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Articles

The Tipping Point: The Failure of Form Over Substance in Addressing the Needs of Unaccompanied Immigrant Children

Lauren R. Aronson

Deconstructing and Reconstructing Rights for Immigrant Children

Erin B. Corcoran

Vulnerability in Numbers: Racial Composition of the Electorate, Voter Suppression, and the Voting Rights Act

Ian Vandewalker & Keith Gunnar Bentele

The Elián González Case: The World's Most Watched and Politically-Charged Custody Battle that Reached the U.S. Supreme Court and Determined a Presidential Election

Antonio Rafael de la Cova

Note

Dominican Apartheid: Inside the Flawed Migration System of the Dominican Republic

Nicia C. Mejia

THE ELIÁN GONZÁLEZ CASE: THE WORLD’S MOST WATCHED AND POLITICALLY-CHARGED CUSTODY BATTLE THAT REACHED THE U.S. SUPREME COURT AND DETERMINED A PRESIDENTIAL ELECTION.

Antonio Rafael de la Cova*

TABLE OF CONTENTS

INTRODUCTION	152
I. THE CUBAN ADJUSTMENT ACT OF 1966 AND ITS CONSEQUENCES	152
A. <i>Fidel Castro’s Ultimatum to the United States</i>	153
B. <i>The Clinton Administration Reverses its Family Court Decision</i>	156
C. <i>A Highly Unusual Secret Agreement to End a Hostage Standoff</i>	159
II. POLITICAL INTERVENTION	161
A. <i>The U.S. National Council of Churches and ADM Interfere</i>	161
B. <i>Three U.S. Presidential Candidates Opine</i>	163
C. <i>The International Campaign</i>	165
D. <i>Elián’s Grandmothers are Escorted by a Spy Handler</i> ..	166
III. THE DEPARTMENT OF JUSTICE CHANGES TACTICS	171
A. <i>A Monument to Elián in Havana</i>	173
B. <i>Elián’s Father Arrives in Washington, D.C. and Embraces Janet Reno</i>	175
C. <i>A Florida Family Court Lacks Jurisdiction</i>	177
D. <i>All Night Negotiations</i>	180
IV. FAMILY REUNIFICATION AT GUNPOINT	182
A. <i>Street Protests and Counter-Protests</i>	187
B. <i>Sedation and Communist Indoctrination</i>	190
V. THE 11TH U.S. CIRCUIT COURT OF APPEALS DECISION	192
CONCLUSION	194

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INTRODUCTION

On Thanksgiving Day 1999, around 8:30 A.M., two south Florida sports fishermen, 39-year-old Donato Dalrymple and his cousin, found five-year-old Elián González nestled in a tire inner tube floating three miles off the Fort Lauderdale coast.¹ When the U.S. Coast Guard arrived, Dalrymple refused to hand over the boy at sea fearing that he would be returned to Cuba under the Wet Foot/Dry Foot Policy because he had not reached land.² The fisherman reluctantly gave up Elián after being assured that the child would be taken ashore for medical reasons, which would make him eligible to stay.³ Elián was rushed to a hospital and treated for dehydration and minor cuts.⁴

Hours earlier, boaters had rescued 22-year old Arianne Horta Alfonso and her 33-year-old boyfriend Nivaldo Fernández Ferrán who stated that they were part of a group of fourteen refugees, including Elián and his mother, Elisabet Brotons Rodríguez, and her common-law husband, 25-year-old Lázaro Munero García.⁵ They had left Cárdenas, Cuba, four days earlier on a 17-foot boat built with aluminum tubes and a 50hp outboard engine, towing three Russian truck tire inner tubes.⁶ After two days, the vessel capsized in the Gulf Stream during a storm and all others perished.⁷

I. THE CUBAN ADJUSTMENT ACT OF 1966 AND ITS CONSEQUENCES

During the previous four decades, nearly half-a-million Cubans had sought political asylum in the United States. The Camarioca boatlift of 1965 and the subsequent Freedom Flights until 1973 brought 265,000 exiles; the Mariel exodus of 1980 added another 125,000; and during the Cuban rafter crisis of 1994, 35,000 refugees headed for the U.S. in one month. Under the terms of the Cuban Adjustment Act of 1966, nearly all Cuban refugees who enter the United States without a visa are paroled and after one year can

¹ Lisa Arthur, Bruce Taylor Seeman & Elaine de Valle, *Five-Year-Old Found on Inner Tube*, MIAMI HERALD (Nov. 25, 1999), available at <http://www.latinamericanstudies.org/elian/found.htm>, archived at <http://perma.cc/Y4HZ-952Y>.

² *Id.*; Jay Weaver & Eunice Ponce, *Lifesaving Moment at Sea Draws Coast Guard into Controversy*, MIAMI HERALD (Dec. 7, 1999), available at <http://www.latinamericanstudies.org/us-cuba/coastguard.htm>, archived at <http://perma.cc/KNM2-AD6Q>.

³ *Id.*

⁴ *Three Who Survived Sinking Won't Be Sent Back to Cuba*, N.Y. TIMES (Nov. 27, 1999), available at <http://www.latinamericanstudies.org/elian/survived.htm>, archived at <http://perma.cc/9ECA-4YVM>.

⁵ *Id.*; Elaine de Valle, *The Deadly Voyage: How it Happened*, MIAMI HERALD (Dec. 13, 1999), available at <http://www.latinamericanstudies.org/us-cuba/voyage.htm>, archived at <http://perma.cc/832N-5K2N>.

⁶ Arthur, Seeman & de Valle, *supra* note 1; de Valle, *supra* note 5; Keith Morrison, *Elián's Story: 'Dateline' in Havana*, MSNBC (Jan. 17, 2000), available at <http://www.latinamericanstudies.org/elian/dateline.htm>, archived at <http://perma.cc/PL4Q-8VTR>.

⁷ de Valle, *supra* note 5; Morrison, *supra* note 6; MICHAEL JOHN, BETRAYAL OF ELIAN GONZALEZ 15–16 (2000).

apply for permanent resident status.⁸ Both nations reached an immigration accord in 1994 requiring Washington to annually issue 20,000 lottery visas to Cubans and under the Wet Foot/Dry Foot Policy, emigrants who reach the mainland can stay while those intercepted by the U.S. Coast Guard at sea are returned to Cuba.⁹

The Immigration and Naturalization Service (INS) granted Elián a temporary deferral of his inspection and released him to his great-uncle Lázaro González, a 49-year-old automobile mechanic, who resided with his wife Angela and their 21-year-old daughter Marisleysis at 2319 NW Second Street in Miami's Little Havana.¹⁰ The relatives telephoned their family in Cárdenas, advising them to get hardship visas and travel to Miami. According to the Miami relatives, their Cárdenas kin "started preparing their papers." They called back the next day and said "some functionary of the government would be coming to get the boy."¹¹ Elián became "a symbol to many exiles of conditions on the island so economically and politically oppressive that a mother would risk the life of her child to leave."¹² In response, Cuban Communist leader Fidel Castro met with Juan Miguel González and a diplomatic note was sent to the U.S. State Department on November 27th declaring that the father was demanding Elián's immediate repatriation.¹³ The INS issued a press release on December 1st that, according to attorney José García Pedroza, indicated: "This is a custody dispute for the state courts to decide based on a single standard. What is in the best interest of the boy?"¹⁴

A. *Fidel Castro's Ultimatum to the United States*

On December 5th, Elián's sixth birthday, Castro angrily responded on state-run television with an ultimatum to the United States to return Elián to

⁸ SAM VERDEJA & GUILLERMO MARTÍNEZ, *CUBANS: AN EPIC JOURNEY* 128–29, 248 (2011).

⁹ *Id.* at 187–88; Madeline Baró Díaz, *U.S. Stopped Granting Asylum to Cubans After 1994 Exodus*, S. FLA. SUN-SENTINEL (Aug. 1, 2004), available at <http://www.latinamericanstudies.org/immigration/exodus-1994.htm>, archived at <http://perma.cc/ZQ7V-JXZQ>.

¹⁰ Ana Aclé, *Elián's Miami Kin to Attend Hearing*, MIAMI HERALD (May 9, 2000), available at <http://www.latinamericanstudies.org/elian/attend.htm>, archived at <http://perma.cc/M5YW-E3CH>; Tim Golden, *Just Another Cuban Family Saga*, N.Y. TIMES (Apr. 23, 2000), available at <http://www.nytimes.com/2000/04/23/magazine/just-another-cuban-family-saga.html>, archived at <http://perma.cc/BDM2-FDZ5>; Ronnie Greene, *Raid's Prelude: What Went Wrong*, MIAMI HERALD (Apr. 30, 2000), available at <http://www.latinamericanstudies.org/elian/prelude.htm>, archived at <http://perma.cc/4E9T-5FJC>.

¹¹ Golden, *supra* note 10; JOHN, *supra* note 7, at 33.

¹² Mike Clary, *Amid U.S.-Cuba Storm, Boy Gets a Party*, L.A. TIMES (Dec. 7, 1999), available at <http://www.latinamericanstudies.org/us-cuba/party.htm>, archived at <http://perma.cc/R742-ZBFZ>.

¹³ *Id.*

¹⁴ Ray Suarez, *Uncertain Future for Elian Gonzalez*, PBS NEWSHOUR, Jan. 13, 2000, available at http://www.pbs.org/newshour/bb/international-jan-june00-cuba_1-13/, archived at <http://perma.cc/E6V6-XZBQ>.

his father “within 72 hours.”¹⁵ He forewarned: “I hope that Cuba’s numerous friends in the United States and in other parts will begin to organize committees for the release of the child kidnapped by the United States. Heaven and earth will be moved.”¹⁶ Castro promised a “battle for world opinion” and threatened mass protests and a boycott of upcoming U.S.-Cuba migration talks scheduled for December 13th.¹⁷ The latter would disrupt implementing the U.S.-Cuba accords to prevent another massive refugee exodus.¹⁸ U.S. State Department spokesman James P. Rubin reportedly noted that “the case was referred to the Florida state courts because they take precedence in custody disputes.”¹⁹ He emphasized, “Our first priority is the welfare of the child. We will not respond to threats made against the United States through the press.”²⁰ Deputy White House press secretary Barry Toil declared, “This is an issue that needs to be hammered out through the appropriate legal channels.”²¹

Attorney Spencer Eig, a former INS lawyer representing Elián’s Miami family, issued an invitation to the child’s father to visit them and settle the custody dispute in state family court.²² Juan Miguel González refused to go and insisted his “kidnapped” son be sent to him.²³ Castro “branded Florida judges mercenary and venal, corrupt to the very marrow of their bones.”²⁴ Ricardo Alarcón, president of the Cuban National Assembly and Havana’s chief negotiator with the U.S.,²⁵ declared, “It’s not a matter of custody. It’s a matter of kidnapping a child.”²⁶ Alarcón stressed that “[t]here [wa]s nothing to negotiate, there [wa]s nothing to discuss in any court or any other

¹⁵ *Cuba Impatient for Return of Rescued Boy, Castro Says*, N.Y. TIMES, (Dec. 6, 1999) [hereinafter *Cuba Impatient*], available at <http://www.latinamericanstudies.org/us-cuba/rescued.htm>, archived at <http://perma.cc/BF92-URYU>; Juan O. Tamayo, *Castro Ultimatum: Return Boy in 72 Hours or Migration Talks at Risk*, MIAMI HERALD (Dec. 6, 1999), available at <http://www.latinamericanstudies.org/us-cuba/ultimatum.htm>, archived at <http://perma.cc/7D FH-M3RJ>.

¹⁶ *Cuba Impatient*, *supra* note 15; Tamayo, *supra* note 15.

¹⁷ *Cuba Impatient*, *supra* note 15; Tamayo, *supra* note 15.

¹⁸ *Castro Raises Stakes in Custody Battle over Boy*, MSNBC (Dec. 6, 1999) [hereinafter *Castro Raises Stakes*], available at <http://www.latinamericanstudies.org/us-cuba/stakes.htm>, archived at <http://perma.cc/CL3A-ET8J>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Alfonso Chardy & Jay Weaver, *Rival Campaigns Helping to Pay for Lawyers in Elian Case*, MIAMI HERALD (May 5, 2000), available at <http://www.latinamericanstudies.org/elian/rival.htm>, archived at <http://perma.cc/26Q9-URUB>; Clary, *supra* note 12.

²³ Juan O. Tamayo & Jay Weaver, *U.S. Asks Havana to Let Elian’s Dad Attend Hearing*, MIAMI HERALD (Jan. 4, 2000), available at <http://www.latinamericanstudies.org/us-cuba/attend.htm>, archived at <http://perma.cc/WWA3-5PV4>.

²⁴ The Miami family eventually had twelve pro bono lawyers: Spencer Eig, former U.S. Attorney Kendall Coffey, Linda Osberg-Braun, Roger Bernstein, Manuel Díaz, Barbara Lagoa, José García-Pedrosa, Laura Fabar, Eduardo Rasco, Judd Goldberg, Eliot Pedrosa and Richard Sharpstein. Chardy & Weaver, *supra* note 23; See Tamayo, *supra* note 15.

²⁵ *Castro Raises Stakes*, *supra* note 18.

²⁶ *Castro Demands U.S. Return Cuban Refugee Boy*, CNN (Dec. 5, 1999), available at <http://www.latinamericanstudies.org/us-cuba/castro-elian.htm>, archived at <http://perma.cc/L3J 4-MJ9D>.

forum.” He warned that if Elián was not repatriated, Cuba would not attend the upcoming migration meeting.²⁷ State Department spokesman James Foley replied, “We do not accept the ultimatum issued by Fidel Castro. This is not conducive to resolving this case in the appropriate humanitarian way.”²⁸

In Havana, regime-choreographed demonstrations, ranging up to 300,000 people, were held nightly in front of the U.S. Interests Section.²⁹ Government buses brought protesters from 100 miles away for what was called “the march of the combatant nation”³⁰ demanding Elián’s return. Large billboards appeared throughout the capital and in front of the U.S. diplomatic mission with images of a gloomy Elián that read: “Return Elián to his country.”³¹ The photo and logo were also displayed on thousands of T-shirts that the regime distributed free to the marchers. Castro later admitted spending \$2 million on the propaganda items.³² The case was virtually the only subject covered by Cuban news media.³³

Cuban children unknown to Elián “have wept for him, given speeches for him, sang songs imploring him to return.”³⁴ Elián’s primary school desk in Cárdenas became a shrine, “almost a religious icon.”³⁵ His classmates wrote to President Bill Clinton that what he was doing was unjust.³⁶ The school had a sign-in book for visitors entitled “For the Freedom of Little Elián. Fatherland or Death. Fidel Castro.”³⁷ The Communist Party daily *Granma* heralded: “Never in the history of Cuba has there been a similar national mobilization, moved by indignation against the rude and repugnant crime committed against a child.”³⁸ Former INS general counsel Grover Jo-

²⁷ *Id.*

²⁸ *Id.*; *Cuban Demonstrators Demand That U.S. Return Boy*, CNN (Dec. 7, 1999), available at <http://www.latinamericanstudies.org/us-cuba/return.htm>, archived at <http://perma.cc/8CMJ-EYPN>.

²⁹ *U.S., Cuba Tone Down Rhetoric*, MSNBC (Dec. 8, 1999) [hereinafter *U.S., Cuba Tone*], available at <http://www.latinamericanstudies.org/us-cuba/rhetoric.htm>, archived at <http://perma.cc/B2TN-4DXS>.

³⁰ *Id.*; *Cuba Plans More Protests for Boy’s Return*, CNN (Dec. 10, 1999), available at <http://www.latinamericanstudies.org/us-cuba/boy-return.htm>, archived at <http://perma.cc/F6DB-PH5R>.

³¹ *Id.*; *Cries for Elian’s Return Ring in Havana’s Streets, Cafes*, MIAMI HERALD (Dec. 10, 1999) [hereinafter *Cries for Elian’s Return*], available at <http://www.latinamericanstudies.org/us-cuba/cries.htm>, archived at <http://perma.cc/K5RU-58GZ>.

³² See Juan O. Tamayo, *Castro Enjoys Propaganda Victory*, MIAMI HERALD (June 29, 2000), available at <http://www.latinamericanstudies.org/us-cuba/propaganda.htm>, archived at <http://perma.cc/Q3T6-QKTE>.

³³ See *Cries for Elian’s Return, Cafes*, *supra* note 31.

³⁴ Anita Snow, *Town Hopeful for Cuba’s ‘Boy Hero’ to Return*, INDIANA, PA GAZETTE (Jan. 16, 2000), available at http://www.latinamericanstudies.org/elian/Indiana_PA_Gazette_1-16-2000.pdf, archived at <http://perma.cc/8KQC-ZKGT>.

³⁵ *Id.*

³⁶ Karen DeYoung, *Cuba Longs for a Little Boy: Family Battles U.S. Relatives for Return of Rescued 6-Year-Old*, WASH. POST (Dec. 10, 1999), available at <http://www.latinamericanstudies.org/us-cuba/longs.htm>, archived at <http://perma.cc/M54H-3YAA>.

³⁷ *Id.*

³⁸ Anita Snow, *Protests Spread Across Cuba for Boy*, AP NEWS ARCHIVE (Dec. 10, 1999), available at <http://www.apnewsarchive.com/1999/Protests-Spread-Across-Cuba-for-Boy/id-c5f3b03f4030414abcfadd9ca8263caa>, archived at <http://perma.cc/58NT-T69B>.

seph Rees declared that Elián had been “turned into a political pawn.”³⁹ He stated, “Fidel had dinner with the father and the two sets of grandparents. How often does that happen?”⁴⁰

B. *The Clinton Administration Reverses its Family Court Decision*

On December 7, 1999, the Clinton Administration reversed the previous INS family court decision and recognized that Elián’s father could assert his custody claim.⁴¹ They also agreed to Castro’s request of immediately deporting six Cubans who had hijacked a docked fishing boat to Florida.⁴² Critics believed that the change was due to a U.S. government fear that Cuba in reprisal would “unleash another flood of refugees.”⁴³ Castro then rectified in a public speech that he did not intend to humiliate the United States and that “we have not formulated an ultimatum.”⁴⁴ Cuban officials claimed that the 72-hour notice was advice, not a deadline.⁴⁵

The next day, President Clinton stated that there were difficult decisions to be made in the Elián case: “I don’t think that politics or threats should have anything to do with it and, if I have my way, it won’t.”⁴⁶ Clinton suggested that, for the child’s sake, officials of both nations “try to take as much political steam out of it as possible.”⁴⁷ The president claimed that “it wasn’t his decision” to decide Elián’s fate.⁴⁸ However, there was a precedent during the Reagan Administration when Attorney General Edwin Meese issued a “departure control order” allowing 12-year-old Ukrainian Walter Polovchak to stay in America against the wishes of his parents, who were returning to the Soviet Union.⁴⁹

³⁹ Lizette Alvarez, *In Two Countries, Six-Year-Old Cuban Is Political Symbol*, N.Y. TIMES (Jan. 9, 2000), available at <http://www.latinamericanstudies.org/elian/symbol.htm>, archived at <http://perma.cc/DTZ5-4TUT>.

⁴⁰ *Id.*

⁴¹ Karen DeYoung, *Can Elian Case Alter U.S.-Cuban Dynamic?*, WASH. POST (May 2, 2000), available at <http://www.latinamericanstudies.org/elian/alter.htm>, archived at <http://perma.cc/8FVU-BGV6>.

⁴² Carol Rosenberg & Elaine de Valle, *Boy Might be Sent Back*, MIAMI HERALD (Dec. 8, 1999), available at <http://www.latinamericanstudies.org/us-cuba/father.htm>, archived at <http://perma.cc/6EYL-XLN8>.

⁴³ DeYoung, *supra* at 41.

⁴⁴ U.S., *Cuba Tone*, *supra* note 29.

⁴⁵ *Id.*

⁴⁶ Steven Mufson, *Clinton Warns Against Politics in Cuban Boy’s Case*, WASH. POST (Dec. 9, 1999), available at <http://www.latinamericanstudies.org/us-cuba/clinton-elian.htm>, archived at <http://perma.cc/NZC6-4NKW>.

⁴⁷ U.S., *Cuba Tone*, *supra* note 29.

⁴⁸ *Id.*

⁴⁹ Mufson, *supra* note 46; ‘Littlest Defector’ of 20 Years Ago Understands the Plight of Elián, WASH. TIMES (Feb. 7, 2000) [hereinafter *Littlest Defector*], available at <http://www.latinamericanstudies.org/elian/plight.htm>, archived at <http://perma.cc/G2WA-HC9W>. Walter Polovchak turned eighteen before a final decision was issued and he was allowed to remain in America. The ruling held that parents who are foreign nationals cannot take their own child from America if that minor objects, unless the youngster first receives a hearing to determine if their life in another country is in their interests; see *Polovchak v. Meese III*, 774 F.2d 731, (7th Cir. 1985). Polovchak eventually reconciled with his parents and every other

In previous Cuban custody cases, a woman fleeing the island in 1969 had managed to get her 2-year-old daughter over the fence of the U.S. Guantanamo Naval base to an awaiting relative before Cuban guards seized her and her three-year-old daughter.⁵⁰ The mother was imprisoned for five years and the child left behind was given to her father.⁵¹ The girl who escaped went to live with her great aunt and uncle and their five sons in Hialeah, Florida.⁵² Her father sued for custody but a Florida family court ruled that the child was to stay in the Miami suburb.⁵³ In another incident in February 1980, 14-year-old Odalys Valdés, daughter of a Cuban Communist Party official, arrived in Florida in a hijacked boat with her boyfriend.⁵⁴ She was placed in foster care and after a two-year legal fight in a Miami circuit court, her parents and the Castro regime dropped their lawsuit seeking her return.⁵⁵

On December 9, 1999, U.S. Deputy Attorney General Eric Holder held a press conference and invoked a legal loophole allowing the Justice Department, instead of Florida family courts, to decide Elián's future.⁵⁶ Holder stated that INS, a branch of the Justice Department, would determine the boy's destiny, since Elián "was taken directly to a hospital and therefore was never formally paroled into the country."⁵⁷ He affirmed that "the law favored Elián's return to Cuba as long as the father could prove his relationship and that he was a suitable parent."⁵⁸ INS spokesman Mike Gilhooly indicated that Elián was paroled in for a deferred inspection that had not occurred. It was set for the end of December and INS was "not legally obliged to let the boy remain in the United States because he was given only temporary entry after his rescue."⁵⁹

The decision gave the Miami relatives little legal recourse in a state courtroom to stop the INS process. The *Washington Post* editorialized that, prior to Elián's repatriation, "[s]ome procedure has to be devised to make

year visited them in Ukraine. He later appeared with his own six-year-old son at Elián's Miami home to express support. See *Littlest Defector*, *supra* note 49; see also Marika Lynch, *Elián's Father Comes Under Attack, Files for U.S. visa*, MIAMI HERALD (Apr. 3, 2000), available at <http://www.latinamericanstudies.org/elian/attack.htm>, archived at <http://perma.cc/6BVH-62LB>.

⁵⁰ Meg Laughlin, *Fate, Separation Altered Two Cuban Sisters' Lives*, MIAMI HERALD (Dec. 10, 1999), available at <http://www.latinamericanstudies.org/us-cuba/fate.htm>, archived at <http://perma.cc/3VSB-PYW9>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Cuban Girl, 15, to Seek Asylum*, MIAMI HERALD (Dec. 3, 1980), available at <http://www.latinamericanstudies.org/exile/MH-12-3-1980.pdf>, archived at <http://perma.cc/6SRZ-48HK>.

⁵⁵ *Id.*; Jay Weaver, *Ruling May Have Dramatic Effect on Asylum Decisions*, MIAMI HERALD (Apr. 20, 2000), available at <http://www.latinamericanstudies.org/elian/asylum0.htm>, archived at <http://perma.cc/L5J5-5MLC>.

⁵⁶ Tom Carter, *U.S. Reverses Policy on Returning Boy to Cuba*, WASH. TIMES (Dec. 10, 1999), available at <http://www.latinamericanstudies.org/us-cuba/reverses.htm>, archived at <http://perma.cc/2NCF-7Y5Z>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

sure that the interests of family reunification don't cost young Elián the freedoms for which he has already paid so dearly."⁶⁰ A U.S. diplomatic note to Cuban officials indicated how Juan Miguel González could exercise his parental rights and present documentation to an INS official willing to travel to his home in Cárdenas.⁶¹ Elián's parents had divorced when he was two years old and the mother had legal custody.⁶² The father rejected appearing before a Florida family court and boasted that Fidel Castro's stern talk made Americans "tremble."⁶³ He telephoned Elián twice daily but declined to talk to the Miami family after the regime installed a speaker phone in his home.⁶⁴ Marisleysis, who had become a surrogate mother, said that the father "sometimes demand[ed] that Elián sing Cuban revolutionary songs."⁶⁵

The attorneys for the Miami family indicated that "they would petition a federal court to block Elián's return to Cuba on the grounds that the boy would live a better life under America's democratic system than under Castro's communist regime."⁶⁶ On December 10th, they filed "a routine political asylum plea" with INS and an injunction with the U.S. District Court to block the child's repatriation.⁶⁷ The document indicated that Elián would be persecuted in Cuba because his two great-uncles and his stepfather had been imprisoned by the Communist regime that had also harassed and intimidated Elián's mother.⁶⁸ It added that the boy would be "subjected to forced indoctrination in the tenets of communism."⁶⁹ A year earlier, the INS had issued new asylum guidelines for children under the age of eighteen, who "may experience persecution differently from adults and may not present testimony with the same degree of precision as adults."⁷⁰ The "political exploita-

⁶⁰ *What's Best for Elian Gonzalez*, WASH. POST (Dec. 9, 1999), available at <http://www.latinamericanstudies.org/us-cuba/best.htm>, archived at <http://perma.cc/HM6Y-EGTR>.

⁶¹ See Rosenberg & de Valle, *supra* note 42.

⁶² Andres Viglucci, *Portrait of a Father: Loyal to Party, Family*, MIAMI HERALD (Apr. 7, 2000), available at <http://www.latinamericanstudies.org/elian/loyal.htm>, archived at <http://perma.cc/8VNG-MLD2>.

⁶³ Ana Acle, Alfonso Chardy & Jay Weaver, *Elian Stays for Now*, MIAMI HERALD (Jan. 11, 2000), available at <http://www.latinamericanstudies.org/elian/stays.htm>, archived at <http://perma.cc/7SXH-3923>; Rosenberg & de Valle, *supra* note 42.

⁶⁴ Maya Bell & Luisa Yanez, *Judge Who Has Ruled Against Castro, Reno Gets Elian Case*, S. FLA. SUN-SENTINEL (Jan. 20, 2000), available at <http://www.latinamericanstudies.org/elian/judge-ruled.htm>, archived at <http://perma.cc/PH6E-FT4U>.

⁶⁵ Tom Carter, *Cousin Says Elian's Dad Wants Him in U.S.*, WASH. TIMES (Mar. 2, 2000), available at <http://www.latinamericanstudies.org/elian/cousin.htm>, archived at <http://perma.cc/7WLY-DNQ6>.

⁶⁶ Carol Rosenberg & Jay Weaver, *Clinton: Let Courts Decide U.S.-Cuba Battle for Custody*, MIAMI HERALD (Dec. 9, 1999), available at <http://www.latinamericanstudies.org/us-cuba/battle.htm>, archived at <http://perma.cc/BR9F-87SV>; *Lawyers File for U.S. Asylum for Cuban Boy*, CNN (Dec. 10, 1999) [hereinafter *Lawyers File*], available at <http://www.latinamericanstudies.org/us-cuba/asylum.htm>, archived at <http://perma.cc/7D7N-JEHU>.

⁶⁷ *Lawyers File*, *supra* note 66; Rosenberg & Weaver, *supra* note 66.

⁶⁸ *Id.*

⁶⁹ JOHN, *supra* note 7, at 17–18.

⁷⁰ Jeff Weiss, *Guidelines for Children's Asylum Claims*, U.S. DEP'T OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE (Dec. 10, 1998), available at <http://www.uscis.gov/sites/default/files/USCIS/Laws%20and%20Regulations/Memoranda/Ancient%20History/ChildrensGuidelines121098.pdf>, archived at <http://perma.cc/SG2M-CBSL>.

tion” of a child was part of the guidelines for granting asylum.⁷¹ The lawyers also petitioned the Family Division of the Circuit Court for Miami-Dade County to declare the Miami family as Elián’s official guardians, because it would be in his best interest to grow up in the United States.⁷² In response, Castro warned Clinton, “I don’t think you will make [the] mistake” of keeping Elián in America.⁷³

The U.S.-Cuba migration talks began in Havana on December 13, 1999, after the government temporarily ended the daily street protests.⁷⁴ That day, two INS officials interviewed Juan Miguel González in his Cárdenas home and promised that “they would get the custody process going quickly.”⁷⁵ Elián’s father “read from a handwritten statement and asked that any application for admission to the United States on his son’s behalf be withdrawn.”⁷⁶ The immigration agents invited him to “apply for a visa to the United States to see Elián now” and he replied, “No, I’m not interested.”⁷⁷ González then filled out a Spanish-language questionnaire and on the section “Do you want to go to the United States to see Elián now, yes or no?” he checked no.⁷⁸ INS began a high-level review of the case the next day. Cuban exiles in South Florida denounced that “the Clinton administration had cut a secret deal with Havana to return the boy.” Marisleydis wondered whether political pressure from Castro had kept the United States from “giving Elián the proper human rights.”⁷⁹

C. A Highly Unusual Secret Agreement to End a Hostage Standoff

Five days after the immigration meeting in Havana, the U.S. Government ended a six-day hostage standoff in the St. Martin Parish jail in Louisiana by secretly negotiating with Cuba to settle the deportation demands of six 1980 Mariel boatlift criminals holding the warden, a female guard and five female inmates. According to Justice Department officials, the “highly

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Castro: U.S. Destroys Boy’s Identity*, L.A. TIMES (Dec. 15, 1999), available at <http://www.latinamericanstudies.org/us-cuba/destroys.htm>, archived at <http://perma.cc/3MDK-MQSS>.

⁷⁴ *Protests Stop in Havana Day before U.S.-Cuba Talks*, CNN (Dec. 12, 1999), available at <http://www.latinamericanstudies.org/us-cuba/elian-talks.htm>, archived at <http://perma.cc/542M-8CPS>.

⁷⁵ *Id.*; *Father of Six-Year-Old Cuban Boy Expresses Hope for His Return*, CNN (Dec. 14, 1999), available at <http://www.latinamericanstudies.org/us-cuba/expresses.htm>, archived at <http://perma.cc/AYT5-SAYG>.

⁷⁶ *Transcript of 11th Circuit Appeals Court Argument in Elian Gonzalez Case*, THE ATLANTA JOURNAL-CONSTITUTION (May 11, 2000) [hereinafter *Transcript of 11th Circuit*], available at <http://www.latinamericanstudies.org/elian/AJC-5-11-2000.htm>, archived at <http://perma.cc/Z328-SK3W>.

⁷⁷ *Id.*

⁷⁸ JOHN, *supra* note 7, at 120; *Gonzalez Ex Rel. Gonzalez v. Reno*, 86 F. Supp. 2d 1167 (S. D. Fla. 2000); *Transcript of 11th Circuit*, *supra* note 76.

⁷⁹ *Report on Six-Year-Old Cuban Boy Under High-Level Review*, CNN (Dec. 15, 1999), available at <http://www.latinamericanstudies.org/us-cuba/high-level.htm>, archived at <http://perma.cc/KLT9-Q6WZ>.

unusual” agreement to grant the prisoners’ ultimatum and get Castro to accept it “was appropriate in this case because it coincided with United States interests. Attorney General Janet Reno was closely involved in the decision, aides said, as were officials in the White House and the State Department.”⁸⁰ Reno had been “monitoring the standoff constantly.”⁸¹ The settlement received President Clinton’s final approval. The convicts were flown to Havana on a U.S. government jet on December 21, 1999. State Department spokesman James Foley stressed at a press conference that there was absolutely no link between the classified agreement and the Elián case. Two days later, the INS asylum interview scheduled with Elián was rescinded by the government.⁸²

INS attorney Rebeca Sánchez Roig then wrote a memo that was emailed on December 29th, summarizing a conference call on the Elián case that involved several INS employees and Commissioner Doris N. Meissner.⁸³ The document noted that some INS officials believed that Elián’s father had previously applied in the U.S. Interests Section in Havana for an immigrant visa through the annual lottery. It also cited allegations that the Cuban government had coerced Juan Miguel González since “his calls to his relatives in Little Havana might have been monitored by the Cuban government.”⁸⁴ The two-page memo indicated that if coercion was demonstrated, the INS could accept the asylum application filed on Elián’s behalf and advised that “there is no prohibition on age to child filing application.”⁸⁵ The next day, Meissner ordered the destruction of all copies of the document.⁸⁶ Sánchez Roig printed the memo before deleting it and made a written annotation on it regarding Meissner’s orders, including that “no more discussions related to Elián be committed to writing.”⁸⁷ Meissner, the daughter of Jewish

⁸⁰ Janet Reno, a 61-year-old Miami native, who had previously been elected Miami Dade County’s state attorney during fifteen years, had courted the Cuban-American vote and repeatedly won widespread approval. See *Deal with Hostage-Takers Allows Them to Return to Cuba*, CNN (Dec. 19, 1999), available at <http://www.latinamericanstudies.org/us-cuba/hostage-deal.htm>, archived at <http://perma.cc/8B3A-FZ4H>; Marc Lacey & David Firestone, *In Rare Deal, U.S. and Cuba Halt Standoff*, N.Y. TIMES (Dec. 20, 1999), available at <http://www.latinamericanstudies.org/us-cuba/deal.htm>, archived at <http://perma.cc/6KAG-SYKS>; JOHN, *supra* note 7, at 22.

⁸¹ Carol Rosenberg, *Jail Crisis Ends*, MIAMI HERALD (Dec. 20, 1999), available at <http://www.latinamericanstudies.org/immigration/crisis-ends.htm>, archived at <http://perma.cc/N27C-QJA9>.

⁸² Philip Shenon & David Firestone, *Six Cubans Are Deported In Wake of Jail Standoff*, N.Y. TIMES (Dec. 21, 1999), available at <http://www.nytimes.com/1999/12/21/us/6-cubans-are-deported-in-wake-of-jail-standoff.html>, archived at <http://perma.cc/Y7HN-9V57>; JOHN, *supra* note 7, at 36.

⁸³ Alfonso Chardy, *INS Weighed Asylum for Elian*, MIAMI HERALD (Apr. 10, 2002), available at <http://www.latinamericanstudies.org/elian/MH-4-10-2002.htm>, archived at <http://perma.cc/86CV-NS2N>.

⁸⁴ *Id.*; *Group Says INS Destroyed Elian Document*, USA TODAY (Apr. 10, 2002) [hereinafter *Group Says INS*], available at <http://www.latinamericanstudies.org/elian/elian-document.htm>, archived at <http://perma.cc/5NWS-4AZH>

⁸⁵ JOHN, *supra* note 7, at 28–29.

⁸⁶ *Group Says INS*, *supra* note 84.

⁸⁷ Chardy, *supra* note 83.

German immigrants, apparently had already determined Elián's fate, in all likelihood obeying higher orders.⁸⁸

II. POLITICAL INTERVENTION

On New Year's Eve, INS officials met with Juan Miguel González in Havana and "asked the Cuban government to help arrange for the boy's father to travel to Miami to pick him up."⁸⁹ Elián's father provided statements contradicting what he had told them two weeks earlier. He first described Lázaro Munero as a "nice man who would often join Elisabet in visiting González's home for dinner and special feasts." González now purported having heard that Munero forced a reluctant and tearful Elián to get on the boat at knife point.⁹⁰ The U.S. government plan was to give González an emergency visa, have him brought to the home of his Miami relatives where he would receive legal custody of Elián, and allow both of them to leave the country.⁹¹ Fidel Castro and González rejected the offer and demanded the unilateral repatriation of the boy.⁹² An INS hearing scheduled for January 21, 2000, which had been previously postponed twice, would determine whether Elián would be allowed to stay in America beyond his temporary status.⁹³ The boy's attorneys had unsuccessfully lobbied Reno to quickly hold the asylum hearing.⁹⁴ They argued that "While Elián's father may be a fit parent, Communist Cuba is an unfit place to bring up a child."⁹⁵

A. *The U.S. National Council of Churches and ADM Interference*

On January 3, 2000, the U.S. National Council of Churches (NCC), a liberal theological organization which for decades had actively opposed the U.S. embargo on Cuba, got involved in the Elián case when its General Secretary, the Reverend Joan Brown Campbell, visited the boy's father and grandparents in Cárdenas and "promised to press the U.S. government to return Elián to his father."⁹⁶ An NCC board member, Dwayne Andreas,

⁸⁸ *Id.*; *Lawyer Who Exposed Memo on Elian Gonzalez Case Sues Ashcroft*, INS, CNN (Jan. 22, 2003), available at <http://www.latinamericanstudies.org/elian/elian-memo.htm>, archived at <http://perma.cc/F96G-NXZL>.

⁸⁹ Karen DeYoung, *U.S. Acts to Ease Cuban Boy's Exit*, WASH. POST (Jan. 4, 2000), available at <http://www.washingtonpost.com/wp-srv/WPcap/2000-01/04/014r-010400-idx.html>, archived at <http://perma.cc/9844-7786>.

⁹⁰ Alfonso Chardy & Juan O. Tamayo, *Dad's View of Family Quickly Deteriorated*, MIAMI HERALD (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/deteriorated.htm>, archived at <http://perma.cc/4F5Y-DAAK>.

⁹¹ DeYoung, *supra* note 89; JOHN, *supra* note 7, at 38.

⁹² DeYoung, *supra* note 89.

⁹³ *Id.*

⁹⁴ Tamayo & Weaver, *supra* note 23.

⁹⁵ *Id.*; JOHN, *supra* note 7, at 38.

⁹⁶ *INS Nears Decision on Cuban Boy Found off Florida Coast*, CNN (Jan. 3, 2000), available at <http://www.latinamericanstudies.org/us-cuba/nears-decision.htm>, archived at <http://perma.cc/5Z9P-F3FT>; *National Council of Churches Leader Arrives to Meet Elian's Father*, MIAMI HERALD (Jan. 3, 2000), available at <http://www.latinamericanstudies.org/us-cuba/coun>

CEO of Archer Daniels Midland (ADM), interested in “opening agricultural facilities in Cuba,” also used his influence to have the boy repatriated.⁹⁷ The next day, Elián enrolled in the bilingual Lincoln-Martí Elementary School in Little Havana with free tuition to continue his first grade studies.⁹⁸

INS Commissioner Meissner declared on January 5th that Elián “belongs with his father,” must be reunited with him by January 14, and rejected his asylum application.⁹⁹ She said that Juan Miguel González was “the sole legal authority to speak on behalf of his son.”¹⁰⁰ President Clinton and U.S. Attorney Reno supported the decision.¹⁰¹ Meissner refused to speculate on what her agency would do if the father requested asylum upon arriving in America.¹⁰² Miami family attorney Spencer Eig immediately wrote to Reno and Meissner requesting a review of the case to assure Elián of due process of law.¹⁰³ Reno quickly declined to reverse the decision.¹⁰⁴ In response to the INS ruling, in Cuba “3 million people rallied for Elián’s return.”¹⁰⁵ The Miami relatives requested from Congressional representatives that visas be given to the entire family in Cuba “so they can decide freely on U.S. soil whether to take the child back to the island.”¹⁰⁶ Florida Democratic Senator Bob Graham “called on family courts to handle the case.”¹⁰⁷ He asked Reno to defer enforcing the INS ruling pending “congressional review” that would include “possible changes in the law.”¹⁰⁸

cil-churches.htm, archived at <http://perma.cc/4K3Q-2MRA>; *Exiles Prepare to Protest Possible Return of Boy to Cuba*, CNN (Jan. 4, 2000) [hereinafter *Exiles Prepare*], available at <http://www.latinamericanstudies.org/us-cuba/elian-protest.htm>, archived at <http://perma.cc/2RY6-MXGU>.

⁹⁷ KIM EISLER, *MASTERS OF THE GAME: INSIDE THE WORLD’S MOST POWERFUL LAW FIRM* 234 (Thomas Dunne Books 2010).

⁹⁸ *Exiles Prepare*, *supra* note 96.

⁹⁹ David Stout, *Father of Cuban Boy Has Right to Custody, U.S. Officials Say*, N.Y. TIMES (Jan. 5, 2000), available at <http://www.latinamericanstudies.org/us-cuba/father-custody.htm>, archived at <http://perma.cc/36V7-MD36>.

¹⁰⁰ *Elián Gonzalez: Back to Cuba?*, PBS NEWSHOUR (Jan. 5, 2000), available at http://www.pbs.org/newshour/bb/latin_america-jan-june00-cuba_1-5/, archived at <http://perma.cc/FN2K-JY4G>; CESAR GUERRA, *ELIAN: SHAME OR SHAM?* 33 (Writers Club Press, 2002).

¹⁰¹ Stout, *supra* note 99.

¹⁰² *Id.*

¹⁰³ Juan O. Tamayo & Jay Weaver, *INS Officer Meets Again with Elián’s Dad in Cuba*, MIAMI HERALD (Jan. 4, 2000), available at <http://www.latinamericanstudies.org/us-cuba/meets-again.htm>, archived at <http://perma.cc/X55E-RKPZ>.

¹⁰⁴ Sue Anne Pressley & Karen DeYoung, *Reno Won’t Reverse INS Decision to Return Boy to Cuba*, WASH. POST (Jan. 7, 2000), available at <http://www.washingtonpost.com/wp-srv/WPcap/2000-01/07/050r-010700-idx.html>, archived at <http://perma.cc/8NXS-SWEG>.

¹⁰⁵ *Id.*

¹⁰⁶ Alfonso Chardy, *Plea: Bring Elián’s Family to U.S.*, MIAMI HERALD (Jan. 5, 2000), available at <http://www.latinamericanstudies.org/us-cuba/plea.htm>, archived at <http://perma.cc/5T6D-LNVU>.

¹⁰⁷ Frank Davies, *Democrats Pressing to Delay Boy’s Return to Cuba*, MIAMI HERALD (Jan. 11, 2000), available at <http://www.latinamericanstudies.org/elian/democrats.htm>, archived at <http://perma.cc/NAQ7-BMDZ>.

¹⁰⁸ Karen DeYoung, *Rare Act of Congress is Planned for Elián*, WASH. POST (Jan. 16, 2000), available at <http://www.washingtonpost.com/wp-srv/WPcap/2000-01/16/030r-011600-idx.html>, archived at <http://perma.cc/4E77-ZJHP>.

B. *Three U.S. Presidential Candidates Opine*

Vice President Al Gore, on the campaign trail for the 2000 presidential election, declared that “he [was] not convinced the father was not coerced by the Castro regime.”¹⁰⁹ He added that he would “like to see the dispute adjudicated in our courts” and that he wasn’t sure the INS had “the experience and expertise to really address” what was best for the child.¹¹⁰ Cuban American Democratic Representative Bob Menéndez of New Jersey warned Gore: “You will be tied to the consequences of how the administration handles this” after the vice president had received “huge financial support from Cubans in Miami.”¹¹¹ During a nationally broadcast debate by Republican presidential candidates, Texas Governor George W. Bush stated that “[t]he Clinton administration looks like they may have done a deal with Fidel Castro” regarding Elián.¹¹² Candidate Steve Forbes denounced that the boy “is Bill Clinton’s human sacrifice to Fidel Castro, and it’s a disgrace.”¹¹³

On January 10, 2000, Miami-Dade Circuit Judge Rosa Rodríguez, a native of Puerto Rico, granted emergency custody of Elián to his great-uncle Lázaro González until a full hearing could be held on March 6th so that his father and the Miami relatives could determine the boy’s future.¹¹⁴ Lázaro alleged that if “Elián is returned to Cuba, he would be subjected to imminent and irreparable harm, including loss of due process rights and harm to his physical and mental health and emotional well-being.”¹¹⁵ The judge ruled that Elián “is threatened with harm if he goes back to Cuba and its totalitarian oppression.”¹¹⁶ She urged his father to be present at the hearing or his “failure to appear may result in a decision adverse to his interests.”¹¹⁷ Miami INS spokesman Mike Gilhooly responded to the judge’s ruling, “We have no plans to take charge of him, and we have no plans to

¹⁰⁹ Pressley & DeYoung, *supra* note 104.

¹¹⁰ Fredricka Whitfield, *Gore Questions INS on Boy’s Fate*, MSNBC (Jan. 10, 2000), available at <http://www.latinamericanstudies.org/elian/elian-fate.htm>, archived at <http://perma.cc/H8NN-TBEQ>.

¹¹¹ Florida’s Cuban American vote in 1980 was about 80 percent for Republican Ronald Reagan, and in 1984, 88 percent voted for his reelection. In 1988, 82 percent voted for Republican George Bush, and in 1992, 70 percent voted to keep him in office. Only 58 percent voted for Republican Bob Dole in 1996. *Cuban Boy Now a Political Football*, N.Y. TIMES (Jan. 12, 2000) available at <http://www.latinamericanstudies.org/elian/football.htm>, archived at <http://perma.cc/Z6W6-YZ4Q>; Davies, *supra* note 107; *INS: No Plans to Forcibly Remove Boy from Relatives*, MSNBC (Jan. 11, 2000) [hereinafter *INS: No Plans*], available at <http://www.latinamericanstudies.org/elian/reunion.htm>, archived at <http://perma.cc/L8LT-RFUF>.

¹¹² Mark Silva, *Custody Issue Stirs Presidential Race*, MIAMI HERALD (Jan. 10, 2000), available at <http://www.latinamericanstudies.org/elian/presidential.htm>, archived at <http://perma.cc/B5BR-CSBN>.

¹¹³ *Id.*

¹¹⁴ Acle, Chardy & Weaver, *supra*, note 63.

¹¹⁵ *Id.*

¹¹⁶ JOHN, *supra* note 7, at 38; David Gonzalez, *Miami Relatives Get Custody of Disputed Cuban Youngster*, N.Y. TIMES (Jan. 11, 2000), available at <http://www.latinamericanstudies.org/elian/custody.htm>, archived at <http://perma.cc/25DB-MLC5>.

¹¹⁷ *INS: No Plans*, *supra* note 111.

forcibly remove him from the home.”¹¹⁸ The next day, the INS announced that “it would not enforce its Jan. 14 deadline and would probably allow the boy to remain in this country until the hearing on March 6.”¹¹⁹ The INS was reluctant to enforce its order, foreboding that a forceful removal of Elián would “cause a major civil upheaval in Miami, have severe political consequences and traumatize the child.”¹²⁰ In contrast, Juan Miguel González stated that “he would be willing for Elián to be forcibly separated from the Miami relatives.”¹²¹

Reno wrote a letter to the Miami family lawyers on January 12th indicating that “a Florida state court had no jurisdiction in the case.”¹²² She publicly stated that “any challenge to the INS decision to return Elián to Cuba would have to be carried out in federal court.”¹²³ The Attorney General offered a long rebuttal to the lawyers’ contention that INS guidelines mandate a full hearing for Elián and “reaffirmed her belief that the law required that Elián should be returned to his father in Cuba.”¹²⁴ Reno believed that the boy was not “at risk of torture or persecution if returned to his father” and did not address the issues of Communist indoctrination and loss of freedom.¹²⁵ She then publicly declared, “My hope is that people will look at this little boy and get him into a situation where he can live a normal life without television cameras and the world his face[.]”¹²⁶

The Miami family attorneys filed a second asylum request for Elián on January 12th but the INS rejected it, affirming that only the father could act on behalf of the child.¹²⁷ One of the lawyers, José García-Pedrosa, denounced that “the custody of the father has been taken over by the Cuban government.”¹²⁸ Juan Miguel González was no longer working as a park

¹¹⁸ *Id.*

¹¹⁹ Peter T. Kilborn, *I.N.S. Extends Boy’s Stay in Miami as Judge’s Links to Case Are Questioned*, N.Y. TIMES (Jan. 12, 2000), available at <http://www.nytimes.com/2000/01/12/us/ins-extends-boy-s-stay-in-miami-as-judge-s-links-to-case-are-questioned.html>, archived at <http://perma.cc/M6U3-V5AY>.

¹²⁰ Karen DeYoung, *Delay in Elian’s Return Puzzles His Father*, WASH. POST, Jan. 14, 2000, available at <http://www.washingtonpost.com/wp-srv/WPCap/2000-01/14/051r-011400-idx.html>, archived at <http://perma.cc/TLH7-PTJN>.

¹²¹ *Id.*

¹²² Neil A. Lewis, *Boy’s Fate Called a Federal Matter*, N.Y. TIMES (Jan. 13, 2000), available at <http://www.nytimes.com/2000/01/13/us/boy-s-fate-called-a-federal-matter.html>, archived at <http://perma.cc/92KF-GL52>.

¹²³ Janet Reno, *Attorney General Reno Letter on Cuban Boy*, REUTERS, (Jan. 12, 2000) [hereinafter *Attorney General Reno Letter*], available at <http://www.latinamericanstudies.org/elian/reno-letter.htm>, archived at <http://perma.cc/KB37-TXX9>; *Reno Calls for Speedy Resolution of Elian Case*, CNN (Jan. 13, 2000) [hereinafter *Reno Calls for Speedy Resolution*], available at <http://www.latinamericanstudies.org/elian/reno2.htm>, archived at <http://perma.cc/UT9H-983D>.

¹²⁴ Lewis, *supra* note 122.

¹²⁵ *Attorney General Reno Letter*, *supra* note 123.

¹²⁶ *Reno Calls for Speedy Resolution*, *supra* note 123.

¹²⁷ *Elian’s Father Says Family in Cuba “Suffering” Because of Separation*, CNN (Jan. 14, 2000), available at <http://www.latinamericanstudies.org/elian/suffering.htm>, archived at <http://perma.cc/9W64-HSNZ>

¹²⁸ Suarez, *supra* note 14.

gatekeeper. He and his family were whisked away to a government safe house.¹²⁹

C. *The International Campaign*

The Elián saga grabbed international headlines and “divided millions of people around the world.”¹³⁰ The boy was featured on the cover of *Time* magazine on January 17th under the heading “Where Does He Belong?” Castro sent his Foreign Minister Felipe Pérez Roque on a European tour to rally international support for Elián’s repatriation.¹³¹ Pérez had an audience with Pope John Paul II on January 17th and claimed that His Holiness “was very worried” about the boy’s separation from his father but the Vatican’s communiqué on the meeting did not mention Elián.¹³² The minister announced, ““Our mobilizations will continue . . . [n]o one should make the mistake to think that we are going to get tired.””¹³³ In Havana, the government began construction of the José Martí Anti-Imperialist Platform, a light and sound stage with an audience capacity for more than 100,000 people in front of the U.S. Interests Section, that institutionalized anti-American demonstrations.¹³⁴ Cuba’s two state-run television stations every weekday evening had a two-hour round-table discussion, with six or seven panelists and Castro stage-managing the broadcast from the live audience, regarding the latest developments in the Elián case.¹³⁵

On January 19th, Elián’s Miami family filed suit in federal court against Reno and Meissner, accusing them of violating Elián’s due-process rights.¹³⁶ They asked the court to order the INS to give the child a twice-denied political asylum hearing made on his behalf by his great-uncle Lázaro González.¹³⁷ The defendants insisted that Elián could not have the inspection

¹²⁹ *Father Has Dropped Out of Sight*, MIAMI HERALD (Jan. 12, 2000), available at <http://www.latinamericanstudies.org/elian/sight.htm>, archived at <http://perma.cc/BX4M-FX4H/>.

¹³⁰ Sara Olkon, *Cuba Hits Citizenship Proposal for Elian*, MIAMI HERALD (Jan. 17, 2000), available at <http://www.latinamericanstudies.org/elian/citizenship.htm>, archived at <http://perma.cc/8RH2-Q9RY>.

¹³¹ *Federal Petition for Six-Year-Old Elian Expected by Midweek*, CNN (Jan. 17, 2000), available at <http://www.latinamericanstudies.org/elian/midweek.htm>, archived at <http://perma.cc/XVA4-MC9B>.

¹³² *Id.*

¹³³ Olkon, *supra* note 130.

¹³⁴ *Id.*; Lucia Newman, *Elian Inspires a Place for Permanent Protest in Havana*, CNN (Jan. 18, 2000), available at <http://www.latinamericanstudies.org/elian/permanent.htm>, archived at <http://perma.cc/T773-TDGY>; Anita Waters, *Social Memory and International Politics at Havana’s Anti-Imperialist Plaza*, DENISON UNIVERSITY 1, 13, available at http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/0/4/7/3/pages104736/p104736-1.php, archived at <http://perma.cc/SJN2-9VEQ>.

¹³⁵ Randal C. Archibold, *Video for Elian is Called Letter from Home*, N.Y. TIMES (Apr. 28, 2000), available at <http://www.nytimes.com/2000/04/28/us/the-elian-gonzalez-case-cuba-video-for-elian-is-called-letter-from-home.html>.

¹³⁶ *Elian’s Miami Relatives File Federal Suit to Overturn INS Ruling*, CNN, Jan. 19, 2000, available at <http://cgi.cnn.com/2000/US/01/19/cuba.boy.03/>, archived at <http://perma.cc/G98Y-8T2D>.

¹³⁷ *Id.*

“because his legal guardian, his father, does not want the hearing.”¹³⁸ Eric Holder had his policy wing lawyers “directing the strategy planning and analysis, and briefing Reno frequently” on the Elián case.¹³⁹

D. *Elián’s Grandmothers are Escorted by a Spy Handler*

Two days later, Elián’s grandmothers, Mariela Quintana and Raquel Rodríguez, left Havana for New York, instead of Miami.¹⁴⁰ They were accompanied by the Rev. Pablo Odén Marichal Rodríguez, executive secretary of the Cuban Council of Churches and deputy of the Cuban National Assembly, and an NCC delegation on a chartered six-seat Lear jet.¹⁴¹ Quintana had a power of attorney to represent her son Juan Miguel González.¹⁴² The group was headed by the new NCC general secretary the Reverend Bob Edgar, a former Pennsylvania representative, the Rev. Joan Brown Campbell, and the organization’s director for Latin America and the Caribbean, the Rev. Oscar Bolioli.¹⁴³ The NCC had “open-ended permission” from the Clinton Administration for “humanitarian missions” in Cuba.¹⁴⁴ The State Department Cuba Desk, interested in continuing their diplomatic talks with the Castro regime, had previously discussed the trip with Meissner, who rejected that the INS should act as facilitator for the grandmothers.¹⁴⁵ The State Department wanted the INS “to have a daily conference call to coordinate Press Guidance and communications with the Cubans.”¹⁴⁶ Miami relatives said they would “welcome a visit by [the grandmothers]” provided they were not accompanied by NCC or Cuban agents but “[would] not allow them to take the boy back to Cuba before the federal court rules in the case.”¹⁴⁷

Elián’s grandmothers were soon escorted by NCC leaders and the Rev. Marichal to a 45-minute meeting in Washington with Reno and Meissner and returned to New York on chartered aircraft. A letter they handed Reno was later distributed by the NCC to the media. The U.S. Attorney told them

¹³⁸ Jay Weaver, Alfonso Chardy & Andres Viglucci, *Elián’s Miami Relatives Sue INS*, MIAMI HERALD (Jan. 20, 2000), available at <http://www.latinamericanstudies.org/elian/sue.htm>, archived at <http://perma.cc/KZ9N-TZBB>; Carol Rosenberg, *U.S. Weighing Answer to Lawsuit*, MIAMI HERALD (Jan. 21, 2000), available at <http://www.latinamericanstudies.org/elian/lawsuit.htm>, archived at <http://perma.cc/4UXU-HTU4>.

¹³⁹ Rosenberg, *supra* note 138.

¹⁴⁰ *Elián’s Grandmothers Depart for U.S.*, MSNBC (Jan. 21, 2000) [hereinafter *Elián’s Grandmothers Depart*], available at <http://www.latinamericanstudies.org/elian/grandmothers.htm>, archived at <http://perma.cc/U4CY-RN2C>.

¹⁴¹ *Id.*

¹⁴² *Even if it Costs Me My Life*, MSNBC (Jan. 23, 2000), available at <http://www.latinamericanstudies.org/elian/life2.htm>, archived at <http://perma.cc/8HPZ-JS3A>.

¹⁴³ *Elián’s Grandmothers Depart*, *supra* note 140.

¹⁴⁴ Andres Viglucci & Sandra Márquez García, *Elián’s Grandmothers Get Visas, are Expected in New York Today*, MIAMI HERALD (Jan. 21, 2000), available at <http://www.latinamericanstudies.org/elian/visas.htm>, archived at <http://perma.cc/2DSY-G3U4>.

¹⁴⁵ JOHN, *supra* note 7, 30–31.

¹⁴⁶ *Id.*

¹⁴⁷ Viglucci & Márquez García, *supra* note 144; *Elián’s Grandmothers Depart*, *supra* note 140.

that the matter was in federal court which made it impossible for Elián to leave Florida. The grandmothers wept and disparaged Elisabet Broton's common-law husband as "a violent person . . . a crook."¹⁴⁸ They said the Miami family "made a business out of the child."¹⁴⁹ The grandmothers requested to meet with President Clinton, but the White House referred them to Reno's office as "the proper place to address their concerns."¹⁵⁰ The exile relatives invited the grandmothers to dinner at their home to "see where Elián sleeps, what he eats, who he plays with and how much love and caring he receives in the home."¹⁵¹

Five NCC members flew the grandmothers to Miami on a Lear jet but when their demand for a private meeting with the boy on neutral ground without the Miami relatives was not met, they returned to the New York home of Dr. Campbell. A Cuban security team headed by José Imperatori, Second Secretary of the diplomatic mission at the capital and a spy handler, escorted the grandmothers.¹⁵² When Reno was asked if she was concerned that the grandmothers' visit was controlled by Cuban officials, she replied, "I think that is something that they have got to deal with."¹⁵³ The INS then ordered for Elián to appear at the Miami Beach home of Barry University President Sister Jeanne O'Laughlin on January 26th to meet his grandmothers. His father then sent a letter to the grandmothers, published in Havana newspapers, forbidding them to visit their Miami relatives.¹⁵⁴

¹⁴⁸ Karen DeYoung, 'Frustrated' and Missing Elian, WASH. POST (Jan. 22, 2000), available at <http://www.latinamericanstudies.org/elian/frustrated.htm>, archived at <http://perma.cc/G42L-FRE7>.

¹⁴⁹ Id.; Carol Rosenberg, *Tears Flow as Grandmas Meet Reno*, MIAMI HERALD (Jan. 23, 2000), available at <http://www.latinamericanstudies.org/elian/tears.htm>, archived at <http://perma.cc/YWM6-L9J4>.

¹⁵⁰ Karen DeYoung, *Battle Over Cuban Boy Moves to Hill*, WASH. POST (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/battle.htm>, archived at <http://perma.cc/PP64-KFPQ>.

¹⁵¹ *Elian's Grandmas Head to Miami*, MSNBC (Jan. 24, 2000), available at <http://www.latinamericanstudies.org/elian/miami.htm>, archived at <http://perma.cc/L46G-DQQY>.

¹⁵² A month later, diplomat José Imperatori was forcibly expelled from the U.S. for being the handler of Mariano Faget, the number three man in the INS' Miami office and a supervisory district adjudication officer, who was spying for Cuba. Karen DeYoung, *Cuban Diplomat Forcibly Expelled*, WASH. POST (Feb. 27, 2000), available at <http://www.latinamericanstudies.org/espionage/expelled.htm>, archived at <http://perma.cc/6ED9-L3AQ>; *Elian's Grandmothers Leave Miami Without Seeing Him*, CNN (Jan. 24, 2000), available at <http://www.latinamericanstudies.org/elian/leave.htm>, archived at <http://perma.cc/7UA6-VVT3>; Juan O. Tamayo, *Family Conflict Interferes with Elian Reunion*, MIAMI HERALD (Jan. 25, 2000), available at <http://www.latinamericanstudies.org/elian/conflict.htm>, archived at <http://perma.cc/KJ5U-VEY9>.

¹⁵³ Carol Rosenberg, *Tug-of-War Continues on Capitol Hill*, MIAMI HERALD (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/tug-of-war.htm>, archived at <http://perma.cc/C968-SGWH>.

¹⁵⁴ *Cuban Grandmothers Meet with Elian*, CNN (Jan. 26, 2000), available at <http://www.latinamericanstudies.org/elian/meet5.htm>, archived at <http://perma.cc/XN4L-YCGB>; Alfonso Chardy, Sandra Márquez García & Andres Viglucci, *Grandmothers Finally Get to Visit Elian*, MIAMI HERALD (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/finally.htm>, archived at <http://perma.cc/5QTR-KKQM>.

Consequently, the grandmothers refused to see the Miami family when they met with Elián at the O’Laughlin home for ninety minutes.¹⁵⁵ The nun later recalled that when the reverends Marichal and Edgar entered the room, the grandmothers “‘were cold and frightened’” and became “‘nasty.’”¹⁵⁶ Elián was shown a family photo album and letters from his Cuban schoolmates. He responded that “‘he had a different school and a different teacher and wasn’t interested in his old school.’”¹⁵⁷ The grandmothers then left by helicopter to the airport without commenting and headed back to Washington.¹⁵⁸ Sister O’Laughlin, after perceiving their paranoia and mistrust, believing it was due to pressure from the Cuban regime, said that she now thought that Elián “‘would live in fear and without freedom if he were sent back to Cuba.’”¹⁵⁹ She questioned, “‘Could we send the boy back to a climate that may be full of fear without at least a fair hearing in a family court?’”¹⁶⁰ O’Laughlin went to Washington twice to lobby her close friend Janet Reno and Meissner “‘that Elián’s future can be decided by a court that rules on matters of child custody’” but failed to sway them.¹⁶¹ She then wrote an opinion piece in the *New York Times* stressing how she saw that Elián had transferred his maternal love to his cousin Marisleysis and “‘watched the grandmothers’ Cuban escort keep close telephone contact with Havana during and after the visit”¹⁶² Alarcón described O’Laughlin’s behavior as “‘pure Nazi fascist tactics.’”¹⁶³

¹⁵⁵ Sue Anne Pressley & Karen DeYoung, *Grandmothers Meet with Elian in Miami*, WASH. POST, Jan. 27, 2000, <http://www.washingtonpost.com/wp-srv/WPCap/2000-01/27/088r-012700-idx.html>, archived at <http://perma.cc/N9MA-6Y4M>

¹⁵⁶ Meg Laughlin, *Sister Jeanne Says Sources on Elian to Come Out in Court*, MIAMI HERALD (Feb. 22, 2000), available at <http://www.latinamericanstudies.org/elian/court.htm>, archived at <http://perma.cc/MS2C-FHFH>.

¹⁵⁷ Meg Laughlin, *A Changed Boy After Miami Stay*, MIAMI HERALD (Apr. 13, 2000), available at <http://www.latinamericanstudies.org/elian/changed2.htm>, archived at <http://perma.cc/3LZR-S9X2>.

¹⁵⁸ Alex Veiga, *Elian and Grandmothers Meet at Home of a Nun*, WASH. TIMES (Jan. 27, 2000), available at <http://www.washingtontimes.com/news/2000/jan/27/20000127-010844-5345r/?page=all>, archived at <http://perma.cc/NZY8-E7K5>.

¹⁵⁹ Nun: *Best for Elian if He Stays*, MSNBC (Jan. 27, 2000), available at <http://www.latinamericanstudies.org/elian/nun.htm>, archived at <http://perma.cc/EGZ6-K2E9>.

¹⁶⁰ *Id.*; Peter T. Kilboen, *Grandmothers See Cuban Boy in Private Talk*, N.Y. TIMES (Jan. 27, 2000), available at <http://www.nytimes.com/2000/01/27/us/grandmothers-see-cuban-boy-in-private-talk.html>, archived at <http://perma.cc/NL3R-DQCZ>; Jeanne O’Laughlin, *Why I Changed My Mind About Elián*, N.Y. TIMES (Feb. 1, 2000), available at <http://www.latinamericanstudies.org/elian/changed.htm>, archived at <http://perma.cc/LQP9-YHNS>.

¹⁶¹ O’Laughlin, *supra* note 160; Ana Aclé & Andres Viglucci, *Boy Should Stay in Miami, Host Family Visit Says*, MIAMI HERALD (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/host2.htm>, archived at <http://perma.cc/RP6B-HBBN>; *Nun Prepares for Second Lobbying Trip to Washington on Behalf of Elian*, CNN (Feb. 1, 2000), available at <http://www.latinamericanstudies.org/elian/second.htm>, archived at <http://perma.cc/AS95-AU6G>

¹⁶² O’Laughlin, *supra* note 160.

¹⁶³ *Cuban Official Says Nun was ‘Instrument’ of Cuban Exile Community*, MIAMI HERALD (Feb. 3, 2000), available at <http://www.latinamericanstudies.org/elian/instrument.htm>, archived at <http://perma.cc/VH9Q-NLTV>.

The next day, January 27, 2000, the U.S. Department of Justice filed an 85-page motion, along with hundreds of pages of supporting documents, responding to the Miami family's suit in federal court.¹⁶⁴ It argued that under U.S. and international law only Elián's father could represent the boy and the case should be dismissed. A hearing for oral arguments was set for February.¹⁶⁵ Psychiatrist Charles Krauthammer presaged in the *Washington Post* that if returned, Elián would be an icon and political commodity for Castro and not have a quiet life with his father.¹⁶⁶ "Elián will be raised to be a model Fidelist, a vindication of the revolution . . . subject to far more indoctrination, far more surveillance than even the average Cuban subject."¹⁶⁷ In contrast, Cuban officials purported that "there are no plans to parade the boy when he returns."¹⁶⁸

Elián's grandmothers returned to a heroine's welcome in Havana on Sunday, January 30th. The sixteen-mile "caravan of dignity" route "was lined with thousands of cheering Cubans responding to a government call to turn out in appreciation" for them.¹⁶⁹ Juan Miguel González rode with them "in a convertible as they waved at the crowds of hundreds of thousands of people waving Cuban flags."¹⁷⁰ The women spoke at a rally in the Convention Palace with Fidel Castro present. Paternal grandmother Mariela Quintana told a Cuban reporter afterward that during the Miami visit she did some "mischievous things" to make Elián talk.¹⁷¹ She wanted to see "if he had no little tongue" and said, "I took it out of his mouth, I bit it."¹⁷² Quintana admitted, "I even opened up his zipper" to see his penis and asked him "[I]et me see, let me see . . . if it has grown" in just two months.¹⁷³ The Miami relatives were dumbstruck by this abnormal behavior

¹⁶⁴ Jay Weaver, *U.S. Urges Judge to Dismiss Elian's Claim for Asylum*, MIAMI HERALD (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/urges3.htm>, archived at <http://perma.cc/N9D9-GZP4>.

¹⁶⁵ *Id.*; DeYoung, *supra* note 150.

¹⁶⁶ Charles Krauthammer, *Why Elian Should Stay*, WASH. POST (Jan. 28, 2000), available at <http://www.latinamericanstudies.org/elian/why.htm>, archived at <http://perma.cc/9RAA-L6RH>.

¹⁶⁷ *Id.*

¹⁶⁸ Randal C. Archibold, *In Havana, Official Stance and Many Conflicted Views*, N.Y. TIMES (Apr. 17, 2000), <http://www.nytimes.com/library/national/041700cuba-boy-cuba.html>, archived at <http://perma.cc/MCC4-QS59>.

¹⁶⁹ John Rice, *Boy's Grandmothers Cheered as Heroines Back in Havana*, MIAMI HERALD (Jan. 31, 2000), available at <http://www.latinamericanstudies.org/elian/cheered.htm>, archived at <http://perma.cc/673V-TZKM>; *Elian's Grandmothers Back in Cuba*, CNN (Jan. 30, 2000), available at <http://www.latinamericanstudies.org/elian/back.htm>, archived at <http://perma.cc/X5B5-RLM9>.

¹⁷⁰ Rice, *supra* note 169.

¹⁷¹ Elaine de Valle, *Grandmoms Resisted Thought of Taking Elian*, MIAMI HERALD (Feb. 3, 2000), available at <http://www.latinamericanstudies.org/elian/resisted.htm>, archived at <http://perma.cc/2RD3-PWG3>.

¹⁷² *Id.*

¹⁷³ *Miami's Cuban Community in Uproar Over Grandmother's Account of Meeting*, N.Y. TIMES (Feb. 5, 2000), available at <http://www.latinamericanstudies.org/elian/uproar.htm>, archived at <http://perma.cc/9298-7W26>.

and assumed that the grandmothers were obeying instructions to search the boy “to see if he was wired, if he was bugged.”¹⁷⁴

On February 18, 2000, the INS issued a statement indicating that they had informed Juan Miguel González that they remained “fully committed to reuniting him with his son Elián as soon as possible, consistent with legal procedures.”¹⁷⁵ Six days later, attorneys for the Miami family presented in federal court numerous sworn statements about the conditions Elián would be subjected to if repatriated. One motion said that “‘Although Elián would return to Cuba a ‘hero’ in the eyes of the Cuban government, returning Elián to such a cauldron of repression, double-speak and forced political ideology would be a grave injustice.’”¹⁷⁶ An affidavit from Dr. Marta Molina, who was a psychologist in Cuba for two decades before arriving in America six months earlier, said that Elián would be “‘immediately taken into seclusion away from the mainstream, to reindoctrinate him . . . He will be indoctrinated to believe that in the United States he was very unhappy,’” and this “‘would include his forced repudiation of his mother, stepfather and Miami relatives.’”¹⁷⁷

In early March, the NCC used ADM contributions to hire Gregory B. Craig, a \$400-an-hour Washington attorney, who represented President Clinton during his impeachment and trial due to the Monica Lewinsky sex scandal.¹⁷⁸ Craig was a senior aide to Secretary of State Madeleine Albright and a former top foreign policy advisor to Senator Edward Kennedy. He met in Havana separately with Fidel Castro and Juan Miguel González. Craig was allowed to represent the latter after assuring Castro that “Juan Miguel would not embarrass him by defecting or asking for political asylum.”¹⁷⁹ Back in Washington, Craig announced that the father “‘is prepared to come to the United States to take custody of his son and will do so at the earliest possible moment.’”¹⁸⁰

¹⁷⁴ *Id.*; de Valle, *supra* note 171.

¹⁷⁵ GUERRA, *supra* note 100, at 49.

¹⁷⁶ Jay Weaver & Elaine de Valle, *Kin Says Father Wanted Life Here*, MIAMI HERALD (Feb. 25, 2000), available at <http://www.latinamericanstudies.org/elian/kin.htm>, archived at <http://perma.cc/LSN7-D99C>.

¹⁷⁷ *Id.*

¹⁷⁸ EISLER, *supra* note 97, at 235; Jerry Seper, *Cost of Elian Saga Keeps Increasing, and There's No End in Sight*, WASH. TIMES (Apr. 27, 2000), available at <http://www.latinamericanstudies.org/elian/cost.htm>, archived at <http://perma.cc/KZL8-5ZXJ>.

¹⁷⁹ Gregory B. Craig attended Yale Law School at the same time as Bill and Hillary Clinton, with whom he had a long-time friendship. In 1986, he traveled to Cuba on behalf of Ted Kennedy to negotiate the release of the last two Bay of Pigs prisoners. EISLER, *supra* note 97, at 235–38; Karen DeYoung, *Former Clinton Lawyer to Represent Elian's Father*, WASH. POST (Mar. 9, 2000), available at <http://www.latinamericanstudies.org/elian/lawyer.htm>, archived at <http://perma.cc/D8HV-7NJE>; Frank Davies, *Washington Lawyer Becomes Key Player in Case*, MIAMI HERALD (Apr. 6, 2000), available at <http://www.latinamericanstudies.org/elian/lawyer2.htm>, archived at <http://perma.cc/VCW7-WK3G>; GUERRA, *supra* note 100, at 62.

¹⁸⁰ Andres Viglucci, *Elian's Dad Hires Ex-Clinton Attorney*, MIAMI HERALD (Mar. 10, 2000), available at <http://www.latinamericanstudies.org/elian/attorney.htm>, archived at <http://perma.cc/CS8P-XSU2>.

III. THE DEPARTMENT OF JUSTICE CHANGES TACTICS

Lawyers for the Department of Justice went back to federal court on March 14th to file motions with a change of tactics. They now claimed that Reno did not have to consider Elián's asylum application because his father, the only legal guardian, never requested it.¹⁸¹ The Miami lawyers reiterated that the Refugee Act of 1980 "makes the right to petition for asylum available to all aliens who are physically present in the United States regardless of status, and without limitation as to age or a parent's consent."¹⁸² A week later, U.S. District Judge Kevin Michael Moore did not rule from the bench but posted his fifty-page decision on the Internet.¹⁸³ He opined that Elián was too young to comprehend the asylum application and that to exclude the father as his legal representative would have required proof that he abused the child, which was never presented.¹⁸⁴ The judge stated that "each passing day is another day lost between Juan González and his son" and ruled that the Attorney General has the discretion to grant asylum and decide who could speak for Elián.¹⁸⁵ In a televised speech, Fidel Castro "lavished praise" on Judge Moore for his decision.¹⁸⁶ Attorneys for Elián's family in Miami insisted that Elián "would be psychologically harmed" if returned to Cuba and filed a brief with the 11th U.S. Circuit Court of Appeals in Atlanta.¹⁸⁷

The next day, Reno met in her office with Gregory Craig and afterwards issued a statement saying in part "I believe it is time for Elián to be reunited with his father" and that "immigration officials could legally take the boy at any time," without specifying a time frame.¹⁸⁸ The Elián case, a

¹⁸¹ Jay Weaver, *Elián's Dad Never Requested Asylum for Boy, Lawyers Say*, MIAMI HERALD (Mar. 15, 2000), available at <http://www.latinamericanstudies.org/elian/never.htm>, archived at <http://perma.cc/QH4U-2Q55>.

¹⁸² *Id.*

¹⁸³ Rick Bragg, *Judge Upholds Plan for Return of Boy to Cuba*, N.Y. TIMES (Mar. 22, 2000), available at <http://www.nytimes.com/library/national/032200cuba-boy.html>, archived at <http://perma.cc/3QJ3-AU4D>; *Elián's Relatives Appeal After Judge Clears Way for Boy's Return to Cuba*, CNN (Mar. 21, 2000) [hereinafter *Elián's Relatives Appeal*], available at <http://www.latinamericanstudies.org/elian/clears.htm>, archived at <http://perma.cc/BQQ2-PMKD>.

¹⁸⁴ Bragg, *supra* note 183.

¹⁸⁵ The Lawyers Committee for Human Rights worried that Judge Moore's decision gave government bureaucrats too much power to refuse considering asylum applications from children against the wishes of their parents, especially those fleeing female genital mutilation. *Gonzalez Ex Rel. Gonzalez v. Reno*, 86 F. Supp. 2d 1167 (S.D. Fla. 2000); Bragg, *supra* note 183.

¹⁸⁶ Andres Viglucci, Jay Weaver & Frank Davies, *Arrival of Elián's Father is 'Imminent,' U.S. Says*, MIAMI HERALD (Apr. 4, 2000), available at <http://www.latinamericanstudies.org/elian/imminent.htm>, archived at <http://perma.cc/ADX2-ZQSA>.

¹⁸⁷ *Elián's Relatives Appeal*, *supra* note 183.

¹⁸⁸ Jay Weaver, Frank Davies & Andres Viglucci, *Sides in Elián Case Talking*, MIAMI HERALD (Mar. 23, 2000), available at <http://www.latinamericanstudies.org/elian/sides.htm>, archived at <http://perma.cc/AQ7M-U95E>; Rick Bragg, *Tug of War Over Cuban Boy in Miami Is Heating Up Again*, N.Y. TIMES (Mar. 24, 2000), available at <http://www.nytimes.com/2000/03/24/us/tug-of-war-over-cuban-boy-in-miami-is-escalating-again.html>, archived at <http://perma.cc/D8T5-23MA>.

recurrent issue on the presidential campaign trail, prompted both front-runners, Al Gore and George W. Bush, to reiterate calls for the boy's custody to be settled in family court. Gore stated, "The child should never have been put in a position where the choice is his freedom or his father. The real fault here lies with Fidel Castro."¹⁸⁹ Bush said, "This case should be decided by a Florida family court, which will protect the best interests of Elián, not by a Clinton-Gore Justice Department whose record of putting politics ahead of the law does not inspire confidence."¹⁹⁰ Callers to Miami Spanish-language radio stations "vowed to express their discontent with the Clinton-Gore administration at the voting booths this November."¹⁹¹

On March 24, 2000, the attorneys for Elián's family in Miami proposed that an independent arbitration panel handle the case, rather than appealing it in the U.S. courts, but Meissner objected.¹⁹² A letter from David J. Kline, of the Justice Department's Office of Immigration Litigation, asked the Miami legal team for an expedited briefing schedule that would "shorten the appeals process to two to three weeks, rather than two to three months."¹⁹³ It threatened the Miami relatives that unless they agreed within 72 hours to expedite their court appeals, they would revoke the child's parole and deport him.¹⁹⁴ The Miami attorneys complied by filing motions with the 11th U.S. Circuit Court of Appeals requesting to schedule briefings and oral arguments.¹⁹⁵

On March 27th, after the federal court of appeals responded that they would hear arguments on May 8th, INS Executive Associate Commissioner for Field Operations Michael A. Pearson sent a letter to Lázaro González threatening that unless he signed a pledge to surrender the boy if he lost the appeal, they would take custody of Elián in three days.¹⁹⁶ Family spokesman Armando Gutiérrez denounced that federal authorities "have promised Cas-

¹⁸⁹ Andres Viglucci & Jay Weaver, *Elián's Future is up to Reno, Judge Says*, MIAMI HERALD, (Mar. 22, 2000), available at <http://www.latinamericanstudies.org/elian/future.htm>, archived at <http://perma.cc/BSB3-7MPD>.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *INS Refuses to Put Elián's Fate in Hands of Arbitrator*, CNN (Mar. 24, 2000), available at <http://www.latinamericanstudies.org/elian/refuses.htm>, archived at <http://perma.cc/Y8YT-G8X9>.

¹⁹³ *Id.*; Neil A. Lewis, *U.S. Takes Steps to Return 6-Year-Old to Father in Cuba*, N.Y. TIMES, (March 28, 2000), available at <http://www.nytimes.com/library/national/032800cuba-boy.html>, archived at <http://perma.cc/5LB8-QTJY>.

¹⁹⁴ Andres Viglucci & Jay Weaver, *U.S. Issues Ultimatum to Speed Elián Case End*, MIAMI HERALD (Mar. 25, 2000), available at <http://www.latinamericanstudies.org/elian/ultimatum.htm>, archived at <http://perma.cc/BL8R-UZCP>; Karen DeYoung, *INS Extends Deadline in Elián Case*, WASH. POST (Mar. 25, 2000), available at <http://www.latinamericanstudies.org/elian/deadline.htm>, archived at <http://perma.cc/P7PP-SGHZ>.

¹⁹⁵ Edward Wong, *Miami Relatives of Cuban Youth File Appeal*, N.Y. TIMES (Mar. 27, 2000), available at <http://www.latinamericanstudies.org/elian/appeal.htm>, archived at <http://perma.cc/4JV6-TDPF>.

¹⁹⁶ *INS Threatens to Revoke Parole Status for Elián by Thursday; Officials Call for Tuesday Meeting With Miami Lawyer*, CNN (Mar. 28, 2000) [hereinafter *INS Threatens to Revoke*], available at <http://www.latinamericanstudies.org/elian/threatens.htm>, archived at <http://perma.cc/E3PR-RGY2>; Rick Bragg, *Standoff Over Cuban Boy's Fate Intensifies*, N.Y. TIMES

tro they will send this kid back and that's why they have to abide by their agreement.”¹⁹⁷ Lázaro was advised by his lawyers and his daughter not to sign such an open-ended guarantee.¹⁹⁸ Marisleysis González declared that if her family lost in court, “the only person they would turn the boy over to is his father, and only at their home in Miami.”¹⁹⁹ Lázaro and seven of his attorneys met with five INS lawyers in Miami on March 28 and insisted that psychologists should “determine whether the boy is to be transferred to the father” and the great-uncle would then turn over Elián at a neutral location.²⁰⁰ The INS replied that “they would consider allowing psychologists to act in an advisory role to help make the hand-over easier for the boy. But they would not consider backing off the change in custody.”²⁰¹ Florida Governor Jeb Bush, Miami-Dade Mayor Alex Penelas and Miami Mayor Joe Carollo then announced that no state or local authorities would intervene in the forced removal of Elián.²⁰²

A. A Monument to Elián in Havana

Fidel Castro raised his propaganda campaign by erecting in front of the U.S. Interests Section in Havana a tall pedestal with a nine-foot bronze statue of patriot José Martí holding a barefoot Elián on his right arm while his other outstretched limb points a defiant accusatory index finger at the building.²⁰³ Billboards appeared throughout the capital depicting Elián as one of a trio of Cuban heroes, along with José Martí and Ernesto “Che” Guevara.²⁰⁴ Castro meddled again in the custody process by announcing that he would send Juan Miguel González and his family, a dozen of Elián's classmates, his teacher, the boy's old school desk and a psychiatrist to Wash-

(March 29, 2000), available at <http://www.nytimes.com/library/national/032900cuba-boy.html>, archived at <http://perma.cc/NE5R-8ZN7>.

¹⁹⁷ *U.S. Relatives Refuse to Promise to Give Up Elian*, L.A. TIMES (Mar. 28, 2000), available at <http://www.latinamericanstudies.org/elian/refuse.htm>, archived at <http://perma.cc/7FPZ-VUT7>.

¹⁹⁸ *INS Threatens to Revoke*, *supra* note 196.

¹⁹⁹ Andres Viglucci & Jay Weaver, *Relatives Forced Into Showdown; INS, Uncle to Meet Today on Demands Over Elian*, MIAMI HERALD (Mar. 29, 2000), available at <http://www.latinamericanstudies.org/elian/showdown.htm>, archived at <http://perma.cc/5ELS-XLEC>; *INS to Give Elian's Relatives One More Chance to Sign Agreement*, CNN (Mar. 28, 2000), available at <http://www.latinamericanstudies.org/elian/chance.htm>, archived at <http://perma.cc/68GK-9MFJ>.

²⁰⁰ Jay Weaver, *Mutual Distrust Rules Elian Talks*, MIAMI HERALD (Apr. 5, 2000), available at <http://www.latinamericanstudies.org/elian/mutual.htm>, archived at <http://perma.cc/HK79-QCNU>.

²⁰¹ *Id.*

²⁰² Ana Acle & Amy Driscoll, *Politicians Show Unity, Defiance*, MIAMI HERALD (Mar. 30, 2000), available at <http://www.latinamericanstudies.org/elian/unity.htm>, archived at <http://perma.cc/2D8V-B3HR>.

²⁰³ *Thousands of Cuban Children Pay Homage to Marti, Call for Elian's Return*, MIAMI HERALD (May 19, 2000), available at <http://www.latinamericanstudies.org/elian/children.htm>, archived at <http://perma.cc/DU5W-FFUC>.

²⁰⁴ *Havana Residents Wait, Wondering What's Next*, MIAMI HERALD (Mar. 31, 2000), available at <http://www.latinamericanstudies.org/elian/wondering.htm>, archived at <http://perma.cc/6SUA-8SCY>.

ington during the appeal process to hasten his “re-integration” into Cuban society.²⁰⁵

The INS declared on April 3rd that if Juan Miguel González arrived in the U.S., they would “have little choice but to attempt to move Elián to the father’s custody.”²⁰⁶ Al Gore objected to Castro’s manipulation and said that “Congress should grant the boy and his family in Cuba permanent residency in the United States” so that “a U.S. court can take the custody case.”²⁰⁷ His words were “quite a blow” at INS headquarters and it “was widely derided as a political stunt driven by Gore’s desire to carry Florida.”²⁰⁸ First Lady Hillary Clinton decried the action while Congress and public opinion were divided on the issue mostly along party lines.²⁰⁹ Democratic pollster Rob Schroth warned, “If Gore and the Democrats fumble the Elián issue, they can kiss the Cuban vote goodbye for a generation to come.”²¹⁰

On April 4th, Luis Fernández, a spokesman for the Cuban Interest Section in Washington, D.C., called Elián “a possession of the Cuban government.”²¹¹ Under a 1978 Cuban law, children are raised with a “communist personality” and “influences contrary to communist development” are outlawed.²¹² The 1992 Cuban Constitution affirms in Article 38 that “the state promotes the patriotic and communist education of the new generations and the training of children, young people and adults for social life,” includ-

²⁰⁵ Juan O. Tamayo et al., *INS Talks to Continue Monday; Castro May Send Father, Entourage*, MIAMI HERALD (Mar. 30, 2000), available at <http://www.latinamericanstudies.org/elian/entourage.htm>, archived at <http://perma.cc/3P42-6B55>; Rick Bragg & Lizette Alvarez, *In Miami, the Issue is Not a Boy, but a Man: Fidel Castro*, N.Y. TIMES (Mar. 31, 2000), available at <http://www.nytimes.com/library/national/033100cuba-boy.html>, archived at <http://perma.cc/7MWH-T6Z5>.

²⁰⁶ Juan O. Tamayo et al., *Dad Wants U.S. Visa, Custody of Elian*, MIAMI HERALD (Mar. 31, 2000), available at <http://www.latinamericanstudies.org/elian/dad.htm>, archived at <http://perma.cc/FZ65-N6UQ>.

²⁰⁷ Mark Silva, *Gore Distances Himself From Clinton Administration on Elian*, MIAMI HERALD (Mar. 31, 2000), available at <http://www.latinamericanstudies.org/elian/gore.htm>, archived at <http://perma.cc/SR7Y-8H9G>; Katharine Q. Seelye, *Gore Supporting Residency Status for Cuban Child*, N.Y. TIMES (Mar. 31, 2000), available at <http://www.nytimes.com/library/politics/camp/033100wh-dem-gore.html>, archived at <http://perma.cc/LD4W-V9ZC>.

²⁰⁸ Frank Davies, *Ex-INS Official Fears Gore’s Stance Could Hurt Negotiations*, MIAMI HERALD (Apr. 1, 2000), available at <http://www.latinamericanstudies.org/elian/ex-ins.htm>, archived at <http://perma.cc/Z647-NNBM>; Jodi A. Enda, *Gore Denies Change of Course on Elian*, MIAMI HERALD (Apr. 5, 2000), available at <http://www.latinamericanstudies.org/elian/gore2.htm>, archived at <http://perma.cc/9TJJ-PXH5>.

²⁰⁹ Adam Nagourney, *First Lady Opposes Law Granting Boy Resident Status*, N.Y. TIMES, Apr. 2, 2000, available at <http://www.nytimes.com/library/politics/camp/040200sen-ny-dem.html>, archived at <http://perma.cc/83P9-JEGG>; Silva, *supra* note 207.

²¹⁰ Silva, *supra* note 207.

²¹¹ *Elian ‘a Possession’ of State, Cuba says*, WASH. TIMES, (Apr. 5, 2000), available at <http://www.washingtontimes.com/news/2000/apr/5/20000405-011050-1346r/>, archived at <http://perma.cc/Q55Z-WKK3>.

²¹² *Id.*

ing “military training.”²¹³ Article 62 denies civil liberties to anyone actively opposing the “decision of the Cuban people to build socialism.”²¹⁴

B. Elián’s Father Arrives in Washington, D.C. and Embraces Janet Reno

On April 6, 2000, Juan Miguel González, his wife and their infant son, accompanied by Greg Craig, and NCC leaders Joan Brown Campbell and Thom White Wolf Fassett, received a personal sendoff at Havana airport from Fidel Castro.²¹⁵ Craig had shown González an INS letter promising to “begin the process of transferring Elián to his father’s care” and a missive from Democrat Senator Patrick Leahy of Vermont saying that González “would not be left waiting” to obtain custody after arriving in America.²¹⁶ More than four months had passed since Elián’s father had first demanded his repatriation. After Castro authorized the family’s departure, they landed in a private jet in Washington, D.C., where González read a prepared “[m]essage to the American people,” denouncing being “unjustly and cruelly separated” from his son.²¹⁷ He praised the Communist leader who, ““as a friend or brother has been next to me, advising me and supporting me in these days of pain and uncertainty.””²¹⁸

The exile family requested that Elián’s father meet them in Miami, free from the “intimidating pressure of the Castro government,” to discuss the boy’s future.²¹⁹ Craig stated Juan Miguel González “had no interest in traveling to Florida, but would await his son in Washington.”²²⁰ Castro declared in Havana: ““The battle for Elián has been won—in judicial terms, in legal terms, in political terms.””²²¹ That morning, more than fifty Cuban exiles carrying signs and a bullhorn loudly protested in front of Reno’s home in Miami to the accompaniment of “an endless blasting of horns by those driving past demonstrators.”²²²

²¹³ *República de Cuba: Constitución Política de 1976 con reformas hasta 2002*, available at <http://pdba.georgetown.edu/Constitutions/Cuba/vigente.html>, archived at <http://perma.cc/BD98-WBSZ>.

²¹⁴ *Id.*

²¹⁵ David R. Sands & Tom Carter, *Elián’s Father Arrives to Take Son Home*, WASH. TIMES (Apr. 7, 2000), available at <http://www.latinamericanstudies.org/elian/arrives.htm>, archived at <http://perma.cc/FY6H-GEF3>.

²¹⁶ *Id.*; EISLER, *supra* note 97, at 237.

²¹⁷ *Transcript of Father’s Remarks*, MIAMI HERALD (Apr. 7, 2000), available at <http://www.latinamericanstudies.org/elian/transcript.htm>, archived at <http://perma.cc/7LWN-XXYB>.

²¹⁸ *Id.*; GUERRA, *supra* note 100, at 97.

²¹⁹ Sands & Carter, *supra* note 215.

²²⁰ Karen DeYoung & Sue Anne Pressley, *Elián’s Father May Arrive Soon*, WASH. POST (Apr. 5, 2000), available at <http://www.latinamericanstudies.org/elian/soon.htm>, archived at <http://perma.cc/DF2T-4KER>.

²²¹ *Elián’s Father Arrives; No Transfer of Custody Set Before Teams of Lawyers Meet*, MIAMI HERALD (Apr. 6, 2000), available at <http://www.latinamericanstudies.org/elian/arrives.2.htm>, archived at <http://perma.cc/3V3C-938Q>.

²²² Karen Branch, *Crowds Target Reno’s Home*, MIAMI HERALD (Apr. 6, 2000), available at <http://www.latinamericanstudies.org/elian/crowds.htm>, archived at <http://perma.cc/BB7Q-F3KE>.

The next day, the Cárdenas family met with Reno, Meissner and Eric Holder, who assured Juan Miguel González that Elián would be turned over to him.²²³ According to Craig, “Reno seemed emotionally affected by the encounter and promised that he would get his son back. The Attorney General and Elian’s father then embraced.”²²⁴ Reno afterward released a 1,127-word communiqué announcing that federal officials would transfer the boy to his father the following week.²²⁵ She avoided the issue of reuniting both families and did not telephone the Miami relatives from her office for a rapprochement.²²⁶ Juan Miguel’s uncle, Delfín González, flew to Washington with nephew Alfredo Martell, and went to the Bethesda house of Fernando Remírez de Estenoz, the chief diplomat of the Cuban Interests Section, where the Cárdenas family was staying. The visitors were turned away twice on consecutive days.²²⁷

Cuban American Representatives Ileana Ros-Lehtinen and Lincoln Díaz-Balart, Republicans of Florida, and Robert Menéndez, New Jersey Democrat, invited Juan Miguel González to a “parent-to-parent” private lunch on Capitol Hill to discuss the case but he ignored them.²²⁸ He likewise scoffed at a proposal by two Florida senators, Democrat Bob Graham and Republican Connie Mack, to arrange a meeting at a neutral site in Washington with his Miami relatives. González also turned down an invitation by Mayor Joe Carollo to visit Miami.²²⁹ House Majority Whip Tom DeLay, a Texas Republican, and other political leaders sent Elián’s father “a hand-delivered letter inviting him to a private lunch at the Capitol.” When he didn’t attend, it was speculated that his actions were being controlled by the Cuban government.²³⁰

On April 8th, Lázaro González wrote to Reno pleading for her “to arrange a private meeting, at a neutral location, between Juan Miguel and his wife and members of my family. This meeting should take place without any intervention whatsoever of any government official, theirs or ours, lawyers,

²²³ EISLER, *supra* note 97, at 238.

²²⁴ *Id.*; *Elián’s Dad Meets With Reno; Attorney General Promises Father-Son Reunion*, MIAMI HERALD (Apr. 7, 2000), available at <http://www.latinamericanstudies.org/elian/dad2.htm>, archived at <http://perma.cc/AW2E-2JYP>.

²²⁵ *Statement of Attorney General Reno*, U.S. DEPARTMENT OF JUSTICE, Apr. 7, 2000, available at <http://www.justice.gov/archive/opa/pr/2000/April/189ag.htm>, archived at <http://perma.cc/398H-QL3R>.

²²⁶ *Id.*

²²⁷ See EISLER, *supra* note 97.

²²⁸ See Sands & Carter, *supra* note 215.

²²⁹ Frank Davies, Frances Robles & Ana Acle, *Reno: Boy Goes to Dad Next Week*, MIAMI HERALD (Apr. 8, 2000), available at <http://www.latinamericanstudies.org/elian/reno4.htm>, archived at <http://perma.cc/3E6L-GH8B>; Jasmine Kripalani, Paul Brinkley-Rogers & Frank Davies, *Forcible Elian Recovery an Option, Official Says*, MIAMI HERALD (Apr. 9, 2000), available at <http://www.latinamericanstudies.org/elian/forcible.htm>, archived at <http://perma.cc/JWD8-WMBS>.

²³⁰ Frank Davies, *Family Refusal to Give Up Boy Ended D.C. Deal*, MIAMI HERALD (Apr. 13, 2000), available at <http://www.latinamericanstudies.org/elian/ended.htm>, archived at <http://perma.cc/QQ2P-73TQ>.

media or anyone else, only family.”²³¹ He reminded Reno how two weeks earlier, Secretary of State Albright had denounced before the United Nations Human Rights Commission that “the Castro regime continues to suppress dissent, deny free speech, outlaw free assembly, and harass human rights advocates and others who seek independence of action and thought.”²³² Elián’s uncle again asked for her guarantee “that the government has no plans for, and does not intend to conduct, a raid on our modest home.”²³³ Reno did not respond and continued to make no effort to bring the families together. Holder declared the next day that “[w]e will do what is necessary to reunite father and son.”²³⁴

C. A Florida Family Court Lacks Jurisdiction

On April 11th, Elián’s Miami relatives offered to meet with Juan Miguel at the home of Sister O’Laughlin or any other neutral place in Miami.²³⁵ They would bring Elián but wanted assurances that he would not be seized during the reunion.²³⁶ That day, mayors Penelas and Carollo met in Washington with Reno and Meissner and urged “the attorney general to arrange a meeting between Elián’s father and the relatives.”²³⁷ Their plea was ignored after the Cuban Interests Section announced that “conditions are not right” for a turnover in Miami.²³⁸ The Miami lawyers then filed a brief in Florida Family Court, asking Circuit Court Judge Jennifer Bailey for “a full hearing to bar Elián’s return to Cuba until his father’s fitness is considered.”²³⁹ The Justice Department “asked the court to dismiss the request, saying it has no jurisdiction to overrule federal immigration law” and reiterated that only the father could speak for the boy.²⁴⁰ Judge Bailey rejected the case for lack of

²³¹ Letter from Lazaro Gonzalez, *MIAMI HERALD* (Apr. 10, 2000), available at <http://www.latinamericanstudies.org/elian/letter.htm>, archived at <http://perma.cc/J6M5-BHH5>.

²³² *Id.*

²³³ *Id.*

²³⁴ David Johnston, *Reno Signals Showdown in Fate of Cuban Boy*, *N.Y. TIMES*, Apr. 10, 2000, available at <http://www.nytimes.com/library/national/041000cuba-boy.html>, archived at <http://perma.cc/X3ZB-UHBZ>.

²³⁵ Madeline Baró, *Elián’s Relatives Seek Meeting with Dad*, *MIAMI HERALD* (Apr. 11, 2000), available at <http://www.latinamericanstudies.org/elian/meeting.htm>, archived at <http://perma.cc/94WG-P2BW>.

²³⁶ *Id.*

²³⁷ David Johnston, *Elián’s Reunion with Father is Canceled, Great-Uncle Says*, *N.Y. TIMES*, Apr. 12, 2000, <http://www.nytimes.com/library/national/041200cuban-boy.html>, archived at <http://perma.cc/XS8R-FCHV>; *Statement by Attorney General Janet Reno Following Meeting with Mayors of Miami* [hereinafter *Statement by Attorney General Janet Reno Following*], Apr. 11, 2000, U.S. DEP’T OF JUSTICE, available at <http://www.justice.gov/archive/opa/pr/2000/April/198ag.htm>, archived at <http://perma.cc/F3FT-SMFM>.

²³⁸ Baró, *supra* note 235.

²³⁹ *Id.*

²⁴⁰ Baró, *supra* note 235; Jay Weaver, *Officials Ask Judge to Throw out Petition*, *MIAMI HERALD* (Apr. 12, 2000), available at <http://www.latinamericanstudies.org/elian/petition.htm>, archived at <http://perma.cc/5XB4-X4GG>.

jurisdiction and rescinded the temporary order barring Elián's removal from the county issued by Judge Rodríguez three months earlier.²⁴¹

The next day, Reno ordered the Miami relatives to immediately surrender Elián. Lázaro González forebode, "they are preparing to take a child from my home, they are training federal agents to attack my house."²⁴² He feared that it could end like the deadly confrontations that Reno authorized at Ruby Ridge and Waco that killed more than twenty children. Retired FBI agent Clinton Van Zandt, the bureau's chief hostage negotiator and veteran of the Waco standoff, warned that it would be "disastrous to stage a surprise operation to grab the boy at night." He emphasized, "The last thing we need are American law enforcers going in like jackbooted Nazis or Castro's storm troops . . . The government is going to have to show infinite patience."²⁴³ Miami family lawyers then filed an emergency injunction in the 11th U.S. Circuit Court of Appeals, which quickly barred Elián from repatriation until his case was heard on May 11. In a 16-page decision, the judges opined that the government never interviewed Elián to examine if his "best interests are not necessarily represented by his father." They also indicated that the boy could file an asylum application because the law set no limits on the age of asylum seekers.²⁴⁴

Thousands of supporters flocked to the González home in Little Havana including actor Andy García, singers Gloria Estefan and Willy Chirino, and musicians Arturo Sandoval and Albita. Mayor Carollo chastised Reno for not implementing a plan that he had discussed with her to have both families "move into separate houses in a federal compound somewhere to ease transition of Elián back to his father." He assured that her "failure to adopt the plan meant that the Cuban government was dictating the terms of Elián's hand-over."²⁴⁵ The Castro regime, on the other hand, repeatedly announced

²⁴¹ Andres Viglucci & Jay Weaver, *Relatives Keep Elian in Miami*, MIAMI HERALD (Apr. 14, 2000), available at <http://www.latinamericanstudies.org/elian/miami2.htm>, archived at <http://perma.cc/UWM6-4YNE>.

²⁴² Andres Viglucci, Jay Weaver & Ana Acle, *Reno Wants Elian Today*, MIAMI HERALD (Apr. 13, 2000), available at <http://www.latinamericanstudies.org/elian/today.htm>, archived at <http://perma.cc/E6HS-DS9T>.

²⁴³ Joseph Tanfani, *Keep Negotiating, Experts Advise Reno*, MIAMI HERALD (Apr. 14, 2000), available at <http://www.latinamericanstudies.org/elian/negotiating.htm>, archived at <http://perma.cc/8597-H8DR>.

²⁴⁴ The three judges on the 11th U.S. Circuit Court of Appeals panel were Joel F. Dubina, a former Alabama district judge appointed in 1990 by President Bush, African-American Charles R. Wilson, previously a Tampa U.S. Attorney appointed by President Clinton in 1999, and James L. Edmondson, a former law professor appointed in 1986 by President Reagan; Christopher Marquis, *A Court with a Conservative Bent*, N.Y. TIMES, Apr. 20, 2000, <http://www.nytimes.com/library/national/042000cuba-appeal.html>, archived at <http://perma.cc/K82G-ZPAE>; Madeline Baró Díaz, *Court: Elian Must Stay in U.S.*, MIAMI HERALD (Apr. 13, 2000), available at <http://www.latinamericanstudies.org/elian/court3.htm>, archived at <http://perma.cc/L5KH-HUQH>.

²⁴⁵ Sandra Márquez García, Andrea Elliott & Martin Merzer, *Throng Outside House Swells to Thousands*, MIAMI HERALD (Apr. 14, 2000), available at <http://www.latinamericanstudies.org/elian/throng.htm>, archived at <http://perma.cc/YC48-6WPP>; Tyler Bridges & Don Finerock, *Mayors Call for Peaceful Reaction*, MIAMI HERALD (Apr. 14, 2000), available at

“that it does not plan to turn Elián into a political ‘trophy.’”²⁴⁶ On April 14th, Reno ordered the preparation of an armed raid to seize the child. Intelligence was gathered about the neighborhood, its streets, and activists near the home were photographed and profiled.²⁴⁷

After Juan Miguel González arrived at the capital with his wife and their son, they remained mostly sequestered in the Cuban diplomatic residence. Their outings were “carefully selected by Craig and by Cuban diplomats.”²⁴⁸ González, at a news conference on the 19th, asked Americans to write or phone Clinton and Reno “to pressure them to reunite him with Elián.”²⁴⁹ He said it was “unconscionable to wait one day longer” and called on Reno to fulfill “her personal promises to him.”²⁵⁰ Elián’s father declared in a televised message to Clinton: “I was promised that I was going to be reunited with my son. Two weeks have gone by and it hasn’t happened . . . Don’t let them continue to abuse my son.”²⁵¹ The president told reporters, “I think he should be reunited and in as prompt and orderly a way as possible.”²⁵² After the Justice Department received more than 7,000 telephone calls, Reno issued a public statement saying that the case had “touched the hearts of virtually every American” and that the court ruling had no bearing on her intention that “Elián should be reunited with his father as soon as possible.”²⁵³

The Miami family proposed taking Elián to a meeting with his father, within driving distance of their home, with “no preconditions, no government, no lawyers.”²⁵⁴ Vice President Gore endorsed the idea of a reunion,

<http://www.latinamericanstudies.org/elian/reaction.htm>, archived at <http://perma.cc/C5GK-F9LZ>.

²⁴⁶ Karen DeYoung, *Pediatrician Says Elian in ‘Imminent Danger,’* WASH. POST (Apr. 18, 2000), available at <http://www.latinamericanstudies.org/elian/imminent2.htm>, archived at <http://perma.cc/H5RH-WP84>.

²⁴⁷ JOHN, *supra* note 7, at 50.

²⁴⁸ Karen DeYoung, *A Father’s Frustration*, WASH. POST (Apr. 15, 2000), available at <http://www.latinamericanstudies.org/elian/frustration.htm>, archived at <http://perma.cc/C5Z9-J4PJ>.

²⁴⁹ *Clinton Says Elian Should be Returned to Father Now*, WASH. POST (Apr. 20, 2000), available at <http://www.latinamericanstudies.org/elian/clinton.htm>, archived at <http://perma.cc/54TJ-MAHG>.

²⁵⁰ Karen DeYoung, *Court Keeps Elian in U.S. for now*, WASH. POST (Apr. 20, 2000), available at <http://www.latinamericanstudies.org/elian/now.htm>, archived at <http://perma.cc/3AYN-H47W>.

²⁵¹ David Johnston, *U.S. Gathers Officers, Preparing to Take Cuban from Miami Kin*, N.Y. TIMES (Apr. 21, 2000), available at <http://www.nytimes.com/2000/04/21/us/elian-gonzalez-case-overview-us-gathers-officers-preparing-to-take-cuban-miami-kin.html>, archived at <http://perma.cc/5DQS-4775>.

²⁵² *Statements by Father and the President*, N.Y. TIMES (Apr. 21, 2000), available at <http://www.nytimes.com/2000/04/21/us/the-elian-gonzalez-case-statements-by-father-and-the-president.html>, archived at <http://perma.cc/5QUS-Q5L6>.

²⁵³ *Statement by Attorney General Janet Reno Following*, *supra* note 237.

²⁵⁴ Jerry Seper, *Justice Prepares for Next Move in Elian Case*, WASH. TIMES (Apr. 21, 2000), available at <http://www.latinamericanstudies.org/elian/justice.htm>, archived at <http://perma.cc/YY8N-6XP4>.

urging the relatives to meet “without government officials or lawyers.”²⁵⁵ Craig insisted that “any meeting must begin with Juan Miguel being given custody of the boy.”²⁵⁶ He angrily called on the U.S. government for an immediate transfer of custody to avoid further “brainwashing” by the exile family. Craig issued a statement from Juan Miguel for Reno “to carry out the order, and her personal promises to him, immediately.”²⁵⁷ According to various news reports, Clinton “chided Reno for not ending the standoff sooner.”²⁵⁸ On Wednesday, the 19th, the Attorney General ordered a pre-dawn raid for Saturday and drills began of entry and escape routes, the house structure and aerial surveillance.²⁵⁹ She met on Good Friday, the 21st, with Juan Miguel González, who had no objection to the armed seizure of his son. After consulting with his attorney and Cuban officials, he agreed not to leave the country until the court of appeals injunction was settled. In preparation for the assault, INS agents asked Craig “if Elián had any allergies and what his blood type was.”²⁶⁰

D. All Night Negotiations

That day, the Miami lawyers faxed a document to Reno at 4:52 PM, proposing that the two families live together in a mutually agreed, neutral site in Miami-Dade County, under the protection of marshals, lawyers would be barred and only a neutral facilitator would have access to the families, until all legal proceedings were finished.²⁶¹ The petition acknowledged: “We understand that you have transferred temporary custody of Elián to his father,” which attorney Aaron Podhurst, Reno’s friend and neutral advocate, said conceded the custody question.²⁶² The families “would live together until Elián was comfortable transferring his primary affections back from the Miami relatives to his father.”²⁶³ Miami attorney Roger Bernstein said the proposal “had to be presented to Greg Craig and Fidel Castro.”²⁶⁴

²⁵⁵ Andres Viglucci, Ana Acle, & Frances Robles, *Dad Makes Plea to Government, Public for Action*, MIAAMI HERALD (Apr. 21, 2000), available at <http://www.latinamericanstudies.org/elian/plea.htm>, archived at <http://perma.cc/9BMU-UCEP>.

²⁵⁶ *Elian Must Stay in U.S.*, MIAAMI HERALD (Apr. 20, 2000), available at <http://www.latinamericanstudies.org/elian/family5.htm>, archived at <http://perma.cc/J53Y-7LN4>.

²⁵⁷ Rick Bragg & Edward Wong, *Elian’s Father Pleads for Help from the American Public*, N.Y. TIMES (Apr. 20, 2000), available at <http://www.latinamericanstudies.org/elian/public.htm>, archived at <http://perma.cc/9QY3-TUFZ>.

²⁵⁸ Viglucci, Acle & Robles, *supra* note 255.

²⁵⁹ Greene, *supra* note 10; JOHN, *supra* note 7, at 55.

²⁶⁰ *Statement by Attorney General Janet Reno Following*, *supra* note 237; EISLER, *supra* note 97, at 239.

²⁶¹ Greene, *supra* note 10.

²⁶² *Id.*

²⁶³ Karen DeYoung, *Raid Reunites Elian and Father*, WASH. POST (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/reunites.htm>, archived at <http://perma.cc/2EZ6-8ESL>.

²⁶⁴ Karen DeYoung, *Elian Case Antagonists Argue over Miami Raid*, WASH. POST (Apr. 24, 2000), available at <http://www.latinamericanstudies.org/elian/antagonistst.htm>, archived at <http://perma.cc/HWU7-2EYW>.

Department of Justice officials waited until Judge Moore, who ruled on Elián's case, had left the Miami courthouse at 7:00 PM.²⁶⁵ They then went to the home of Magistrate Robert Rube, considered friendly to law enforcement, to obtain a search warrant to enter the González home and seize the child.²⁶⁶ Rube was handed an affidavit signed by INS Agent Mary Rodríguez purporting that Elián was being "concealed" in the house and had been "unlawfully restrained."²⁶⁷ The document also indicated that James T. Spearman, INS deputy director of investigations, had ordered the arrest of Elián as "an illegal alien."²⁶⁸ The magistrate's warrant, allowing a nighttime seizure, was good for ten days.²⁶⁹

Attorneys who later questioned the order said that it was "improperly issued because it is meant for use only when there is suspicion of a criminal violation, or violation of a direct court order."²⁷⁰ Federal agents had no right to enter the residence of a third party, Lázaro González, to grab Elián. Harvard Law School Professor Laurence H. Tribe denounced the warrant as invalid: "It was not a warrant to seize the child. Elián was not lost, and it is a semantic sleight of hand to compare his forcible removal to the seizure of evidence, which is what a search warrant is for."²⁷¹ Constitutional law expert Alan Dershowitz, a Clinton ally, stated that this was "an end-run around the Constitution. What they did was improper and unlawful."²⁷² African American syndicated columnist Deroy Murdock accused the Justice Department of violating Fourth Amendment restrictions against "unreasonable searches and seizures" by using an improper search warrant.²⁷³

At 7:58 PM, Justice Department attorneys faxed Craig a proposal that the joint living arrangement would occur in Airlie House, a hotel in the Washington suburbs. Craig demanded separate quarters for the families and "an immediate custody transfer."²⁷⁴ Three hours later, another proffer agreed to this demand. Craig, however, now insisted that the provision should not exceed one week. Reno spoke to President Clinton at midnight to update him on the negotiations. Two hours later, the Attorney General informed the White House chief of staff that "the talks were still going on" and the mes-

²⁶⁵ Jerry Seper, *Justice Told to Protect Elian from Cuba*, WASH. TIMES (Apr. 27, 2000), available at <http://www.latinamericanstudies.org/elian/protect.htm>, archived at <http://perma.cc/5L58-EFP5>.

²⁶⁶ *Id.*

²⁶⁷ JOHN, *supra* note 7, at 97; Seper, *supra* note 265.

²⁶⁸ Seper, *supra* note 265.

²⁶⁹ *Id.*

²⁷⁰ Andres Viglucci, *Experts Dispute Warrant to Seize Elian from Home*, MIAMI HERALD (Apr. 29, 2000), available at <http://www.latinamericanstudies.org/elian/warrant2.htm>, archived at <http://perma.cc/FXT7-BU6B>.

²⁷¹ Laurence H. Tribe, *Justice Taken Too Far*, N.Y. TIMES (Apr. 25, 2000), available at <http://www.nytimes.com/2000/04/25/opinion/justice-taken-too-far.html>, archived at <http://perma.cc/X363-GU2P>.

²⁷² Seper, *supra* note 265.

²⁷³ Deroy Murdock, *Feds Hold Bill of Rights at Gunpoint*, NAT'L REVIEW (May 2, 2000), available at <http://www.latinamericanstudies.org/elian/gunpoint.htm>, archived at <http://perma.cc/C3S8-HAG5>.

²⁷⁴ DeYoung, *supra* note 263.

sage was relayed to the president.²⁷⁵ The Justice Department responded to Craig at 2:10 AM with a draft giving him “most of what he had demanded, including a 3:30 AM turnover of the boy to marshals at the federal courthouse in Miami.”²⁷⁶ Craig “complained that the one-week limitation was not included in another section, which allowed the Attorney General to direct the conditions of the transition period.”²⁷⁷ After the limitation was amended on the document, the draft was faxed to the Miami attorneys at 2:59 AM. Miami family attorney Carlos de la Cruz recalled, “Up until that point, I thought we had an agreement,” then suddenly Reno “starts introducing drastically different terms. But even so, we were willing to work with those terms.”²⁷⁸ An hour later, Reno told Podhurst on the phone “that time had run out.”²⁷⁹ Podhurst afterward said, “I do not agree that we weren’t close to a settlement. I believe everybody was acting in good faith . . . [a]nd I had believed we had made substantial progress.”²⁸⁰

IV. FAMILY REUNIFICATION AT GUNPOINT

By 5:00 AM, the Miami lawyers had agreed to go along with the Washington plan and were pressing a sleepy Lázaro González to accept it. At the same time, an impatient Reno got President Clinton’s approval for “Operation Reunion,” a commando-style raid on Lázaro’s home by 151 heavily armed members of INS, U.S. Marshals and the El Paso-based Border Patrol Tactical Unit (BORTAC).²⁸¹ Minutes later, Podhurst had Reno on one phone line and family lawyers Manny Díaz and Kendall Coffey on another in Elián’s home. Reno put them on hold when the raiders arrived in “three white vans, four sport utility vehicles and two pickup trucks.”²⁸² Eight

²⁷⁵ BILL CLINTON, *MY LIFE* 906 (2004).

²⁷⁶ Adam Clymer, *Debate on Miami Raid Rides on Whether Deal Was Near*, N.Y. TIMES (Apr. 25, 2000), available at <http://www.nytimes.com/library/national/042500cuba-boy-reno.html>, archived at <http://perma.cc/3B8L-6L8L>.

²⁷⁷ *Id.*

²⁷⁸ Jay Weaver & Ronnie Greene, *Last-minute Differences for Deal Were Significant*, MIAMI HERALD, (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/differences.htm>, archived at <http://perma.cc/3YKN-C35C>.

²⁷⁹ *Attorney General Statement Regarding the Removal of Elian Gonzalez*, DEP’T OF JUSTICE (Apr. 22, 2000), available at <http://www.justice.gov/archive/opa/pr/2000/April/225ag.htm>, archived at <http://perma.cc/EB4X-WUG4>.

²⁸⁰ Chris Black et al., *Reno Meets with Lott, Other Senators On Elian Case*, CNN (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/senators.htm>, archived at <http://perma.cc/HVM2-ZV6A>.

²⁸¹ Weaver & Greene, *supra* note 278; Joseph Tanfani, David Kidwell & Ronnie Greene, *Aggressive Action by Agents Defended*, MIAMI HERALD (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/aggressive.htm>, archived at <http://perma.cc/84PD-FG93>.

²⁸² Manny Díaz was elected Miami mayor the following year. See Sue Anne Pressley, *From Elian’s House to City Hall*, WASH. POST (Nov. 15, 2001) available at <http://www.latinamericanstudies.org/exile/diaz-elected.htm>, archived at <http://perma.cc/HQQ2-VYUE>; Ronnie Greene, *Last Deadline Was Ignored, Lawyer Says*, MIAMI HERALD (Apr. 24, 2000), available at <http://www.latinamericanstudies.org/elian/lastdeadline.htm>, archived at <http://perma.cc/4GUZ-JX4K>; Clymer, *supra* note 276; Tanfani, Kidwell & Greene, *supra* note 281.

BORTAC agents “sprayed gas into the residence; broke down the front door with a battering ram and entered the residence without first announcing their presence; sprayed more gas; pointed guns at the occupants of the residence, threatening to shoot; shouted obscenities; and broke doors, furniture, and religious artifacts.”²⁸³ The attorneys, family members, and children in the house “were ingesting the gas” as the “agents corralled the frightened family inside at gunpoint” demanding the boy and threatening “[w]e’ll shoot you, we’ll shoot you.”²⁸⁴ Agents held people in the backyard on the ground at gunpoint and threatened about fifty protesters behind police street barricades sixty-five feet away that they would shoot them if they moved.²⁸⁵

NBC cameraman Joaquín “Tony” Zumbado and freelance photographer Alan Díaz quickly ran into the house ahead of the federal agents. NBC soundman Gustavo Moeller was behind them outside when he was “hit with the butt of a weapon on the back of his head and fell to the ground bleeding.”²⁸⁶ Zumbado was pepper-sprayed and thrown to the living room floor by a kick to the stomach from a raider who yanked and broke his camera cord. He told NBC’s David Bloom that agents “put their foot on my back and told me not to move or else they were going to shoot.”²⁸⁷ Zumbado saw “red dots from laser sights pinpointed at the foreheads of Lázaro and Marisleysis.”²⁸⁸ He denounced how “[t]he agents were physically and verbally abusive; they said every bad word in the book and kept me from doing my job.”²⁸⁹

Díaz won a Pulitzer Prize for a searing photo showing a snarling BORTAC agent wearing a chin-strapped helmet, goggles, body armor, battle fatigues, jack boots and shooter’s gloves. He held with one hand a Heckler & Koch MP5 submachine gun that had a target light, a 30-round ammunition clip and the safety off. The weapon was pointed at Dalrymple and a terrified Elián who were embracing in a closet doorway.²⁹⁰ Dalrymple stated, “They ripped him out of my arms. He was screaming ‘Help me, help me.’”²⁹¹ Weeks later, Díaz was still haunted by that “most awful cry you could ever

²⁸³ See *Gonzalez v. Reno*, 325 F.3d 1228, 1232 (11th Cir. 2003).

²⁸⁴ Greene, *supra* note 10; DeYoung, *supra* <CITE_Ref288918756>.”

²⁸⁵ Sue Anne Pressley, *Elián Arrives in Washington, Reunited With Father*, WASH. POST (Apr. 22, 2000), available at <http://www.latinamericanstudies.org/elian/washington.htm>, archived at <http://perma.cc/QKW5-GWRH>; JOHN, *supra* note 7, at 77–79.

²⁸⁶ JOHN, *supra* note 7, at 87; David Bauder, *NBC Seeks Elián Coverage Explanation*, L.A. TIMES (Apr. 27, 2000), available at <http://www.latinamericanstudies.org/elian/Zumbado.htm>, archived at <http://perma.cc/DKE6-CJMY>.

²⁸⁷ GUERRA, *supra* note 100, at 119; Murdock, *supra* note 273.

²⁸⁸ JOHN, *supra* note 7, at 87.

²⁸⁹ Luisa Yanez, *NBC Cameraman Says INS Agents on Elián Raid were Physically and Verbally Abusive*, S. FLA. SUN-SENTINEL, June 9, 2000, available at <http://www.latinamericanstudies.org/elian/abusive.htm>, archived at <http://perma.cc/3V7B-G7AD>.

²⁹⁰ David A. Vise, *Moment at Gunpoint Yields Searing Image*, WASH. POST (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/searing.htm>, available at <http://perma.cc/UE35-PQA5>; Tanfani, Kidwell and Greene, *supra* note 281.

²⁹¹ Pressley, *supra* note 285.

hear in your life” from Elián.²⁹² His photo quickly “appeared over and over on television screens around the world.”²⁹³



A U.S. Border Patrol Tactical Unit (BORTAC) agent seizes a frightened Elián González from the arms of his rescuer Donato Dalrymple. Photo credit: Photograph taken by Alan Díaz of the Associated Press, retrieved from MSNBC, <http://www.msnbc.com/sites/msnbc/files/2013/03/elian-gonzalez.jpg>.

A hysterical Elián was wrapped in a blanket by pistol-packing INS agent Betty Ann Mills, a former military policewoman and “avid runner,” and hustled out of the house wide-eyed, shrieking and crying.²⁹⁴ He was spirited away in a van with tinted windows driven by a masked man; he was then flown in a Marshals Service jet to his awaiting father at their temporary residence in Andrews Air Force Base near Washington, D.C.²⁹⁵ At a televised news conference that morning, Reno stated that she had “no regrets whatsoever” about authorizing the raid.²⁹⁶ The next day, Lázaro, Delfín and

²⁹² Robert Tanner, *Raid Still Haunts Photographer*, MIAMI HERALD (May 8, 2000), available at <http://www.latinamericanstudies.org/elian/haunts.htm>

²⁹³ Vise, *supra* note 290.

²⁹⁴ Carol Rosenberg, *INS Agent Targeted by Death Threats*, MIAMI HERALD (May 6, 2000), available at <http://www.latinamericanstudies.org/elian/death.htm>, archived at <http://perma.cc/XRB4-Q2C8>; DeYoung, *supra* note 263.

²⁹⁵ Terry Spencer, *Cops Take On Miami Protestors*, WASH. POST (Apr. 22, 2000), available at <http://www.latinamericanstudies.org/elian/cops.htm>, archived at <http://perma.cc/AK2G-TYBW>; Rick Bragg, *U.S. Officers Seize Cuban Boy and Reunite Him With Father*, N.Y. TIMES (Apr. 23, 2000), available at <http://www.nytimes.com/library/national/042300cuba-boy.html>, archived at <http://perma.cc/V3XB-XXZQ>; Pressley, *supra* note 285.

²⁹⁶ Reno Says She Has ‘No Regrets’ Over Raid, MIAMI HERALD (Apr. 24, 2000), available at <http://www.latinamericanstudies.org/elian/raid.htm>, archived at <http://perma.cc/FKV4-DS>

Marisleysis González were turned away at the base gate when they arrived to deliver an Easter basket to Elián and were barred entry during three subsequent days. In contrast, Cuban officials, attorney Craig, and the Rev. Joan Brown Campbell and her granddaughter frequently visited Elián.²⁹⁷

Days later, an emotional Reno reiterated on the Oprah Winfrey Show before a friendly audience that she “had no regrets” about the raid, while President Bill Clinton, First Lady Hillary Clinton, Meissner, Holder and Craig staunchly defended her actions.²⁹⁸ Most Democrats backed the president’s decision. Public opinion on the use of force to seize Elián was 49% against and 48% in favor in an NBC News poll.²⁹⁹ Mexican-American INS agent Rick Ramírez, assigned to the periphery of the three-minute operation, affirmed that the excessive use of force was due to the “anti-Cuban and anti-Hispanic sentiment in the agency.”³⁰⁰ Attorney Dershowitz denounced that “For whatever reason the government chose not to seek a court order following an adversarial hearing, its actions confirm a dangerous precedent: that the executive branch of the government has the authority to break into a citizen’s home in a contested dispute without giving that citizen the opportunity first to present his side to a court for resolution of the dispute.”³⁰¹ Judge Andrew Napolitano called the raid an “outrageous kidnapping” that “was constitutionally flawed, unlawful and repugnant to the language and spirit of the then three-day-old decision of the Eleventh Circuit that *ordered* Ms. Reno to keep Elián in the U.S. and *denied* her request for an injunction requiring Mr. González to turn the boy over.”³⁰² Former INS Commissioner

UU. A six-hour live MSNBC TV report of the raid and its aftermath can be seen on YouTube at https://www.youtube.com/watch?v=MGIJvGZq_Bc.

²⁹⁷ Carol Rosenberg, *Father and Son Reported ‘Quietly Bonding’ at Base*, MIAMI HERALD (Apr. 24, 2000), available at <http://www.latinamericanstudies.org/elian/bonding.htm>, archived at <http://perma.cc/JH3B-HXWR>; *Girl Who Saw Elian Reunion Day: ‘. . . like any other. . . boy on an ordinary day.’*, CNN (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/girl.htm>, archived at <http://perma.cc/M7MM-FG8E>.

²⁹⁸ Madeline Baró Díaz, *Reno Discusses Elian Case on Oprah Show*, MIAMI HERALD (May 2, 2000), available at <http://www.latinamericanstudies.org/elian/oprah2.htm>, archived at <http://perma.cc/Z68C-UCBN>; Frances Robles, *Emotional Reno on ‘Oprah’ Seeks A Different Audience*, MIAMI HERALD (May 3, 2000), available at <http://www.latinamericanstudies.org/elian/oprah.htm>, archived at <http://perma.cc/QY5W-KXQR>; David A. Vise, *Reno’s Decision to Remove Child Praised*, WASH. POST (Apr. 22, 2000), available at <http://www.latinamericanstudies.org/elian/remove.htm>, archived at <http://perma.cc/NSB2-VUZN>.

²⁹⁹ Mireidy Fernández, Anabelle de Gale & Curtis Morgan, *Polls Show Americans Split on Using Force*, MIAMI HERALD (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/split2.htm>, archived at <http://perma.cc/4P5K-H37X>.

³⁰⁰ Jay Weaver, *Feds Want to Relocate Trial for INS Agent*, MIAMI HERALD (June 29, 2002), available at <http://www.latinamericanstudies.org/elian/elian-retaliation.htm>, archived at <http://perma.cc/G4TJ-TBHP>.

³⁰¹ J. Joaquín Faxedas, *Every American Should Be Afraid*, ORLANDO SENTINEL (May 1, 2000), available at http://articles.orlandosentinel.com/2000-05-01/news/0005010064_1_constitutional-scholar-constitutional-law-asylum, archived at <http://perma.cc/8TS6-E6Y8>.

³⁰² ANDREW P. NAPOLITANO, CONSTITUTIONAL CHAOS: WHAT HAPPENS WHEN THE GOVERNMENT BREAKS ITS OWN LAWS 115–16 (2004).

Gene McNary declared, “This is stooping to the level of Castro and Hitler.”³⁰³

George Bush declared that the “chilling” photo of the frightened child being “removed from his home at gunpoint” was “not an image a freedom-loving nation wants to show the world.”³⁰⁴ He added that “Custody disputes are resolved in the calm of a courtroom, not in the terror of middle-of-the-night raids.”³⁰⁵ Gore concurred: “I believe this issue should have been handled through a family court and with the family coming together.”³⁰⁶ House Majority Whip Tom DeLay told NBC that the United States had for the time “taken the custody of a child out of the courts and put it into the executive branch . . . That is outrageous, it is unconstitutional.”³⁰⁷ Florida Democrat Senator Bob Graham accused President Clinton of breaking a personal promise to him “that there would be no taking of this child during the night . . . It was a clear commitment which was violated.”³⁰⁸ He denounced the raid as “absolutely intolerable, unnecessary, outrageous and has left a scar on this community and particularly a scar deep in the mind of this little boy, and, I suggest, a lot of other children as to what can happen in the middle of the night.”³⁰⁹ Republican New York City Mayor Rudolph Giuliani declared that the big winner “was Fidel Castro. He’s been orchestrating this . . . Not only did the Clinton administration adopt Fidel Castro’s position, they’re now adopting his tactics.”³¹⁰ Castro praised President Clinton, Reno and Meissner, “adding that the Cuban government had passed along its full support for the raid before it was staged.” He called it “a day of glory for our people” and 400,000 Cubans were called out to a victory rally.³¹¹

³⁰³ Adam Clymer, *Republicans Take Raid Rage to TV, and Turn up Volume*, N.Y. TIMES (Apr. 24, 2000), available at <http://www.nytimes.com/library/politics/camp/042400cuba-boy-pols.html>, archived at <http://perma.cc/8KN6-EPNU>.

³⁰⁴ Don Van Natta, Jr., *Bush Criticizes Administration for Removing Boy ‘at Gunpoint’*, N.Y. TIMES (Apr. 23, 2000), available at <http://www.nytimes.com/2000/04/23/us/bush-criticizes-administration-for-removing-boy-at-gunpoint.html>, archived at <http://perma.cc/4PK5-L3XB>.

³⁰⁵ Sue Anne Pressley & April Witt, *Angry Crowds Take Frustration into the Streets*, WASH. POST (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/frustration2.htm>, archived at <http://perma.cc/5K2M-L7RR>.

³⁰⁶ *Id.*

³⁰⁷ Maggie Fox, *Fight over Elian Continues in Front of Cameras*, WASH. POST (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/cameras.htm>, archived at <http://perma.cc/K7LQ-5Z6M>.

³⁰⁸ Karen DeYoung, *Elian Case Antagonists Argue over Miami Raid*, WASH. POST (Apr. 24, 2000), available at <http://www.latinamericanstudies.org/elian/antagonistst.htm>, archived at <http://perma.cc/4BDT-5B6Q>.

³⁰⁹ Clymer, *supra* note 303.

³¹⁰ David Barstow, *After U.S. Agents Seize Cuban Boy, Giuliani Seizes an Issue*, N.Y. TIMES (Apr. 24, 2000), available at <http://www.nytimes.com/library/politics/camp/042400sen-ny-gop.html>, archived at <http://perma.cc/QLK5-Q3M4>.

³¹¹ John Ward Anderson, *Great Emotion and Immense Joy*, WASH. POST (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/emotion.htm>, archived at <http://perma.cc/3LS3-RPRU>; *A Day Later, Cuban Boy Spends Time With Father*, N.Y. TIMES (Apr. 23, 2000), available at <http://www.latinamericanstudies.org/elian/day.htm>, archived at <http://perma.cc/TNP9-5LJ4>; *Victory is Not Complete in the Case of Elián, Warns Fidel*, GRANMA

A. *Street Protests and Counter-Protests*

The violent removal of Elián sparked protests throughout Little Havana. The demonstrators blocked intersections and set 304 random trash fires in the streets, prompting 303 arrests for mostly minor offenses. No store looting or window breaking took place while shouts of “Al Gore will pay for this in November” resounded in the streets.³¹² Other protests occurred in Washington, D.C., Manhattan and Union City, N.J., that included blocking traffic in the streets and in front of the Lincoln Tunnel. Scores of Cuban Americans registered as Democrats went to the Miami-Dade elections office on Monday to switch political allegiance.³¹³ Fifty-four Catholic priests from South Florida sent a letter of protest to President Clinton.³¹⁴

Miami’s 800,000 member Cuban-American community protested the assault on the González home with a general strike on April 25 that shut down “large portions of the county.”³¹⁵ More than 115,000 Miami-Dade public school students and some 4,000 teachers were absent. Thousands poured out onto the streets and gathered near landmarks waving Cuban flags or driving in honking caravans.³¹⁶ The protest was joined by ten members of the Florida Marlins baseball team, including six players, as well as two Giants players and a coach, who did not dress for the scheduled game at Pro Player Stadium in Miami. Six other major league players and coaches in other cities skipped evening games.³¹⁷ A dozen federal prosecutors and thirteen staff members at the U.S. Attorney’s office in Miami, not all of them Cuban Americans, protested by going to work dressed in black. They “felt betrayed” by Reno’s authorization of the raid after she “had assured them in an April 12 meeting that the Justice Department would not use force to reu-

INT’L (Apr. 23, 2000), available at <http://www.walterlippmann.com/Elian-victory-not-complete.html>, archived at <http://perma.cc/LN6C-M254>.

³¹² David Sands, *Child Gone, but his Cause Still Fuels Passions in Miami*, WASH. TIMES (Apr. 24, 2000), available at <http://www.latinamericanstudies.org/elian/fuels.htm>, archived at <http://perma.cc/WZ7X-UFM5>; JOHN, supra note 7, at 109–10.

³¹³ Karen Branch, *Cubans Move to Snub Dems*, MIAMI HERALD (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/dems.htm>, archived at <http://perma.cc/R38N-GGN3>.

³¹⁴ Aileen Dodd, *South Florida Catholic Church Breaking Silence in Elian Case*, MIAMI HERALD (Apr. 30, 2000), available at <http://www.latinamericanstudies.org/elian/catholic.htm>, archived at <http://perma.cc/3PD4-QLKV>.

³¹⁵ Alfonso Chardy, *Businesses Shut Down for Elian Protest*, MIAMI HERALD (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/businesses.htm>, archived at <http://perma.cc/C6WW-2QWX>.

³¹⁶ Alfonso Chardy, *Protest Shuttters Much of County*, MIAMI HERALD (Apr. 26, 2000), available at <http://www.latinamericanstudies.org/elian/shutters.htm>, archived at <http://perma.cc/LS35-DRAV>; Juan Forero, *Little Havana Locks Its Doors in Quiet Protest*, N.Y. TIMES (Apr. 26, 2000), available at <http://www.nytimes.com/library/national/042600cuba-boy-strike.html>, archived at <http://perma.cc/L9QJ-4635>.

³¹⁷ Tyler Kepner & Charlie Nobles, *Cuban Major Leaguers Join Work Stoppage*, N.Y. TIMES (Apr. 26, 2000), available at <http://www.nytimes.com/library/sports/baseball/042600bbn-protest.html>, archived at <http://perma.cc/4HXL-JRL8>.

nite Elián with his father.”³¹⁸ The Cuban American Bar Association decried that the “raid was contrary to the democratic traditions of our great nation.”³¹⁹ After the Castro regime announced that it had sent shipments of mango juice to Elián, Democrat Hialeah Mayor Raúl Martínez urged Cuban exiles to ship mango juice cans directly to Reno’s office in Washington to protest her “complicity” in Castro’s “continued lies.”³²⁰

On April 25th, the Justice Department filed an 83-page brief with the 11th U.S. Circuit Court of Appeals arguing that the asylum application was not Elián’s doing and that it amounted to “a substantial intrusion into the realm of parental authority for a distant relative to be able to trigger government procedures concerning the parent’s 6-year-old son.”³²¹ The Miami relatives responded with a legal request seeking access to Elián or the appointment of an outside guardian for him until the appeal was decided.³²² Craig retorted on behalf of Elián’s father with a 21-page pleading before the court that only he could represent the boy in his pending asylum case and not the “intruder and uninvited meddler” Lázaro González.³²³ The three-judge panel denied all requests in deference to the full court hearing scheduled the following month.³²⁴

Juan Miguel González and his family relocated on April 25th to Carmichael farm on the Wye Plantation, a secluded private compound seventy miles from Washington, D.C. on Maryland’s Eastern shore. Coast Guard launches were assigned to patrol the area.³²⁵ The State Department lifted the 25-mile travel restriction on ten Cuban diplomats to allow them to visit Elián.³²⁶ The Clinton Administration also authorized Fidel Castro to send an

³¹⁸ Daniel A. Grech, *Twelve U.S. Prosecutors, Thirteen Staffers in Miami Protest Raid with ‘Black Thursday’*, MIAMI HERALD (Apr. 28, 2000), available at <http://www.latinamericanstudies.org/elian/thursday.htm>, archived at <http://perma.cc/Y6J5-9X4G>.

³¹⁹ Jay Weaver, *Reno Visit to Draw Protests*, MIAMI HERALD (May 24, 2000), available at <http://www.latinamericanstudies.org/elian/reno-protests.htm>, archived at <http://perma.cc/4UYL-5EFU>.

³²⁰ Mireidy Fernández, *Send a Message to Reno, Hialeah Mayor Urges*, MIAMI HERALD (Apr. 28, 2000), available at <http://www.latinamericanstudies.org/elian/message.htm>, archived at <http://perma.cc/BV5W-32VB>.

³²¹ Peter T. Kilborn, *Custody Change Could Affect Boy’s Asylum Case*, N.Y. TIMES (Apr. 25, 2000), available at <http://www.latinamericanstudies.org/elian/custody-change.htm>, archived at <http://perma.cc/2BX8-4XH4>.

³²² Madeline Baró Díaz, *Court Denies Elian Relatives’ Motion*, MIAMI HERALD (Apr. 27, 2000), available at <http://www.latinamericanstudies.org/elian/denies2.htm>, archived at <http://perma.cc/DU8B-RDRY>.

³²³ Jay Weaver, *Dad Asks Court to Boot Great-Uncle from Lawsuit*, MIAMI HERALD (Apr. 27, 2000), available at <http://www.latinamericanstudies.org/elian/boot.htm>, archived at <http://perma.cc/TF4G-6N5U>.

³²⁴ *Text of Federal Appeals Court Ruling in Elian Gonzalez Case*, MIAMI HERALD (Apr. 27, 2000), available at <http://www.latinamericanstudies.org/elian/ruling2.htm>, archived at <http://perma.cc/P4QU-NMEH>; Lizette Alvarez, *Father of Cuban Boy Gains Right to Join, Not End, Case*, N.Y. TIMES (Apr. 28, 2000), available at <http://www.latinamericanstudies.org/elian/gains.htm>, archived at <http://perma.cc/X6WT-XE2R>.

³²⁵ Seper, *supra* note 178.

³²⁶ Tom Carter & Jerry Seper, *Cuban Officials Visited Boy on First Day at Wye*, WASH. TIMES (Apr. 28, 2000), available at <http://www.latinamericanstudies.org/elian/wye.htm>, archived at <http://perma.cc/A23F-4URK>.

entourage consisting of Elián's 10-year-old cousin, four of his Cárdenas schoolmates and their mothers, their teacher and a pediatrician, to join him for a fortnight and their visas were later extended for two more weeks.³²⁷ The group waved Cuban flags at the Havana airport when Castro bid them farewell. Elián's grandmothers and his eight-year-old stepbrother were left behind.³²⁸ Rep. Lincoln Díaz-Balart charged that Elián was "being placed under a systematic program of brainwashing and it is being done on U.S. soil, under the protection of U.S. officials."³²⁹

On April 29, 2000, more than 100,000 marchers "of all ages and all nationalities" peacefully protested in Little Havana's Calle Ocho against the armed removal of Elián.³³⁰ "We will remember in November" said one sign in reference to the presidential election.³³¹ The protest was broadcast live only by Miami Spanish-language television stations, unlike the previous national coverage. A counter rally of 2,500 people in South Dade backing the Clinton Administration was organized by "an Army veteran and a self-described redneck."³³² It had a bizarre alliance of African Americans alongside Confederate flag wavers, white bearded motorcycle guys, teenagers with pierced tongues, fanatics holding Bibles aloft, and xenophobes with signs proclaiming "This is America, Speak English," "America: Love it or Leave it" and "Janet Reno for President."³³³ They denounced Cuban American politicians and called for the firing of Mayor Joe Carollo. Fidel Castro, in turn, wearing an Elián T-shirt, on May 1 led a march of hundreds of thousands of Cubans to a rally in front of the U.S. Interests Section where he condemned the "barbarous and cruel crime" of the boy's "kidnapping" in America.³³⁴ During his speech, Castro answered his cellular telephone and told the crowd that it was Juan Miguel González calling to express solidarity with the

³²⁷ Lizette Alvarez, *Republicans Plan Hearings on Decision to Seize Boy*, N.Y. TIMES (Apr. 26, 2000), available at <http://www.nytimes.com/library/politics/camp/042600wh-elian.html>, archived at <http://perma.cc/DQG2-WEZA>; Frances Robles, *Playmates from Cuba Allowed to Stay Longer*, MIAMI HERALD (May 11, 2000), available at <http://www.latinamericanstudies.org/elian/playmates2.htm>, archived at <http://perma.cc/56A4-DUTU>.

³²⁸ Alvarez, *supra* note 327; JOHN, *supra* note 7, at 111.

³²⁹ Carter & Seper, *supra* note 326.

³³⁰ Sarah Olkon, Diana Marrero & Elaine de Valle, *Thousands Protest Seizure*, MIAMI HERALD (Apr. 30, 2000), available at <http://www.latinamericanstudies.org/elian/thousands2.htm>, archived at <http://perma.cc/TZA5-HKAV>.

³³¹ *100,000 March in Miami Protest over Elian*, CNN (Apr. 30, 2000) [hereinafter *100,000 March*], available at <http://www.latinamericanstudies.org/elian/march.htm>, archived at <http://perma.cc/F4WC-EDE8>; Mike Clary, *Tens of Thousands Protest Miami Raid*, L.A. TIMES (Apr. 30, 2000), available at <http://www.latinamericanstudies.org/elian/protest-raid.htm>, archived at <http://perma.cc/TRD9-4KZT>.

³³² Peter Whoriskey, Draeger Martínez & Eunice Ponce, *At Counterrally, Protesters Show Their Support for U.S.*, MIAMI HERALD (Apr. 30, 2000), available at <http://www.latinamericanstudies.org/elian/counterrally.htm>, archived at <http://perma.cc/CA62-QMVC>.

³³³ *100,000 March*, *supra* note 331.

³³⁴ *Castro Takes to the Streets of Havana for May Day and Elian*, CNN (May 1, 2000), available at <http://www.latinamericanstudies.org/elian/may-day.htm>, archived at <http://perma.cc/A9R7-FQAS>.

demonstration. A State Department annual report on terrorism issued that day continued to include Cuba as a state sponsoring terrorist activities.³³⁵

B. Sedation and Communist Indoctrination

On May 1, Craig urged the 11th U.S. Circuit Court of Appeals in a 17-page filing to dismiss Elián's political asylum bid, claiming that lengthy proceedings would curtail the father's "freedom to raise a family" and force him "to choose between his country and his son."³³⁶ He stressed that Elián was illiterate and did not understand the asylum petition. The Miami lawyers submitted evidence that the boy would be deprogrammed "to repudiate his late mother and his stepfather" if returned to Cuba.³³⁷ The Communist indoctrination process on the sequestered boy had already begun. Elián's pediatrician had a batch of Miltown, diazepam and Phenobarbital sedatives and tranquilizers confiscated from her upon arrival because she was not licensed to practice medicine in America. Republican Senator Bob Smith of Vermont denounced that Elián was being drugged.³³⁸ The indoctrination included dressing Elián in the tricolor Pioneers Youth Communist league uniform, daily joining his classmates in saluting the Cuban flag and singing the national anthem, ending with the shout: "Pioneers for Communism, we will be like Che [Guevara]."³³⁹ Critics have compared the Pioneers to the Hitler Youth. Child psychologist Dr. Marta Molina stated, "The oppression has already started."³⁴⁰ Before the end of the month, Elián and his entourage were moved to the Rosedale estate, owned by the National Cathedral Foundation, in the Cleveland Park section in Washington, near Craig's residence.³⁴¹

A CNN/USA Today poll in early May suggested that the Elián case had "no measurable impact" across the nation on the upcoming presidential

³³⁵ *Cuba May Day Rally Focuses on Elian*, MIAMI HERALD (May 2, 2000), available at <http://www.latinamericanstudies.org/elian/may-day2.htm>, archived at <http://perma.cc/C4QV-XSD5>; DeYoung, *supra* note 41.

³³⁶ Jay Weaver, *Father's Lawyer Urges Court to End Elian's Asylum Bid*, MIAMI HERALD (May 2, 2000), available at <http://www.latinamericanstudies.org/elian/bid.htm>, archived at <http://perma.cc/95K7-7P49>.

³³⁷ *Id.*; see also Sean Scully, *Republicans Lose Fervor for Elian Hearings*, WASH. TIMES (May 3, 2000), available at <http://www.washingtontimes.com/news/2000/may/3/20000503-011331-1168r/>, archived at <http://perma.cc/4JMN-H5C3>.

³³⁸ Jerry Seper, *Cuban Doctor Brought Sedatives to U.S.*, WASH. TIMES (May 2, 2000), available at <http://www.washingtontimes.com/news/2000/may/2/20000502-011330-5223r/?page=all>, archived at <http://perma.cc/6BX7-4YKJ>; JOHN, *supra* note 7, at 114.

³³⁹ Karen DeYoung, *Castro's New Recruit?*, WASH. POST (May 19, 2000), available at <http://www.latinamericanstudies.org/elian/recruit.htm>, archived at <http://perma.cc/JN4S-PUUQ>; Marika Lynch & Frances Robles, *Elian Pictures Anger Exiles*, MIAMI HERALD (May 17, 2000), available at <http://www.latinamericanstudies.org/elian/anger2.htm>, archived at <http://perma.cc/UR5Y-TR63>.

³⁴⁰ Lynch & Robles, *supra* note 339.

³⁴¹ Sylvia Moreno & Karen DeYoung, *Cleveland Park Welcomes Elian in Style*, WASH. POST (May 26, 2000), available at <http://www.latinamericanstudies.org/elian/cleveland.htm>, archived at <http://perma.cc/C5QW-4E2H>.

election.³⁴² Al Cárdenas, chairman of the Republican Party of Florida, stated that “No one will vote based on Elián except for Cuban Americans,” who comprised eight percent of Florida voters.³⁴³ President Clinton was “concerned that it could cost Al Gore Florida in November” but did nothing about it.³⁴⁴ Brian Kennedy, a Republican political consultant indicated, “Ultimately, it’s a Florida issue. Some would suggest that if Gore can deny Bush Florida, Gore would be hard to beat.”³⁴⁵ The *Miami Herald* predicted that “The Elián vote in Florida could be enough to decide the election.”³⁴⁶

On May 11th, the three judges of the 11th U.S. Circuit Court of Appeals met for less than ninety minutes to hear the Elián case. Edwin Kneedler, the deputy solicitor general of the U.S., argued that “only the father can speak for his son” since the boy is not old enough to understand his application for political asylum.³⁴⁷ Kendall Coffey, representing the Miami family that was in the courtroom, argued that “Elián would be paraded around Cuba, more a trophy than a boy growing up in his old life there, and his father would have little to say about the child’s life.”³⁴⁸ Craig countered that Juan Miguel González, who was not present, was not being manipulated by the Cuban government. He also questioned how INS could accept an asylum application filed by someone who did not have custody of the child.³⁴⁹ Coffey stated that Elián “was more than sufficiently competent to express his desire to invoke a chance to stay in this country.”³⁵⁰

Judge Wilson reminded Coffey that the Supreme Court had ruled that an asylum seeker had to provide the following evidence: “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.”³⁵¹ Kneedler stated that in the evidence submitted, six-year-old Elián had not expressed fear of persecution in Cuba; could not swear to the truth of the content of the asylum application; and that he was “was far below the

³⁴² Mark Silva, *Gore Seems Unhurt by Elian Issue Outside Florida*, MIAMI HERALD (May 4, 2000), available at <http://www.latinamericanstudies.org/elian/gore3.htm>, archived at <http://perma.cc/6EHH-JKCH>.

³⁴³ *Id.*

³⁴⁴ CLINTON, *supra* note 275.

³⁴⁵ Lizette Alvarez, *Republicans Back Away From Their Indignation Over Seizure of Cuban Boy*, N.Y. TIMES (May 3, 2000), available at <http://www.nytimes.com/2000/05/03/us/republicans-back-away-from-their-indignation-over-seizure-of-cuban-boy.html>, archived at <http://perma.cc/AZ65-84QG>.

³⁴⁶ Silva, *supra* note 342.

³⁴⁷ Rick Bragg, *Judges Ask Tough Questions About Cuban Boy’s Interests*, N.Y. TIMES (May 12, 2000), available at <http://www.nytimes.com/2000/05/12/us/judges-ask-tough-questions-about-cuban-boy-s-interests.html>, archived at <http://perma.cc/F8XR-WSPX>.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Excerpts of the Appeals Court Discussion*, MIAMI HERALD (May 12, 2000), available at <http://www.latinamericanstudies.org/elian/excerpts2.htm>, archived at <http://perma.cc/78GE-AYMJ>.

³⁵¹ *Id.*

range of age suggested in the Polovchak decision.”³⁵² Judge Edmondson “noted that it was not uncommon for courts to rule that a child’s best interests override the rights of a parent, as in the case of parents who refuse their child a doctor’s care because of their religious beliefs.” He affirmed that in U.S. courts, “a wider variety of people can act as next of friend other than the natural parent, even if the natural parent is present.”³⁵³

V. THE 11TH U.S. CIRCUIT COURT OF APPEALS DECISION

Edmondson wrote the unanimous decision issued on June 1st, ruling that “this case is about the discretion of the executive branch to make policy.”³⁵⁴ The court indicated that “the INS policy seems to implicate the conduct of foreign affairs more than any other” and worried that to the INS, a parent living “in a communist-totalitarian state is no special circumstance” for considering Elián’s asylum claim. The judges acknowledged “that Cuba does violate human rights and fundamental freedoms and does not guarantee the rule of law to people living in Cuba.”³⁵⁵ They admitted that Elián would be subjected to “re-education, communist indoctrination and political manipulation” if repatriated but that this was not “synonymous with persecution.”³⁵⁶ The court affirmed that Elián had “a substantial conflict of interest” with his father’s “demands that the child leave this country to return to a country with little respect for human rights and basic freedoms.” However, living in a communist-totalitarian state “does not constitute a special circumstance requiring the selection of a non-parental representative.”³⁵⁷ While the INS policy did not harmonize perfectly with their own asylum interpretative guidelines, these were not law, and INS officials could make a “discretionary policy choice,” even if “it might be imperfect,” without judicial interference. Therefore, the court ruled that INS acted properly in denying Elián asylum and ordered that he stay in America pending appeal.³⁵⁸ Consequently, the “political exploitation” of a child as a cause for granting asylum to Elián under the 1998 INS Guidelines for Children’s Asylum Claims was a moot issue.³⁵⁹

Janet Reno announced her pleasure with the decision and awaited its “final resolution so that Elián, his father and his family, may resume their

³⁵² *Id.*

³⁵³ Bragg, *supra* note 347.

³⁵⁴ *Gonzalez v. Reno*, 212 F.3d 1338, 1348 n.10 (11th Cir. 2000).

³⁵⁵ *Id.* at 1353.

³⁵⁶ *Id.* at 1355.

³⁵⁷ *Id.* at 1350.

³⁵⁸ *Id.* at 1356.

³⁵⁹ See Rick Bragg, *Court Upholds I.N.S.’s Rejection of Asylum Effort for Cuban Boy*, N.Y. TIMES (June 2, 2000), available at <http://www.nytimes.com/2000/06/02/us/elian-gonzalez-case-overview-court-upholds-ins-s-rejection-asylum-effort-for.html>, archived at <http://perma.cc/HH6H-82UQ>; Weiss, *supra* note 70.

lives away from the scrutiny of the media.”³⁶⁰ Two weeks later, the Miami lawyers asked the full twelve-judge appeals panel to reverse the adverse decision. They cited a recent Supreme Court ruling that courts need not defer to an executive agency decision. The Justice Department then asked the court to shorten the process by which Elián could return to Cuba.³⁶¹ On June 19th, Cuba indefinitely postponed the upcoming migration talks with the U.S. citing its “preoccupation with the return of Elián González as the reason.”³⁶² Four days later, the appellate court refused to review the case again and ruled that its earlier order requiring Elián to stay in America would end in five days.³⁶³

On June 26th, the Miami attorneys asked the U.S. Supreme Court to block Elián’s departure pending a quick formal appeal. They argued that Elián was denied “the absolute constitutional right to an asylum hearing five months ago.”³⁶⁴ Two days later, the high court, in a sparse 26-word order issued at midday, declined to intervene. It reiterated the rulings of lower federal courts, upholding the tradition of sustaining the broad powers of the INS to enforce the immigration laws.³⁶⁵ The Cárdenas family and their entourage immediately returned to a hero’s welcome in Cuba under live national television coverage. They were met at the Havana airport by a music band, Ricardo Alarcón, and hundreds of schoolchildren who waved Cuban flags, loudly sang the Cuban national anthem, and chanted, “Elián! Elián!”³⁶⁶ The regime told citizens to “celebrate in their homes and neigh-

³⁶⁰ *Statement by Attorney General Janet Reno on the 11th Circuit Court’s Decision in the Elian Gonzalez Case*, U.S. DEP’T OF JUSTICE (June 1, 2000) [hereinafter *Statement by Attorney General Janet Reno on the 11th*], available at <http://www.justice.gov/archive/opa/pr/2000/June/312ag.htm>, archived at <http://perma.cc/XR9R-VVQW>.

³⁶¹ Neil A. Lewis, *Miami Relatives Seek Review of Decision That Would Let Boy Return to Cuba*, N.Y. TIMES (June 16, 2000), available at <http://www.nytimes.com/2000/06/16/us/miami-relatives-seek-review-of-decision-that-would-let-boy-return-to-cuba.html>, archived at <http://perma.cc/DWC2-BA8S>; Neil A. Lewis, *Justice Dept. Asks Appeals Court to Allow Boy to Return to Cuba*, N.Y. TIMES (June 21, 2000), available at <http://www.nytimes.com/library/national/062100cuba-boy.html>, archived at <http://perma.cc/CG4P-SMMH>.

³⁶² Karen DeYoung & Eric Pianin, *Cuba Delays Talks on Immigration, Citing Elian Case*, WASH. POST (June 20, 2000), available at <http://www.latinamericanstudies.org/elian/delays.htm>, archived at <http://perma.cc/A3JQ-3CGY>.

³⁶³ *Castro Urges Fight Against U.S. Even After Elian Returns*, MIAMI HERALD (June 24, 2000), available at <http://www.latinamericanstudies.org/us-cuba/fight.htm>, archived at <http://perma.cc/LZ9B-XFT3>.

³⁶⁴ Christopher Marquis, *Relatives of Boy Ask Justices to Block His Return to Cuba*, N.Y. TIMES (June 27, 2000), available at <http://www.nytimes.com/2000/06/27/us/relatives-of-boy-ask-justices-to-block-his-return-to-cuba.html>, archived at <http://perma.cc/XM5Z-CE4G>.

³⁶⁵ Karen DeYoung, *Seven Months Later, Elian Goes Home to Cuba*, WASH. POST (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/goes-home.htm>, archived at <http://perma.cc/BK7D-DLGD>.

³⁶⁶ Andres Viglucci & Jay Weaver, *Elián’s Odyssey Ends*, MIAMI HERALD (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/odyssey.htm>, archived at <http://perma.cc/5XBZ-JFMN>.

borhoods.”³⁶⁷ Castro’s earlier promise “of a low key homecoming to save the boy more trauma” proved false.³⁶⁸

During the two months after Elián’s seizure, “3,185 Democrats in Miami-Dade County switched to another party affiliation—71 percent of them to the GOP.”³⁶⁹ Radio commentator Ninoska Pérez Castellón forewarned that Cuban Americans would hold Vice President Al Gore “and other Democratic candidates accountable in the November elections.”³⁷⁰ The *Miami Herald* foresaw that the seven-month Elián saga had made it “difficult for Democrat Al Gore to count Florida in any electoral formula for victory in November.”³⁷¹

CONCLUSION

The Elián case did not break new legal ground and it received extraordinary fast-track treatment by the courts. The federal courts agreed that the INS “acted reasonably and within its broad powers” in denying Elián an asylum hearing.³⁷² It was the first time in history that “a Cuban refugee had been given a deferred inspection and the INS later decided to return the person to Cuba.”³⁷³ The INS ignored their own 1998 Guidelines for Children’s Asylum Claims by not interviewing Elián.³⁷⁴ The special procedure recommended by the *Washington Post* was never implemented. It was the first time that a large federal armed force seized a child in a custody case. Internationally, no government had ever before mobilized an entire nation to support its claim on a custody battle. Fidel Castro hailed the outcome as a national victory over American imperialism and vowed to continue the struggle. In contrast, during the previous three years, nearly ninety Cuban minors had arrived undocumented in the United States, and none were sent home involuntarily nor did Castro demand their return.³⁷⁵

³⁶⁷ David González & Lizette Alvarez, *Justices Allow Cuban Boy to Fly Home*, N.Y. TIMES (June 29, 2000), available at <http://www.nytimes.com/library/national/062900cuba-boy.html>, archived at <http://perma.cc/FW62-QA5B>.

³⁶⁸ Snow, *supra* note 34.

³⁶⁹ Karen Branch-Brioso, *Fallout in South Florida: Power Structure Shaken to the Core*, MIAMI HERALD (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/core.htm>, archived at <http://perma.cc/RCX3-Q6NL>.

³⁷⁰ Tom Carter, *Elian Returns to Cuba*, WASH. TIMES (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/returns.htm>, archived at <http://perma.cc/9FGP-63NJ>.

³⁷¹ Mark Silva, *Case Makes Mark on Campaign*, MIAMI HERALD (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/campaign.htm>, archived at <http://perma.cc/966T-SP7Y>.

³⁷² Jay Weaver, *Long Legal Battle Broke No New Ground*, MIAMI HERALD (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/ground.htm>, archived at <http://perma.cc/C9BH-RNDP>; Viguerra & Weaver, *supra* note 366.

³⁷³ Carter, *supra* note 56.

³⁷⁴ *Transcript of 11th Circuit*, *supra* note 76.

³⁷⁵ Edward Wong, *Cuban Boat Immigrants Have Benefited From Cold War-Era Legislation*, N.Y. TIMES (Apr. 20, 2000), available at <http://www.latinamericanstudies.org/elian/legislation.htm>, archived at <http://perma.cc/38S4-6TX3>.

Throughout the ordeal, the Clinton Administration negotiated from a forceless position, intimidated by Castro's threat of suspending the immigration accords and unleashing another massive exodus. It retracted its initial commitment to follow standard custody procedure and resolve the situation in a family court, sealing the boy's fate. After secret negotiations with Cuba ended the hostage crisis in Louisiana, the Clinton Administration denied Elián an asylum hearing and rushed the process to repatriate him. President Clinton never revealed what Castro gained in exchange for accepting the return of the Mariel criminals and disavowed that any deal was made in relation to the Elián case. The Clinton Administration afterward never opposed Castro's demands and stopped responding to his anti-American rants. The Communist leader was allowed to orchestrate the immigration process during the custody battle, including rejecting the initial INS offer to give Juan Miguel González legal custody of his son in Miami; permitting a separate visit by the grandmothers; controlling the father's departure for America after four months; participating in the Good Friday negotiations with the Miami family; approving the armed seizure of Elián; and giving extended visas for the selected Cárdenas entourage.

The Clinton Administration adhered to Castro's insistence that the Cárdenas family never be allowed to meet with their Miami relatives, even after Elián was reunited with his father. They also abided by Castro's demand that the case not go to a "corrupt" family court, where an impartial and experienced person would make a decision based on the best interests of the boy.³⁷⁶ Reno and Meissner ignored repeated pleas from the Miami family for a reunion with their Cárdenas kin.³⁷⁷ The Justice Department disregarded suggestions by South Florida mayors Penelas and Carollo on how to bring both sides together.³⁷⁸ They also avoided a psychological evaluation of Elián, involving his interactions with the entire family, as usually ordered by family courts.³⁷⁹ Reno's all-night negotiations by telephone and fax with a large number of people, many tired and incoherent just before dawn, are not methods used by child custody professional negotiators and were therefore doomed to fail.³⁸⁰ All negotiating proposals by the Miami family were presented to Greg Craig and Fidel Castro for their approval.³⁸¹ Although the Clinton Administration was denouncing Cuba as a totalitarian regime that violated human rights and sponsored terrorism, it had no qualms about returning Elián to a nation that had legal possession of children and control of their training.³⁸² To protect Elián's future, Cuban exiles appealed to the same

³⁷⁶ See Tamayo, *supra* note 15.

³⁷⁷ Baró, *supra* note 235.

³⁷⁸ *Statement by Attorney General Janet Reno Following, supra* note 237.

³⁷⁹ Jay Weaver, *Issue of asylum hearing is real dispute in Elian case*, MIAMI HERALD (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/issue.htm>, archived at <http://perma.cc/L6VR-H5ZZ>.

³⁸⁰ Weaver & Greene, *supra* note 278.

³⁸¹ DeYoung, *supra* note 264.

³⁸² *Elián 'a Possession' of State, Cuba says, supra* note 211; *República de Cuba, supra* note 213.

moral “higher law” that 19th-century abolitionists preached against slavery sanctioned by the Constitution and the Supreme Court, while the Clinton Administration called for abiding by the rule of law.

Clinton and Reno did not honor their word against a night-time raid.³⁸³ They rushed to forcefully hand over Elián to his father by Easter to attain religious symbolism, favorable publicity, and comply with the pressing public demands and challenges from Castro, Juan Miguel González and his lawyer. Reno, after being chided by Clinton for faltering, obtained a dubious warrant to seize the boy.³⁸⁴ Although the instrument gave her ten days to act, she executed it within ten hours.³⁸⁵ The Attorney General lacked the “infinite patience” advised by retired FBI chief hostage negotiator Clinton Van Zandt.³⁸⁶ BORTAC agents violated the First Amendment rights of the NBC crew trying to film the home invasion.

The distressing photo of the six-year-old boy being snatched at machine gun point during a nighttime raid had a furious adverse effect. The *New York Times* editorialized that the operation was “precipitous” and that Reno “should have given the two branches of the González family more time to try to resolve the case amicably, and she should have applied more legal pressure on the Miami relatives before battering down their door to remove Elián.”³⁸⁷ Senate Majority Leader Trent Lott, a Mississippi Republican, stated that Reno never satisfactorily explained “why it was necessary to use force of that magnitude at a time when negotiations were apparently seriously under way.”³⁸⁸

One crucial point neglected by the mainstream media, which largely echoed the Clinton Administration’s mantra that the boy belonged with the father, was that the U.S. government for decades arranged for defectors from Communist countries to flee with their families. In the Elián saga, no effort was made to bring the entire Cárdenas family together to America and away from the control of Cuban officials to privately offer them asylum. When Reno met with Juan Miguel González in her office, she did not telephone the Miami relatives to establish a rapport.³⁸⁹ The Cárdenas family and their entourage were sequestered and controlled by Cuban agents during their extended stay.³⁹⁰ The federal law enforcement tab for the Washington, D.C. visit was more than \$2 million and it cost the city of Miami and Miami-Dade County more than \$4 million.³⁹¹

³⁸³ DeYoung, *supra* note 308; Grech, *supra* note 318.

³⁸⁴ Seper, *supra* note 265.

³⁸⁵ *Id.*

³⁸⁶ Tanfani, *supra* note 243.

³⁸⁷ *A Precipitous Raid*, N.Y. TIMES (Apr. 23, 2000), available at <http://www.nytimes.com/2000/04/23/opinion/a-precipitous-raid.html>, archived at <http://perma.cc/9EWG-3CR7>.

³⁸⁸ Joyce Howard Price, *Senators Split on Elián Hearings*, WASH. TIMES (May 1, 2000), available at <http://www.latinamericanstudies.org/elian/hearings.htm>, archived at <http://perma.cc/KNE3-WJQP>.

³⁸⁹ EISLER, *supra* note 97, at 238.

³⁹⁰ DeYoung, *supra* note 248; DeYoung, *supra* note 339.

³⁹¹ Tyler Bridges, *Local Police Seek Elian-Case Refunds*, MIAMI HERALD (May 17, 2000), available at <http://www.latinamericanstudies.org/elian/refunds.htm>, archived at <http://perma.cc/9EWG-3CR7>.

Three months after Elián returned to Cuba, President Clinton and Fidel Castro shook hands and briefly talked at the United Nations Millennium Summit. It was the first and only time that Castro has ever shaken hands with a sitting American president.³⁹² The London *Times* envisaged: “The rapprochement is fraught with political dangers for Vice President Al Gore’s presidential campaign, particularly in the key state of Florida.”³⁹³ In November 2000, angry Cuban Americans massively voted against Gore, whose presidential defeat narrowly hinged on Florida.³⁹⁴ He lost the state, and the election, by 537 votes and never again aspired to public office.³⁹⁵ The following month, President Clinton stated that the “seizure of Elián González might have cost the vice president ‘a lot of votes’ in Florida.”³⁹⁶ Clinton’s final day in office was marred by scandal and controversy stemming from his grand jury testimony and his 140 criminal pardons and various commutations of sentence.³⁹⁷

When Janet Reno returned to her Miami home in 2001, the Cuban exile organization Vigilia Mambisa held weekly bullhorn protests with scores of hecklers in front of her residence.³⁹⁸ Reno ran for governor of Florida in 2002, but narrowly lost the Democratic primary to a candidate supported by

perma.cc/3V54-P82W; Alfonso Chardy, *Little Boy’s Big D.C. Tab: \$2 million*, MIAMI HERALD (June 30, 2000), available at <http://www.latinamericanstudies.org/elian/tab.htm>, archived at <http://perma.cc/YPW5-D8X5>.

³⁹² Kenneth R. Bazinet, *Bill, Fidel Shake Hands*, N.Y. DAILY NEWS (Sept. 8, 2000), available at <http://www.latinamericanstudies.org/us-cuba/shake.htm>, archived at <http://perma.cc/YH55-VZ75>; *It’s a Handshake and Small Talk for Clinton and Castro*, N.Y. TIMES (Sept. 8, 2000), available at <http://www.nytimes.com/2000/09/08/world/08CAST.html>, archived at <http://perma.cc/5YWN-2P9U>.

³⁹³ James Bone, *Clinton Breaks Taboo to Shake Castro’s Hand*, LONDON TIMES (Sept. 8, 2000), available at <http://www.latinamericanstudies.org/us-cuba/taboo.htm>, archived at <http://perma.cc/C79N-U2VS>.

³⁹⁴ Madeline Baró Diaz, *Cuba policies have some rethinking their support for president*, S. FLA. SUN-SENTINEL (Oct. 4, 2004), available at <http://www.latinamericanstudies.org/exile/rethinking.htm>, archived at <http://perma.cc/NNL2-6BSU>.

³⁹⁵ Dan Keating & Dan Balz, *Florida Recounts Would Have Favored Bush*, WASH. POST (Nov. 12, 2001), available at <http://www.washingtonpost.com/wp-dyn/articles/A12623-2001Nov11.html>, archived at <http://perma.cc/VRT9-PWKP>.

³⁹⁶ Andrew Cain, *Clinton: Elian Case May Have Cost Gore*, WASH. TIMES (Dec. 21, 2000), available at <http://www.latinamericanstudies.org/elian/cost-gore.htm>, archived at <http://perma.cc/68QX-ZC3H>.

³⁹⁷ Bill Clinton, on his last day as president in 2001, consented to have his Arkansas law license suspended for five years by the Arkansas Supreme Court and pay a \$25,000 fine. It was part of a plea bargain agreement to avoid prosecution for lying under oath about his sexual relationship with White House intern Monica Lewinsky. He was also disbarred from the U.S. Supreme Court. The following month, Clinton wrote a column in the *New York Times* defending his 140 pardons. *Lewinsky Scandal Ends as Clinton is Disbarred*, THE GUARDIAN (Oct. 2, 2001) available at <http://www.theguardian.com/world/2001/oct/02/duncancampbell>, archived at <http://perma.cc/2JPV-DAHR>; William Jefferson Clinton, *My Reasons for the Pardons*, N.Y. TIMES (Feb. 18, 2001), available at <http://www.nytimes.com/2001/02/18/opinion/my-reasons-for-the-pardons.html>.

³⁹⁸ *Exile Group Demonstrates at Reno’s House*, MIAMI HERALD (Feb. 4, 2001), available at <http://www.latinamericanstudies.org/elian/reno-house.htm>, archived at <http://perma.cc/CL6N-VHQZ>.

former President Clinton.³⁹⁹ Her announced memoirs never appeared and she remained a pariah among the Cuban community that formerly adored her.⁴⁰⁰

Gregory Craig deserted the Clintons in 2008 to support Obama's presidential candidacy and was afterward named White House counsel. When his ability to draft executive orders was challenged, Craig was forced to resign in less than a year.⁴⁰¹

Eric Holder was appointed Attorney General of the Obama Administration in 2009. He became the first Attorney General held in contempt of Congress on both civil and criminal grounds on June 27, 2012, for withholding thousands of documents related to the botched Fast and Furious gun operation that supplied more than 2,000 military weapons to Mexican drug cartels.⁴⁰² After 57,524 unaccompanied and undocumented Central American minors crossed the U.S. border in the first six months of 2014, Holder created the Justice AmeriCorps program to provide them emergency legal representation and prevent their immediate repatriation.⁴⁰³ The children were released to sponsors and allowed to enroll in public schools. No effort was made to return them to their parents.⁴⁰⁴ In September 2014, Holder resigned his post after a federal judge ruled that the contempt of Congress charge against him could proceed in court.⁴⁰⁵ He later said that his only regret was authorizing a subpoena in 2010 for the email records of Fox News reporter James Rosen and calling him a "criminal co-conspirator." In probing leaks

³⁹⁹ Steve Miller, *Democrats Give Reno Cold Shoulder*, WASH. TIMES (Sept. 9, 2002), available at <http://www.latinamericanstudies.org/elian/reno-cold.htm>, archived at <http://perma.cc/8CTM-7TQB>; Lesley Clark & Peter Wallsten, *Reno Backs Former Foe as Vote Count Falls Short*, MIAMI HERALD (Sept. 18, 2002), available at <http://www.latinamericanstudies.org/elian/foe.htm>, archived at <http://perma.cc/7DYH-ZA4X>.

⁴⁰⁰ Miami City Commissioner Tomás Regalado had wryly predicted that if Reno "turns for dogcatcher, she probably couldn't make the runoff." Carol Rosenberg, *Exiles See Reno as the Enemy*, MIAMI HERALD (Mar. 30, 2000), available at <http://www.latinamericanstudies.org/elian/enemy.htm>, archived at <http://perma.cc/WXN9-8RZS>.

⁴⁰¹ Peter Baker, *Fate of White House Counsel is in Doubt*, N.Y. TIMES (Oct. 21, 2009), available at http://www.nytimes.com/2009/10/22/us/politics/22craig.html?_r=0, archived at <http://perma.cc/UY48-FBY9>.

⁴⁰² Richard A. Serrano, *House finds Atty. Gen. Eric Holder in contempt of Congress*, L.A. TIMES (June 28, 2012), available at <http://articles.latimes.com/2012/jun/28/nation/la-na-holder-contempt-20120629>, archived at <http://perma.cc/2LYR-WNW2>.

⁴⁰³ Michael Oleaga, *Department of Justice Grants \$1.8 Million to Expedite Immigration Court Process for Unaccompanied Children*, LATIN POST (Sept. 15, 2014), available at <http://www.latinpost.com/articles/21504/20140915/department-justice-grants-1-8-million-expedite-immigration-court-process.htm>, archived at <http://perma.cc/S2ZR-UJVD>.

⁴⁰⁴ *Id.*

⁴⁰⁵ Jessica Chasmar & Jacqueline Klimas, *Eric Holder Resigns as Attorney General*, WASH. TIMES (Sept. 25, 2014), available at <http://www.washingtontimes.com/news/2014/sep/25/eric-holder-stepping-down-attorney-general-report/>, archived at <http://perma.cc/RD8A-W6YS>; Eric Tucker, *Holder Tells Fast and Furious Critics to Kiss His Butt in Released Emails*, WASH. TIMES (Nov. 8, 2014), available at <http://www.washingtontimes.com/news/2014/nov/8/holder-aims-vulgarity-at-critics-in-email/>, archived at <http://perma.cc/8NAT-BUHU>.

to the press, Holder had also obtained “two months’ worth of phone records for Associated Press employees.”⁴⁰⁶

Reno had hoped that Elián would “live a normal life without television cameras and the world in his face,”⁴⁰⁷ that the boy and his father would “resume their lives away from the scrutiny of the media,”⁴⁰⁸ and that she would see Elián again to talk about “himself and what his interests are.”⁴⁰⁹ Juan Miguel González returned to Havana and said forcefully that “he never wants to see a camera pointed at his son again.”⁴¹⁰ Castro had promised Juan Miguel that once Elián returned home, the child would “disappear from the limelight.”⁴¹¹ However, the promise was never kept and Juan Miguel made no further objection after his son became an icon of the revolution. Elián frequently appeared at key annual Cuban national rallies on the dais with Fidel Castro wearing political-slogan T-shirts and Communist Youth uniforms. The Cárdenas municipal museum created a “Hall of Elián” wing where he and his classmates visited weekly to use the computer center.⁴¹² The Cárdenas family changed its phone number and never again communicated with its Miami relatives.⁴¹³ The regime built a new home for them with state security neighbors guarding the entrance. In 2003, Elián’s father, who Castro had decorated with a national hero medal, won a seat in Cuba’s National Assembly after running unopposed.⁴¹⁴ Two years later, 11-year-old Elián read a prepared speech “for the entire world” before 5,000 people at the Anti-Imperialist Platform demanding the release of five Cuban spies imprisoned in the United States.⁴¹⁵ In 2006, Fidel Castro’s ailing health forced him to hand over power to his brother Raúl, who assumed the presi-

⁴⁰⁶ Holder says ‘Subpoena’ to Fox News Reporter is his One Regret, FOX NEWS (Oct. 30, 2014), available at <http://www.foxnews.com/politics/2014/10/29/holder-says-subpoena-to-fox-news-reporter-is-his-one-regret/>, archived at <http://perma.cc/MN27-7YJ2>.

⁴⁰⁷ Reno Calls for Speedy Resolution, *supra* note 123.

⁴⁰⁸ Statement by Attorney General Janet Reno on the 11th, *supra* note 360.

⁴⁰⁹ U.S. Government to Meet Friday Court Deadline as Elian, Father Remain Separated, CNN (Apr. 14, 2000), available at <http://www.latinamericanstudies.org/elian/remain.htm>, archived at <http://perma.cc/4LE2-4CHV>.

⁴¹⁰ With Elian Home, Cuba Presses Attacks on U.S. Policy, CNN (June 29, 2000), available at <http://www.latinamericanstudies.org/elian/presses.htm>, archived at <http://perma.cc/L3JF-EDVT>.

⁴¹¹ Mary Murray, *The Life that Awaits Elian in Cuba*, MSNBC (Jan. 17, 2000) available at <http://www.latinamericanstudies.org/elian/life.htm>, archived at <http://perma.cc/PWK4-AS53>.

⁴¹² Mark Fineman, *Cuban Boy Is an Obsession for Castro*, L.A. TIMES (Apr. 13, 2000), available at <http://www.latinamericanstudies.org/elian/obsession.htm>, archived at <http://perma.cc/S7N9-BTYJ>; Vanessa Bauzá, *Five Years Later, Elián, Now 11, is Living a ‘Normal’ Life*, S. FLA. SUN-SENTINEL (Apr. 17, 2005), available at <http://www.latinamericanstudies.org/elian/elian-11.htm>, archived at <http://perma.cc/2CEU-XUC4>.

⁴¹³ Elaine de Valle, *Family Can’t Escape the Memories*, MIAMI HERALD (Apr. 22, 2001), available at <http://www.latinamericanstudies.org/elian/elian-memories.htm>, archived at <http://perma.cc/XZ2L-BPXD>.

⁴¹⁴ Bauzá, *supra* note 412.

⁴¹⁵ Anett Ríos Jáuregui, *Un Niño Libre Convoca a Otra Lucha*, GRANMA (Apr. 23, 2005), available at <http://www.latinamericanstudies.org/elian/convoca.htm>, archived at <http://perma.cc/VQB8-UA9D>.

dency two years later.⁴¹⁶ In 2008, Elián joined the Young Communist Union and enrolled in the Camilo Cienfuegos military school in Matanzas, located thirty miles from his home. He was chauffeured there by bodyguards on weekdays.⁴¹⁷

In 2009, Felipe Pérez Roque and Fernando Remírez de Estenoz were dismissed from the Cuban Foreign Ministry and forced to resign from the Communist Party.⁴¹⁸ The latter's 24-year-old son, Pablo Remírez, later received political asylum in Miami.⁴¹⁹ Ricardo Alarcón was ousted as parliamentary chief in December 2012 and was afterward removed from the Political Bureau and the Central Committee of the Communist Party.⁴²⁰

On December 3, 2013, 20-year-old Elián was interviewed in *Quinquenio de Luz*, the University of Matanzas journalism student blog. He claimed that he would have been exploited in America, and that “[i]n Cuba, I enjoy freedoms I would be denied in the United States.” He blamed the United States for “claiming many lives, my mother’s included, with the Cuban Adjustment Act.” Elián acknowledged that Fidel Castro constantly watched over him and attended all of his birthday parties: “He would give me good advice, congratulate me.” Elián still had a team of bodyguards assigned to him since the age of six, “out of fear of reprisals from imperialism.” He affirmed that “Fidel Castro is like a father to me. I don’t profess to have any religion, but, if I did, my god would be Fidel Castro . . . no one has done more for world peace than he has. That’s why I believe that, more than a father to me, he ought to be considered a father by the whole world.” Elián’s political exploitation, lack of freedom, Communist indoctrination, and control by Fidel Castro, forewarned by his Miami family, Sister O’Laughlin, Charles Krauthammer, and Dr. Marta Molina, was now complete.⁴²¹

⁴¹⁶ James C. McKinley, Jr., *Fidel Castro Resigns as Cuba’s President*, N.Y. TIMES (Feb. 20, 2008), available at <http://www.nytimes.com/2008/02/20/world/americas/20castro.html>, archived at <http://perma.cc/7TMS-ZL9X>.

⁴¹⁷ Carlos Frías, *The Elian Gonzalez Saga Ten Years Later: Exiles’ Miracle Boy Missed, Ever-Present*, PALM BEACH POST (Dec. 7, 2011), available at <http://www.palmbeachpost.com/news/the-elian-gonzalez-saga-10-years-later-exiles-mira/nL6MF/>, archived at <http://perma.cc/KVG9-B7H2>.

⁴¹⁸ Wilfredo Cancio Isla, *Another Leading Official Ousted*, MIAMI HERALD (Mar. 6, 2009), available at <http://www.latinamericanstudies.org/cuba/MH-3-6-2009.htm>, archived at <http://perma.cc/J3GF-5A5B>.

⁴¹⁹ Juan O. Tamayo, *Hijos de Dirigentes Cubanos Dejan el Comunismo Para Vivir en Miami*, EL NUEVO HERALD (Mar. 27, 2014), available at <http://www.elnuevoherald.com/noticias/sur-de-la-florida/article2032086.html>, archived at <http://perma.cc/8EZJ-XQXE>.

⁴²⁰ Damien Cave, *Cuba: National Assembly President to Leave His Post*, N.Y. TIMES (Dec. 22, 2012), available at <http://www.nytimes.com/2012/12/22/world/americas/cubas-national-assembly-president-to-leave-his-post.html>, archived at <http://perma.cc/Q75L-QNFL>; *Cuba: Communist Party Leaders Ousted*, N.Y. TIMES (July 3, 2013), available at <http://www.nytimes.com/2013/07/04/world/americas/cuba-communist-party-leaders-ousted.html>, archived at <http://perma.cc/N2RS-VJT6>.

⁴²¹ *El Joven Elián González*, QUINQUENIO DE LUZ (Dec. 2, 2013), available at <https://quinqueniodeluz.wordpress.com/2013/12/02/el-joven-elin-gonzlez/>, archived at <https://perma.cc/LUJ3-PA77>; English translation at <http://www.havanatimes.org/?p=100439>, archived at <http://perma.cc/BWX5-XKGS>.