

**March 2000, Amy Peikoff, J.D., submitted on behalf of The Association for Objective Law an *amicus curiae* (friend of the court) brief to the United States District Court for the Southern District Of Florida, Judge Moore, in support of Elian Gonzalez's right to stay in the US.**

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**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA**

ELIAN GONZALEZ, a minor, by and through LAZARO GONZALEZ, as next friend, or alternatively as temporary legal custodian, of ELIAN GONZALEZ, a minor,

Petitioners/Plaintiffs,

v.

JANET RENO, Attorney General of the United States; DORIS MEISSNER, Commissioner, Immigration and Naturalization Service; ROBERT WALLIS, District Director, Immigration and Naturalization Service; UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE; and UNITED STATES DEPARTMENT OF JUSTICE,

Respondents/Defendants.

No. 00-0206-CIV-MOORE

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**BRIEF OF AMICUS CURIAE, THE ASSOCIATION FOR OBJECTIVE LAW, IN SUPPORT OF PETITIONERS/PLAINTIFFS**

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**STATEMENT OF INTEREST**

THE ASSOCIATION FOR OBJECTIVE LAW (TAFOL) is a Missouri non-profit corporation whose purpose is to advance Objectivism, the philosophy of Ayn Rand, as the basis of a proper legal system.

Objectivism holds that a man’s mind must be left free in order for him to grow and develop mentally, spiritually, and physically — i.e., to sustain his life and health, and to be happy. The fundamental rights of life, liberty, property, and the pursuit of happiness identified in this country’s founding documents are principles necessary to preserve the free functioning of man’s mind in a social context.

TAFOL, through such measures as the filing of *amicus curiae* briefs, strives to assist in the protection of these rights when they are implicated in legal proceedings.

In the present case, all these rights are implicated because Elian Gonzalez will lose them if he is returned to Cuba, a country that does not recognize or uphold them. Objectivists seek to live in a society in which these rights are consistently upheld. Therefore, they have an interest in making sure their country’s government and its agencies act consistently to uphold them. Accordingly, TAFOL supports the Plaintiff’s position in this case.

**INTRODUCTION**

TAFOL adopts and incorporates by reference herein the Statement of Jurisdiction and Venue and the Statement of the Facts contained in Plaintiff’s Complaint for Injunctive Relief and Petition for Issuance of Writ of Mandamus.

Summary judgment is warranted only where there are no “genuine issues as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” “Disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” By means of the facts and argument presented below, *amicus curiae* TAFOL will show that there is a genuine issue of material fact:

-First, as to whether Elian Gonzalez’s father, Juan Miguel Gonzalez, did actually express his true wishes when he requested that his son be returned to him in Cuba. If Juan Miguel was not free to state his own views in this issue, Elian’s petition should not be considered withdrawn and Elian should be given an asylum hearing as Plaintiff requests.

-Second, as to whether Elian Gonzalez has a legitimate fear of persecution or harm that would result if he were returned to Cuba. If he does, then Elian should receive an asylum hearing independently of Juan Miguel’s wishes.

## **ARGUMENT**

**I. IN A TOTALITARIAN SOCIETY, A FATHER IS NOT FREE TO EXPRESS HIS TRUE WISHES.** The basis of the Government’s position is the purported wish of Juan Miguel Gonzalez, Elian’s loving father, to have his son returned to Cuba to live with him. In the context of this case, Mr. Gonzalez’ statements should be given minimal weight.

If Juan Miguel were to say that he did not want Elian to return to Cuba, what would this mean? It might very well mean that, despite his desire to be with his son, he considered it in Elian’s best interests for the boy to remain in the United States. It would not mean that Juan Miguel thought that Elian’s Florida relatives would do a better job raising Elian than he would. It would mean that he thought that Cuba is a terrible place to live, and that the United States is a good place to live. And that the difference is so great that his son’s living in the United States is worth the inevitable feeling of loss he would experience. Such a declaration by Juan Miguel would be a slap in the face to Castro’s Cuba and to all those who believe communism can provide a satisfactory way of life for human beings. That is why Fidel Castro would never let him say such a thing.

In the United States, one is free to express his political opinions under the protection of the First Amendment of the Constitution, regardless of the wishes of the President or any other government official. Not so in Cuba. From day one of his reign, Fidel Castro set in motion an elaborate system of ideological and political oppression, which continues to operate to this day. In January of 1959, as soon as Castro and Che Guevara seized power, “they began to conduct mass executions inside the two main prisons [in Havana], La Cabana and Santa Clara. According to

reports of the foreign press, 600 of Batista's supporters were summarily executed." Between 1959 and the late 1990's, more than 100,000 Cubans were sent to camps or prisons, and during that same period, between 15,000 and 17,000 were killed. "During the repressions of the 1960's [alone], between 7,000 and 10,000 people were killed and 30,000 people imprisoned for political reasons." Political and other prisoners had their cases heard in the "tribunal" of the mob: they were taken to the Palace of Sports where, in a carnival-like atmosphere, they were subjected to the "judgment" of 18,000 spectators.

Castro hunted his political enemies from the Batista and other regimes until 1960, "when the last remaining political and military opposition leaders . . . were arrested." After destroying his political opposition, Castro forced the closure of labor unions opposed to his regime. In 1962 David Salvador, the leader of the last such union remaining, was arrested and forced to spend twelve years in prison for his resistance. Castro also forbade Salvador's union to strike. In that same year, Castro targeted religious organizations, shutting them down and confiscating their buildings and property. "In full military dress, the 'Lider Maximo' (Supreme Chief) declared: 'Let the Flangist priests start packing their bags!' . . . . On 17 September, 131 priests were forced to leave the country."

According to Rafael Del Pino, a Cuban air force general who defected to Miami in 1987, Castro's state security department, the DGCI (popularly known as the Red Gestapo), has been told to "infiltrate and destroy the various groups opposed to Castro. The DGCI violently liquidated [political opponents] and oversaw the creation of forced labor camps." The DGCI is divided into sections. Some monitor officials in other government departments. One "observes everyone who works in culture, sports, and artistic fields, including writers and film directors." Another "oversees everyone who works in economic organizations and the ministries of transport and communication." Others are responsible for tapping telephone wires, screening mail, and keeping tabs on foreign visitors to Cuba. The investigations conducted by the various sections have yielded thousands of "detainees," who assist the Castro regime politically, by their forced silence, and economically, by their forced labor.

Political dissidents in Cuba's prisons have been subject to violent interrogations conducted by the Departamento Tecnico de Investigaciones. "[E]lectric shock treatment was routinely used as a punishment without any form of medical observation. The guards also used attack dogs and mock executions." Other forms of physical and psychological torture have been used. For example, in one prison, built in 1980, the cells were designed to be kept at "extreme temperatures (both high and low)," and the prison guards carried out a policy of awakening prisoners every 30 minutes.

Political prisoners are housed with common criminals, and therefore also live in fear of violence from their inmates. “Some political prisoners held at Boniato [a high security prison known for its extreme violence] have been known to smear themselves with excrement to avoid being raped by other prisoners.” Writers opposed to the regime, including poets Jorge Valls and Ernesto Diaz Rodriguez, who have been incarcerated in Cuba, report of the deplorable conditions, including the use of iron cages in some prisons. An August 1995 hunger strike, conducted jointly by the political and common-criminal prisoners, and lasting nearly one month, had no effect on prison conditions. In addition to the prisons, Castro has maintained a number of concentration camps. One of the largest, “El Manbu, in the Camaguey region, contained more than 3,000 in the 1980’s.”

To maintain “social control,” Castro has organized a system of Committees for Defense of the Revolution. Members of the CDRs are told to “patrol constantly to root out ‘enemy infiltration.’” The CDRs also organize “actos de repudio (acts of repudiation) designed to marginalize and break the resistance of opponents — labeled gusanos (worms) — and their families.” In an act of repudiation, “A crowd gathers in front of the opponent’s house to throw stones and attack the inhabitants . . . The police intervene only when they decide that the ‘mass revolutionary action’ is becoming physically dangerous to the victims.” Recent victims of acts of repudiation include Ricardo Bofill, the president of the Cuban Human Rights Committee, who was subjected to this ordeal in 1988, and Oswaldo Payas Sardinias, the liberation theologian, who was targeted in 1991.

Cuban law presents no obstacle to Castro’s total social control. Even when Castro adopted a constitution in 1976 (a constitution modeled on the USSR’s), it included provisions limiting the rights of citizens to meet in private groups and otherwise restricting citizens’ freedom of association. In 1978 Cuba adopted a preventative law whose stated purpose was to prevent criminal acts from occurring. In practice this meant “that any Cuban could be arrested on any pretext if the authorities believed he presented a danger to state security, even if he had not committed any illegal act. In effect the law criminalized any thought that did not accord with the ideas of the regime.” Recently Castro pledged to “get tough on crime.” Accordingly, the National Assembly considered legislation to address “internal subversion.” One bill, entitled “Law for the Protection of the National Independence and Economy of Cuba,” provides for jail terms of up to 30 years for “those who collaborate with the U.S. government, its agencies or representatives.”

“In 1978 there were between 15,000 and 20,000 prisoners of conscience in Cuba.” In 1986, there were between 12,000 and 15,000. In 1999 the Cuban government admitted to holding only between 400 and 500 political prisoners. However, various sources, including Amnesty International, “put the number of

political prisoners in Cuba in 1997 at between 980 and 2,500 (including men, women and children).” Amnesty International’s report for the year 1998 contains the most recent data. The organization estimates that, although the Pope’s visit early in the year resulted in the release of many political prisoners and “prisoners of conscience,” at the year’s end, “at least 350 political prisoners . . . remained imprisoned, . . . including at least 60 prisoners of conscience and possible prisoners of conscience. However the exact figure was not known because of the absence of official data and the continuing severe restrictions on human rights monitoring.” In addition, these figures don’t take into account those who were detained for short periods throughout the year. Fidel Castro has clearly demonstrated his willingness to use force on a regular and mass basis, if he deems it to be in his government’s best interests.

Juan Miguel is no doubt aware of Castro’s long history of human rights violations. He must be aware of the Castro government’s treatment of Elian’s stepfather, as well as the fact that Castro considers Elian’s return particularly important to his government’s interests. There is evidence that Castro has subjected Juan Miguel to other threats and punishments, explicit or implicit, including restricting his movements, isolating him from his family in Cuba, and monitoring his actions and telephone conversations.

In light of the above, no reasonable person can credit Juan Miguel’s requests for the return of his son. The natural conclusion is that they are nothing more than the products of force or threats exerted by Castro and his government. Moreover, there is an increasing volume of evidence indicating that Juan Miguel wished for Elian to come to the United States in the first place, and that he now wishes the boy to remain.

For all the above reasons, there is a substantial likelihood that Juan Miguel Gonzalez, Elian’s father, has been unable to, and has not, expressed his true wishes in asking for the return of his son. For this reason, in the context of this case, Juan Miguel’s requests for Elian’s return should be given minimal credit. In particular, Elian’s petition for asylum should not have been considered voluntarily withdrawn; the decision to do so should be nullified, and the matter reviewed in an asylum hearing.

**II. INDEPENDENTLY OF JUAN MIGUEL’S WISHES, ELIAN GONZALEZ SHOULD NOT BE RETURNED TO CUBA — AT LEAST NOT WITHOUT A HEARING.** Under either of the two competing legal standards, Elian Gonzalez’ claim warrants consideration independently of his father’s wishes.

**A. IF ELIAN IS RETURNED TO CUBA, CASTRO'S TOTALITARIAN DICTATORSHIP WILL LIKELY CAUSE THE BOY IRREPARABLE MENTAL, PSYCHOLOGICAL AND PHYSICAL**

**HARM.** A dictatorship is harmful to all aspects of human life — particularly to the functioning of the human mind.

Man's mind plays an indispensable role in guiding his life and action. Its healthy functioning is necessary, not only to achieve material well-being, but also to achieve spiritual fulfillment, to become an independent, creative, happy human being. A man uses his mind to perceive reality, to draw conclusions, and to guide his actions. Whether one is building a suspension bridge, deciding which career to pursue, or preparing breakfast for one's child, in order to complete the task successfully, one must perceive the relevant facts, think about them logically, and act accordingly.

While there are many requirements for the proper development and functioning of a human mind, one crucial requirement is freedom. To the extent a man is not free, he will be unable to use or to develop his mind.

“Freedom” in this context does not mean freedom from any restrictions (e.g., the “freedom” to commit crimes like murder, assault, battery, theft). It means the basic freedoms we have in the United States, as outlined in our country's founding documents, including life, liberty, and the pursuit of happiness — basic freedoms that are sorely lacking in Cuba.

As detailed in Part I, *supra*, in Castro's Cuba no one in any field has the right to speak or act according to his own judgment. The government monitors and controls citizens engaging in almost any field of endeavor, watching for possible opposition to its rule. Expressions of independent ideas, or independent actions, are seen as a threat, and often result in jail time, forced acts of repudiation, torture, or death. Castro's is totalitarian rule. Under such conditions, a man must be dominated by fear and the need to conform; he will see any element of independence or self-assertion as a threat to his survival, to be desperately pushed underground. While there are some exceptions, the usual result is that a man living under such conditions will habitually stifle his own judgment (before government officials do it for him), eventually subverting or killing his motivation and ambition.

In a dictatorship, “The citizens' own understanding of reality, along with their own value-judgments, is irrelevant to their lives; state force, not individual cognition, is the principle governing their actions. To the extent that an individual . . . is rational, independent, uncompromising, purposeful, or proud, his life becomes unendurable.” This explains why Dr. Marta Molina, who practiced psychology in Cuba for over 20 years, saw “patients [who] had emotionally traumatic experiences as a result of their resistance to the indoctrination of the Communist ideology.”

A totalitarian dictatorship is especially harmful to a child, who does not have even the enslaved adult's ability to cope with a hostile environment. He does not have any clear knowledge or principles to cling to in the face of the intimidation and indoctrination surrounding him, nor can he get much guidance from the frightened adults he encounters.

Castro's government has organized its system of public education to take advantage of the impressionability and vulnerability of Cuba's youth. Article Three of The Code of the Child, Law No. 16, dated June 28, 1978 states: "The communist formation of the young generation is a valued aspiration of the state, the family, the teachers, the political organizations, and the mass organizations that act in order to foster in the youth the ideological values of communism." How is this goal carried out? We are told in Article Five that "The society and the State watch to ascertain that all persons that come in contact with the child during his educational process constitute an example for the development of his communist personality." Article Eight says society and the State will work to protect children from influences that will hinder their development in accordance with communist ideals. Article Nine says educators have a crucial role in developing children's "communist personalities." Article Twenty-three links a child's ability to pursue higher education to one's "political attitude and social conduct." Article Thirty-three says that State education emphasizes Marxism and Leninism because of "its importance in the ideological formation and political culture of the young students." Article Sixty-eight says that children and young people are given military education and training, and engage in military service, in order to "mak[e] their own the principles of proletarian internationalism and combative solidarity." Article Thirty-nine of the Cuban constitution also makes reference to the educational goal of the "communist formation" of youth.

The educators' role in forming children's "communist personalities" consists in part in their keeping a yearly Cumulative Academic Record, which evaluates students according to their "ideological and political integration." "This powerful weapon of intimidation hangs over the student and his or her family. Any blot on the Cumulative record means the student is guilty of political misconduct and could be refused access to higher education or the right to choose a career." This is especially true with respect to certain privileged careers (teacher, doctor, e.g.) that have "social impact." Such careers are reserved for those who are politically and ideologically well-integrated. In addition, young students are taken from their parents and required to do farm work at "schools in the countryside" for 45 to 60 days a year.

The Black Book of Communism provides us with a glimpse of one youth labor organization, El Ejercito Juvenil de Trabajo: "In this paramilitary organization



young people did agricultural work and construction work, often under terrible conditions with hours that were almost intolerable, for a derisory wage of 7 pesos, equivalent to 30 cents in 1997 dollars.”

In Cuba, children and adolescents can be convicted and punished for political crimes. They are then sent to camps along with those convicted of common crimes. There is even a special internment camp for children up to age 10. In the various camps, “adolescents cut cane or make simple objects by hand, which can then be sold by the government.”

Given the Cuban government’s treatment of Cuba’s children, it is not surprising that Dr. Molina saw “over 500 children under the age of 16 who had serious psychological problems as a result of their disagreement or their parents’ disagreement and refusal to indoctrinate the children in the Communist ideology.” Students who made “statements contrary to the popular indoctrination in the Communist ideology” were routinely “silenced and reprimanded,” with the result that the children “regress[ed] and bec[ame] inhibited[,] doubting their own freedom of thought.” Such children “often became depressed and underachievers.”

But one need not express explicit disagreement with a totalitarian regime’s ideology to draw negative attention towards oneself. Totalitarianism doesn’t mean only political control. Officials in a totalitarian government interpret any disrespect to authority, regardless of motivation, as opposition to the regime, and therefore total subservience is the only effective proof of ideological loyalty.

So, as is true for adults in Cuba, to the extent that a Cuban child is an independent thinker, eager to develop his understanding and reach his potential — rather than stifle himself and conform — his life will be made unendurable by Castro’s Cuba. One would expect this to be especially true for Elian, who not only is the child of someone who has illegally left Cuba, but also has lived in the United States long enough to know of and appreciate the freedom and prosperity that exists here. Furthermore, he has become such a political symbol for Castro’s government that Castro recently announced plans to devote the entire May Day celebration in Cuba to the cause of Elian’s return. For these and other reasons, Dr. Marta Molina and Dr. Jaime Suchlicki believe that Elian will be subjected to more indoctrination (including being forced at least to denounce his mother as a traitor, if not actually come to believe that she is himself) and will be monitored more closely than the average Cuban child. What will happen to Elian if he, like so many other Cubans, comes to see his life as stifling and unendurable?

Such an individual has only three alternatives, which are defined in Ayn Rand’s [novel about life in Soviet Russia,] *We the Living*. He may attempt to flee the country . . . . He may kill himself . . . . Or he may try to make the conflict between force and mind endurable, . . . by nullifying one of the

two clashing elements, the only one within his power. This means: drowning his mind, through promiscuity, drugs, alcohol, or some equivalent. To the extent that a person succeeds in this endeavor, . . . he loses the capacity to know any longer what is being done to him or to care.”

Many Cubans, including Elian’s mother and stepfather, have chosen the first alternative: escape. One source reports that “From 1959 through 1993, some 25,000 Cubans managed to escape from the island, mostly by sea in small boats and fragile rafts. Others fled by way of the U.S. Naval Base at Guantanamo, which is encircled — on the Cuban side — by barbed-wired fences and heavily mined fields, much like those between the former East and West Germany. It is estimated that only one of every three or four Cubans who have attempted to escape has been successful. Thousands have died in the attempt or have been captured and imprisoned.” Another source says that approximately 100,000 Cubans have attempted to flee the country by sea in a thirty-year period, and that two-thirds of those have succeeded. Even on this more generous estimate, the odds of one dying at sea while trying to escape are one in three. “Castro has tried to prevent people from leaving by sending helicopters to drop sandbags onto the balsas [makeshift rafts] when they are at sea.” On one occasion in July 1994, the Castro regime sank a tugboat carrying 70 people who were trying to flee Cuba. Forty-one people — including twelve children — perished. Given Elian’s status as a political symbol, and the close monitoring to which he will likely be subjected, it will probably be difficult — even impossible — for Elian to escape from Cuba.

Since 1959, over one million luckier Cubans have been able to go into exile legally. While such individuals do not face the risk of death at sea that illegal refugees do, they have not been allowed to leave without “first suffer[ing] discrimination and persecution at home.” Many “have been sent to forced labor camps and despoiled of all their property.”

Those who have not had the opportunity or courage to attempt escape, yet find life in Cuba unendurable, resort to the other two alternatives. Reports one source: “As their hope [sic] fade, alcoholism, drug addiction and suicide (the highest rate in this hemisphere), become all too frequent forms of escape.” One Cuban doctor “trie[d] to explain why suicide now ranks as one of the leading causes of death in Cuba. ‘People can’t cope with the pressure of life in Cuba,’ she sa[id], pausing to look out at the sea. ‘I’m a doctor. In any other country I would have a good life. Here I can barely live.’”

Many distraught Cubans seek the help of psychiatrists or psychologists. Unfortunately, such individuals rarely find solace in the psychological treatment with which they are provided. Psychologists in Cuba are “routinely advised by [their] superiors that any problems involving resistance to the Communist ideology should be treated in such a manner as to support the regime, regardless of the effect

on the patient.” What’s worse, “Cubans cannot rely on doctor-patient confidentiality: psychiatrists and psychologists are supposed to report those cases considered suspicious of ‘ideological deviation’ to the State Security [sic], whose agents have full access to their files.”

Various physical privations also await Elian should he be returned to Cuba. Cubans suffer from shortages “of everything from milk to medicine, the severe rationing of soap and meat, the lack of toothpaste and anesthesia.” Dr. Bennett Leventhal, in an opinion letter provided to *amici curiae*, the Hon. Sheila Jackson Lee and the Children and Family Justice Center, stated that, until his departure from Cuba, “[Elian’s] basic needs for a healthy environment were in place,” including proper nourishment. Elian is six years old. In Cuba, milk rationing does not begin until a child reaches the age of seven. “In 1993, the calorie intake of the average Cuban was 1,780 calories per day . . . whereas the ideal is over 3,000.” Cubans have suffered from vitamin deficiencies and serious nutrition problems due to an inadequate food supply. Mr. Carl-Johan Groth, the Special Rapporteur to the United Nations Human Rights Commission, writes:

Such an individual has only three alternatives, which are defined in Ayn Rand’s [novel about life in Soviet Russia,] *We the Living*. He may attempt to flee the country . . . According to analysts of conditions in Cuba, the Government bears a large share of the responsibility for this situation. Official estimates show that the Cuban economy ceased to grow in the mid-1980s. There were various factors involved but one of them seems to be related, in the case of the food sector, to the so-called correction campaign launched in 1986, which prohibited farmers from selling their produce in the free market and prevented the population from engaging in economic activities that would have helped to meet its basic needs. Other factors to which analysts attribute the Cuban economic situation have been the virtually total absence of small-scale enterprises in the private sector; centralized planning at any price entirely unrelated to market forces; excessively centralized control of decision-making governing the appropriation of resources and lack of a rational economic price structure.

In other words, Cuba’s low standard of living is a consequence of Castro’s policy of maintaining total control over all areas of citizens’ lives.

Cuba’s dire situation continues. As of 1995, “the economy ha[d] shown a poor rate of real growth for several years, leading to the serious economic crisis that has prevailed in Cuba since the early 1990s and the consequent impact on the enjoyment of economic, social and cultural rights.” In that year, almost 80 percent of the industrial sector either was not operating at all, or operating only at a very low level. In his 1996 report, the last of his reports containing a section on economic concerns, Mr. Groth said that the economic measures adopted by Castro’s government, which were meant to alleviate the economic crisis, had been ineffective.

In sum, Cuba is a land where one is indoctrinated, threatened, monitored, and even terrorized for “ideological and political integration” from an early age. Government officials use this standard to determine who will be permitted to receive higher education and to pursue certain desirable careers. Young children are required to spend one to two months per year away from their homes performing farm labor. Moreover, average citizens have great difficulty obtaining the basic foodstuffs they need to maintain a properly balanced diet. This is not a place to send this boy.

If Elian is returned to Cuba he faces major harm — mental, psychological, spiritual and physical. Accordingly, Elian should not be returned to Cuba.

**B. A FINDING FOR PLAINTIFF IN THIS CASE WILL NOT VIOLATE ANY ALLEGED PARENTAL RIGHTS OF JUAN MIGUEL GONZALEZ.** Other amici argue that established constitutional principles concerning a parent’s autonomy in decisions affecting the raising of his child are applicable to this case. Assume, *arguendo*, that Juan Miguel Gonzalez did express his true wishes when asking for Elian to be returned to Cuba. In their view, that decision of Juan Miguel’s is comparable to an Amish family’s decision not to educate their children in formal high schools, another family’s decision not to send their children to public school at all, or a group of families’ decision to teach their children a foreign language before the eighth grade. To rule for Plaintiff in this case, they argue, would threaten parents’ rights under this established body of constitutional precedent.

This argument is ironic because parental rights do not exist in Cuba. In Cuba the state assumes — often in fact, but always in principle — the prerogatives that are, in the United States, reserved to a child’s parents. The Cuban Government

assumes arbitrarily the right to educate, indoctrinate, and change the personality. At eleven years of age it imposing a boarding school requirement and separates parents from children. . . . [Even] nutrition, a basic right and obligation of parents is . . . usurped by the state which rations and deprives children of milk at age seven. . . . [The state] is the de facto parent.”

This argument asks the Court to apply a set of legal principles in order to send Elian back to a country in which those legal principles are not recognized. If *amici* are concerned with protecting parental rights in this case, they should be arguing for Castro to let Juan Miguel, the father, come to the United States and live with Elian here.

In addition, the body of law referred to by *amici* is inapposite. The decision to bring one’s child to live under a totalitarian dictatorship is not comparable to decisions regarding one’s child’s education. A parent has the right to determine the

upbringing of his child — but he does not have the right to engage in child abuse. For the reasons stated in Parts I and II-A, *supra*, Cuba can accurately be described an abusive country. Juan Miguel has no right to bring his child to live under a regime that does not protect his child’s fundamental rights. Moreover, the body of law that *amici* cite rests on a basic assumption that is inoperative in the present case: Parents do have wide latitude in deciding how to best raise their children; but because this is the United States, those children, upon reaching maturity, are free to choose a different way of life. However, if Elian is sent back to Cuba, that decision will condition not only his upbringing, but also his entire adult life. Elian has become such a symbol for Castro, that it is unlikely that Castro or his successors will ever allow Elian to leave Cuba. The only solution that would protect the rights of both Elian and his father is for Castro to allow Juan Miguel to leave Cuba and raise his son in the United States or some other free country.

## **CONCLUSION**

The choice of what political system to live under is not a matter of “subjective bias” or “international politics.” It is not a decision “inappropriately laden with subjective and culturally-based value judgments.” The commitment to liberty is not an “encumbrance” which renders one incapable of acting as proxy “for the effective real parties in interest.” Rather, it is a decision that follows logically upon a proper recognition of the rights and interests at stake.

Those who say that political opinion is irrelevant to this case are trying to further their own political opinion: that a free country like the United States provides no better way of life for human beings than does a totalitarian dictatorship. Elian’s mother and stepfather disagreed.

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Respectfully submitted,

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