

# ***Eliau Asylum Appeal Dismissed; INS Was Within Law in Not Considering Relative's Petitions, Court Rules***

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## **Body**

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A federal appeals panel ruled yesterday that the Immigration and Naturalization Service acted within the law and its policymaking rights when it refused to consider political asylum petitions filed for 6-year-old Eliau Gonzalez by his Miami great-uncle.

In a major government victory that could mark the beginning of the end of the international custody battle that began six months ago, a three-judge panel at the 11th U.S. Circuit in Atlanta unanimously dismissed great-uncle Lazaro Gonzalez's appeal of a lower court ruling earlier this year. It gave him 14 days to ask the panel to rehear it, to ask that all 12 judges of the 11th Circuit consider it, or to appeal to the U.S. Supreme Court.

Under federal rules, the panel's earlier injunction prohibiting Eliau from leaving the United States remains in force until one week after that 14-day deadline. Even if the relatives do not appeal, Eliau, his father and family, currently living on an estate in Northwest Washington, will not be able to return to Cuba until near the end of this month. If the full appeals court or Supreme Court agreed to hear the case, the departure prohibition could be extended.

Attorney General Janet Reno said she was "hopeful that this matter will soon reach final resolution," and President Clinton said he was pleased that the Justice Department's actions in the case had been upheld.

The father's attorney, Gregory B. Craig, called on the Miami relatives to give up their struggle to keep the young shipwreck victim from returning to Cuba and "to accept this result with grace and dignity." Juan Miguel Gonzalez, Eliau's father, said all he wanted was "to go home as soon as possible, with my son and my whole family."

Although attorneys for the Miami relatives said they had not yet decided how to proceed, the relatives themselves made clear they were not ready to concede defeat. "The battle is not over yet," said Lazaro Gonzalez's 21-year-old daughter, Marisleysis. Eliau "is still here . . . he's still in this great country," she said, "and I hope that the laws of this country" will prevent him from returning to a place where the relatives have alleged he will be persecuted.

The court began its 33-page ruling saying that "this case, at first sight, seems to be about little more than a child and his father. But, for this Court, the case is mainly about the separation of powers under our constitutional system of government." What they had to decide, the judges said, was how much discretion the executive branch

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had in implementing applicable immigration law, and to what extent the court could review the use of that discretion.

The court did not endorse the INS's decision not to process Eliau's asylum applications--in fact, it noted that "the choices . . . that the INS made in this case are choices about which reasonable people can disagree." The ruling, written by Judge J.L. Edmondson, a Reagan appointee, said the judges themselves might personally have preferred different choices.

But, the court said, the decisions made in this case were a matter of "policy and the application of policy," and were within the prerogatives of the executive branch.

The court did appear to reject one determination made by the lower District Court in Miami. In that ruling, Judge K. Michael Moore said that federal law allowing "any alien" to apply for asylum was "evidently not intended by Congress to include all aliens" because the law listed some exceptions.

The appeals court held that the law was "neither vague nor ambiguous. The statute means exactly what it says: 'any alien . . . may apply for asylum.'" But while the meaning of the word "any" was clear, yesterday's ruling said, the statute did not define the word "apply." "From this gap" in the statute, it said, "springs executive discretion."

The legal question in the case, it said, "is not whether the Plaintiff may apply for asylum. . . . The ultimate inquiry, instead, is whether a six-year-old child has applied . . . when he, or a non-parental relative on his behalf, signs and submits a purported application against the express wishes of the child's parent."

"We cannot say that . . . the INS determination that six-year-old children necessarily lack sufficient capacity to assert, on their own, an asylum claim--is unreasonable," the appeals court found. The INS decision that such an application is valid only when it is filed by a parent "also comes within the range of reasonable choices," it said.

On the question of whether an otherwise adequate parent can be rejected because of where he lives, the court acknowledged that returning a child to a "communist-totalitarian state," as defined by the State Department, "worries us some." But, it said, "in no context is the executive branch entitled to more deference than in the context of foreign affairs."

"Something even close to a per se rule--that, for immigration purposes, no parent living in a totalitarian state has sufficient liberty to represent and to serve the true, best interests of his own child in the United States--likely would have significant consequences for the President's conduct of our Nation's international affairs," it said. "Such a rule would not focus on the qualities of the particular parent, but on the qualities of the government of the parent's country."

Overall, the court said, the INS "was within the outside border of reasonable choices. And the INS did not abuse its discretion or act arbitrarily in applying the policy and rejecting Plaintiff's purported asylum applications."

In addressing other legal matters raised in the case, the court said the claim that Eliau's constitutional due process rights were violated by the INS decision "lacks merit," because it has previously ruled that aliens seeking U.S. admission have no such rights. It rejected Lazaro Gonzalez's request to name an outside guardian to represent Eliau's legal interests, saying the boy had been "ably represented" in the appeal by Lazaro himself.

It also rejected Juan Miguel Gonzalez's request to substitute himself for Lazaro as Eliau's representative before the appeals court--a request that, if granted, would effectively have mooted the case.

In a clear indication of the political and foreign policy overtones of the issue, a number of major political figures yesterday issued statements on the ruling.

Vice President Gore, who was criticized within his own party when he broke with the administration and said the Eliau matter should be decided in a family court, repeated that position, but seemed willing to cede the matter. "I have long felt, as I said early on, it should have been referred to a family court and decided according to due

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process, which is the normal venue where disputes like that are resolved," Gore said. "However, now that it is in the federal court, this decision today must be accepted with respect and we all wish the boy well."

Texas Gov. George W. Bush (R) said: "I continue to believe that it is in the child's best interest for the decision to be made in the family courts, a court whose job it is to decide the best interest of the child."

Neither presidential hopeful referred to a Florida family court ruling that, under state law, Lazaro Gonzalez was too distant a relative to file a custody suit over Eliau.

Sen. Patrick J. Leahy (D-Vt.), who has strongly supported sending Eliau back to Cuba, said the appeals court had acted correctly. "Every mother and father knows that parents speak for their children," Leahy said, "and this 6-year-old boy belongs with his father."

But Rep. Ileana Ros-Lehtinen (R), who represents Miami, said she remained "cautiously optimistic about Eliau's fate and the ability that the American judicial system affords him to pursue further legal action. . . . I believe the court's recognition of the political factors influencing the actions of the executive branch sheds light on the use of Eliau as a pawn by the Clinton administration to appease the Castro regime."

The appeasement charge was repeated by the Miami relatives and their spokesmen, who accused the administration of manipulating the original INS decision to stay in good favor with Cuban President Fidel Castro. Clinton was assisted in this, they said, by Craig, who served as Clinton's attorney in last year's impeachment trial.

They cited the court's repeated reference to the INS decision as a matter of policy rather than law. "I read the opinion to suggest that the court itself thought there were a lot of close questions here," said Kendall Coffey, one of the Miami lawyers. "I think they made it very clear that this is not about the INS following the law."

But the ruling noted that "although the courts should not be unquestioning, we should respect the other branches' policymaking powers." In this case, the court said, "the INS decision did not contradict" applicable federal statute.

While they mull the possibilities of appeal, the relatives said they would continue to press for the right to visit Eliau, along with their attorneys, physicians and a Catholic priest they described as Eliau's "spiritual adviser."

Marisleyis Gonzalez said Eliau's father was "afraid" to let the relatives see him. "I think . . . they know he's going to run to us."

Armando Gutierrez, a spokesman for the relatives, said that Juan Miguel Gonzalez had written the relatives early last month to say that he would agree to such a meeting if the relatives would drop their legal case.

Craig acknowledged that Gonzalez had sent "a handwritten letter" to his uncle, saying "a meeting of all members of the family was difficult when one part was suing the other part." He said that Lazaro Gonzalez had not replied to the letter.

"Juan Miguel Gonzalez is Eliau's father," Craig said yesterday. "If they want to talk to Eliau they should approach Juan Miguel or Juan Miguel's representative and ask to see him. They have never done that."

Juan Miguel Gonzalez, who traveled here from Havana in April with his wife and infant son to reclaim Eliau, told reporters in Spanish that he was "happy with the court's decision. It's what I've always wanted from the bottom of my heart. . . . What I really want now is an end to all of this, and to be able to go home as soon as possible."

Speaking in English, Gonzalez said: "I want to thank the American people. Thank you."

In its own statement on the ruling, the Cuban government called the 14-day deadline for further appeals a "prolonging of the injustice and the crime," the Associated Press reported from Havana. In what would be the largest single rally since the custody dispute began, the government called for a march of a half-million mothers and grandmothers to protest the delay.

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Staff writers Sylvia Moreno and Ceci Connolly contributed to this report.

### The Boy's Journey

Nov. 22: **Elían** and 12 others leave Cuba for United States aboard 16-foot motor boat.

Nov. 23: Boat capsizes.

Nov. 25: Two passengers come ashore. **Elían** found on inner tube near Fort Lauderdale.

Nov. 26: **Elían** turned over to great-uncle Lazaro Gonzalez.

Nov. 27: Juan Miguel Gonzalez demands son's return to Cuba.

Dec. 10: Lazaro Gonzalez applies for **asylum** for **Elían**.

Dec. 31: Immigration and Naturalization Service interviews Juan Miguel Gonzalez in Havana.

Jan. 5: INS Commissioner Doris M. Meissner decides **Elían** "belongs with his father" and must be returned to Cuba by Jan. 14.

Jan. 7: Lazaro Gonzalez files **petition** for temporary custody in state **court**.

Jan. 12: Attorney General Janet Reno upholds father's right to custody.

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

Jan. 28: U.S. lawyers seek dismissal of relatives' federal lawsuit.

March 21: U.S. District Judge K. Michael Moore **dismisses** federal lawsuit, a **ruling appealed** to federal **appeals court** in Atlanta.

April 6: Juan Miguel Gonzalez leaves Cuba for United States.

April 12: Reno meets with boy's relatives in Miami but returns without the boy.

April 13: Relatives defy a government order to hand over **Elían** and obtain a **court** order keeping him in the United States.

April 14: Justice Department asks federal **court** to order **Elían**'s great-uncle to obey the government order.

April 19: **Appeals court** orders that **Elían** be kept in the United States pending his relatives' legal **appeal**.

April 22: Federal agents seize **Elían** in raid and reunite him with father near Washington.

Yesterday: **Appeals court rules** that federal officials did **not** abuse their discretion and that **Elían** is **not** entitled to political **asylum** hearing.

SOURCES: News services and staff reports

## Graphic

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Chart, The Washington Post

## Classification

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**Language:** ENGLISH

**Subject:** LAW COURTS & TRIBUNALS (90%); JUDGES (90%); IMMIGRATION (89%); SUPREME COURTS (89%); IMMIGRATION LAW (89%); APPEALS (78%); CITIZENSHIP (78%); US FEDERAL GOVERNMENT (78%); APPELLATE DECISIONS (78%); DECISIONS & RULINGS (78%); PUBLIC POLICY (78%); LAWYERS (78%); ATTORNEYS GENERAL (78%); APPEALS COURTS (78%); TYPES OF GOVERNMENT (78%); INJUNCTIONS (78%); CHILD CUSTODY & SUPPORT (76%); US PRESIDENTS (76%); LAW ENFORCEMENT (73%); POLITICAL ASYLUM (73%); JUSTICE DEPARTMENTS (72%); PETITIONS (72%)

**Company:** SUPREME COURT OF THE UNITED STATES (56%); SUPREME COURT OF THE UNITED STATES (56%); OREGON SUPREME COURT (55%); OREGON SUPREME COURT (55%); US DEPARTMENT OF JUSTICE (54%); US DEPARTMENT OF JUSTICE (54%)

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**Industry:** LAWYERS (78%)

**Person:** BILL CLINTON (58%); GREG CRAIG (50%)

**Geographic:** MIAMI, FL, USA (91%); UNITED STATES (93%)

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