

US court, ruling in favor of Cuban father, rejects asylum hearing for Elian Gonzalez

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A panel of federal appeals court judges ruled Thursday that the Immigration and Naturalization Service (INS) acted properly in rejecting the asylum application filed on behalf of Elian Gonzalez by his Miami relatives, against the wishes of the boy's father.

The decision by a three-judge panel of the 11th Circuit Court of Appeals in Atlanta is a legal victory for the six-year-old boy's father, Juan Miguel Gonzalez, and a blow to the right-wing Cuban exiles in Miami's Little Havana neighborhood, who have waged a six-month campaign to block the boy's return to Cuba.

The judges voted unanimously to uphold a March 21 decision by US District Judge K. Michael Moore, who dismissed a lawsuit against the INS filed by the boy's great uncle, Lazaro Gonzalez. Thursday's ruling by the appeals court upheld Juan Miguel's right to speak for his son. The judges also limited the time period for the Miami relatives to file an appeal to 14 days, and informed their lawyers that they should not expect any extensions.

The three-judge panel extended for at least this two-week period its earlier order barring Elian's removal from the US until the completion of the appeals process. The panel also denied a motion by Elian's father to replace Lazaro Gonzalez in the asylum case. Had the judges granted this motion, the boy's father would have been able to formally drop the asylum request and take Elian home.

Juan Miguel Gonzalez welcomed the ruling and said he hoped that the Miami relatives would cease their court battles to keep the child in the US and allow Elian and his Cuban family to "finally go back home together." However, within minutes of the Atlanta judges' ruling, the Miami relatives sought an emergency injunction barring Elian's removal, and approached Supreme Court Justice Anthony M.

Kennedy for help to "assure that Elian will remain in the United States" until the full Supreme Court can consider a formal appeal.

Lawyers for the relatives, who may appeal to the entire 11th Circuit Court to reverse the ruling, or take the case directly to the US Supreme Court, said they had not decided what legal action to take. Neither judicial body is obligated to hear the case.

In Miami's Little Havana neighborhood the decision was met with screams and cries among the small numbers of Cuban exiles who gathered outside the house of Lazaro Gonzalez, where Elian had been held for several months. Jose Basulto, leader of the anti-Castro group Brothers to the Rescue, called the ruling "disgusting," but said he did not expect Cuban Americans to hold protests during the appeals process.

Last April 19 the same three-judge appeals court panel barred Elian from leaving the US pending its disposition of the case. This earlier ruling was handed down under conditions in which the Miami relatives were refusing to abide by the INS's decision to return the boy to his father, who had shortly before arrived in the US from Cuba.

For months the Clinton administration had backpedaled and conciliated with the Miami relatives and their anti-Castro political backers, desperately seeking to avoid a direct confrontation with extreme right-wing elements in the Cuban exile community, led by the Cuban-American National Foundation (CANF).

The federal government's retreat before the CANF reached a low point on April 12, when Attorney General Janet Reno went to Little Havana to plead with the family of Lazaro Gonzalez to hand over Elian. The boy's great uncle, who had never even seen Elian until the six-year-old was rescued from the ocean off the Florida coast last November, dismissed Reno's efforts

with contempt, declaring the government would have to use force because he would never voluntarily turn over the child to his father. Reno's response was to return to Washington and announce at noon the following day that a 2 p.m. deadline for the Miami relatives to hand over Elian, which had been previously declared with great fanfare by the Justice Department and the INS, would not be enforced.

This was the political context in which the three-judge panel of the 11th Circuit Court issued its April 19 ruling barring Elian's removal from the US. It was a highly political ruling, calculated to bolster the Miami relatives and their right-wing backers.

The ruling flew in the face of common sense and the law, legitimizing the Miami relatives' contention that a six-year-old was competent to make an independent claim for asylum, against the wishes of his father. This legal travesty was justified on the same grounds as the Cuban-American rightists' efforts to keep Elian in the US—the claim that Cuba was a “communist” state and hence it, and its inhabitants, were not protected by internationally-recognized legal and democratic principles, such as the right of a child and his father to be united.

The April 19 ruling was an important factor in compelling the Clinton administration to finally take action to end the de facto abduction of Elian. With the federal courts lining up behind extreme right-wing elements who were flaunting the law and all but asserting political control over Miami, the very credibility and authority of the federal government were being brought into question. Such were the conditions surrounding the April 22 INS raid that rescued Elian and returned him to his father.

In its June 1 ruling denying the Miami relatives' request for an asylum hearing for Elian, the three-judge panel sought to distance itself politically from the INS, criticizing the agency for failing to sufficiently take into account the fact that the boy's father lived in a “communist-totalitarian” country. “Moreover,” the judges wrote, “some reasonable people might say that a child in the United States has a substantial conflict of interest with a parent residing in a totalitarian state when that parent—even when he is not coerced—demands that the child leave this country to return to a country with little respect for human rights and basic freedoms.”

On balance, however, the judges concluded that such decisions should best be left in the hands of the INS, lest the courts, in their anticommunist zeal, undermine US immigration law and disrupt American foreign policy.

That there was even the possibility of the federal judge panel upholding the legally worthless claims of the Miami relatives is a measure of how far the American political establishment, including the federal judiciary, has moved to the right, and the degree to which it caters to extreme right-wing elements which have, in fact, relatively little popular support.

Even at this point, notwithstanding the latest court ruling, it would be premature to assume that Elian's return with his father to Cuba is guaranteed. The extremely corroded state of American democracy—as evidenced yet again by the Elian Gonzalez case—precludes such an assumption.

See Also:

Rescue of Elian Gonzalez intensifies political crisis in US
[25 April 2000]

US judicial panel backs ultra-rightists in Elian Gonzalez case
[20 April 2000]

US Vice President Gore bows to Cuban rightists in Elian Gonzalez case
[1 April 2000]

Socialist Workers Party (US) denounces rescue of Elian Gonzalez
[23 May 2000]

How the Socialist Workers Party (US) changed its line on the Elian Gonzalez case
[23 May 2000]



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