

Boy's Fate Called A Federal Matter

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Body

Attorney General Janet Reno said today that only **federal** courts had the authority to decide whether a 6-year-old boy should be reunited with his father in Cuba but said immigration officials had lifted a Friday deadline for his return to allow his relatives to appeal in **federal** court.

In a letter to lawyers for the **boy's** relatives in Miami, Ms. Reno said a Florida state court had no jurisdiction in the case. The boy, Elian Gonzalez, was rescued at sea clinging to an inner tube last November after his mother drowned.

In her letter, Ms. Reno emphatically reaffirmed her belief that the law required that Elian should be returned to his father in Cuba.

The Justice Department is considering going to court this week to ask a **federal** judge to enforce the immigration ruling in hope of speedily resolving a difficult, emotional political and diplomatic problem.

The Clinton administration has adopted a dual approach to dealing with the case. On one hand, officials want to show that their ruling giving Elian's father the right to make the decision for the boy is the product of well-established law that sets a priority on family unification and that they are willing to have it tested in **federal** court. At the same time, the administration is moving to end the stalemate quickly, possibly seeking a court order that could lead to **federal** marshals' being sent to fetch Elian from the Miami relatives.

In her letter, Ms. Reno said a separate lawsuit filed in Florida state court by the relatives to gain custody of Elian had no bearing on the case, which she said could only be decided in **federal** court. Judge Rosa Rodriguez of the Miami-Dade Circuit Court ruled on Monday that Elian must remain in the United States until a March 6 hearing.

Ms. Reno brushed aside that ruling today, saying the state court order "has no force or effect" on the Immigration and Naturalization Service's decision in the case.

"The question of who may speak for a 6-year-old child in applying for admission or asylum is a **matter** of **federal** immigration law," she wrote.

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Justice Department officials and legal analysts said they believed that Ms. Reno had the authority to decide as she did because the immigration issues under **federal** jurisdiction took precedence over the custody **matter** before the Florida court.

Spencer Eig, a lawyer for the Florida relatives, said in a telephone interview that the family would soon take up Ms. Reno's invitation to file a challenge to the immigration ruling in **federal** court. But he said the relatives would also maintain efforts to have a state court award them legal custody of Elian. "We are not removing this case from the state court," he said. "We will seek protection for Elian's civil rights in **federal** court as a separate action."

The lawyers for the Miami relatives will ask the court to reinstate an asylum petition on behalf of Elian and argue that immigration officials wrongly decided that the **boy's** father was in a position to make a decision in the child's best interests.

No clear end appears in sight.

Officials said today's action in lifting the deadline was part of the effort to demonstrate that the decision to rule in favor of the father was a product of the law. One official said the deep fear behind all the legal maneuvering was that the situation would deteriorate to a stage where the **federal** government would have to use marshals to assume physical custody of the boy. "We are still hopeful that we can resolve this **matter** soon," a senior official said today.

Since last week's ruling, hundreds of Cuban-Americans have protested in the streets of South Florida. The administration has been sensitive from the beginning to the political implications of the case. And while reluctant to offend Cuban-American voters, senior officials have been eager to end the situation to prevent any worsening of relations with Havana.

Today, several members of Congress, Democrats and Republicans, sent a letter to Ms. Reno urging her to respect the role of the Florida courts. The signers included Representative Dan Burton, an Indiana Republican, and Senator Robert G. Torricelli, a New Jersey Democrat.

Mr. Eig said today that the family would abide by any court decision and fully understood that it would not be in the best interests of the child to have any confrontation with the **federal** authorities in which Elian would be forcibly taken from them. But he left open the possibility that the relatives might feel that a state court ruling in their favor on custody might trump the **federal** authorities.

"I was surprised that Ms. Reno would not respect a state court ruling on what is essentially a state **matter**," he said, adding it was common for **federal** courts to look to state courts to determine a person's status in making immigration rulings.

Ms. Reno today made it clear that she believed otherwise. She also offered a long rebuttal to the lawyers' contention that immigration service guidelines mandated that Elian should be given a full hearing.

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