

Custody Change Could Affect Boy's Asylum Case

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Body

The fact that Elian Gonzalez is now in the **custody** of his father, Juan Miguel Gonzalez, most likely weakens his, or his Miami relatives', **case** for him to be granted **asylum** in the United States, immigration lawyers say.

Before federal marshals wrested the 6-year-old Cuban boy from the relatives' home in Miami just before dawn on Saturday, he had signed an application for **asylum**. Last week, the United States Court of Appeals for the 11th Circuit in Atlanta agreed to hear his application on May 11, and his father agreed to hold Elian in the United States until then.

But now that Mr. Gonzalez has **custody** of his son, he can make a stronger **case** against **asylum** and take him home to Cuba, perhaps well before May 11, said Jose Pertierra, an immigration lawyer in Washington who is not involved with the **case**.

"I'm sure that's what's being planned by Juan Miguel's attorneys," Mr. Pertierra said. He said the **case** of Lazaro Gonzalez, the great-uncle who had been holding the boy in Miami, had been weakened by several factors, including his losing the day-to-day care of the boy, which the Justice Department allowed until days before the raid on the house.

The father, whose lawyers have not disclosed their strategy, could try to withdraw the application for **asylum** that Elian signed, Mr. Pertierra said, or he could ask Elian himself to withdraw it.

Or the Immigration and Naturalization Service could interview the boy, find that he is not competent to understand his application and ask the court to dismiss it. That, however, appears unlikely.

"It's not something we would do," said Maria Cardona, spokeswoman for the immigration service.

She said the argument the immigration service intends to make before the court's three judges is not whether the **asylum** application should be honored or dismissed but whether a 6-year-old is competent to make one. In an 83-page brief filed today with the appeals court, the Justice Department argued that the **asylum** application was not the **boy'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."

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