

Sun-Sentinel

PALM BEACH EDITION • SOUTH FLORIDA • WEDNESDAY • MAY 10, 2000 • SUN-SENTINEL.COM • 50¢

14A WEDNESDAY, MAY 10, 2000 • NWS

THE STRUGGLE FOR ELIAN

A perilous path on asylum

Elián, family look to court to decide future

By DAVID CÁZARES
STAFF WRITER

By now, just about everyone has seen the photo of a federal agent inside the Little Havana home of Elián's González's Miami relatives — an image that stunned the world.

Preceding that famous shot, however, was an oft-repeated line that also traveled far and wide: Elián deserves his day in court.

By that, the Miami relatives who are fighting to keep Elián in the United States, and their supporters, mean they want the Immigration and Naturalization Service to hold a hearing on whether the 6-year-old should be granted political asylum in the United States.

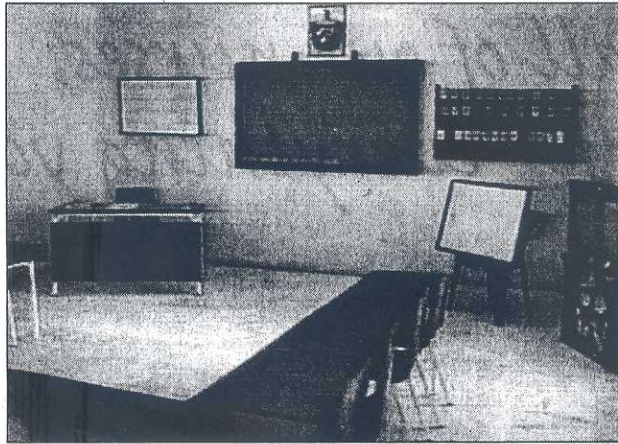
So far, the INS, Attorney General Janet Reno and a federal judge have said no. On Thursday, the relatives and their attorneys will have the next best thing when they ask the U.S. 11th Circuit Court of Appeals in Atlanta to compel the INS to grant Elián the asylum hearing.

Based on court documents and their public statements, a primary goal for the attorneys representing Elián's great-uncle, Lázaro González, is to put Cuba on trial. Another is to refute the decisions of federal officials who first determined that Elián's father is the only person who speaks for the boy — and then reunited father and son after the April 22 raid.

"The child is going to return to Cuba as a hero of the revolution," said Roger Bernstein, one of Lázaro González's attorneys. "He will necessarily have to be indoctrinated to fulfill that role. That, to me, is horrific."

In legal documents filed with the appeals court, the Miami relatives' lawyers said Elián would face certain harm if he was returned to Cuba, where he would have "no freedom of expression, thought or speech." There, he would be not so much the responsibility of his father but a "possession" of the state.

"Castro has already announced that upon Elián's return, he and his family will be taken to a 'villa,' or more appropriately, a re-education camp, where Cuban state psychologists will manipulate his feelings, repress his memories and control this young and fragile boy's psyche," the lawyers said.



SCHOOL'S OUT: This TV image shows a classroom at the home where Elián González is expected to live in Cuba. AP file photo

More Elián rallies scheduled

A day before the Miami relatives of Elián González take their battle to keep the 6-year-old in the United States to an appeals court panel in Atlanta, thousands of people across the country are expected to demonstrate on their behalf.

Although polls show that most Americans think Elián should be with his father, organizers of the national demonstration say there are nevertheless many Americans who don't want the boy to be returned to Cuba.

To get its point across, a group that calls itself Americans to Keep Elián Free has called for peaceful rallies Wednesday at

federal buildings across the United States. Demonstrations are planned for Miami, Atlanta, Los Angeles, New York, Chicago, Seattle, Washington, D.C., San Francisco, Pittsburgh, Houston and Charlotte.

The demonstrators will carry American flags, sing patriotic songs and listen to speakers who will urge that Elián remain in the United States. They also will criticize Cuba's communist government and decry the raid that removed Elián from his relatives' Little Havana home.

In Miami, a 10 a.m. demonstration will be held outside the Federal Building at 99 NE 4th St.

— DAVID CÁZARES

"As such, upon his return, there exists a reasonable possibility — if not a substantial likelihood — that he would be psychologically harmed and politically exploited as the symbol of a repressive regime."

But in urging the three-judge panel to order an asylum hearing — which the judges have hinted Elián may be entitled to — the lawyers are pursuing a perilous path.

Legal experts say that by focusing on conditions in Cuba — arguments that are more suitable to actual asylum hearings — the attorneys are resorting to political tactics when they would be better served by addressing the child's own future.

Given that both sides will have little time for oral arguments, that could detract from the central issue

in Elián's case: whether a 6-year-old can independently file for asylum.

"The court is going to focus on whether a child can make such an application or whether someone acting on his behalf can make the application," said Jeffrey Brauerman, a former immigration judge and INS counsel who is now an immigration lawyer in Plantation. "If the INS is ordered to consider the claim, that's when you put pressure on Cuba, at the INS asylum hearing."

The judges are expected to hear brief presentations from the Justice Department and lawyers for Elián's Miami relatives. They will also hear from Gregory Craig, the attorney for Elián's father, Juan Miguel González, who wants the

claim dismissed. The judges will then deliberate, for days or months.

"Just because you have an oral argument on a certain date doesn't mean you're going to get a decision very fast," said Miami immigration lawyer Ira Kurzban, who has frequently appeared before the 11th Circuit.

However, the judges' quick response to various motions in the case may indicate they are aware of its sensitive character and prepared to rule promptly.

Despite the fact that the judges have issued an injunction preventing Elián from being taken out of the United States, it's not clear whether they will give great weight to the Miami relatives' claims. The 11th Circuit has traditionally given deference to government agencies with respect to immigration matters, Kurzban and legal scholars said.

Congress also has given the attorney general the duty of interpreting immigration law and applying it while at the same time limiting the ability of the courts to review such decisions. That's what led U.S. District Judge K. Michael Moore to rule against Elián's Miami relatives on March 21.

In disagreeing with Moore's decision, the relatives' attorneys claim that "any" foreign national not legally in the country has the right to apply for asylum, even a young child.

Also at issue is whether Elián's wishes differ from those of his father, who has made it clear that he wants to return with his son to Cuba.

Legal scholars and immigration law practitioners, however, say that a child Elián's age is unable to make decisions for himself — particularly on whether to sign complex legal documents that are presented to him in English.

"Sometimes, the state has to intervene and make a decision for a parent, such as when a parent objects to an appendectomy for his child on religious grounds," said Tammy Fox-Isicoff, a Miami immigration lawyer who once worked for the INS. "But in the course of that operation, you would never ask a 6-year-old child, 'Do you want this operation, honey, to save you?'"

David Cázares can be reached at dcazares@sun-sentinel.com or 305-810-5012.