Havana, perhaps to keep a closer watch on him.) From the very outset, Manuel told NEWSWEEK, he urged his distraught nephew to come to the United States to press his case for the boy in person. All winter long, Manuel tried begging, cajoling and shaming Elián's father, who seemed fearful and confused. On several occasions, Manuel recalled, he threw down the phone in his dining room over his nephew's apparent lack of resolve. He tried taunting his nephew, pointedly asking him if he was free to speak his own mind and exercise his own free will. Still, Elián's father did not budge.

A good communist who held a cushy government job as a cashier at a beach resort for tourists and well-connected Cubans, Juan Miguel viewed the U.S. government with suspicion. In his emotional phone calls with Juan Miguel that winter, Manuel tried different arguments. He told Juan Miguel that he had been reassured by a U.S. senator—Democrat Patrick Leahy of Vermont, at a Senate Judiciary Committee hearing in early March—that the father would not be kept waiting if he came to the United States to claim his son. Juan Miguel was not persuaded.

As it turned out, however, Leahy had performed a greater service than a good legal argument: he had found Elián's father a good lawyer. At about that time, the Vermont senator contacted the Rev. Dr. Joan Brown Campbell, a human-rights activist and former general secretary of the National Council of Churches who had been working to reunite Juan Miguel with his son since Elián's rescue at sea. "I think you need a lawyer," Leahy told Brown Campbell. "I know one who can do it and would do it." His name: Gregory Craig, a former senior State Department official who had defended President Clinton in his impeachment hearings.

Craig, whose fees will be paid by money raised by the United Methodist Church, flew to Havana to meet Juan Miguel in early March and assure himself that the boy's father was not a stooge for Castro. But when he returned to Havana last week "we didn't know what would happen," he told NEWSWEEK. He was uncertain whether Juan Miguel would agree to come home with him, and unsure of Castro's intentions. Castro had been talking about sending an unwieldy delegation of Cubans, including Elián's teachers

and classmates and a couple of psychiatrists. Was it all political posturing? But after a night and a day of negotiating, when Castro personally put Juan Miguel on the plane for the United States in the predawn darkness of Thursday, the only Cubans with him were his new wife and new baby boy. Presumably, Castro had some assurance that Juan Miguel would not embarrass him by defecting.

In Miami, meanwhile, the negotiations over Elián's return were going badly. The tone had been set on the second day of talks, when Lázaro's legal team asked for some water to drink. The government lawyers shrugged, so one of Lázaro's lawyers left to buy some Evian bottles from the cafeteria. As the days dragged on, the running joke became, "So, are you guys going to give us some water today or not?"

Lázaro's lawyers were very suspicious of Craig's activities. When Craig began applying for visas for Juan Miguel and various teachers and classmates of Elián, one of the lawyers remembers wondering, "What the f— is that all about? Were they really negotiating with us in good faith?" And when Juan Miguel actually arrived on Thursday morning, it became clear that the government lawyers were not in a bargaining mood. The issue was not whether Elián would be turned over, but how. Washington would not even guarantee that Juan Miguel would stay in the country until the federal courts finished ruling on the appeals filed by the family lawyers, probably in late May. At about 4 on Thursday afternoon, the family lawyers got up and walked out. Elián's Miami relatives would not stand in the way of the Feds when they came to get Elián. But neither would they help deliver him through the crowd.

In Washington, Attorney General Reno had wept back in January when she first read Juan Miguel's anguished testimony to the INS official in Havana. She was moved again when she met with Juan Miguel, his new wife and baby in her office Friday morning. There were no Cuban officials present, and if Juan Miguel had wanted to seek amnesty, there was no better time or place. But he said that he wanted to return to Cuba with the boy. Reno told him that she would get his son back. The attorney general and Elián's father embraced. Outside, Reno told reporters, "All you needed to do was listen to him and look at him and see how much he loved that little boy."

The lawyers for Elián's great-uncle Lázaro had demanded that a team of outside psychiatrists be appointed to determine if Elián should return to Cuba. The attorney general topped them by appointing her own team—two psychiatrists and a psychologist—to advise on the best way of turning over the boy to his father. Their answer was: right away, and with the support of all his family. Whether this can be achieved remains to be seen, but it appears that one way or another Elián will be given back to his father, probably this week. According to Craig, Juan Miguel is willing to stay in the United States

while the appeals drag on—but only if he has a support group. Sending over a delegation of teachers and classmates is a "serious idea," says Craig, not just Castro's gambit to keep an eye on Juan Miguel.

With the right nurturing, Elián González may overcome his nightmares, but he has been scarred and prematurely aged, first by losing his mother in a terrifying accident at sea, then by the grotesque spectacle of his martyrdom in Miami. His extended family is probably permanently shattered. Last Friday, Uncle Delfin flew to Washington and went out to the Maryland suburb where Juan Miguel is staying in the home of a Cuban diplomat. Delfin was turned away. Back in Miami, Manuel is morose. He says he will not invite Delfin or Lázaro over to his house any time soon. Eventually, the slogan-chanting crowds will go away. "The party's over," he says, bitterly. "Now it's the family's turn to pick up the garbage." Manuel at least has the consolation of knowing that he was thinking of Elián, and not himself.

With Donatella Lorch

Message Sent To:

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Patten, Wendy L. (MULTI)

From: Hollis, Caryn C. (INTERAM)
Sent: Friday, April 14, 2000 3:08 PM
To: Patten, Wendy L. (MULTI); DeRosa, Mary B. (LEGAL)
Subject: court delays hearing...did you all hear this? [UNCLASSIFIED]

PM-Cuban Boy-Human Rights, 4th Ld-Writethru, a0596,550

^Court delays hearing on Elian's human rights

^Eds: SUBS graf, 6, ``He just, to CORRECT last name to Gereg, NOT Gerez

^By LAURIE ASSEO= ^Associated Press Writer=

WASHINGTON (AP) A federal judge today delayed a hearing on a request by Elian Gonzalez's Miami relatives to bar him from leaving the country unless U.S. officials can certify that Cuba won't violate the 6-year-old boy's human rights.

Without such an order, ``Elian Gonzalez will suffer imminent, irreparable injury," Lazaro Gonzalez's lawyers said in court papers filed Thursday.

At a brief hearing today, attorney George Fowler, representing Lazaro Gonzalez, told U.S. District Judge Henry H. Kennedy Jr. that because a federal appeals court has blocked anyone from taking Elian out of the country, the need for Kennedy to act now has ``lessened considerably."

But should the 11th U.S. Circuit Court of Appeals lift its order, ``we may have to come back quickly" and seek an order by Kennedy, Fowler said.

While the hearing was under way, Juan Miguel Gonzalez, who is in Washington trying to get back his son, toured the National Cathedral. He was accompanied by his wife, 6-month-old son and the Rev. Joan Brown Campbell, former general secretary of the National Council of Churches.

``He just said he wanted to have his son home as soon as possible," said translator Daphne Gereg.

After government lawyers said they did not object, Kennedy scheduled a hearing for Wednesday on the Gonzalez family's request for an emergency order keeping Elian in this country. The judge also told the lawyers they could seek an earlier hearing if needed.

The human rights arguments represent another tack in the relatives' legal battle to prevent Elian from returning to Cuba with his father. Their request is based on U.S. participation in agreements including the Universal Declaration of Human Rights and the Convention Against Torture.

The motion says that if returned to Cuba, ``Elian would face the risk of being persecuted for having sought asylum in the United States. He would be politically indoctrinated to a much larger extent than others."

It also contends that Elian would be compelled to believe that his mother and her boyfriend, who died in the Thanksgiving Day boat wreck, and his Miami relatives ``were traitors to the revolution. Accordingly, a return to Cuba under such circumstances would be detrimental to Elian," the motion said.

It asks the court for a temporary restraining order barring the government from deporting Elian or holding deportation proceedings unless the State Department can certify that:

Cuba is in compliance with human rights provisions of the U.N. Declaration of Human Rights.

The country is ``no longer engaged in 'systematic, gross violations of human rights.'"

Elian ``may return to Cuba with the assurance that his human rights will be respected, as well as the human rights of his father so that he may freely determine the best interest of his child"

The motion said there was ``credible evidence" that Juan

Miguel Gonzalez was under pressure from the Cuban government to demand Elian's return. ``Juan Miguel's true preference, however, remains a mystery in light of almost certain retaliation against him by the Cuban government should he state publicly a preference that Elian remain in the United States," it argued.

APE- 04/14/00 13:03:46

Patten, Wendy L. (MULTI)

From: DeRosa, Mary B. (LEGAL)
Sent: Thursday, April 13, 2000 5:27 PM
To: @NSA - Natl Security Advisor
Cc: @LEGAL - Legal Advisor; @MULTILAT - Multilateral and Humanitarian Affairs; @INTERAM - Inter-American
Subject: Update on Elian Gonzalez case [UNCLASSIFIED]

Please pass to Jim

There have been a few developments this afternoon:

- As you know, the state court dismissed the Miami family's petition for temporary custody.
- The Miami relatives have asked the 11th Circuit court of appeals for an injunction. Although we have not seen the papers yet, Justice reports that the relatives have asked the court to (1) prevent removal of Elian from the United States, and (2) prevent transfer of Elian to the Cuban government or "any person controlled by the Cuban government."
- The 11th Circuit asked the Justice Department to refrain from any enforcement action until the court can consider the petition, and Justice agreed. Justice is filing responsive papers today or early tomorrow. They believe the Court could issue a decision as early as tomorrow.
- At 3:00 PM, a single judge on the 11th Circuit (Judge Edmondson) issued a temporary injunction -- valid only until a three judge panel has the opportunity to review the relatives' petition -- that prevents Elian's removal from the country, prevents all persons acting for Elian from aiding or assisting his removal from the United States, and orders DOJ to take lawful and reasonable precautions to prevent his removal from the United States.
- Note that an order preventing Elian's removal from the country *would not* necessarily prevent transfer of Elian to his father in the United States, although Justice would have to take the necessary precautions to prevent his removal.
- Greg Craig, in a public statement, pointed out that, despite claiming for months that he would not break the law, Lazaro Gonzalez has now broken the law. He said now that the state court order has been dismissed and parole has been revoked, Lazaro and the others who keep Elian from his father are holding Elian in violation of the law. He pleaded with the Justice Department to enforce the law.
- Earlier today, the AG said publicly that any enforcement action would be "reasonable and measured." She did not give any more detail.

And to Dave

From: Lisa J. Macecevic on 04/12/2000 05:05:12 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Senate floor remarks on S.2383--Alien Children Protection Act of 2000

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM:

S. 2383. A bill to amend the Immigration and Nationality Act to provide temporary protected status to certain unaccompanied alien children, to provide for the adjustment of status of aliens unlawfully present in the United States who are under 18 years of age, and for other purposes; to the Committee on the Judiciary.

ALIEN CHILDREN PROTECTION ACT OF 2000

Mr. GRAHAM. Mr. President, for many weeks, we have been dealing with the tragedy of Elian Gonzalez. If this tragedy teaches us anything, it is that the U.S. immigration laws have not been constructed in a manner that accounts for the special needs of our Nation's most precious resource-I also say our world's most precious resource-our children.

Yesterday, CNN-USA Today released a Gallup Poll on the Elian Gonzalez tragedy. That poll said by a 2-to-1 margin Americans believe Elian Gonzalez should live with his father in Cuba rather than with relatives in the United States. But that same poll, also by a 2-to-1 margin, found that Americans disapprove of the way the Government has handled this case. That disapproval of the way in which the Government has handled this case could be a disapproval of hundreds of cases if they had the same notoriety as Elian.

I come this afternoon to introduce legislation that will require the Federal Government to dramatically improve its treatment of the thousands of unaccompanied children who arrive in the United States each year.

Many of us are parents. I personally have been blessed with four beautiful daughters and 10 wonderful grandchildren. We all know the special joy a child brings to our lives. We know that bond across generations that relationship between a parent or a grandparent and a child brings. We all want to pour all of the history, all of our personal experience into safeguarding and into paving the way in the best interests of our children.

The Bible tells us to take this responsibility seriously. In the book of Proverbs, it imparts this wisdom:

Train up a child in the way he should go, and when he is old he will not depart from it.

We all have that responsibility to train up a child.

As that passage from Proverbs suggests, we have a responsibility to protect and nurture all of our children. Their future-our planet's future-depends on it.

Unfortunately, U.S. law prevents us from carrying out that responsibility with respect to some of this planet's most vulnerable children.

Each year, there are about 5,000 unaccompanied children who are detained by the U.S. Immigration and Naturalization Service. Some children come to this country seeking asylum, others hope to be reunified with families, and others seek nothing but a better life. While many of these children ultimately are deported or voluntarily returned home, some have legitimate claims which merit our attention.

Regardless of the outcome of their cases, in most instances, these children must endure the rigors of an immigration system that is anything but child friendly. Unfortunately, many children in INS custody end up spending time in jail-like settings while their cases are pending. They have no one to guide them through complex immigration law and procedure.

Moreover, immigration laws are technical and inflexible and do not permit compassion or frequently even common wisdom to enter into the equation when determining the fate of a child.

I will give some examples. Six Chinese children were detained by the INS last year in Oregon. Though charged with no crime, they were sent to a juvenile detention facility for 8 months where they were exposed to violent youthful offenders who had committed crimes such as murder and drug trafficking. One of the group, a 15-year-old girl, was forced to remain at the jail for several weeks after she had been granted asylum, even though she had relatives living in New York.

Such innocent children should not have to endure exposure to hardened juveniles and criminals as part of their experience with the U.S. immigration process.

Equally compelling is the story of a Kosovar Albanian boy who was suffering from severe depression. He was held in a juvenile correctional facility for over 6 months during his immigration proceedings. The INS provided psychiatric care but by a professional who spoke only English. After a mental episode, the boy was placed in the maximum security section of the jail rather than being provided with appropriate care. The INS even balked at placing the boy in foster care after he was granted asylum, thus further delaying his stay in an inappropriate facility.

The Federal Government's insensitivity to child immigrants is also illustrated by a recent case of two children from the Caribbean. Their mother is a legal, permanent resident in the United States, but she had left her minor children behind with the belief they would soon follow. The mother promptly applied for visas for her children. Yet the children were required to wait in their home country for months and, in some cases, even years before they could even get an interview at the local U.S. Embassy to pave the way for reunification with their mother.

These are just three examples of children who were improperly treated as a result of our current immigration laws. Many of these cases are the result of INS's inherent conflict of interest: Children are detained and frequently deported by the same agency that is responsible for caring for them and protecting their legal rights. This system does not work well enough, and it needs improvement. Children are entitled to receive care from child welfare authorities who will act in their best interest and who are trained to protect children's rights.

Indeed, there is an irony. The Federal Government requires States to place children in facilities that are separate and apart from adult correctional facilities. The INS should at least abide by the same standard with respect to alien children.

[Page S2528]

To address these problems, my legislation takes four actions: First, it requires that INS place children in its custody in a facility appropriate for children; in other words, no jails. These facilities are required to provide for the health, welfare, and educational needs of children.

Two, provide children in INS custody with a guardian ad litem to champion that child's best interest. Notably, this guardian would not be associated with the INS in order to eliminate any conflict of interest.

Three, give the Attorney General the flexibility and the authority in extraordinary cases to evaluate a child's case on the basis of what is in the best interest of the child.

Four, to direct the General Accounting Office to conduct a study and report back to Congress regarding whether and to what extent U.S. diplomatic officials are fulfilling their obligation to reunify on a priority basis children in foreign countries whose parents are legally present in the United States.

With these changes in the law, children will no longer be forced to struggle through the immigration process alone under the adverse conditions to which they are currently exposed. The INS will have the flexibility to treat children in its custody with greater compassion and common sense.

I hope the recent attention which has and will continue to surround the Elian Gonzalez tragedy will encourage us to shield all our children from the vagaries of U.S. immigration law. Our future generations deserve to be protected, not persecuted or prosecuted. They deserve to be inspired, not incarcerated. They deserve to have decisions about their future made consistent with what is in their best interest, not confused by conflicts of interest.

I conclude with hope that this Congress will give attention to an issue which affects not one child but thousands of children who are in the custody of the United States and whose treatment reflects our fundamental American values of justice and concern for their rights.

Mr. President, I ask unanimous consent that the bill and three newspaper articles and editorials on the subject of "INS Treats Children Shamefully" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2383

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Alien Children Protection Act of 2000".

SEC. 2. USE OF APPROPRIATE FACILITIES FOR THE DETENTION OF ALIEN CHILDREN.

(a) IN GENERAL.-Except as provided in subsection (b), in the case of any alien under 18 years of age who is awaiting final adjudication of the alien's immigration status and who does not have a parent, guardian, or relative in the United States into whose custody the alien may be released, the Attorney General shall place such alien in a facility appropriate for children not later than 72 hours after the Attorney General has taken custody of the alien.

(b) EXCEPTION.-The provisions of subsection (a) do not apply to any alien under 18 years of age who the Attorney General finds has engaged in delinquent behavior, is an escape risk, or has a security need greater than that provided in a facility appropriate for children.

(c) DEFINITION.-In this section, the term "facility appropriate for children" means a facility, such as foster care or group homes, operated by a private nonprofit organization, or by a local governmental entity, with experience and expertise in providing for the legal, psychological, educational, physical, social, nutritional, and health requirements of children. The term "facility appropriate for children" does not

include any facility used primarily to house adults or delinquent minors. 0634

SEC. 3. ADJUSTMENT TO PERMANENT RESIDENT STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

"(1)(1) The Attorney General may, in the Attorney General's discretion, adjust the status of an alien under 18 years of age who has no lawful immigration status in the United States to that of an alien lawfully admitted for permanent residence if-

"(A)(i) the alien (or a parent or legal guardian acting on the alien's behalf) has applied for the status; and

"(ii) the alien has resided in the United States for a period of 5 consecutive years; or

"(B)(i) no parent or legal guardian requests the alien's return to the country of the parent's or guardian's domicile, or with respect to whom the Attorney General finds that returning the child to his or her country of origin would subject the child to mental or physical abuse and

"(ii) the Attorney General determines that it is in the best interests of the alien to remain in the United States notwithstanding the fact that the alien is not eligible for asylum protection under section 208 or protection under section 101(a)(27)(J).

"(2) The Attorney General shall make a determination under paragraph (1)(B)(ii) based on input from a person or entity that is not employed by or a part of the Service and that is qualified to evaluate children and opine as to what is in their best interest in a given situation.

"(3) Upon the approval of adjustment of status of an alien under paragraph (1), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval, and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current.

"(4) Not more than 500 aliens may be granted permanent resident status under this subsection in any fiscal year."

SEC. 4. ASSIGNMENT OF GUARDIANS AD LITEM TO ALIEN CHILDREN.

(a) ASSIGNMENT.-Whenever a covered alien is a party to an immigration proceeding, the Attorney General shall assign such covered alien a child welfare professional or other individual who has received training in child welfare matters and who is recognized by the Attorney General as being qualified to serve as a guardian ad litem (in this section referred to as the "guardian"). The guardian shall not be an employee of the Immigration and Naturalization Service.

(b) RESPONSIBILITIES.-The guardian shall ensure that-

(1) the covered alien's best interests are promoted while the covered alien participates in, or is subject to, the immigration proceeding; and

(2) the covered alien understands the proceeding.

(c) REQUIREMENTS ON THE ATTORNEY GENERAL.-The Attorney General shall serve notice of all matters affecting a covered alien's immigration status (including all papers filed in an immigration proceeding) on the covered alien's guardian.

(d) DEFINITION.-In this section, the term "covered alien" means an alien-

- (1) who is under 18 years of age;
- (2) who has no lawful immigration status in the United States and is not within the physical custody of a parent or legal guardian; and
- (3) whom no parent or legal guardian requests the person's return to the country of the parent's or guardian's domicile or with respect to whom the Attorney General finds that returning the child to his or her country of origin would subject the child to physical or mental abuse.

SEC. 5. SENSE OF CONGRESS.

Congress commends the Immigration and Naturalization Service for its issuance of its "Guidelines for Children's Asylum Claims", dated December 1998, and encourages and supports the Service's implementation of such guidelines in an effort to facilitate the handling of children's asylum claims.

SEC. 6 GENERAL ACCOUNTING OFFICE REPORT.

The General Accounting Office shall prepare a report to Congress regarding whether and to what extent U.S. Embassy and consular officials are fulfilling their obligation to reunify, on a priority basis, children in foreign countries whose parent or parents are legally present in the United States.

[From the St. Petersburg Times, Mar. 8, 2000]

INS TREATS CHILDREN SHAMEFULLY

Reaching the U.S. mainland usually is no easy feat for illegal immigrants fleeing their homelands. Whether crossing the ocean by boat or trudging miles across desert, immigrants nearly always face a journey that is dangerous and traumatic. For the children of these immigrants, who often have no say in their parents' decision to flee to the United States, that trauma too often is compounded once they arrive-by an American immigration system that treats kids like criminals.

The Immigration and Naturalization Service says children detained by the agency must be moved to a safe, kid-friendly environment within 72 hours of their initial detention, unless they are suspected criminals or considered a flight risk. Advocates for these children say that rule rarely is enforced. Instead, immigrant children typically are separated from their loved ones and locked in juvenile detention facilities, often before the INS has a chance to determine the family's status.

Because of a worsening space crunch at INS facilities, nearly 1,000 of the 4,000 children detained by the INS within the past year have been remanded to secure, jail-like facilities where many have remained for months. The children typically wear prison uniforms, and many are forced to mingle with the teenage convicts also housed in the facilities. Unlike the convicts, immigrant children get no legal representation, and no adult guardians are appointed to protect their interests.

This shameful treatment of children is a symptom of the broader problems plaguing U.S. immigration policy. It is a system that allows legal U.S. residents to be detained indefinitely on the basis of secret evidence. It is a system that no longer gives judges discretion in deportation cases. And it is a system that even the INS's own chief has described as slow, inefficient and poorly managed.

The INS is expected to issue new rules that will require jails housing non-criminal INS detainees to meet specific standards of care. Immigrant advocates hope the new rules will give detainees the right to make phone calls, meet with lawyers and prevent guards from subjecting them to arbitrary strip searches.

Even if those rules pass, they should be only the first of many reforms initiated by the INS and Congress to ensure that all detainees-especially children-are treated more humanely by the U.S. government.

[From the Seattle Post-Intelligencer, Mar. 21, 2000]

IMMIGRATION LAW BUSTS UP FAMILIES

(By Llewelyn G. Pritchard)

Llewelyn G. Pritchard is a Seattle attorney at Helsell Fetterman. He is chairman of the American Bar Association Advisory Committee to the Immigration Pro Bono Development and Bar Activation Project. He is a former member of the boards of the Washington State Bar Association and the American Bar Association.

Lately we have been bombarded with media stories about immigrant families being ripped apart due to draconian measures undertaken by the U.S. Immigration and Naturalization Service.

There is the Atlanta story about the German mother of two who, having applied for citizenship, faces deportation instead because years ago she admitted to pulling another girl's hair over the affections of a boy.

There is the Falls Church, Va., mom who called police after repeatedly being beaten by her husband. She was arrested for biting him after he sat on her. She faces deportation and separation from her children, all of whom were born in the United States.

But we don't have to look beyond the boundaries of Washington to hear terrible tales.

There is the case of Emma Hay. This Puyallup mother of four-all U.S. citizens-is being deported. Her crime was to answer the telephone for a visiting relative who said he didn't speak English well enough to talk to the caller.

By simply saying her relative "couldn't help the caller today, but could help tomorrow," Hay was caught in a drug sting and charged with "using a communications facility to facilitate the distribution of cocaine." Although she claimed she wasn't aware of her cousin's activities, she pleaded guilty and was convicted on federal drug charges. She got no jail time, and was placed on probation for three years, which she successfully completed.

After living in our state for more than 20 years and running a restaurant, Hay now faces deportation. While the original incident earned her a probationary sentence because she agreed to plead guilty, it has now become a deportable offense.

Hay was grabbed by the INS upon returning from a vacation, all because the tough 1996 Illegal Immigration Reform and Immigrant Responsibility Act has tipped the legal scales against non-citizens * *

*. This draconian law reclassifies past infractions and makes them deportable offenses even in cases where no prison time has been served or where there is evidence of rehabilitation.

This law also widely expanded the definition of aggravated felony. Non-citizens convicted of

"aggravated felonies" are now not only deportable, but are also ineligible for a waiver from deportation or even judicial review.

Woe to the immigrant who applies to become a citizen only to be trapped in the INS web, as in the case of the German mother in Atlanta, or who seeks to re-enter the country as Hay did.

So now Hay sits in a Louisiana jail, thousands of miles away from her lawyer and her children, awaiting deportation. Her 20-year-old daughter has quit school to support the family.

What's the benefit of justice to her, her family or our country? There is none under this new act.

The INS has the fastest growing prison population in the United States. There are more than 17,000 immigrants detained, with predictions of 23,000 by year's end. Most detainees do not have legal representation, even though the INS adopted standards in 1998 allowing lawyer access in federal INS facilities.

The majority, or 60 percent, are warehoused in state and local jails, at great cost to our overburdened prison budget. Those folks are far away from immigration lawyers and have no guarantee of legal access. Even those in federal INS facilities are in remote areas and access is often difficult.

We should be outraged. This can't be happening in America. Newcomers live in all our communities, work at our sides, attend our churches and our schools. They are our neighbors and our friends.

But there is some good news.

The 60,000 member American Bar Association Section of Litigation, which will meet in Seattle in early April, announced that it will adopt our ABA immigration project as one of its pro bono efforts, pairing up with lawyers with detainees around the country.

Their efforts will help some of the most defenseless in our country. I applaud and welcome them in this worthy fight.

We must make certain that the basic premise and promise of our country is not forgotten: Justice for all."

[From the Miami Herald, Jan. 9, 2000]

THE LITTLEST REFUGEES MERIT BETTER TREATMENT FROM INS

Immigration and Naturalization Service Commissioner Doris Meissner projects uncommon compassion. "Both U.S. and international law recognize the unique relationship between parent and child," she said in announcing her decision to return 6-year-old Elian Gonzalez to his father in Cuba. "Family reunification has long been a cornerstone of both American Immigration law and INS practice."

Unfortunately her agency doesn't always practice what she preaches. Case in point: Two children, ages 8 and 10, were repatriated to Haiti while their mother, desperate with worry not knowing what had happened to them, was brought to Miami for medical care.

Yvena Rhinvil and her children were among some 400 passengers on the boat from Haiti that ran aground off Key Biscayne on New Years Eve. They were trying to enter the United States illegally. Both the Coast Guard and INS now say that they didn't know about the children. Had it known, INS says it would have tried to keep the kids with their mother.

But Ms. Rhinvil says she spoke of her kids both to an interpreter before being taken off the ship and once again on land. What mother wouldn't?

KIDS DON'T COME FIRST

If indeed the INS didn't know, it should have known before it sent the children back. Nobody asked, which is inexcusable. Fortunately an aunt watched Ms. Rhinvil's children. But who knows if there were other unaccompanied youths aboard that boat?

The problem is that the INS is not equipped either by mission or staffing to look out for the welfare of children. First and foremost it is an enforcement agency, charged with protecting our borders. Both policy and practice reflect it.

Another case: A 15-year-old Chinese girl remained in a Portland, Ore., juvenile jail more than six weeks after being granted asylum and after an uncle in New York had agreed to take her. She and five other teens fled China in April, only to spend eight months in a criminal facility.

Unfortunately, locking up minors such as these teens is not an exception. That's because INS practices regarding children vary widely by their nationality and INS district. Even though international law and common decency dictate that refugee children be detained only as a last measure and only for a short time, detention in criminal juvenile facilities happens regularly in some districts. Without caretakers and most often without legal advisers, what hope can detained children have of knowing or demanding their legal rights?

LITTLE PROTECTION

For the most part, the Florida INS District treats minors better than most. Unaccompanied children without U.S. relatives are often placed with Catholic Charities facilities such as Boystown. Children who arrive with parents are typically placed in a hotel until the family is deported or released from detention.

Ideally all minors could be released to caring relatives, and the INS frequently does this. Yet without the intervention of child-welfare authorities, there is little protection from abuse. The INS mandates such intervention only when the child is from China or India because of the track record of child servant-slaves. Yet Haitian children, too, have been known to be sold into servitude.

Capricious and inconsistent treatment of children simply is unacceptable when last year alone the INS had some 5,300 minors in its custody.

Source: Government Printing Office
From CQ Congressional Record Service
Providing government documents on demand, in context.
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Message Sent To: _____

Steven M. Mertens/OMB/EOP@EOP
Christine J. Lindsey/OMB/EOP@EOP
Debra J. Bond/OMB/EOP@EOP
Joseph G. Pipan/OMB/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Richard E. Green/OMB/EOP@EOP
Mark D. Magana/WHO/EOP@EOP
Joel K. Wiginton/WHO/EOP@EOP
Wendy L. Patten/NSC/EOP@EOP



**U.S. Department of Justice
Immigration and Naturalization Service**

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

April 12, 2000

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

Dear Mr. Gonzalez:

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

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

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

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

Mr. Lazaro Gonzalez
Page 2

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

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

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

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
for Field Operations

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

Torres, Natly

From: Torres, Natly
Sent: Wednesday, April 12, 2000 1:29 PM
To: Shapiro, Charles S; Rodriguez, Lula; Snyder, Susan L.; Arreaga-Rodas, Luis E.; Doherty, Kathleen A.; Abramson, Karin J.; Brown, Catherine W; Harty, Maura A; Miele, Wayne; Trejo, Maria A.
Cc: O'Brien, James C.
Subject: Q and A for S for SAFCO (Please clear)



Apr 12- Elian Q & A for
SAFCO....

It's more on ELIAN! Attached is guidance to be cleared no later than 3pm for the Secretary's appearance before SAFCO on Thursday. Most of the language is pre-cleared and has been used by S on previous hill appearances. The background is too lengthy but I suppose H will decide what info they need on congressional tactics in this case. Also, the last three Q and A have changed to reflect the latest information.

I thank you in advance for helping me get this to the staffers in a timely fashion.

-Natly

To: Cayn Hollis
Brendy Patten
Janell Jones

Fr: Natly

4 pages

Shanks!

ELIÁN GONZÁLEZ: EFFORTS TO KEEP HIM IN THE U.S.**Background:**

The situation in Miami now is fluid, but INS expects Elián to be reunited with his father this week. Dan Burton (R-IN) subpoenaed Elián to testify before a Congressional committee on February 10 but it did not take place. Connie Mack (R-FL) has introduced a bill, co-sponsored by Lott, Helms, and Torricelli, granting Elián citizenship. Republicans Chuck Hagel and Peter Fitzgerald (IL) oppose the bill. On April 11 Lott stated that he has been unable to win agreement on legislation to grant Elián and his family citizenship or residency. Senators Dodd and Boxer have co-sponsored a bill calling on the Immigration and Naturalization Service to return Elián to his father immediately. Senator Hatch held a hearing on March 1 at which time U.S. family members and other interested parties were interviewed. On March 21, Federal district court judge Moore dismissed the request by Elián's Miami relatives to force INS to grant Elián an asylum hearing.

Question:

What is the Department's role in this case?

Answer:

- From the beginning, we have been concerned for Elián's well-being and have sought to ensure that the process of reaching a decision in this case was undertaken in a deliberate and considered manner.
- The Department's primary role has been to communicate with the Government of Cuba, to facilitate contact between the Immigration and Naturalization Service (INS) and Elián González's father and to issue visas for Elián's immediate family members and others as necessary in conjunction with this case.

- On January 5 the INS made public its decision that only Elián father can speak for Elián on immigration issues and the father has asked that his child be returned to him. We support that decision.
- The rights of the parents are recognized internationally and have been a central tenet of our work on behalf of Americans.
- The USG has determined that this case is not about custody. When his mother died there was a surviving parent who was exercising parental rights.
- Were there a similar case to that of Elián involving an American child abroad, the Department of State would expect the foreign government to return the child to the surviving parent, wherever that parent may be.
- To that end, we offered to expedite consideration of visa requests by Elián's family to travel to the United States, should they wish to do so.
- On April 4 we issued visas to Elián's father, step-mother, half-brother, his 11 year-old cousin, a teacher and a pediatrician.

- On April 6, Elián's father, step-mother and half-brother arrived in Washington.
- We are optimistic that Elián will be reunited with his father very soon.

*amanged***Cuba: Elián**

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

Question:

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

Answer:

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

Question:

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

Answer:

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

Question:

What is the next step?

Answer:

- The next steps are of course being decided by the Department of Justice and INS. I understand that Justice and INS will be consulting today with the three independent experts in child psychiatry and psychology who have met separately with Elian's father and his Miami relatives.

WHA Press Guidance
April 12, 2000

To: Janelle Jones
Caryn Hollis
Wendy Patten

Fr: Naim
* Please clear
by 11:30.
Thanks.

Cuba: Elián

Background ONLY: Last night, April 11, it was announced that Lázaro González would bring Elián to Washington to reunite the child with his father. The chosen site for the meeting is the Vatican Embassy (officially, the Embassy of the Holy See. At about midnight Lázaro Gonzalez announced that he would not be coming to Washington after all. The situation in Miami now is fluid, with Sister Jeanne having just escorted Elián and Lararo to her residence, reportedly picking Marileysis up en route.

Question: Situation update on Elián González and visas?

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

IF PRESSED ONLY

Question: Is it true that the Vatican Embassy might be the locale used to reunite Elián and his father?

Answer: **THE PAPAL NUNCIO'S OFFICE AGREED AT THE REQUEST OF BOTH PARTIES TO MAKE THE NUNCIATURE AVAILABLE TO FACILITATE THE PROCESS**

Question: What role did the Department play in setting up this meeting?

Answer: **THE DEPARTMENT'S ROLE IN THIS MATTER HAS BEEN TO COMMUNICATE WITH THE PAPAL NUNCIO'S OFFICE AS REQUESTED BY THE DEPARTMENT OF JUSTICE.**

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT

04/10/00

INS Statement on the Elian Gonzalez Case

The meeting between Elian's Miami relatives and the three experts in child psychiatry and psychology has concluded. Based on the doctors' meeting yesterday with Elian's father, Juan Miguel Gonzalez, and their meeting today with Elian's Miami relatives, the doctors will soon be consulting with the Immigration and Naturalization Service (INS) on the most appropriate way to proceed with Elian's reunion with his father.

These consultations will serve to inform INS' decision on the best way to proceed in reuniting Elian with his father in a way that is the least disruptive to Elian. Subsequently, the INS will give instructions to the Miami family on how this transfer will occur. We continue to believe that Elian's well being is best served if the Miami relatives participate in an active and responsible way in preparing Elian prior to the transfer, as well as in supporting him during and after he is reunited with his father.

Elian and his father, Juan Miguel, have been separated for more than four months. We hope that Elian's Miami relatives and everyone involved with this little boy will be supportive of him and his father during this time.

-INS-

Wendy
Patterson
456-9140

BOB SMITH
NEW HAMPSHIRE

epinion@smith.senate.gov
http://www.senate.gov/~smith/

WHA - Info copy
for email.
United States Senate
WASHINGTON, DC 20510-2903

CHAIRMAN,
ENVIRONMENT AND PUBLIC WORKS
COMMITTEE ON ARMED SERVICES
COMMITTEE ON THE JUDICIARY
SELECT COMMITTEE ON ETHICS

April 7, 2000

BL
SJ
JM MT

Hon. Madeline Albright
Secretary of State
2201 C Street, N.W.
Washington, D.C. 20520
By fax

Dear Secretary Albright,

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages = 1

To: Charles Shapiro	From: M. Trejo
Dept./Agency: CCA	Phone #
Fax # 736-4476	Fax #

NSN 7540-01-317-7288

5009-101

GENERAL SERVICES ADMINISTRATION

I have been informed by sources that I consider to be reliable that one or more of the grandparents of Elian Gonzalez have had some level of restriction placed upon them by the Castro Government as a result of the current developments in the Elian Gonzalez case.

It has been reported to me that their ability to move freely has been restricted or monitored in some fashion by the Government. I respectfully request that you provide me any information that the United States has with regard to the status of Elian's grandparents and any restrictions placed upon them and/or any intimidation or influence being exercised on these relatives of Elian and Juan Gonzalez.

If this is true, this calls into question Juan Miguel Gonzalez's freedom to speak and represent the interests of his child in the United States. Given sensitivity of this matter, and the actions that will be taken on Tuesday of next week, I ask that you provide me with any information on this matter by Noon on Monday, April 10.

Thank you for your assistance in this matter.

Sincerely yours,

Bob Smith

Bob Smith, U.S.S.

BY 3PM today

CC Attorney General Janet Reno

SENATE
WASHINGTON, DC 20510-2903
224-3841
224- (Fax)

1700 Sun Street
Suite 100
Manchester, NH 03104
(603) 634-6000
(603) 633-2330

ONE HARBOUR PLACE
SUITE 400
PORTSMOUTH, NH 03801
(603) 467-4330
603-467-4330

Torres, Natly

From: Torres, Natly
Sent: Monday, April 10, 2000 1:22 PM
To: Miele, Wayne; Shapiro, Charles S; Snyder, Susan L.; Arreaga-Rodas, Luis E.; Rodriguez, Lula; Brown, Catherine W
Cc: Diaz, Johanna M.
Subject: CONGRESSIONAL- CLEAR BY 2:30



Apr 10- Smith on
restricted gr...

Please clear on the attached congressional. H has to call Senator Smith at 3pm today so I will need your clearance no later than 2:30. Thank you for your cooperation. I will send you the incoming by fax.

3 pages

To: Caryn Hollis
Wendy Patten
Janell Jones

Lula Rodriguez
Susan Snyder
Luis Arreaga-Rodas
Catherine Brown

Dear Senator Smith:

Thank you for your letter of April 7 regarding your concern for Elián González's grandparents in Cuba. You have stated that your sources have informed you that some level of restriction has been place on one or more of the grandparents of Elián. We are not aware of any such restrictions ~~but are not in a position to confirm that.~~

We hope this information has been useful to you.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

WHA PRESS GUIDANCE
April 5, 2000

*To: Wendy Patten
Caryn Hollis*

4 pages

Cuba: Visas for Elián's Father and Others

Background: In keeping with our earlier statements promising expedited handling of visa applications for Elián González's immediate family, the visa applications for Elián's father and five other individuals were adjudicated immediately. On April 4, USINT issued visas for Elián's father, stepmother, half-brother, 11-year-old cousin, kindergarten teacher and pediatrician. All other visa applications are pending.

Question: There is a top headline in a Washington newspaper that quotes a Cuban government official as saying that Elián González is the possession of the Cuban government. What is the reaction of the State Department?

Answer: IT IS MY UNDERSTANDING THAT THE SPOKESMAN AT THE CUBAN INTERESTS SECTION DENIES THAT HE EVER SAID SUCH A THING AND SAYS THAT HE WAS MISQUOTED BY THE WASHINGTON TIMES. HOWEVER, REGARDLESS OF WHAT WAS SAID OR NOT SAID, JUAN MIGUEL GONZALEZ IS ELIAN'S FATHER AND ELIAN SHOULD BE REUNITED WITH HIM.

Question: Has the State Department been in contact with Greg Craig and are you expecting him to return with Juan Miguel González?

Answer: DEPARTMENT OFFICIALS HAVE BEEN IN CONTACT WITH THE FATHER'S ATTORNEY REGARDING VISAS FOR ELIAN'S FAMILY AND OTHERS. WE HAVE ISSUED SIX VISAS AND THOSE INDIVIDUALS MAY TRAVEL WHENEVER THEY WISH. WHETHER OR NOT MR. GONZALEZ COMES TO THE UNITED STATES WITH HIS ATTORNEY IS SOMETHING THAT MR. GONZALEZ AND HIS ATTORNEY WILL HAVE TO DECIDE.

Question: What is the possibility of a peaceful transition of the child from his relatives to his father?

Answer: ^{hqs} I WILL NOT SPECULATE ON THAT BUT WE ARE CONFIDENT

^{will} THAT ALL PARTIES INVOLVED ~~ARE~~ TRYING TO MAKE THE
TRANSITION AS SMOOTH AS POSSIBLE .

Question: What is your reaction to the anti-American monument recently erected in front of the US Interest Section in Havana?

Answer: IT IS AN OUTRAGE TO THE MEMORY OF JOSE MARTI AND IT IS
A SHAME THAT THE CUBAN GOVERNMENT WASTED SO MUCH MONEY
BUILDING A PROTEST SITE IN FRONT OF THE U.S. INTERESTS SECTION
IN HAVANA.

Question: What is your reaction to the declarations by the mayors of Miami not to help federal officials with law enforcement?

Answer: WE UNDERSTAND THAT THE MAYORS HAVE CLARIFIED THEIR
STATEMENTS AND WILL PROVIDE THE NECESSARY SUPPORT.

Question: Is there any possibility that this crisis will be used to establish better relations with Cuba?

Answer: NO. WHAT WE ARE DEALING WITH IS A SIX-YEAR OLD AND
THE REQUEST OF HIS ONLY SURVIVING PARENT TO BE REUNITED
WITH HIS SON. WITH REGARD TO RELATIONS BETWEEN CUBA AND
THE U.S., WE HAVE LONG SAID THAT IF THE GOVERNMENT OF CUBA

MAKES FUNDAMENTAL, SYSTEMIC CHANGES, OUR RELATIONS WILL IMPROVE; IF IT DOES NOT, RELATIONS WILL NOT IMPROVE.

Question: If the Embargo and Cuban Adjustment Act were not in place, could this crisis have been avoided?

Answer: **THIS HAS NOTHING TO DO WITH EITHER THE CUBAN ADJUSTMENT ACT OR THE EMBARGO.**

Question: What are your thoughts on Congress' effort to make Elián a US resident?

Answer: **THE ADMINISTRATION OPPOSES THOSE EFFORTS. IT IS INAPPROPRIATE TO CONFER SUCH A STATUS ON A SIX YEAR OLD CHILD WHEN HIS SOLE SURVIVING PARENT HAS NOT REQUESTED IT.**

Question: How will this case affect similar cases of US children abroad?

Answer: **A FAILURE TO ENFORCE THE INS DECISION TO RETURN ELIAN TO HIS FATHER IN CUBA WOULD 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.**

Question: Are you worried that the father might defect and have you made arrangements in the event that this would happen?

Answer: **REGARDLESS OF NATIONALITY, ANY ALIEN WHO IS IN THE UNITED STATES MAY APPLY FOR POLITICAL ASYLUM; HOWEVER,**

JUAN MIGUEL GONZÁLEZ HAS STATED PUBLICLY THAT HE HAS NO INTENTION OF STAYING IN THE UNITED STATES AND WE DO NOT THINK IT IS APPROPRIATE TO SPECULATE.

Question: What is your reaction to V.P. Gore's break with the administration's position on Elián?

Answer: **WE HAVE NO COMMENTS ON THE VICE PRESIDENT'S VIEWS. I WOULD REFER YOU TO THE WHITE HOUSE.**

Question: How did you select the six visas and what are the chances you will grant the rest?

Answer: **WE ISSUED VISAS TO MR. GONZALEZ, HIS IMMEDIATE FAMILY, A YOUNG COUSIN TO WHOM HE WAS CLOSE, ELIAN'S TEACHER FOR ALL OF KINDERGARTEN, AND ELIAN'S PEDIATRICIAN. WE EXPEDITED REVIEW OF MR. GONZALEZ'S APPLICATION AND THE APPLICATIONS OF OTHERS WHOSE TRAVEL SEEMED LEGITIMATELY URGENT. THE REMAINING 22 VISA APPLICATIONS ARE STILL UNDER REVIEW.**

Question: What will happen if Cuba insists on the granting of the other visas as a condition for the father to come to the US?

Answer: **WE HAVE ISSUED SIX VISAS, INCLUDING ONE FOR ELÍAN'S FATHER. WE HOPE THAT HE WILL COME TO THE UNITED STATES SO THAT INS CAN BEGIN TRANSFERRING PAROLE CARE OF ELIAN TO HIM.**

Wendy Patton

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

456-9140

STATEMENT

04/04/00

Statement on the Elian Gonzalez Case

The attorneys representing Lazaro Gonzalez have asked that we continue our discussions on Thursday, April 6 at 9:30 am. We are sensitive to the challenges the family members are facing, and have agreed to do so. We will meet again on Thursday to discuss the transfer of Elian to his father.

The focus of the government continues to be on how best to accomplish the reunification of Elian with his father, Juan Miguel Gonzalez.

-INS-

WHA Press Guidance
April 4, 2000

10: Janelle Jones
Caryn Hollis
Wendy Patter

Fr: Natly
3 pages

FINAL VERSION
Cuba: Elian's Father to Travel

Background: Cuban officials requested meeting with USG officials in Havana and Washington today (April 4). They have answered the questions we posed regarding the additional 22 individuals and have said that Juan Miguel Gonzalez will only come to the U.S. to pick up his child and leaves immediately or all 28 visa applicants come and stay in the United States through the appeals process.

Question: What was the outcome of the meetings with CUBINT here and MINREX in Havana?

Answer: **THE CUBAN GOVERNMENT HAS INFORMED US THAT JUAN MIGUEL GONZALEZ HAS EXPRESSED HIS WISHES TO COME TO THE U.S. ONLY UNDER ONE OF TWO CONDITIONS: EITHER HE PICKS UP HIS SON AND LEAVES IMMEDIATELY, OR HE COMES TO THE UNITED STATES FOR AN EXTENDED VISIT WITH THE 27 OTHER INDIVIDUALS WHO HAVE REQUESTED VISAS. TO THIS END, THE CUBAN GOVERNMENT SAID THAT THEY ARE REQUESTING, ON BEHALF OF JUAN MIGUEL GONZALEZ, THAT WE ISSUE THE REMAINING 22 VISAS.**

Question: What about the six visas you already issued?

Answer: **AN OFFICIAL FROM THE U.S. INTERESTS SECTION IN HAVANA PROVIDED THE CUBAN FOREIGN MINISTRY WITH THE PASSPORTS AND VISAS FOR JUAN MIGUEL GONZALEZ AND FIVE OTHERS. THEY MAY TRAVEL WHENEVER THEY WISH TO DO SO.**

Question: When will you be done reviewing the 22 pending requests?

Answer: **I AM NOT GOING TO SPECULATE ABOUT THAT.**

Question: Did you receive a response from the GOC on your questions?

Answer: **YES, WE HAVE RECEIVED PARTIAL RESPONSES TO THE QUESTIONS.**

Question: Will you issue a visa to Ricardo Alarcon?

Answer: **WE HAVE ISSUED 6 OF THE 22 VISAS. THE REMAINING 22 VISA APPLICATIONS ARE PENDING.**

Question: What type of visa did the 6 individuals receive?

Answer: **THEY RECEIVED B-2 VISITORS VISAS.**

Question: Do the visas have travel restrictions?

Answer: **NO. THEY ARE NOT GOVERNMENT OF CUBA OFFICIALS AND AS SUCH THEY HAVE RECEIVED VISITORS VISAS WITHOUT ANY TRAVEL LIMITATIONS.**

Question: How long can they remain in the United States?

Answer: **THE LENGTH OF STAY IS NORMALLY DETERMINED AT THE TIME OF ARRIVAL.**

Question: If they do travel, where would they stay?

**I WOULD REFER YOU TO MR. GONZALEZ'S ATTORNEY FOR FURTHER
DETAILS PERTAINING TO TRAVEL AND LODGING ARRANGEMENTS.**

Questions: Will Mr. Gonzalez get immediate custody of his child?

Answer: **I REFER YOU TO DOJ AND INS ON QUESTIONS REGARDING
ELIAN'S PAROLE STATUS.**

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	re: Consequences if Juan Miguel Gonzalez Defects (2 pages)	04/07/2000	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral and Humanitarian Affairs (Wendy Patten)
OA/Box Number: 3135

FOLDER TITLE:

Elian Gonzalez [2]

2012-0371-F

rs2167

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]

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.

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

- 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]

Patten, Wendy L. (MULTI)

From: Patten, Wendy L. (MULTI)
Sent: Wednesday, April 19, 2000 8:25 PM
To: @NSA - Natl Security Advisor
Cc: @INTERAM - Inter-American; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs;
@MULTILAT - Multilateral and Humanitarian Affairs
Subject: elian gonzalez update [UNCLASSIFIED]

Please pass to Sandy, Jim, and Mara. Thanks.

From Wendy Patten
Cleared by Legal and Interam

Sandy,

Here's a summary of the day's events:

1. 11th Circuit injunction --

Today's court order prohibits Elian's departure from the U.S. pending appeal, which is set for oral argument on May 11. It further prohibits any persons acting on Elian's behalf from removing him from the U.S., and directs the USG to take such reasonable and lawful measures as necessary to prevent Elian's removal from the U.S.

Noting that the appeal likely would be moot if Elian left the U.S. pending the appeal, the court found that balance of equities weighs heavily in favor of granting the injunction. Elian's father has said he would remain in the U.S. through the appeal, and a decision preventing the appeal from becoming moot is hardly surprising, nor does it undermine the central issues at stake in the case. Most important, the court expressly declined to reach the issue of custody during pendency of the appeal. Also of note, the court did not determine the likelihood of success on the merits; it only had to find that the Miami relatives had presented a "substantial case" on the merits.

The court, however, cited several factors that suggest difficulties that INS must overcome in order to prevail in this case. First, it noted potential inconsistencies between, on the one hand, INS's present position and, on the other hand, INS's own regulations and guidelines and the plain language of the statute, which states that "any alien" may apply for asylum. Second, it seemed troubled by the fact that INS never interviewed Elian in determining that he was too young to apply for asylum on his own behalf. Third, it questioned whether INS had considered all relevant factors, especially the child's separate and independent interests in seeking asylum. Fourth, even assuming INS correctly determined that an adult must apply for asylum on Elian's behalf, the court was not convinced that the asylum application filed by Lazaro Gonzalez was ineffectual under the law. (It is worth noting that the Court reviewed

Plaintiff's appeal briefs in considering this injunction, but not the government's -- because we have not yet filed our briefs.)

2. reuniting Elian with his father --

The order does not, by its terms, bar the INS from removing Elian from the Miami relatives and reuniting him with his father. The Attorney General told reporters this afternoon that the order does not preclude her from placing the child in his father's care. She also said "we will take the course of action most appropriate under the circumstances," but did not give any additional details about her plans. We understand that the Attorney General and the President will discuss the matter in Oklahoma City.

Greg Craig gave a strongly-worded statement in which he called upon the government to act immediately to return Elian to his father. He said that "nothing in the order weakens the father's legal or moral claim to custody" and that it is "unconscionable" to wait one day longer to act. If the government does not act immediately to remove him from Lazaro Gonzalez and return him to his father, he said, "it will be responsible for the harm that continues to be inflicted upon Juan Miguel's beloved son."

3. D.C. District Court case --

The plaintiffs last week filed a new case in the district court in DC, seeking to prevent Elian's transfer to his father or removal to Cuba on the grounds that such action would violate U.S. obligations under several human rights instruments. They sought a TRO and a permanent injunction. This morning, the Miami relatives withdrew their request for a TRO in this matter, but they are continuing to pursue this suit.

Patten, Wendy L. (MULTI)

From: Patten, Wendy L. (MULTI)
Sent: Tuesday, April 04, 2000 5:39 PM
To: @NSA - Natl Security Advisor
Cc: @MULTILAT - Multilateral and Humanitarian Affairs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs; @INTERAM - Inter-American
Subject: further update on Elian Gonzalez case [UNCLASSIFIED]

Please pass to Sandy and Jim. cc: Mara. Thanks.

Cleared by Interam and Legal

Sandy and Jim,

The Cuban government has just informed us, both through their Interests Section here and through their Foreign Ministry in Havana, that Elian's father will be allowed to travel only under one of two scenarios:

1. with assurance that he will be able to pick up Elian and return with him to Cuba immediately; or
2. accompanied by all 27 of the individuals for whom visas were requested.

State is considering next steps in terms of travel by the father.

We will stay in touch with State and Justice and provide a further update as soon as possible.

Wendy

Patten, Wendy L. (MULTI)

From: Patten, Wendy L. (MULTI)
Sent: Tuesday, April 04, 2000 2:44 PM
To: @NSA - Natl Security Advisor
Cc: @MULTILAT - Multilateral and Humanitarian Affairs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs; @INTERAM - Inter-American
Subject: Update on Elian Gonzalez Case [UNCLASSIFIED]

Please pass to Sandy and Jim. cc: Mara. thanks.

From Wendy Patten through Eric Schwartz
Cleared by Interam and Legal

Elian Gonzalez's father may be traveling to the United States tomorrow morning.

State has spoken with Vivian Manerud, who indicated that she is taking steps to organize a charter flight that would bring Greg Craig, Joan Brown Campbell of the National Council of Churches, and a third person to Havana tonight. The plane, which seats eight, would return tomorrow morning with Juan Miguel Gonzalez and the five others who have been granted visas. The plane would arrive at Dulles Airport at 11:00am. Such a flight plan would require OFAC approval, as OFAC's general licenses for charter flights from Cuba apply only to Miami, Los Angeles, and New York. State sees no problem with this approach and will recommend that OFAC approve such a request.

This information is not yet confirmed, and State does not know whether these plans have been discussed with the Government of Cuba.

This proposed travel is consistent with our belief that the family's coming to the U.S. will contribute to resolution of this case. (In any event, we would be hard pressed not to grant visas and facilitate the travel of the father of an unaccompanied minor in the United States.)

We will provide further updates as soon possible, both on the travel plans for the six and where they plan to stay while here.

Patten, Wendy L. (MULTI)

From: DeRosa, Mary B. (LEGAL)
Sent: Monday, April 03, 2000 12:30 PM
To: Patten, Wendy L. (MULTI); @NSA - Natl Security Advisor
Cc: @INTERAM - Inter-American; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs; @MULTILAT - Multilateral and Humanitarian Affairs
Subject: RE: Update on Elian Gonzalez Case [UNCLASSIFIED]

One legal note -- by statute, it is the Consular Affairs officer in Havana that has the authority to decide whether to grant the visas. State can make recommendations, but they are not binding. The Secretary of State can *deny* a visa for foreign policy reasons, however. The Secretary can also make decisions on visas for government officials who are covered by the 212(f) proclamation on Cuba. The only government official of which we are aware is Alarcon, although it is possible that there are others among the 28 applicants.

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

From: Patten, Wendy L. (MULTI)
Sent: Monday, April 03, 2000 12:12 PM
To: @NSA - Natl Security Advisor
Cc: @INTERAM - Inter-American; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs; @MULTILAT - Multilateral and Humanitarian Affairs
Subject: Update on Elian Gonzalez Case [UNCLASSIFIED]

Please pass to Jim, cc: Mara. Thank you.

Jim,

This morning, the Cuban government delivered to the U.S. Interests Section in Havana a diplomatic note and a request for visas for 28 people. The request indicated their desire to travel to the U.S. as soon as possible. The list includes Ricardo Alarcon.

The Cuban government provided official passports for all but two of the individuals listed, which signals that they view this group as an official delegation. This fact, however, does not affect State's processing of the visa applications.

The State Department is prepared to grant visas immediately to the family members (Juan Miguel Gonzalez, his wife, their child, and Elian's 10 year-old cousin). They continue to review and discuss the other visa applications. In particular, State is considering whether to approve visas for a group of 2 to 3 additional people, who include Elian's kindergarten teacher, the family pediatrician, and a psychologist.

State met with officials from the Cuban Interests Section in Washington this morning at 10:30. The GOC gave State a translated copy of Castro's speech from last evening, and reiterated Castro's message that they propose two options:

1. A group of 28 people would travel to DC to stay with Elian until the judicial process is completed.

2. Elian's father would travel alone at any time and to any place in the U.S. in order to pick up the child and return immediately to Cuba.

We remain in close contact with State and Justice and will provide further updates throughout the day. By the end of the day, we should have a decision from State on the core group of visa applications (the family plus the additional 2 to 3) and also have a sense of where they stand on the other visa requests.

Wendy