

**CUBA'S OPPRESSIVE GOVERNMENT AND THE  
STRUGGLE FOR JUSTICE**

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**HEARING**

BEFORE THE

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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MARCH 1, 2000  
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**Serial No. J-106-67**

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Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

72-703

WASHINGTON : 2001

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## **CUBA'S OPPRESSIVE GOVERNMENT AND THE STRUGGLE FOR JUSTICE**

**WEDNESDAY, MARCH 1, 2000**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:22 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Smith, Leahy, Feinstein, Torricelli, Schumer, and Mack [ex officio].

### **OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

The CHAIRMAN. Well, if we can, we will begin here. We are pleased this morning to hold a hearing on Cuba and to shed some light on America's very special relationship with, and affinity for, the Cuban people.

The recent media focus on the plight of little Elian Gonzalez has raised Cuba once again to the forefront of our national awareness. Many of us still remember the Mariel boatlift of 1980 and the serious impact the escape of over 100,000 Cubans to our shores had on us, even affecting presidential and gubernatorial elections, of course, at the time.

Cuba is unlike any of our neighbors. Our relationship with the Cuban people goes back right from the very beginning. President Thomas Jefferson entertained pleas for American assistance by Cuban representatives inveighing against their tyrannical rulers as long as 200 years ago. Cuba's first war of independence was launched by Cuban patriots from New Orleans, and Cuba's tricolor flag was designed and first sown on American soil.

The American and Cuban people are inextricably bound in a way that only happens when two peoples shed their blood in a common cause, as we did in 1898 for the cause of Cuban liberty in the Spanish-American War, or what Cubans call the Second War of Cuban Independence.

People forget that prior to Castro, Cuba's cities had the highest standard of living in Latin America and the Caribbean, second in many ways only to the United States. We can only imagine how this nation might have flourished without communism.

It is inconceivable that a government could hand off over one-tenth of its population to others and not recognize this mass exodus as a colossal failure, not to mention the pain caused by the separa-

tion of families and the anguish caused to people forced to uproot and leave their own homes.

Cuba also presents a question of conscience for the American people. In the same way that we can take pride in the achievement of bringing down the Berlin Wall, we might well see as another imperative our continuing obligation to the cause of the Cuban people.

It seems to me that too many are already willing to turn a blind eye to Cuba, forgetting that the underlying rationale for the embargo still holds—deligitimizing the Castro regime—as well as forgetting that we would do so at the expense of the Cuban people.

Remarkably, all this has been brought to the forefront of our national attention by the plight of one little boy. Since Elian Gonzalez was rescued from the waters that claimed his mother and others fleeing Castro's regime, I have said that our country needed to do what is right for this child. As we ponder the best course of action for Elian, we simply cannot ignore the fact that this is not just a custody matter, but a case where one of the options considered is returning this child to one of the last prison nations in the world, Fidel Castro's wretched communist dictatorship.

The State Department released its annual human rights report last Friday and its first sentence, "Cuba is a totalitarian state controlled by Fidel Castro," is followed by 31 pages of Castro's human rights violations. I would like this report to be entered into the record at this point.

[The report referred to is retained in the committee files.]

The CHAIRMAN. From it, we are reminded that America's core principles enabling life, liberty and the pursuit of happiness have no place in Cuba's dictatorship, where the state rules above the family and the pursuit of faith can only bring the police to your door.

A particular focus of today's hearing is to see how families are affected in this dictatorship and what decisions they are focused to make, and to consider that a little boy's life under Castro's gun would include the following.

The boy will play in a neighborhood under the watchful eye of agents, informers and the ubiquitous Neighborhood Committee for the Defense of the Revolution. All his food and basic necessities will be rationed, despite the fact that Cuba has economic relations with all countries except ours. He will only have toys if his father has access to either Party sources or hard currency.

Perhaps he may celebrate Christmas, a religious holiday banned from 1969 to 1997, and he will be conscripted into one of the last remaining Marxist militaries in the world, which not that long ago fought for dictators in Africa as part of Fidel's bloody commitment to global communism. As Elian grows up in Castro's island jail, he will never be able to express his political views in public. He will never have a choice as to what he can read and he will never be free to come here again.

As we commence today's discussion, I want to thank all of our witnesses for their willingness to travel, often from great distances, to share their thoughts and experiences with us at this hearing. Before I introduce our witnesses, we shall hear from our ranking member, whom I want to thank for overcoming scheduling difficulties in holding this hearing today.

I have also extended an invitation for my friend, Congressman Rangel, to sit at the dais with us and listen to today's hearing, if he so chooses. And I have also indicated that we probably will have a follow-on hearing to this one and make sure that all points of view will be heard.

Senator Leahy had informed that witnesses of his choosing could not make it today and I have responded by pledging another hearing, should he wish one, in which to hear the testimony of those witnesses. But I could not postpone today's hearing, given the great inconvenience that would have been caused to our witnesses, and given the Attorney General's inability to commit to postponing any deportation of Elian until after such time as we had our hearing.

Senator Leahy has also expressed concern that nothing that is discussed in today's hearing should interfere with the pending litigation concerning Elian, and I am, of course, entirely in agreement with that. To that end, as I have written Senator Leahy, we will pursue a cautious approach today that will avoid discussion of any legal immigration issues presently before the court.

With that, I would like to turn to our ranking member, Senator Leahy, for his remarks.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR  
FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman, and I appreciate your usual courtesies in these matters. Frankly, I regret that we are here today. I believe that the Elian Gonzalez issue has already been inappropriately politicized at the beginning of this Congress by members of this Congress, and that a 6-year-old boy has been converted into a political symbol.

A young boy belongs with his parent, not with distant relatives. Because we all oppose dictatorships, because we oppose Fidel Castro, does not mean that we should also oppose a son being with his father. I recall that a Senate bill was introduced trying to keep this young boy in the country in the opening moments of this Congress and that the Republican leadership had announced that it would ram it through the Senate as our first item of business. The bill wasn't even referred to this committee, the appropriate committee of jurisdiction, but held at the Senate desk for expedited action. Fortunately, the Republican leadership came to its senses and did not do that.

I do think that the timing, as I have said to the chairman, of this hearing is inappropriate. I believe that if we must have a hearing about this matter—and, of course, I do not question at all the right of the chairman to hold a hearing on any matter that he desires at any time, but I think this timing is bad. It occurs in the midst of Federal legal proceedings brought by Elian Gonzalez' Miami relatives. In fact, there is a hearing scheduled on the Government's motion to dismiss this case in just 5 days.

The Judiciary Committee has a special obligation to avoid interfering in a particular case currently pending and being actively considered in a Federal court, and I appreciate the chairman's comments of his own sensitivity to that. We should even the appearance of such interference. In fact, our traditional practice of not interfering with ongoing cases is one of the many good reasons for

our rule prohibiting the consideration of private relief bills while judicial or administrative proceedings continue. I regret that some may say this hearing calls into question our adherence to our own procedures and our own obligations.

The Cuban American relatives with temporary custody of Elian Gonzalez have said that they will respect the decision of the Federal court in that matter, and I applaud them for that. And we should also respect the court's independence and ability to do its job. This abbreviated committee hearing is no place to try to do fact-finding, and I would worry that it might do worse and inflame the passions on both sides of this controversy.

I regret that the majority rejected my request that this hearing be postponed. I had hoped that if the committee were to have a hearing on Cuba and Elian Gonzalez that we could hear from the Reverend Bob Edgar, the General Secretary of the National Council of Churches and a former member of the House of Representatives. The National Council of Churches has done important work in Cuba and on this case, and Reverend Edgar would have had a great deal to offer at this hearing. But by the time we were informed the hearing was to take place, he already had a commitment elsewhere. I do appreciate the chairman saying that at another time he could be heard.

We are not going to be hearing from the U.S. Department of State, nor will we be in a position to effectively consider the potential impact of the ongoing dispute over Elian Gonzalez on U.S. parents who are fighting to gain custody of their children in other countries. Mary Ryan, the Assistant Secretary of State for Consular Affairs, has testified in the Federal court case that a failure to enforce the INS decision that Elian Gonzalez should be reunited with his father would, "be inconsistent with the principles we advocate on behalf of the United States and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizen children taken to foreign countries."

We will hear from a U.S. parent who has struggled for years just for the right to see his children in Japan, and who believes, as do other American parents in similar circumstances, that to preserve American credibility we have to practice what we preach and reunite Elian with his father.

In fact, my office worked for months on such a case of an American child who was taken abroad by an estranged parent. Had it not been for the active intervention of the Government of Egypt, the child would not have been reunited with his American mother. I thank Walter Benda for being with us today to tell his story.

We will not hear from the Justice Department or the INS because they are involved in the ongoing litigation and thus cannot discuss it in this forum. Now, it is politically expedient for some to want to relive the Cold War, to continue a decades-old opposition to the Castro regime, but without regard to its implications for our national interests and international position.

I am troubled that this hearing and the House committee subpoena issued for this young boy crosses into another dangerous arena in which we are using domestic political institutions to undermine lawful judicial authority for partisan gain. I find that regrettable.

Now, let me be clear on one thing. I am a critic of the repressions of the Castro government. Unlike someone who just gives speeches about what they feel Fidel Castro has done wrong in stifling dissent, I have gone to Cuba and told him personally how wrong that it is. He doesn't agree with me, obviously, but if I am going to say it here, I am also going to say it there.

No one more than I wants the Cuban people to have the freedoms that we have, and I deplore the way Fidel Castro has used Elian Gonzalez to further his own feud with the United States. But as Senator Dodd has said, there are many good families living under bad governments. I strongly believe that the well-being of Elian Gonzalez will be better served by making sure that he has the support and love of his father and grandparents than in making him a symbol of the anti-Castro movement.

I also question why the principle asserted by those who want him to stay in the United States would not also apply to a small child from China or any other repressive government. Do the proponents of this citizenship bill believe that any child living in a communist country is a victim of child abuse? If so, do they support granting citizenship to any child who arrives here from a communist country, no matter how young and no matter how the child's parents react? What about the billion children who live in countries marked by extreme poverty? Should they all be American citizens? That is what the bill implies, but I doubt that 10 percent of the American people would support that. In fact, 67 percent of the American people feel this boy should be returned to his father.

Now, I think this entire controversy unfortunately has served only to benefit Fidel Castro. He has used our refusal to return Elian Gonzalez to unite his people and once again consolidate his political position, just as he uses our embargo to explain away his own failed economic policy.

Indeed, this set of events has further weakened our already ineffective policy toward Cuba and offered a perfect occasion for Castro to sharpen the "us against them" rhetoric that he has returned to repeatedly and successfully over his four decades of rule. In fact, I think the United States should be attempting to engage ordinary Cubans rather than antagonizing them in this way. That process of engagement should include both the lifting of the embargo and an increase in contact between U.S. citizens and Cuba. In other words, we should be tearing down these barriers rather than building them higher.

It is true that Elian is a victim. He is a victim of a pitched battle which has been largely shaped by the political priorities of others rather than the basic but critically important needs of a small boy. I have been told by Elian's grandmothers that he and his father, Juan Gonzalez, have always had a close and loving relationship. They said that Elian regularly spent most days and nights of the week with his father, and that even though his father and mother divorced, they remained friends.

Today, we will hear from Elian's uncle, Manuel Gonzalez. He lives in Miami, but he has come forward while recovering from a recent illness to tell us that Elian would be better off with his father, even if it means his return to Cuba. He says that Juan Gonzalez is a good father who deserves to be with his son.

Now, nobody has disputed that the father loves his son. No one has presented evidence that he is an unfit parent. It was entirely predictable that after a thorough investigation in which he was twice interviewed at length, the INS concluded that his father is the lawful guardian with the sole right to make decisions.

As a grandparent and a parent, I cannot imagine anyone, especially people in a foreign country, telling me what is in the best interest of either my sons, my daughter, or my grandchild, or even worse, preventing me from seeing them. I think reuniting them is the best thing to do to advance America's interests. We should rise above temptations to meddle.

Lastly, I would note that just yesterday we had another tragic incident of school violence. I recall that on the day of the shocking violence at Columbine High School last April, this committee was talking about flag burning, another political issue. Instead of dealing with political issues that do not deal with the things at hand, we ought to be redoubling our efforts to enact the Hatch-Leahy juvenile crime legislation and its sensible public safety provisions that passed the Senate last May with 73 votes.

I do not fault Senator Hatch on this. I know he is doing what he can do on that, but I would renew a call again to the Republican leadership of the House and the Senate to let us go forward with that bill. If Columbine was not enough to shock us into moving forward with it, let's think at least that yesterday might have been.

Thank you, Mr. Chairman. I will put my whole statement in the record.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR LEAHY

I regret that we are here today. I believe that the Elian Gonzalez issue has already been inappropriately politicized at the beginning of this Congress, and that a 6-year-old boy has been converted into a political symbol. A young boy belongs with his parent, not with distant relatives.

I recall that the Senate bill was introduced trying to keep this young boy in the country in the opening moments of this Congress and that the Republican leadership had contemplated ramming it through the Senate as our first item of business. The bill was never even referred to this Committee but held at the Senate desk for expedited action. Fortunately, the Republican leadership came to its senses.

Unfortunately, we are proceeding at this inappropriate time with this hearing in this Committee. I believe that even if we must have a hearing about this matter, the timing of this hearing is particularly ill-advised. This hearing occurs in the midst of federal legal proceedings brought by Elian Gonzalez' Miami relatives—indeed, there is a hearing scheduled on the government's motion to dismiss this case in just five days. The Judiciary Committee has a special obligation to avoid interfering in a particular case currently pending and being actively considered in federal court. We should avoid even the appearance of such interference. Indeed, our traditional practice of not interfering with ongoing cases is one of the many good reasons for our rule prohibiting the consideration of private relief bills while judicial or administrative proceedings continue. I regret that this hearing may call into question our adherence to that obligation. The Cuban-American relatives with temporary custody of Elian Gonzalez have said that they will respect the decision of the federal court in that matter, and we should respect the court's independence and ability to do its job. This abbreviated Committee hearing is no place to try to do factfinding, or worse, inflame the atmospherics surrounding that decision.

I regret that the majority rejected my request that this hearing be postponed. I had hoped that if this Committee were to have a hearing on Cuba and Elian Gonzalez, that we could hear from Rev. Bob Edgar, the general secretary of the National Council of Churches and a former member of the House of Representatives. The National Council of Churches has done important work in Cuba and on the Elian Gonzalez case, and Bob Edgar would have had a great deal to offer at this hearing. By

the time we were informed that this hearing was to take place, however, Rev. Edgar already had a commitment elsewhere for today.

We will not be hearing from the United States Department of State nor will we be in a position to effectively consider the potential impact of the ongoing dispute over Elian Gonzalez on U.S. parents who are fighting to gain custody of their children in other countries. Mary Ryan, the Assistant Secretary of State for Consular Affairs, has testified in the federal court case that a failure to enforce the INS' decision that Elian Gonzalez should be reunited with his father would "be inconsistent with the principles we advocate on behalf of the United States and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizens children taken to foreign countries."

We will hear later from a U.S. parent who has struggled for years just for the right to see his children in Japan, and who believes, as do other American parents in similar circumstances, that to preserve American credibility we must practice what we preach and reunite Elian Gonzalez and his father. In fact, my office worked for months on such a case of an American child who was taken abroad by an estranged parent. Had it not been for the active intervention of the Government of Egypt, the child would not have been reunited with his American mother. I thank Walter Benda for being with us today to tell his story and to provide needed balance and perspective.

We will not hear from the Justice Department or the INS because they are involved in the ongoing litigation and therefore are unable to discuss it in this forum.

While it is politically expedient for some to want to relive the Cold War and to continue a decades-old opposition to the Castro regime without regard to its implications for our national interests and international position, I am troubled that this hearing and the House Committee subpoena issued for young Elian Gonzalez crosses into another dangerous arena in which we are using domestic political institutions to undermine lawful judicial authority for partisan gain. I find that most regrettable.

Let me be clear: I am a critic of the repressions of the Castro government. No one more than I wants the Cuban people to have the freedoms that we have. And I deplore the way Fidel Castro has used Elian Gonzalez to further his own feud with the United States. But as Senator Dodd has said, there are many good families living under bad governments. I strongly believe that the well-being of Elian Gonzalez will be better served by making sure that he has the support and love of his father and grandparents than in making him a symbol of the anti-Castro movement.

I also question why the principle asserted by those who want Elian Gonzalez to stay in the United States would not also apply to a small child from China or any other repressive government. Do the proponents of this citizenship bill believe that any child living in a Communist country is a victim of child abuse? If so, do they support granting citizenship to any child who arrives here from a Communist country, no matter how young, and no matter how the child's parent reacts? What about the billion children who live in countries marked by extreme poverty? Should they all be American citizens? That is what this bill implies, but I doubt that 10 percent of the American people would support that. In fact, 67 percent believe Elian should be returned to his father.

As someone who has traveled to Cuba and talked to Cubans from all walks of life, I believe that this entire controversy has served only to benefit Castro. Castro has used our refusal to return Elian Gonzalez to unite his people and once again consolidate his political position. Indeed, this set of events has further weakened our already ineffective policy toward Cuba and offered a perfect occasion for Castro to sharpen the "us against them" rhetoric that he has returned to repeatedly and successfully over his four decades of rule. In my view, the United States should be attempting to engage ordinary Cubans rather than antagonizing them by acting in such a heavy-handed way toward a 6-year-old child. This process of engagement should include both a lifting of the embargo and an increase in contact between Americans and Cubans—in other words, we should be tearing down the barriers between our countries not building them even higher.

Our policy toward Cuba today is misguided and counterproductive, and the tragic situation that has ensnared young Elian Gonzalez only confirms that fact. Since Elian was found clinging to an inner tube off the Florida coast, there has been a mad scramble to turn him into a "symbol"—as one anti-Castro leader in Miami said—of the Cuban exile community's years of frustration with Fidel Castro. Paraded in front of cameras and showered with gifts since his arrival in the United States, he has been portrayed as a destitute young victim of the Castro regime. It is true that Elian is a victim. He is the victim of a pitched battle which has been largely shaped by the political priorities of others rather than the basic but critically important needs of a small boy who has suffered the catastrophic loss of his mother.

In January I met with Elian's grandmothers. They told me that Elian and his father, Juan Gonzalez, have always had a close and loving relationship. They said that Elian regularly spent most days and nights of the week with his father, and that even though his father and mother had divorced they remained close friends. Today we will hear from Elian's uncle Manuel Gonzalez. Manuel Gonzalez lives in Miami, but he has come forward while recovering from a recent illness to tell us that Elian would be best off with his father, even if that means that he is returned to Cuba. He says that Juan Gonzalez is a good father who deserves to be with his son.

Indeed, no one has disputed that Juan Gonzalez loves his son, and no one has presented evidence that he is an unfit parent. It was entirely predictable that after a thorough investigation—in which Juan Gonzalez was twice interviewed at length—the INS concluded that his father is his lawful guardian with the sole right to make decisions about his future.

Reuniting Elian and his father is the right thing to do. As a grandparent myself, I cannot imagine anyone, especially people in a foreign country, telling me what is in the best interest of my grandchild, or, even worse, preventing me from seeing him.

Reuniting Elian and his father is the best thing to do to advance American interests—and the interests of American parents whose children have been taken abroad without their consent. Sadly, such abductions are not rare, and we should take no action that encourages them.

This boy belongs with his father, and we should rise above temptations to meddle and to prevent Elian from rejoining his father.

The CHAIRMAN. Thank you, Senator Leahy.

We have invited Congresswoman Sheila Jackson Lee to sit in and listen to these hearings as well, and, of course, Senator Mack from Florida to sit in and listen. We have invited all of them. We are happy to have you here, honored to have you here.

I welcome the four witnesses on our first panel this morning and, of course, the others I will welcome later. Our first witness—and you can please take your seats, if you will—our first witness has traveled from Spain to share her views with this committee, but this is certainly but one of the many journeys in this courageous woman's life. We welcome Alina Fernandez—we are so happy to have you here—the daughter of Cuban leader Fidel Castro. On December 13, 1993, when Alina was 37 years old, she fled Cuba and shared with the world her views about that country.

We really appreciate you making this effort to be here, Alina, and we are honored to have you here.

Ms. FERNANDEZ. Thank you for your invitation.

The CHAIRMAN. Thank you so much.

The second witness on this panel is Juan Carlos Formell, with whom I share a common and great love of music. Mr. Formell is a Cuban musician who was recently nominated for a Grammy Award for his CD "Songs from a Little Blue House." He has been kind enough to give me one of those and I am sure going to listen to it today. Mr. Formell escaped Cuba in 1993 and will share his experiences with us today. We are grateful to have you here.

Our third witness is Mr. Mel Martinez, Chairman of Orange County, FL. Mr. Martinez left Cuba at the age of 15 in Operation Pedro Pan, a secret underground program in which 14,000 Cuban children were whisked from Cuba to Miami due to their parents' fears. So we want to thank you for joining us today and we certainly look forward to hearing about your experiences as well.

Finally, I want to warmly welcome Marisleyis Gonzalez, the cousin of Elian Gonzalez who has cared for Elian since his arrival in the United States. Ms. Gonzalez and I had the pleasure of being

together here recently, and I enjoyed speaking with you and chatting with you about this. I know this is extremely difficult for you, but I appreciate your coming here today. We all do.

So we will begin with you, Ms. Fernandez, and we will go right across the table.

**PANEL CONSISTING OF ALINA FERNANDEZ, DAUGHTER OF FIDEL CASTRO; JUAN CARLOS FORMELL, QUEENS, NY; MEL R. MARTINEZ, CHIEF EXECUTIVE, ORANGE COUNTY, FL, AND MARISLEYSIS GONZALEZ, MIAMI, FL**

**STATEMENT OF ALINA FERNANDEZ**

Ms. FERNANDEZ. As a Cuban mother, I can understand fully the desperation of another Cuban mother to attempt to cross the dangerous Florida Straits in an attempt to take her son out of Cuba to live a life of freedom.

My own experience was less dramatic, for I escaped Cuba in 1993. I left illegally—I had no other choice—in a manner that ridiculed and embarrassed the state security apparatus, which is believed to be basically invulnerable. But I do think my own experience shows just how difficult it is for any Cuban to leave Cuba on their own terms without government permission, without paying to leave, and without fear.

On the other hand, I can also understand the many different attitudes and opinions people may have regarding this case. It is tragic and it is complex. We all recognize the conflict between a child's natural right to be free and to be with his family, even as we see in this case that the family is being used and manipulated by the Cuban government for political purposes and to generate anti-American sentiment.

What I am unable to understand, however, is how a Nation such as the United States of America can allow a dictator to manipulate and take advantage of U.S. laws and use them for personal political gain. That is what surprises me the most about this entire case, that a dictator from a totalitarian state without any respect for the rule of law, that does not safeguard or protect individual rights, receives the protection and respect of a law-abiding society like the United States.

In Cuba, the terms “paternal rights” or “freedom of expression” are meaningless, and it is truly absurd that such a state would impose its own lawless views on your legal system. In Cuba, there are many cases of children who have their parents crossing the Florida Straits. These children all remain hostages of the Cuban government. About 4 years ago, the Cuban government sunk a tugboat off its coast that sent 11 children to their untimely and horrible deaths. In my opinion, it is the tragedy of all those Cuban families that have been forcibly separated through exile or death crossing the Straits or by other means. That is what the case of this little boy symbolizes.

Ladies and gentlemen of the Senate of the U.S. Government, with all due respect, you cannot allow this unilateral victory on behalf of a dictator. You cannot bend to the wishes of a dictator without in any way addressing the larger issues of safeguarding the rights of all Cuban families.

How can it be that anyone could so forcefully seek the return of this boy, who has already suffered too much, to Cuba and ignore the many other Cuban families who remain forcibly separated from their loved ones by the whims of this dictator?

I also wish to say that we have to be very clear when we speak of “rights” in the Cuban context because, as I have said, parental rights, family rights, do not exist there. For example, if this child is returned to Cuba, when he is 11 years old he will be taken from his family and placed in a school where he will be allowed to visit them 3 days a month. This is the way in which the Cuban government defines the term “parental rights.”

But if I could be allowed to emphasize an earlier point that situations such as the one before us today are unfortunately not uncommon in the tragedy that has befallen our homeland. My point is this, that we cannot pretend to be self-satisfied in thinking we know the answer as to what should become of Elian without attempting in some way to resolve the situations of the many other divided Cuban families, families divided due to the intolerant, repressive nature of the current dictatorship. And this is precisely the issue that the Cuban government is attempting to distract attention from in its current campaign.

I know that United States and Cuban officials meet every few months to review the implementation of its immigration agreement with the Cuban government. If there are those here truly interested in the issue of the reunification of Cuban families, then they should push to have the issue made a part of these discussions. The Cuban government should be pressured as part of these talks, and only as the U.S. Government has the means and assets to do, to resolve all those cases where families are separated due to the Cuban government’s refusal to allow travel to or from Cuba. I am for the reunification of Cuban families, all Cuban families, but in an atmosphere free of control and intimidation and not under the terms dictated by one government.

If my appearance here today can in any way lead to such an emphasis in the policy of this country with Cuba, then I will feel my purpose here will have not been in vain. To continue to ignore this situation only invites more tragedies such as the one we have before us today and is simply an unwise policy for the United States as it faces Cuba’s increasingly difficult future.

Thank you for your attention in this matter and I will be happy to answer any questions you may have.

The CHAIRMAN. Well, thank you so much.

[The prepared statement of Ms. Fernandez follows:]

PREPARED STATEMENT OF ALINA FERNANDEZ

As a Cuban mother, I can understand fully the desperation of another Cuban mother to attempt to cross the dangerous Florida straits in an attempt to take her son out of Cuba to live a life of freedom.

My own experience was less dramatic, for I escaped Cuba in 1993. I left illegally—I had no other choice—in a manner that ridiculed and embarrassed the State Security apparatus, which is believed to be basically invulnerable. But I do think my own experience shows just how difficult it is for any Cuban to leave Cuba on their own terms—without government permission, without paying to leave, without fear.

On the other hand, I can also understand the many different attitudes and opinions people may have regarding this case. It is tragic and it is complex. We all recognize the conflict between a child’s natural right to be free and to be with his fam-

ily, even as we see, in this case, that the family is being used and manipulated by the Cuban government for political purposes and to generate anti-American sentiment.

What I am unable to understand, however, is how a nation such as the United States of America can allow a dictator to manipulate and take advantage of U.S. laws, and use them for personal political gain.

That is what surprises me the most about this entire case. That a dictator, from a totalitarian state without any respect for the rule of law, that does not safeguard or protect individual rights, receives the protection and respect of a law-abiding society like the United States. In Cuba, the terms "Paternal Rights" or "Freedom of Expression" are meaningless, and it is truly absurd for such a State to attempt to impose its own lawless views on your legal system.

In Cuba, there are many cases of children who have lost their parents crossing the Florida Straits. These children all remain hostages of the Cuban government. About four years ago, the Cuban government sunk a tugboat off its coast that sent eleven children to their untimely and horrible deaths.

In my opinion, it is the tragedy of all those Cuban families that have been forcibly separated, through exile or death crossing the straits or by other means, that is what the case of this little boy symbolizes.

Ladies and Gentlemen of the Senate of the United States government, with all due respect you cannot allow this unilateral victory on behalf of a dictator. You cannot bend to the wishes of a dictator without in any way addressing the larger issue of safeguarding the rights of all Cuban families. How can it be that any one could so forcefully seek the return of this boy, who has already suffered too much, to Cuba and ignore the many other Cuban families who remain forcibly separated from their loved ones by the whims of this dictator?

I also wish to say that we have to be very clear when we speak of "rights" in the Cuban context, because, as I said, parental rights, family rights do not exist there. For example, if this child is returned to Cuba, when he is 11 years old, he will be taken from his family and placed in a school where he will be allowed to visit them three days a month. This is the way in which the Cuban government defines the term "Parental Rights."

But if I could be allowed to emphasize an earlier point: that situations such as the one before us today are, unfortunately, not uncommon in the tragedy that has befallen our homeland. My point is this: that we cannot pretend to be self-satisfied in thinking we know the answer as to what should become of Elian without attempting in some way to resolve the situations of the many other divided Cuban families, families divided due to the intolerant, repressive nature of the current dictatorship.

I know that United States and Cuban officials meet every few months to review the implementation of its immigration agreement with the Cuban government. If there are those here truly interested in the issue of the reunification of Cuban families, then they should push to have the issue made a part of those discussions. The Cuban government must be pressured—as part of these talks, and only as the U.S. government has the means and assets to do—to resolve all those cases where families are separated due to the Cuban government's refusal to allow travel to or from Cuba. I am for the reunification of Cuban families—all Cuban families—but in an atmosphere free of control and intimidation and not under the terms dictated by one government.

If my appearance here today can in any way lead to such an emphasis in the policy of this country with Cuba then I will feel my purpose here will have not been in vain. To continue to ignore this situation only invites more tragedies such as the one we have before us today—and is simply an unwise policy for the United States as it faces Cuba's increasingly difficult future. Thank you for your attention in this matter and I will be happy to answer any questions you may have.

The CHAIRMAN. Mr. Formell, we will turn to you. Now, we have an interpreter for those who need it. Get fairly close to the mike, though, so we can understand.

#### STATEMENT OF JUAN CARLOS FORMELL

Mr. FORMELL (interpreted from Spanish). My name is Juan Carlos Formell. I am a singer-songwriter from Cuba living in New York since 1993. Recently, I was honored with a Grammy nomination for my first record, but it is an even greater honor to be here

today and address this committee. I speak as a refugee and as a product of the Castro regime. I was born in it and it was all I knew until I defected 6 years ago.

The testimony I am about to give comes from the core of the Cuban experience, something so far from what it is like in the rest of the world that perhaps the best way to understand it would be to consider me as a witness from inner space.

As a Cuban, it has been painful and horrifying to watch the unfolding events in the life of Elian Gonzalez, painful because his story is the quintessential representation of the tragedy that is Cuba. By that I mean that all of us, those still in Cuba and those who live in freedom outside, have a visceral understanding of the breadth and depth of this child's situation.

What I would like you to know about Cuba is that the very air we breathe is polluted with the smell of fear. It is a fear so strong that it makes the soul cringe. All of us are mentally and emotionally deformed by this cringing and it takes years of being out of Cuba to establish a sense of personal integrity and moral balance.

What has been horrifying about watching this story is to see the blatant manipulation of the truth and grotesque deception of the American public by their own news media. The reporting of this story has been so uninformed and biased that it cannot even be called a lie. I would have to call it a continuation of a concerted campaign of disinformation, the only achievement of the Castro regime in its 41 years in power.

The first victory in the Castro regime in this case has been to make the central issue one of paternal rights. Of course, if these events occurred in relation to almost any other country in the world, it would be appropriate. But in Cuba, it is not. Parents in Cuba have no rights because these rights do not exist.

I am the son of the most famous celebrity in Cuba, a bandleader who has maintained his popularity in Cuba for over 30 years. The Rolling Stones might be a good comparison. Not only is he the most famous person in Cuba, he is also known throughout the world as the most important figure of contemporary Cuba.

Yet, when I found I could not offer mindless obedience to the system—I regret to say that I was not even close to being outspoken or a dissident; I simply wanted to practice yoga and play Cuban music in my own way—I was punished. And my father, despite his popularity, was unable to help me. The government threatened not only me, but let me know that my meditation and pursuit of individualism could affect him.

State security developed a file on me that made it impossible for me to get an exit visa from my own country, which meant that my life as a musician was impeded because without permission to travel, you can not enter any musical band whose revenues depend on touring. And without government authorization, you cannot start your own band. My future was taken away from me, but worse things have happened.

The parents of classmates who were practicing Christians were unable to intervene when their children were barred from scholastic advancement as a result of their beliefs. Nor could they intervene when their children were mocked and humiliated by their teachers in school.

The second victory of Castro's campaign has been to portray the conflict over Elian as one having to do with family values versus crass materialism. Americans seem to think that everyone in Cuba is poor but honest, whereas this country is riddled with an overabundance of material goods. I must tell you that when I left Cuba, I left behind not only all the comfort I had ever known, but also the possibility of a life of great material ease.

My younger brother, who was in my father's band, drives a Mercedes and lives in an exclusive residential district of Havana. I have been offered since being here the possibility to return and live that life, but I choose to stay here, where I still do not speak the language and where I first had to sing in the subway and where I am still struggling to survive as an artist and as a person. I am still adjusting to freedom, which I will cherish even if I am poor all of my life.

The most terrible thing to have happened in Cuba is the elimination of hope for its people. Let me tell you what are the choices of Cuba's children. The first choice is unthinking obedience. This means substituting the regime's agenda for one's own personal conscience. Aside from that there, there are three other paths: to be an oppressor, which is the only way to rise in the system; to be a criminal, which is the only way to survive in the system; or to be a victim, which is the only way to have a conscience in the system.

The issue here is not whether we should give Elian Gonzalez more opportunities of career choices here or whether in Cuba he will be a poor farmer or an esteemed surgeon. It has nothing to do with that. It is whether he will be able to have the same right of personal autonomy that you sitting here take for granted or whether he will have to adapt his life to a dictatorship.

Thank you very much.

The CHAIRMAN. Thank you so much.

[The prepared statement of Mr. Formell follows:]

PREPARED STATEMENT OF JUAN CARLOS FORMELL

My name is Juan-Carlos Formell. I am a singer/songwriter from Cuba living in New York since 1993. Recently I was honored with a Grammy nomination for my first record, but it is an even greater honor to be here today and address this committee. I speak as a refugee and a product of the Castro regime; I was born in it and it was all I knew until I defected six years ago. The testimony I am about to give comes from the core of the Cuban experience, something so far from what life is like in the rest of the world that perhaps the best way to understand it would be to consider me as a witness from outer space.

As a Cuban, it has been painful and horrifying to watch the unfolding events in the life of Elian Gonzalez. Painful, because his story is the quintessential representation of the tragedy that is Cuba. By that I mean that all of us—those still in Cuba and those who live in freedom outside—have a visceral understanding of the breadth and depth of this child's situation. What I would like you to know about Cuba is that the very air we breathe is polluted with the smell of fear. It is a fear so strong that it makes the soul cringe. All of us are mentally and emotionally deformed by this cringing, and it takes years of being out of Cuba to establish a sense of personal integrity and moral balance.

What has been horrifying about watching this story is to see the blatant manipulation of the truth and grotesque deception of the American public by their own news media. The reporting of this story has been so biased that it can even be called a lie. I would have to call it a continuation of a concerted campaign of disinformation; the only achievement of the Castro regime in its forty-one years in power.

The first victory of the Castro regime in this case has been to make the central issue one of paternal rights. Of course, if these events occurred in relation to almost

any other country in the world, that would be appropriate, but in Cuba it is not. Parents in Cuba have no rights because rights such as this do not exist. I am the son of the most famous celebrity in Cuba, a bandleader who has maintained his popularity in Cuba for over thirty years—The Rolling Stones, might be a good comparison. Not only is he the most famous person in Cuba, he is also known throughout the world as the most important figure in contemporary Cuba. Yet when I found that I could not offer mindless obedience to the system—I regret to say that I was not even close to being outspoken or a dissident, I simply wanted to practice yoga and play Cuban music in my own way—I was punished and my father, despite his popularity, was unable to help me. The government threatened not only me, but let me know that my meditation and pursuit of individualism could affect him. State Security developed a file on me that made it impossible for me to get an exit visa from my own country, which meant that my life as a musician was impeded because without permission to travel you cannot enter any musical band, whose revenues depend on touring. And without government authorization you cannot start your own band. My future was taken away from me but worse things have happened.

The parents of my classmates who were practicing Christians were unable to intervene when their children were barred from scholastic advancement as a result of their beliefs. Nor could they intervene when their children were mocked and humiliated by their teachers in school.

The second victory of Castro's campaign has been to portray the conflict over Elian as one having to do with family values versus crass materialism. Americans seem to think that everyone in Cuba is "poor but honest" whereas this country is riddled with an overabundance of material goods. I must tell you that when I left Cuba, I left behind not only the comfort of all I had ever know, but also the possibility of a life of great material ease. My younger brother, who is in my father's band, drives a Mercedes and lives in an exclusive residential district of Havana. I have been offered since being here, the possibility to return and live that life. But I chose to stay here, where I still do not speak the language, where I first had to sing in the subway, and where I am still struggling to survive as an artist and as a person. I am still adjusting to freedom, which I will cherish even if I am poor all of my life.

The most terrible thing to have happened in Cuba is the elimination of hope for its people. Let me tell you what the choices are for Cuba's children. The first choice is unthinking obedience. This means substituting the regime's agenda for one's own personal conscience. Apart from that there are these other paths: to be an oppressor, which is the only way to rise in the system; to be a criminal, which is the only way to survive in the system, or to be a victim, which is the only way to have a conscience in the system. The issue here is not whether we should give Elian Gonzalez "more opportunities" of career choices to have, or whether in Cuba he will be a poor farmer or an esteemed brain surgeon. It has nothing to do with that. It is whether he will be able to have the same right of personal autonomy that you take for granted here, or whether he will have to adapt his life to a dictatorship.

Finally, there is the most important aspect of this case—one that has been overlooked completely. It explains why the determination of Elian's future is the most important event in contemporary Cuban history—because it will affect Cuban history in the future. The soul of the Cuban people is represented and personified by its patron saints—Our Lady of Charity and her sister, Our Lady of Regla. Both are manifestations of the Virgin Mary, with the former ruling over fresh water and the latter ruling the sea. More folk legend than religious doctrine, their influence has survived the destruction of established religion in Cuba. All those saved at sea are viewed by the Cuban people as specially blessed—and are referred to as "Yemaya Diordde"—a title that comes from our African heritage. This image, of the Holy Mother, suspended over the sea with a child in her arms is the central icon of the Cuban identity. There is no one in Cuba who does not share a deep reverence for this.

Fidel Castro's hysterical insistence on the return of this child is based on his knowledge of this icon, and his cruelly subtle ability of how to manipulate the Cuban people. It is a tremendous irony that Castro is admired by many as a figure of what is thought of as my progress, when in reality he runs his country with the use of witchcraft and superstition. If you, as rational people, find this idea hard to accept, I refer you to the Book of Matthew, chapter 2, verses 1 through 8, when Herod tells the three kings to bring the child to him after they have found him.

As rational people, members of this committee might find this absurd, but it is not absurd to the Cuban people. Castro himself has publicly and before cameras referred to Elian as "Baby Jesus." In his mind, and in his appearance before the Cuban people, the future of his regime rests on regaining this child. For all those

here who say "A child should not be a symbol, let him lead a normal life," what kind of normal life awaits him as the heir apparent of Fidel Castro?

The CHAIRMAN. Mr. Martinez, we will take your testimony at this time.

#### STATEMENT OF MEL R. MARTINEZ

Mr. MARTINEZ. Thank you, Mr. Chairman, members of the committee.

The CHAIRMAN. Go ahead, Senator Mack.

Senator MACK. Well, I just wanted to say a personal comment here with respect to Mel Martinez, whom I met 12 years ago as I began my effort to become a member of the U.S. Senate, and how gratifying it is to see you in the position that you have won in elective office in Orlando and the great work that you are doing in that community. So I welcome you here today.

Mr. MARTINEZ. Senator, thank you very much. It is really a high honor to be here and to be in this company.

Mr. Chairman and members of the committee, I come to you here today as the fulfillment of the promise of America, the promise of freedom and opportunity for all people. It is through this promise that I have received an education, become an attorney, married a wonderful wife, raised a beautiful family, been successful in business, and have been given the privilege by the people of Orange County, FL, to be the elected Chief Executive of their local government.

But 38 years ago, I was just like Elian Gonzalez. Thirty-eight years ago, my parents made the gut-wrenching decision to separate themselves from me, their oldest son, at the age of 15. Their decision was made in the desperate circumstances that can perhaps only be fully understood by the perspective of a person who has lived under a brutal tyranny.

My parents felt that the situation in Cuba had reached the point where they would rather be apart from their child, whom they had brought into this world, loved and nurtured, than risk the possible fate that other young people had already suffered. Political prison in Cuba then or now did not begin with the age of majority. The suffocating lack of freedom that has been the Cuban people's daily companion for 40 years was already well on its way.

As a young boy, I saw my Catholic school closed, the priests and brothers who ran it expelled from the country, people attacked by government-organized thugs upon leaving church on Sunday morning. The education system was turning into a tool of communist indoctrination, and expression of dissent generally was persecuted. My expressions of dissatisfaction with this situation at this early age had already caused my father to be told by government officials as friendly advice that my big mouth was going to land me in trouble. This type of advice was an intimidating warning.

After the failed Bay of Pigs invasion, repression in Cuba stiffened even more. Practicing one's religion was considered an act of defiance against the state. Families feared their children would be taken from them and sent to state-run camps, where they would be indoctrinated. Rumors that children would be wards of the state seemed possible and real.

Against this backdrop, my parents went to watch a basketball game in which I, then 14 years old, would be playing. This was the moment when they decided to do the unthinkable and join the hundreds of other parents that they had heard had been secretly sending their children to the United States. The precipitating event at the game was the chants and taunts against me from an organized throng simply because I was wearing a scapular, a symbol of my faith that was now viewed as an unacceptable sign of anti-government sentiment. The words "kill him, he is Catholic" had a chilling ring for my desperate and frightened parents.

That night, they called me into their bedroom. I sat on their bed as they explained to me that we would separate as a family and that I would be leaving without them, that this difficult separation would be what was best for me. I understood their concern, and despite the fact that I deeply loved them and I depended upon them, I was anxious for the opportunity to leave.

My family secretly made arrangements for me to leave the country, and after 6 to 8 months of red tape and my 15th birthday I was able to leave Cuba. As I left all of my family and everything I knew behind, excitement turned to fear and loneliness. I was fortunate that I did not risk my life on a flimsy raft, but flew to Miami on February 6, 1962.

I was met at the Miami airport by the organization put together by Monsignor Bryan Walsh of the Catholic Diocese of Miami. The program was authorized by then President John F. Kennedy. This exodus of unaccompanied Cuban children which took place in 1961 and 1962 and saved 14,084 children from the clutches of Castro's gulag came to be known as Operation Pedro Pan. It has been chronicled in a book by Yvonne Conde titled *Operation Pedro Pan*.

Unlike Elian Gonzalez, I did not have a loving family waiting for me and enthusiastically caring for me when I arrived in Miami. My life in the United States began in Camp Matecumbe, in Miami, later another camp in Jacksonville, FL, and ultimately the home of two different American foster families. Through these wonderful people in Orlando, FL, I came to know the fullness of the charity and kindness of the American people.

The October missile crisis of 1962 came and, as a result, all travel between Cuba and the United States was suspended. What was supposed to be and hoped to be a short separation from my parents now seemed permanent. Admitting to myself the reality that I might never see my parents again was one of the hardest things that I have ever had to do.

My life alone here continued. I graduated from high school and began to work and attend college. Finally, almost 4 years after I had fled Cuba, on December 1, 1965, under President Lyndon Johnson's leadership, a series of freedom flights began between Cuba and the United States. The primary goal of the U.S. Government was family reunification of children who were here alone without their parents; not deportation, Senators, but reunification here, in freedom. So after 4 long years and some months, in March 1966 my younger brother and I were reunited here in freedom with our parents.

During those years of awful separation, never did my parents in Cuba nor I here ever consider that I should return to Cuba. Re-

turning to Cuba was simply unthinkable. Also, it should be relevant to note for your current considerations that on more than one occasion my father's employer, the Cuban government, offered to reunite us by returning me to Cuba. To their offer he would say that I had been brainwashed by the priests of the Catholic school that I had attended in Cuba, and that I had become a rebellious teenager and he could not persuade me to return.

What my father did not say is that he himself was hoping, praying and planning to leave the country. This was a plan he could not share. In effect, he was living a lie. Those lies that the people of Cuba live and which are so familiar to the people of the now liberated Eastern European countries are still being lived in Cuba today. It is perhaps the lie, Senator Leahy, that those grandmothers could not share with you when they visited with you here in this capital.

It is for this reason that Cuban Americans in this country wonder about the true intentions of Elian's father. It is not about keeping a father and child from living together, but rather ensuring through due process that the father's true wishes be known and the Cuban government's manipulation be exposed. We who have lived that repression and manipulation know that they are the trademark of Cuba's dictatorial system.

Some argue that we should not presume that this young boy is better off here, that he could be equally well-off in Cuba. This argument suggests a moral equivalency between the system of freedom and opportunity framed by Washington, Hamilton and others, and the system of tyranny and oppression imposed by Fidel Castro. The truth is that there is no moral equivalence. The State Department's just released human rights record in Cuba attests once again to that fact.

This great and blessed land has given me the opportunity to fulfill the promise of America. It is my hope and prayer that Elian Gonzalez will also be permitted to live in freedom and opportunity. I am a firm believer in the promise of America, the promise that regardless of where you come from, what language you speak or the color of your skin, if you share the American dream of a brighter tomorrow, if you pursue with respect for the law and for others, and with an abiding faith in God, that all things are possible.

That is the promise that every child should enjoy. In fact, our Founding Fathers called it a God-given right. They said that all people are "\* \* \* endowed by our creator with inalienable rights, (and) among these are life, liberty and the pursuit of happiness \* \* \*"

Thirty-eight years ago, this land of refuge to all oppressed people of the world opened its wonderful arms to me. And thanks to the policy of President John Kennedy, I had the opportunity to live in freedom. And I am here today to ask that President Clinton and this Senate give to Elian Gonzalez today the same opportunity that President Kennedy gave to me 38 years ago.

Thank you.

The CHAIRMAN. Thank you, Mr. Martinez. We are grateful to have you here.

[The prepared statement of Mr. Martinez follows:]

## PREPARED STATEMENT OF MEL R. MARTINEZ

I come before you today as the fulfillment of the promise of America—the promise of freedom and opportunity for all people. It is through this promise that I have received an education, become an attorney, married a wonderful wife, raised a beautiful family, been successful in business and have been given the privilege by the people of Orange County, Florida, to be the elected chief executive of their local government. But 38 years ago, I was just like Elian Gonzalez.

Thirty-eight years ago, my parents made the gut-wrenching decision to separate themselves from me, their oldest son, at the age of 15. Their decision was made under desperate circumstances and can perhaps only be fully understood from the perspective of a person who has lived under brutal tyranny. My parents felt that the situation in Cuba had reached the point that they would rather be apart from the child whom they brought into this world, loved and nurtured than risk the possible fate that other young people had already suffered. Political prison in Cuba then or now did not begin with the age of majority. The suffocating lack of freedom that has been the Cuban people's daily companion for forty years now was already well on its way.

As a young boy, I saw my Catholic school closed, the priests and brothers who ran it expelled from the country, people attacked by government-organized thugs upon leaving church on a Sunday morning. The education system was turned into a tool of communist indoctrination and the expression of dissent generally persecuted. My expressions of dissatisfaction with the situation had already caused my father to be told by government officials as friendly advice that “my big mouth was going to get me in trouble”. This type of advice was an intimidating warning.

After the failed Bay of Pigs invasion, repression in Cuba stiffened even more. Practicing one's religion was considered an act of defiance against the state. Families feared their children would be taken from them and sent to state-run camps where they would be indoctrinated. Rumors that children would be wards of the state seemed possible and real. Against this backdrop, my parents went to watch a basketball game in which I, then fourteen-years-old, would be playing. This was the moment when they decided to do the unthinkable and join the hundreds of other parents that they heard had been secretly sending their children to the United States. The precipitating event at the game was the chants and taunts against me from an organized throng simply because I was wearing a scapular, a symbol of my faith that was now viewed as an unacceptable sign of anti-government sentiment. The words “kill him, he is Catholic” had a chilling ring for my desperate and frightened parents.

That night, they called me into their bedroom. I sat on their bed as they explained to me that we would separate as a family and I would be leaving without them; that this difficult separation would be what was best for me. I understood their concern and despite the fact that I deeply loved my parents and depended upon them, I was anxious for the opportunity to leave.

My family secretly made arrangements for me to leave the country; and after six to eight months of red tape and my fifteenth birthday, I was able to leave Cuba. As I left all of my family and everything I knew behind, excitement turned to fear and loneliness. I was fortunate that I did not risk my life on a flimsy raft, but flew to Miami on February 6, 1962.

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My life alone here continued. I graduated from high school and began to work and attend college.

Finally, almost four years after I had fled Cuba, on December 1, 1965, under President Lyndon Johnson, a series of "Freedom Flights" began between Cuba and the United States. The primary goal of the United States government was family reunification of children who were here alone without their parents. So, after four long years and some months, in March of 1966, my younger brother and I were reunited here in freedom with our parents.

During those years of awful separation, never did my parents in Cuba, nor I here, ever consider that I should return to Cuba. Returning to Cuba was unthinkable.

Also, it should be relevant to note for your current considerations that on more than one occasion, my father's employer, the Cuban government, offered to reunite us by returning me to Cuba. To their offer, he would say that I had been brainwashed by the priests at the Catholic school that I had attended in Cuba and that I had become a rebellious teenager and he could not persuade me to return. What my father did not say is that he himself was hoping, praying and planning to leave the country also. This was a plan he could not share. In effect, he was living a lie. Those lies that the people of Cuba live and which are so familiar to the people of the now liberated eastern European countries is still being lived in Cuba today.

It is for this reason that Cuban-Americans in this country wonder about the true intentions of Elian's father. It is not about keeping a father and child from living together, but rather ensuring through due process that the father's true wishes be known and the Cuban government's manipulation be exposed. We who have lived it know of the repression and manipulations that are the trademark of the Cuban dictatorial system.

Some argue that we should not presume that this young boy is better off here; that he could be equally well in Cuba. This argument suggests a moral equivalency between the system of freedom and opportunity framed by Washington, Jefferson, Hamilton and others, and the system of tyranny and oppression imposed by Fidel Castro. The truth is that there is no moral equivalence. The State Department's just released human rights record in Cuba attests once again to that fact.

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Thirty-eight years ago, this land of refuge to all oppressed people of the world opened its wonderful arms to me; and thanks to the policy of President John f. Kennedy, I had the opportunity to live in freedom. Today, I am here to ask that President Clinton give to Elian Gonzalez today, the same opportunity that President Kennedy gave to me thirty-eight years ago.

The CHAIRMAN. Ms. Gonzalez, we will conclude with you on this first panel.

#### STATEMENT OF MARISLEYSIS GONZALEZ

Ms. GONZALEZ. First of all, good morning to everybody. My name is Marisleysis Gonzalez and I am Elian's cousin. I am here on behalf of the Gonzalez family to express the facts of this situation that we are going through as a family.

It is an honor for me to be here today sitting and being able to speak to you all about the situation that we are going through, and it is very painful for us. I thank you all for giving us and giving me the undivided attention to express myself and give some facts about what really did happen with this case.

On November 22, around 9 p.m., Juan Miguel Gonzalez and Juan Gonzalez, his father, called my house and called Delfin's house, Delfin Gonzalez, who is an uncle of mine, and couldn't reach us. After that, he called my aunt's house, Georgina, to let them

know that Elian and his mother had left Cuba on a boat, to please be aware and alert to their arrival.

My aunt waited for us to be home and called my father and let him know the situation and let him know that Juan Gonzalez had spoken to her and called. Quickly, my father called back to Cuba and spoke to Juan Miguel Gonzalez and Juan Gonzalez in regard to this matter. They stated to my father that Elizabeth had left on a boat with Elian Gonzalez, her son, to please be alert and to take care of them when they got here and give them any support that they needed, as they all know that we have given that support to other cousins of mine that had just arrived 7 months ago on a raft with their three sons. My father said to them, you know that I will do the same as I have done for my other nephews and you know that they are in good hands. And he said, yes, that is the reason that I have called, please take care of them.

Then the tragedy began on November 25, when Elian arrived. And we were very worried because almost 4 days and we hadn't heard anything. We as a family started calling Chrome and trying to find out if they had known any evidence or if they have arrived or if they were trying to be processed or so. That morning, my brother's wife heard on TV and on the radio that there was a boat that had turned over and it was coming from Cardenas. Because of the fact that there were so many days that they were at sea, we thought it was them.

I quickly called Chrome and tried to call all the Coast Guard to find out if these were my family. And in one of these calls, the Coast Guard told me that there was not only two survivors that we thought, there was a 5-year-old involved and he was taken to a Fort Lauderdale hospital. I quickly tried reaching Fort Lauderdale Hospital because they didn't give me a specific hospital, and so I found where Elian was at.

We quickly ran down there, and that night the doctor didn't have any idea or clues of what Elian was allergic to and neither did we because we as a family lived here. We told him that his official father was in Cuba and that he would be the only one to know if he was allergic to any medication. So the doctor that night said, well, we need to get in touch with his father in case we need to provide any medicine for this child.

There was a phone call made on November 25, that night, to Juan Miguel's house, and this was not the first phone call, as he stated to INS, which wasn't true. The first phone call was November 22, when he called my aunt's house stating that they had left on a boat. My father spoke to him and told him that the boy was OK, that he was very dehydrated, but he was going to be under care for a day or so. And he told my father, please take care of him until I am able to come over there. And my father said to him, you know I will do that, but the doctor has to ask you some questions in regard to his medical history.

There was a male nurse translating between the doctor and Juan Miguel. Afterwards, that night, I stayed with Elian and my aunt, Georgina, at the hospital taking care of this little boy. He expressed everything to me that same night of what he had experienced in that ocean. That night, at 9 p.m., we arrived at the house

and we called again Juan Miguel's house for him to be able to speak to his son and know that he was OK.

He spoke to my father and it was totally a different tone of voice, very aggressive, telling him that this boy had to go back. My father asked him why; we will provide visas for you and all of your family to come to this country as well. And he stated, that is the way it has to be. These were his specific words.

The reason I recall this and I could sit here and talk about it as a fact was because he got very aggressive, and my father said, speak to my daughter, and these were the words he told me: in 48 hours, I will go to Havana, Cuba, and I will sign some papers and someone will go pick up Elian and bring him back to me. And I told him, if you don't know, this little boy is very dehydrated and he has been through a lot. Who is coming to pick him up? Are you going to come and pick him up? He says, no, I cannot go over there. And I said why? He goes, because I haven't lost anything at that country.

And said, well, if you haven't lost anything at this country, what is your son to you? It hurt me a lot to express myself that way, but it was very painful after me seeing this little boy that couldn't even sit in a bed or wasn't able to walk straight when he got out of the hospital, and his father didn't even have the slightest idea what his son went through. And besides that, I am sure he didn't have the freedom to get in an airplane and give his child that support of everything that he had gone through that night.

I told him that to please, if he wanted his son, to pick him up, for him to come here and pick him up, not to let anybody else pick him up who Elian didn't even know, and that I didn't think he was in the best medical sense to walk or anything like that or to get an airplane, to please think about what he was going to do. And he said, if you don't understand, that is the way it has to be.

To this point, I didn't know much about what would really happen to him or about the pressure that he would have, as he is having today. After me experiencing and being with this little boy almost 3 months now, I see that my cousin must be going through the most horrible thing of not being able to come here to this country and give support to his child when he most needed it. And I am sure they are under a lot of pressure.

To my knowledge, this kid wasn't kidnapped, as they are stating in Cuba. This trip was planned for 6 months. I know this fact because of the other two survivors on that boat who gave me all the information and explained to me that Elizabeth was able to go back and if she wanted to leave the little boy behind, she could have done it because the boat broke down and they had to go back. And she said, he will go with me, regardless.

To my understanding, my cousin has been wanting to come to this country for a very long time. Prior to this, a year-and-a-half ago, my father went to Cuba with my uncle, Delfin, and my brother, William. And he stated to my brother that he was dying to come to this country. Seven months ago, I received cousins of mine who came on a raft as well, and Mary Isabel, a cousin of mine who came on that boat—and Juan Miguel's brother was going to come with her on that boat; he just couldn't find the money he needed

to buy the materials that were needed for that boat. And that was the reason that he didn't get on that boat.

To all of this that I have been seeing and that I have experienced, I have been hearing from Elizabeth's family members, who she was questioned by the Cuban government after her husband, Munero, escaped Cuba and came here for the first time and was returned back to Cuba and was imprisoned for 3 months.

When he was here, to my understanding from family members of hers, she was interrogated from the Cuban government to see if she knew of his departure, if she knew that he had left Cuba, if she was aware of all of this. And she stated to this family member that they told her that if they would find out that she knew or she had something to do with that, she would be taken to prison and Elian would be taken away from her custody.

I am not a mother, but to everything that I have seen and that I could possibly imagine that she went through, I could just feel the pressure that she must have gone through on having to decide to take her son through such a risky trip, knowing that they would either make it or they wouldn't, knowing everything and everyone that he was leaving behind. And that wound will never leave my heart because I have really asked this little boy what he wants. I have asked him from the bottom of my heart if he wants to go with his father to Cuba, that I myself would take him.

And all he said to me were these words: no, my mother brought me here and I want to stay here. And after he told me everything that they went through and how he saw people drowning and all this experience, he asked me to promise him that I would never leave his side and to always protect him. And I promised him this, and it is very painful for me because I know that my cousin is under a lot of pressure because whoever is a father or isn't a father, they should know what the feeling would be of knowing that your son went through the most tragic moment of his life seeing the death of his mother and the tragedy of his family, and that he doesn't have the right and they don't allow him to come to this country to see his son or giving him that support when he most needed it.

I honestly feel that if he would have not been pressured or he wouldn't have been under all this political issue in Cuba having Fidel next to him, and that if in Cuba there was liberty and freedom, this mother wouldn't have had to risk her life on that boat to come to this country. She could have come in an airplane. And if there would be such a freedom to my cousin, I know for a fact that he is a good father and that he loves his son, and that he would have come here to give that support and that love that he needed that day and that he still needs to this point.

Under no circumstance we as a family are going to separate this boy from his father. My family has always been very close, extremely close, and all I ask is--all I ask God is that he made the miracle to bring this little boy safe and sound to us, especially to me; that I take care of him and I hear everything he has to say. And I have to live with him and see the pressure that his father gives him. When he speaks to him over the phone and tells him, you have to come back, you have to come here, and makes him sing

songs of the revolution, this little boy sometimes doesn't even want to speak to his father.

And we as a family are going through a lot because we cannot tell him, your son doesn't want to speak to you, because it is very painful to us for him to have hear that because we know he is under the pressure and he is doing it because of the fact that he is pressured. And at the same time we cannot do it because the Cuban government would turn around and say, look, the family doesn't want to allow the boy to talk to his father, when all this family has done has been to be there when that little boy needed someone because his father wasn't able to be there with him.

All my family has done is given him the support and given him a shelter and try to give him love, hoping that someday his father could come here. And to this point, after 3 months, I pray to God every night I go to sleep, you have given this mission to me and you allowed him to see the death of his own mother, you should know why. But I also ask him to please allow my cousin to someday come to this country and reunite with his son, where his mom wanted him and where his mom brought him and where she thought he would get what she always thought this country was all about, freedom and liberty.

To her, that wasn't an adventure. I hear the stories from my cousin how—not the poorness, but how they can't talk, how they have to tell their sons and daughters to talk low in the house, how they risk their own daughter and son's life when they come in that boat. And they know that my cousin wanted to come here. He stated to my brother he was dying to come here. He told my cousin, who came 7 months ago, that as soon as he loses his job in Baradero, he would even come here in a toilet bowl, but he would come to this country.

And if that is the fact and that is something that he said, I am sure that he as a father, wanting the best for his child, as he would have wanted the best for him, he would have risked Elian's life as well and brought him here on that boat. I feel that he did know that they were coming, but as Elizabeth wasn't able to express herself and say to the government that she knew Munero was coming here as well, that is the same way my cousin feels. He cannot tell the Cuban government that he knew his son was coming to this country because he has another infant son and a wife that he has to look forward of.

He knows that his son is in a country of freedom where he is protected, and that is why he can sit there and read papers, with the pain of heart, say things that they are telling him to say. But he cannot turn around and say otherwise because he knows that his wife and his son might be in danger or are in danger. And he knows that the other one is very safe and sound here because he knows that in this country they would never hurt any kid. What they would do is support him. And he knows to this point that we as a family have given him the support and have been there for him, and he knows that we will do it to the end.

This is my written statement and it is on file. I would just rather express myself from the bottom of my heart because I am living this every single day. And I feel that everybody should open up their heart and not think about the political issue, or rather think

about how Cuba is so poor. That is not the fact. Nobody has ever thought about the wishes of that mother when she stated to one of the survivors, the male, you are the only male left, please help my son, please allow him to touch land, please let my son make it. Nobody has ever asked that.

Nobody has ever asked what Elian wants. Nobody has ever asked how fearful he is. His father has not even had the opportunity to ask his son what he wants. He has not even had the opportunity to ask him about his mother. Neither Raquel, the mother of Elizabeth, has asked about her daughter. It is very sad to see that the Cuban government has to make her speak and refer to her daughter saying "Elian's mother." She cannot say "my daughter." She has to state "Elian's mother." That was her daughter. She hasn't been given the right to express her feelings or anything like that because I am sure that if she would, she would be thanking us for what we have done because those were the words of Elian's mother.

And all I ask is that they not only see us as a painful family and everything we are going through, but to see what my cousin is going through in Cuba. I wish that someday he will have the opportunity to come here with his wife and son to express himself and really say what he wants for his child.

The grandmothers came here. Why didn't they allow the father to come here? He is the most closest thing to him, the father. This boy needed the support of the father. After 2½ months afterwards, they allowed them to come here. This little boy already had us; he already had the people that were there for him when he really needed it because even though he is 6, he knows a lot and he knows the people that were there for him when he needed them.

And it is very sad that I had to stand up in front of the two grandmothers and they couldn't even say hello to me. It is very painful because I haven't done anything wrong. All I have done is taken care of this little boy and give him the support that he needed now that his mom wasn't there.

And I have to see the fear in that little kid's face when he met both his grandmothers, thinking that he would be returned to Cuba, where he would be brainwashed, because Fidel Castro, he thinks that this will be his trophy, when he has never cared about any kid. If he would, he would have allowed my cousin to come here and give the support for his child when he really needed it.

And with this, I thank you all, and if you were to have any questions in regard to this matter, I will be more than willing to answer it.

[The prepared statement of Ms. Gonzalez follows:]

PREPARED STATEMENT OF MARISLEYSIS GONZALEZ

It is difficult for me to express to you how deeply honored I am to appear before you today. Never in my life had it even entered my mind that I would have the privilege of speaking to members of the United States Senate. And never in my life did it ever occur to me that my doing so would be so important, not just to my life, but to the life of another human being, in this case that very special 6-year-old boy named Elian Gonzalez.

Let me tell you about Elian, who entered my life after surviving alone for over two days in the ocean, tied to an inner tube, in shark-infested waters, without food or water. Some believe that he was protected by dolphins. I believe that he was protected by a miracle of God.

Elian is, in a nutshell, full of life; he is everything that his mother would have wanted him to be. Despite his ordeal, he is a happy, sometimes mischievous boy, whose boundless energy tests my ability and that of my family to keep up with his level of activity. His enthusiasm and good humor are contagious. He is very bright, very much aware of his surroundings and circumstances, and—with one exception—very comfortable and very happy.

The exception is this: any time that Elian has heard anything suggesting that he will be taken back to Cuba, his reaction has been immediate and most noticeable. Despite my family's best efforts to shield him from unfavorable rumors, it has proven to be impossible to keep this bright, perceptive child from catching a news report on television, or from overhearing a comment by a nearby adult about some threat to his continued stay in our home and with our family, which he considers to be—and which is—his family. I will tell you that Elian was upset when he felt that his grandmothers, after refusing our invitation to come have dinner at our home, might try to snatch him and take him away. I had to persuade him to get dressed to go to Sister Jeanne's house to meet his grandmothers, but it was not easy. When Elian feels that anything threatens his staying here, with us, his whole mood changes. His face turns somber. His level of activity dramatically declines. He becomes moody, difficult to deal with, and sad. He says very little, even in answer to our attempt to talk with him. To put it in one phrase, he becomes a different boy. And this has happened repeatedly, whether with the grandmothers' visit, or with the talk about his father coming to get him, or with the recent request that he be placed in the home of my father's brother. Sometimes Elian is so worried about being taken away that he tells me that he does not want to go to school. On those occasions, this delightful, outgoing little boy becomes withdrawn and grows silent. At times he tells me that he is afraid—afraid of being taken away from his home, from my family, from me.

Unfortunately, these episodes happen often, too often, in Elian's life. We have a real problem with his father's telephone calls, which he usually makes three times a day, and in which he insists that Elian speak with him for long periods of time, sometimes up to an hour. On the one hand, my family and I have been very careful not only to avoid any difficulty between Elian and his father, but actually to encourage those communications. Therefore, we have placed no restrictions even though long telephone conversations, three times a day, usually between 6 and 9 P.M. is too much: too much for anyone, and certainly too much for a child who has homework to do and who wants to play and who has a full life. Worse, during those conversations, which we believe to be orchestrated and then taped by the Cuban government, Elian's father constantly asks the boy—over and over again—when he is going back to Cuba, only to have Elian tell him—over and over again—that he does not want to go back to Cuba. Elian complains to me about the frequency, length, and even content of those telephone calls, which sometimes include attempts to have him sing revolutionary songs with his father. Those calls place visible stress on Elian every time they happen. Truthfully, we don't know what to do. We don't want anyone to say that we are interfering with the father's ability to speak with his son, but we are also very much aware, daily, of the adverse impact of those calls, and we are very worried about that.

Above all, what Elian needs is stability, certainty about his life and about his future. My family and I have done everything we can to give this boy not just a house, but a home. We have given him our hearts and all of our love; we have given him the care and attention that his mother would have wanted us to give her son and that his father asked my father to give to him last November; and I believe that, except for the anguish about his future, we have succeeded in making Elian's life a happy one. But we need your help. Elian needs your help. He cannot go on with fear in his heart every time he picks up the telephone, or every time he hears a news broadcast, or every time he overhears an adverse comment about his future here.

I doubt that when INS gave my parents custody of this child last November, the INS officials ever dreamt that we would take such good, loving care of him. We are doing everything we can for him. We have done everything we can. Now we need your help. Please help us. Please help Elian. All he needs from you is the certainty that no one is going to take him away, in the middle of the school day or in the middle of the night, away from us, his loving family, away from where he desperately wants to say and where he belongs—here with us.

Thank you, and God bless you.

The CHAIRMAN. Well, thank you so much. This has been a very interesting panel.

Let me just ask you one question, Marisleysis. Why do you believe that Elian's father wants him to stay in the United States? You have indicated that. If you could just give us what your view is there?

Ms. GONZALEZ. There is a lot of views toward this. The first one is that he stated to my brother that he was dying to come to this country. The second one is that he said to my cousin that as soon as he loses his job, he would come here in a toilet bowl. And besides that, what parent doesn't want the best for his child?

When I have spoken to my cousin over the phone, he always tried to speak to me very calmly and he tries to not argue with me. But at the end, he ends up arguing, but before he argues and he speaks to me, I tell him, you don't have to thank me for what I am doing; I am doing it because your son needs it. And these were his words: I appreciate everything that you are doing for my son. Do you understand me? He says, my cousin, do you understand what I am trying to tell you? And I said, yes, I do.

To my understanding is that if he tells me that he thanks me for everything that I am doing for his son, one part of that is that I am here and I will be wherever I need to be to make this little boy's dream come true, and his mother's will to stay in a country of freedom and liberty. That is the reason why I feel that. And besides that fact, he himself stated to my father, please take care of him until I am able to go over there. "Able," not saying until I want to go over there, saying until I am able, until somebody allows him, because in 3 months nobody has allowed him to come to this country.

And knowing my family and knowing my cousin, I know that if he had the freedom, he would not have left his son that night in the hospital and for 3 months now, not giving him the support that this little boy needed.

The CHAIRMAN. Thank you. Now, as I understand it, your cousin is remarried and has a daughter or a son?

Ms. GONZALEZ. He has a son.

The CHAIRMAN. Any other children?

Ms. GONZALEZ. No.

The CHAIRMAN. So if he came by himself, he would have to leave the—

Ms. GONZALEZ. He will still be pressured, and even more because over there his wife and his son might be in danger. He knows that whatever he might say over there in regard to us and in regard to his child there, there would be no problem because thanks to God, this is a country of freedom and liberty and you have the right to speak freely and the rights for speech. And he knows that the laws will support his son and that we will as well, and that we are free to speak in behalf of anything that comes upon.

The CHAIRMAN. Well, if he could come with his wife and son, if he, his wife and son could come here, then you would feel better about any resolution of this, regardless of what it is?

Ms. GONZALEZ. Yes, I will because I would love, and I pray to God every night to allow me to have the opportunity as I had to see the grandmothers, to have the opportunity to see Elian's face and to see Elian when he sees his father, for his father to have the rights that he has as a father to sit down with his son and ask him

what is it that he wants, how does he feel, how are you doing, how is your school, what did you eat, everything that a father asks their son, not having to make him sing songs of the revolution or telling him—actually pressure him and making him feel sorry that he is not in Cuba because of himself.

The CHAIRMAN. Well, let me say this. If Fidel Castro wants to resolve this matter, it seems to me that he ought to allow the father, his wife and his son to come here so that nobody would think that the father was under special pressure because he has left his wife and son behind, and then have it resolved right here. And if he would do that, it seems to me that might be the best way to resolve this matter. So I would call on Fidel Castro to do that, unless he is afraid that the father, his wife and son would stay here in this country.

Ms. GONZALEZ. I think that is one of the reasons that—

The CHAIRMAN. So that may be the way to resolve this in the best way for all concerned. But in any event, that would be my suggestion.

Let me just ask you, Alina, if I could, you among the panelists this morning may have the most unique perspective on the psychology of your father, Fidel Castro. What is it about the Elian Gonzalez case that has so caused your father to take it up as a cause when so many other families and children have fled Cuba without comment from him, and indeed sometimes were urged to flee by him? Is Elian Gonzalez a political trophy sought by Fidel Castro, or what is the reason for all this?

Ms. FERNANDEZ. Well, I think that he has some kind of temper tantrum because the summit failed, the Hispanic summit failed, and it is a way also to hide the fact that people are able to risk their lives and their children's lives just to escape from his paradise. A country who doesn't produce or study or anything during 2 months is totally madness, and he will never allow the father to come with the wife and the child because they will all stay here. So I don't know what to suggest.

The CHAIRMAN. Are you saying that it is very difficult for this father to really, truly express his wishes rather than through the code?

Ms. FERNANDEZ. I am sure they have a team of psychologists and people who specialize, and intelligent persons, suggesting to him what he has to do. I am sure he is 24 hours under screen. But you can't relate to that. You don't know what it is to have a camera and to have microphones and to have people, you know, just pushing you. One of the symptoms is the mother who just lost her daughter is able to come here with the other grandmother. It is just amazing. I mean, people have to be under a lot of pressure to do that. It is pure fear.

The CHAIRMAN. Let me turn to Senator Leahy.

Senator LEAHY. Thank you. To begin with, I tend to agree with the point that Senator Hatch has made. Ideally, I would like to see the father and son together in the same venue where they could talk to each other. I think that is what you also would like to see, Ms. Gonzalez, in that, ideally, so there would be no question about it, Ms. Fernandez, and perhaps the father's wife and infant.

Let me ask you this, Ms. Gonzalez. If arrangements were made for the father and the son to meet in a place of true neutrality, say the Spanish embassy or the Swiss embassy or something like that here in the United States or elsewhere, in a neutral area, would that be a help and would that be an advantage to the little boy?

Ms. GONZALEZ. We as a family don't have anything against the little boy to see his father because we didn't have it for him to see his grandmothers. The Cuban government was the one that didn't allow my grandmothers to visit my house, and they won't allow the father to visit my house either.

But all I ask is if that is done, it is for the best interest of the child psychologically. All I am doing this is for this kid, not for anybody else. I want for them to make Elian comfortable and not be afraid. I am a hundred percent sure that he is going to tell me no. If that is the case—

Senator LEAHY. But if we could just back up a bit, and I don't want to cut you off. I want you to go back to what you were saying, but just for a hypothetical let us assume—and I haven't discussed this with the Swiss government or the Spanish government or anybody else. They might say no, but let us assume somewhere where he could be with the same language being spoken and everything else, a sense of a security, but no one from the Cuban government would be there, nobody from the family or anything else. It would be the father and the son. Would that be advantageous?

Ms. GONZALEZ. Would his wife and son be here?

Senator LEAHY. Well, let's take it step by step. Let's take first the father and the son. Would that be an advantage? And then, second, would it be—

Ms. GONZALEZ. We as a family don't have anything against that. All I am saying is to make Elian feel comfortable. The reason I am saying this is because he did not want to go to Sister Jeanne's house that day. And when we told him the grandmothers were coming to visit the house, he said he was not going to go outside the room.

The reason he says this and the reason he didn't want to go, because I have asked him, these are your grandmothers, you need to go, they love you, they are here to see you, it has been a long time that they haven't seen you—he said, I don't want to see them because they are going to want to take me back to Cuba. And the next day, this little boy didn't want to go to school because he was afraid for them to pick him up and take him to Cuba.

I don't have anything against for him to see his father if it is either at my house or wherever they ask him to see him.

Senator LEAHY. I wonder—

Ms. GONZALEZ. But last time this was done with the grandmothers, INS gave restrictions where he had to go upstairs by himself. Because of the fact that I live with this little boy and I see his fear and I know what he feels, I told them, what if he doesn't want to go up by himself? This is a house where he doesn't know anybody. He has been through a lot and, you know, he is afraid.

And they said, well, you cannot go up there with him. And I said, well, fine, but what are you going to do if he says he doesn't want to go up there? So then they allowed me to take the boy upstairs.

Senator LEAHY. Ms. Gonzalez, do you think it creates a problem for the boy when, for example, going over to the residence where he met with his grandmothers—incidentally, when I met with the grandmothers, his maternal grandmother always referred to her daughter by the daughter's name. But when he goes over there, the fact that there are all these demonstrators outside either for or against Castro, either for or against him going back, does that frighten him?

I mean, the grandmothers may come to your house. There are demonstrators all over the streets. If he goes to the nun's residence, there are demonstrators all there. Is that an unfortunate thing as far as this boy is concerned?

Ms. GONZALEZ. Well, it uncomferts me as well and I am older. Imagine him being 6 years old. But this is something that we just don't have control of.

Senator LEAHY. I understand.

Ms. GONZALEZ. As a country of freedom, they could be wherever they want.

Senator LEAHY. I understand that, but I am asking—

Ms. GONZALEZ. But it would be preferred if he would be in a place where he didn't have to have all the cameras and everybody around him. That was really nice because he didn't have to get out of the car where all those people were screaming. He just walked in the car and went straight into the residence.

And I feel that if the father comes and he is given the opportunity to meet there, I feel that Elian won't be—he won't feel uncomfortable because he has already gone to that house and he knew that he went to the house and he was able to go back to his home. So in a way, I feel that, yes, he will be secured if he does go to Sister Jeanne's house again.

Senator LEAHY. The reason I ask that is it is always easier to look at something in hindsight and say why wasn't it done this way, why wasn't it done that way. It is unfortunate that this has become such a terrible political football. And, frankly, I am very, very upset both with those who have demonstrated in our own country, oftentimes for their own political purposes, subpoenaing the little boy and all that, just as much as I condemn Fidel Castro for the staged demonstrations that he has done in Cuba. It seems in both cases that people forget there is a little boy here.

We have members of Congress, we have others who may have perfectly legitimate reasons. They have an absolute right to do what they do, as you say the people who demonstrate have a perfect right in our country to do it. But I cannot help but feel that many of these people have been more interested in their own political agenda than they have in the interests of the little boy on both sides, in both countries. That is what I find unfortunate.

And I only mention that because I think if I had my way about it, I would say let the father, let his new wife, let their child come to a neutral place with the little boy, without demonstrators on either side hollering and screaming outside the gates.

Ms. Fernandez, I was quite impressed with your testimony and I am familiar with your history. You came here when you left Cuba. You used a disguise. You had an unauthentic Spanish passport as your way of getting out. I understand that is the way you

had to do it. Here in the United States, we passed a law in 1996; it is not one I support, but a law that calls for the automatic exclusion of foreign nationals who arrive on our shores without valid travel documents.

Now, if that law had been in place when you arrived, you would have been kicked right out. Would you agree that we have to have something more flexible? I mean, you couldn't just walk in and get a Cuban passport and leave.

Ms. FERNANDEZ. Well, I don't know if I would agree if it had happened to me, you know. I am sure I would have felt hurt. Somehow, I always have the feeling that this situation in my country exists because you here allowed it, or somehow it is convenient for you. I am not accusing your government—

Senator LEAHY. Which situation, Ms. Fernandez?

Ms. FERNANDEZ. I don't know. I think you are too close and you are not helping people there. For instance, Fidel Castro has been functioning, doing things, and then you have to repress. So sometimes I wonder if it is a game, you see.

Senator LEAHY. But it is a game, it is a game.

Ms. FERNANDEZ. That is it.

Senator LEAHY. We agree.

Ms. FERNANDEZ. That is why sometimes to speak is so exhausting.

What I was saying is that you have to be very aware that some crisis is mostly at your door because when Fidel will be out and Castroism will be finished, you will have thousands of families that will want to be reunited. And it is time now to prepare that step for both countries. And as she is saying, this boy has the right to see his father. I don't know if there is any mutual place on Earth toward Cuba and America, you see.

Senator LEAHY. I see.

Ms. FERNANDEZ. I don't think that you will find that. That is another matter.

Senator LEAHY. Ms. Fernandez, be happy that we didn't have the law when you came here that we have now because—

Ms. FERNANDEZ. I am very happy, but let me tell you something. My first harbor was Spain, so if you had had that law, maybe I should have stayed there.

Senator LEAHY. No. We are glad you are here, but I am saying that some of those who voted for that law didn't stop to think that people like you would have been kept out. Usually, when somebody wants to flee a country, they are not able to walk down and say, gee, give me a passport because I want to flee the country. Obviously, they are going to take invalid or—

Ms. FERNANDEZ. Do you think I did that? I asked somebody to—

Senator LEAHY. No, no. I am saying that is exactly right. I mean, you are not going to get out with a valid passport. You are going to have to use something else.

Thank you, Mr. Chairman.

The CHAIRMAN. Just to make it clear, we still have asylum laws that take care of these matters, I mean, my gosh.

I want to turn to Senator Smith, but if I could just ask one other question before I do, Mr. Martinez, you came here as a child?

Mr. MARTINEZ. Yes, sir.

The CHAIRMAN. How old were you?

Mr. MARTINEZ. I was 15.

The CHAIRMAN. You were 15. You did not have a family?

Mr. MARTINEZ. No, I didn't. I didn't have a loving cousin acting like my mother. I mean, I was in a camp and it was an old Army barracks-type camp. And it was wonderful that it was there for me, but it was not exactly a home.

The CHAIRMAN. You have had a lot of experience, very similar experience. In some ways you were older, but still a youth. What would be your suggestion as to how to solve this? You deal with problems everyday now and you have earned the right to deal with them.

Mr. MARTINEZ. Unquestionably, I think that Senator Leahy is heading in the right direction, but I think it would be a profound mistake to suggest that the father could come alone. The only way that the father would be even close to being free—

The CHAIRMAN. I have made it clear that the only way that the father would be free to come and free to speak and free to act would be if he has his whole family with him.

Mr. MARTINEZ. Correct.

The CHAIRMAN. We both said that. But even then, he may have other relatives there that could be persecuted.

Mr. MARTINEZ. Correct. I mean, in fact, the companions on this trip were fearful of speaking about the circumstances under which they left Cuba, the other two survivors, for fear of repercussions to their family in Cuba.

You know, as I stand here and speak to you today, my mother back in Orlando is dying because she has family in Cuba and she wonders about that. There is such a total repressive system of fear that he has been able to sustain for so long that it is just sort of endemic.

So I think a proposed solution, Senator, would be to have the father come. How unnatural that the father wouldn't come to be with his child. Why wouldn't he, why couldn't he? I mean, there are flights between Cuba, Miami, and Havana now, and New York, daily.

The CHAIRMAN. You are saying the only way he would come is if he has his wife and his son?

Mr. MARTINEZ. His wife and his son with him, and then they could have a reunification. You know, we ought to scale it back. You asked me how would I solve it. You scale it back to a family issue, not a political dispute between—

The CHAIRMAN. But I am suggesting what if we had a Federal judge mediate this?

Senator LEAHY. Mr. Martinez, would you say that still in this particular case, for whatever reason, it has been handled a lot differently than if, say, this was a child of Chinese refugees or those from other countries also with repressive governments?

Mr. MARTINEZ. Well, Senator, I really am much more familiar with the Cuban experience. I do know there is repression in China and there is repression in many parts of the world, and I know that whenever this country has been confronted with the opportunity to assist a refugee, as it was in my case—I am ever so grate-

ful to President Kennedy and then President Johnson that reunited my family—that policy of this country has always been on the side of those seeking freedom.

I don't think it is practical or real that we should have some sort of a blanket citizenship for every child in China, but I do think that this child—

Senator LEAHY. How about Haitian refugees?

Mr. MARTINEZ. Well, here is the thing. This child arrived on these shores. Were it not for the fact that his mother died en route—if Elian's mother had survived, we would not be discussing this here today. It would be beyond question that this child would remain here with his mother, hoping that dad would come along at some point later.

The reason that there is such a different reaction between Cuban Americans and other Americans—I see it in my own city of Orlando—people do not understand. As you talk about it, people understand much better and then they tend to be more understanding of the circumstances that causes one to say, well, maybe the child wouldn't be with his father, because for 40 years the Cuban family has been separated in many different ways.

It might be that my own separation lasted 4½ years, but I could tell you countless other Cuban Americans, some who left by way of Spain alone as children that ended up coming here. The parents then left by way of Jamaica. I mean, we have been, you know, people of the world that have found an opportunity to be reunited here.

So nothing could be more natural to the Cuban experience than for the child to remain here and at the next opportunity that Juan Miguel had, he would have been here reunited with him. This is what happened to other members of her family who came by raft a few months ago.

So the unusual part of this is that somehow or another, for whatever political need the dictator had at that given point in time, having just suffered the embarrassment of a failed Iberian summit where some of his closest international allies like the President of Mexico gave him a tongue-lashing about the need for change in Cuba—so it was time then to change the subject. What better way to change the subject than to energize the country now with a crusade to return this child to Cuba within 48 hours, it was said at the time, and then later—

The CHAIRMAN. Let me just say it is different because there should have been an asylum hearing and there was not. The Attorney General jumped into this way before she should have, in my opinion, and I think the opinion of almost everybody else that knows anything about immigration law.

Mr. MARTINEZ. Right.

The CHAIRMAN. Let me turn to Senator Smith.

Senator SMITH. Well, thank you very much, Mr. Chairman. Let me just also add a footnote to what you just said. Not only did she jump into it prematurely, she did not seek to get all of the facts. As you have said very emotionally and very coherently this morning, Ms. Gonzalez, if the INS had taken the time, and others in the Government from the Attorney General's office had taken the time to speak to Elian or to speak to you and other members of the fam-

ily in detail about what was Juan Miguel's true motives, this could have been a lot different. But, oh no, that didn't happen.

Ms. GONZALEZ. That day in the hospital, INS gave parole to my Dad over Elian Gonzalez, and custody. We were supposed to show up December 23 to file all the papers and everything that was going to be given to this little boy in this country.

I am sorry if I say something here, but this comes from my heart. After Fidel Castro stood up on TV and said he has to be returned in 72 hours, everything changed. They took the parole, they took everything. They took the right for my dad to represent this boy in every sort of way. Now, I was thinking, my God, we were there for him that night in the hospital, giving him that support he needed. What if this little boy gets sick and we need to take him to the hospital and my father has no rights over him? What is going to happen to him because his father cannot come here?

A lot of things ran through my mind because in this country, to my understanding, if you are a minor and you are taken to the hospital and your dad and your mom are not with you, then they can't see you. And I was very worried about all of this and then INS saying that he has no legal rights here. They never heard our point of view. They never gave the opportunity of the psychologists to present their stuff psychologically of Elian, nothing.

Senator SMITH. And I think the point that needs to be made here is that as far as our own Government's involvement here, you talk about politics and getting a little boy involved in politics. This was bungled from day one by the INS and by the Attorney General by going to Cuba to talk to Juan Miguel, which was the wrong place. They should have insisted that he come here.

And with all due respect to what Senator Leahy said about those of us who got involved in this for political purposes, maybe I get 15 votes of Cuban Americans who live in New Hampshire. But I would be proud to have all the votes of the Cuban American community because I am really impressed with the community and the way they have stuck together in very, very difficult situations.

And I did something, Mr. Chairman, God forbid, that some in the administration wouldn't take the time to do. I went to Miami and I sat down for 2 hours and talked privately with your family, and it was a delightful experience, and with Elian. And I will never forget it, to have Elian Gonzalez look me in the eye. There wasn't any pressure, no pressure whatsoever. I was a total stranger and a pretty big guy, so I guess I could have been intimidating. But he looked me in the eye and he said, ayudame, por favor, Senor Smith, please help me. And nobody was prepping Elian to say that, Ms. Reno, no one.

Let's get the cards out on the table here. And, Mr. Martinez, you said it right on the money. It is the number one issue; you hit it right on the head. If Elian's mother had survived, we would not be here. There are thousands of families, unfortunately, who are separated from their loved ones. You were separated from loved ones in Cuba, Ms. Fernandez. There are so many people who are separated from their loved ones. That is the tragedy of this whole thing.

Why are we picking on Elian Gonzalez and saying his mother's dying wish—and I spoke also to the survivors of that boat, and the stories that were coming out of this Senate from some of my col-

leagues about kidnapping and all this. All you had to do was talk to the people who were involved and you would know that that was not true. This is the tragedy that has been exploited and it is not Elian's fault. His mother died, so he is being punished.

The other two survivors, God bless them, were heroes, in my view, because they did try their best to keep Elian alive as his mother's last wish. They have, under the Cuban Adjustment Act, the right to be here for 12 months and a day and to make their case. Elian doesn't have that right, according to Ms. Reno. Well, that is wrong, and what is wrong is wrong. We get involved in these issues not because of politics, but because what is right—that is why we get involved, because it is the right thing to do, and that is why you are here.

And the tragedy, Mr. Chairman, is this very compelling testimony from all of the witnesses here today should have been heard 2 months ago. This should have been heard 2 months ago. These people have tried to make this case and they have been criticized in the press. They have been exploited by those who—for example, the grandmothers coming here, as you correctly said, Ms. Gonzalez—why didn't the father come here?

It is totally unbelievable that we have allowed this to come down to this. And this little boy, who is afraid that he is going to be yanked back to Cuba—how would you like to be a 6-year-old boy and in the course of 3 months see your mother die before your eyes, worry everyday that somebody is going to snatch you up and take you back to a country that you want to go back to? And I asked him, and I think he understands. I think he understood from his mother why he was on that boat. That is my view, and you know him better than I do, but I think he fully understood and I think he wanted to go. And I think he knows what happened and why it happened, and he does not want to go back.

And I said to him in my private conversation, every so brief, would you like to see your father? And do you know what he said to me? Yes, I would, but I want my father to come here to see me; I don't want to go to Cuba because I know what will happen. So this is the tragedy, but I think it is shocking that not one person from the U.S. Government as far as I know to this day has spoken to Elian directly.

Who can say that a little boy 6 years old doesn't have a voice? Anybody out there that has got a 6-year-old child, or even a 7-year-old child for that matter, thinks they don't have a voice? Of course, they have a voice. And in American law—and we all know this—they do have a voice. They are heard in sexual harassment cases, they are heard in child abuse cases, they are heard in divorce cases every single day in the courts in this country. And Elian should be heard.

Ms. GONZALEZ. Excuse me, Senator Smith. Everyday, every night, I show this little kid how to pray, and every night I hear how he asks God to please return his mother so he could stay here. Nobody has ever looked at that. Nobody has had that feeling that even though I am standing here and saying it, nobody could possibly know how I feel every time I have to go to sleep.

Members of my family who go to my house and deal with this little boy do know what he wants, and do know and do feel and

they suffer the same as I do. But in the long run, we as grown-ups overcome it. But he goes to sleep every night with fear and the sense of not knowing what is his status. He doesn't sleep with fear because he is very secure that he is with me.

And it is incredible how whenever anybody sees me and him, how they change their mind. He recently just met me, and every night when I wake up to go to the bathroom, even though he is in his bed, I don't know how he hears me. He just wakes up and stands outside the bathroom door to wait until I come out. And I tell him, go to sleep, why are you here? I am not going anywhere. And he tells me, oh, I want to make sure that you are always with me.

After he wakes up, there is no way that he goes back to his bed to sleep. He has to sleep in my bed. And when he wakes up, because he is the first one to wake up in the house, he tells me every morning, in these words because he has learned it, I love you very mucho, my prima. And he is always telling me how much he loves me. And every time I bathe him, everyday, there is no day he doesn't say this. When I am drying him up, he just hugs me and tells me, I love you, don't go away, don't go away. And I tell him, you know, I am never going to leave from you. You are OK, everything is going to be fine.

Sometimes, I feel that psychologically, even though he is very good in the house—and he adapted to my house so good because he never refers to my house as my cousin's house, my uncle's house. He always refers to the house as "my house." And it is incredible how he practically just met us and he is so comfortable in this home, and he has never woken up in the middle of the night asking for his father. Sometimes, it scares to me.

And I always talk to him about his father. When he doesn't want to talk to him on the phone and he tells me, if it is from Cuba, don't get the phone, don't get the phone, I tell him, that is your father, he loves you, you have to talk to him. And on one occasion, his father pressured him so much of him going back to Cuba, he got very hyper and he told his father, if you do not know, my mother drowned, and so did Munero, and I am not going to go back over there.

And to this point, no one has asked how Elian feels, what Elian wants, psychologically what Elian said about the trip, psychologically how he is feeling, where he wants to stay, where he wants to live, with who he wants to live. Everything has been political. Everything has been Fidel trying to win his trophy, taking people out of work because those people don't want to be there screaming, because I have people that have come from Cuba and they tell me how they ask them to leave their job and to go outside and scream and how the kids go in the street because it is a field trip.

Senator LEAHY. Because there is a what?

Ms. GONZALEZ. A field trip, to them. Elian is like a zero; he has always been left out. And to my understanding, the case is Elian Gonzalez, not Cuba versus the laws of this country or anything else. I feel that he has the opportunity to someday state to whoever he needs to state, who doesn't believe in this matter and who doesn't believe that he should stay in this country—for them to

allow him to have the opportunity to say why he wants to stay here. That is all we ask for.

It is very hard if they tell you you have to go somewhere else where you don't want to because you might be afraid because you might have seen a lot of things in that country that nobody has allowed you to have the opportunity to say or psychologically hear his psychologists. It is very good to speak outside of the circle and outside of the situation where you are not living it and you don't practically even know what is going on.

Mr. MARTINEZ. Senator, may I make two observations, please?

The CHAIRMAN. Yes.

Mr. MARTINEZ. On the one hand, you know, in hearing Ms. Gonzalez' very heartfelt testimony, having been a lawyer for more than 25 years, I am reminded that this is the kind of testimony that really belongs in a family court. This is how this process has been so manipulated and perverse that, in fact, the Senate of the United States is hearing the testimony that normally belongs in a family court about a disputed custody situation where the best interest of the child is what rules.

Senator Leahy, if I might comment on your comments at the opening, you mentioned that the Cold War has ended. And so often I hear that as a commentary on how this is not an appropriate issue for debate today. The fact of the matter, Senator, is that the Cold War has ended, but the Cold War has not ended in the Florida Straits. The Berlin Wall came down, but that wall of water between the United States and Cuba remains even today.

And the fact is that as we look to this issue, it cannot be viewed in the context of a post-Cold War world because Mr. Castro remains solidly stuck in the Cold War. You know, he is the only world leader who ever not only threatened but encouraged and urged that nuclear missiles be launched against this country. This is something that seems to be forgotten as we just sort of want to rewrite history so that we can just get along.

Why can't we just get along? That is a very popular notion, and whether it is interpersonal relations or whether it is among nations, the fact of the matter is that the leader of Cuba today in 1962—as my parents were there and I was here, we were eyeball to eyeball, as Secretary Rusk said at the time. Missile bases were no more than 6 miles from my home. It surely would have been destroyed.

Fidel Castro was urging Premier Khrushchev to launch the missiles against the United States. That sort of mind set has not changed. Mr. Castro over all of that time and until today—and I am sure as you met with him, you would have found he has not reformed, he has not changed. The world has, but he has not. His system is the same, his mind set is the same. His desire for world conquest of communism continues.

So the Cold War has not ended between Mr. Castro and the rest of the free world. And so what happens now is that there are people still climbing their Berlin Wall. There are people daily attempting to cross the Florida Straits illegally for the opportunity to breathe free. And I believe frankly that it is, in a sense, a discriminatory thing, as a somewhat of an unfair thing that no one would have ever suggested to a Berliner that they should toss the child

back over the wall if the mother was shot as she attempted to cross it. That never entered our discussions as a country, as a people that have stood for freedom, during the time of the Cold War.

The Cold War with Mr. Castro has not ended; he has not allowed it to end. And until that happens, we cannot deal with these issues in the sterile environment of just the father and the son ought to be together.

Senator LEAHY. Insofar as he addressed that to me, Mr. Chairman, I should have some response.

Mr. MARTINEZ, I don't think you will find anybody in this room who would disagree with the fact that Fidel Castro has become an anachronistic leader. I might use the term "world leader" differently than you. It is still a small, impoverished island nation. To what extent that is a world leader, I don't know.

I would add the adjective "enslaved."

Senator LEAHY. Well, I tend to agree with Ms. Fernandez, though, that this whole operation has become almost like a game. I have to think that many times we in the United States give him the excuse. I said to him at one time our embargo allows him an excuse to continue a failed economic system because he doesn't blame the failures of his own economic system, which is a badly flawed system—and both you and I would agree—he blames it on us.

And at a time when we deal with the Chinese and others, trying to open up our arms and our markets and all, and we act almost anachronistically toward this little country, I wonder how long he would last if we just said, fine, let's open everything open up. You would find so many people either leaving that country or you would find a lot of people in America and others going down and investing like mad in the country.

Mr. MARTINEZ. I would say he would last every bit as long as the repressive machinery that he has in place would continue to oppress the people that they subjugate today. I don't think that it is an economic problem. Cuba's is an economic basket case, and has been for many years. The only reason that Mr. Castro remains in power is through brutal repression of people; it is through fear and intimidation. And that brutal machinery that gets down to the neighborhood block of repression is what maintains him in power. And I would say that the embargo would only be another victory for him which would in no way change the outcome of the plight of the Cuban people.

The CHAIRMAN. Well, we are going to turn to Senator Schumer, but let me just say this. I have had a little bit of experience here, and frankly you are right. The way to resolve this is in a domestic relations court with the father, his current wife and son there, and the family here in this country, and let people who really have expertise do this.

But I have to say that I remember those years when many on the left in this country treated Fidel Castro like an agrarian reformer. And I remember a man named Irving Brown. Irving Brown was the international vice president of the AFL-CIO. He was the number one anti-communist in the world, in my opinion, one of the greatest men I have ever met, and he was the inspiration behind

the National Endowment for Democracy which I helped to bring about. I was on its board of directors, its initial board of directors.

And I remember how hard I had to fight on that board to get the grant so Amando Vayaderas could write his book, *Against All Hope*. Now, here was a poet who was certainly liberal, who had spent, I think, 21 years in Castro's prison who wrote poetry with his own blood. And when people read that book, *Against All Hope*—I mean, it came down to one vote and we finally gave the grant so that that book could be written—at that point there was a tremendous change of attitude toward your father, and I think with good reason. I read that book twice, and I recommend it to everybody even though it is probably out of print now. But it was a great book.

You are aware of him, aren't you, Ms. Fernandez—Amando Vayaderas?

Ms. FERNANDEZ. Yes.

The Chairman. I am going to turn to Senator Schumer for just a couple of comments, and then I am going to defer to Senator Mack, who is a leader in the Senate, and we will finish up this panel.

**STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR  
FROM THE STATE OF NEW YORK**

Senator SCHUMER. Thank you, Mr. Chairman. I don't have questions of the panel. I couldn't stay for the testimony, but I have read some and will be following the rest of it. I just wanted to make a brief statement about this issue, which I have really not commented on before.

I guess I received some insight into this issue just a few weeks ago when I sat down with a bunch of Cuban Americans who were from all over the country. It was just happenstance, because frankly before that I could not really understand the issue as fully as I did after. And they said to me very simply and explained to me—one of them had been a man who had been 2 years in prison as a result of being part of the Bay of Pigs, and he said, Senator, you are arguing that we should be rational and we should stop being so angry and we should figure out a more rational way to go, but imagine you saying that about Hitler.

And while I am not sure the analogy is exact, it at least helps me understand because I always try to be in the other person's moccasins a little bit. And it helped me understand the passion and the vehemence that people here feel, and I felt good about that because I don't like to look at large groups of people and say they are behaving irrationally. They may have different values and different views than I do, but at least I try to understand where they are coming from. And it gave me greater understanding.

Having said that and having followed this case to some significant extent, it seems to me the basic parameter that was enunciated by Senator Leahy still stands, but should have the opportunity to be rebutted, and that is this, that the ultimate family value is a child being raised by his parents. That is one of the highest paradigms we all place in America, whatever place we came from.

I would say it seems to me—and I will be following the case because we are not here influencing the case—that there is a very,

very strong burden of proof on those who are on the other side because children are not politicians; they are not even political actors. They are, above all, part of their family. I have an 11-year-old—10; she will be 11 next month, so she is pushing it. I say 11 to make her happy. You know, what would mean most to her is being with her loving family, no matter where she lived, despite oppression, despite everything that goes on around her.

And so I still think that ought to be our model, but I did want to express to the group here—and that doesn't always follow, but it almost always follows. There is a very strong burden of proof for removing a child from her or his natural parents. But having said that, I understand the passion that motivates people, and understand where people are coming from on this issue, and would like to say to all of you that I appreciate—I may not agree with you, but I appreciate where you are coming from and the fight that you are waging. I would just ask you not to forget there are lots of values in the world, and freedom is one of the highest and family is one of the highest, and it is awfully hard when the two conflict to make a determination. For a child, at least I would give the benefit to family.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

We will turn to Senator Mack. Since he is from Florida and a leader in the Senate, we will defer to him to ask any questions he cares to.

Senator MACK. Thank you, Mr. Chairman, and I want to first of all begin by expressing my appreciation to you for holding this hearing and giving people an opportunity to express their views, which is exactly what I have been trying to bring about almost since this case began. And I would stress "almost" because I said nothing with respect to what was going to happen with Elian when the INS made its first statement and decision that this was an issue about custody.

I have very strong feelings about what the conclusion should be, but I felt that the issue should be determined by what is in the boy's best interest. And the only way to bring that about, given what was happening in our country, was that after there was a rally and, as Mr. Gonzalez mentioned earlier, a demand on the part of Fidel Castro that within 72 hours Elian be returned, the INS and the Justice Department said, oh, no, no, this is not a custody hearing anymore, this is about an INS law.

And so people talk about politics. It seemed to me at that point that political decisions were being made and what was in Elian's best interest was no longer the number one concern, but it was a political decision about the relationship between two countries as opposed to a little boy's future. And it was at that point that I suggested that the way to solve this was to provide citizenship for the little boy.

And, mind you, citizenship does not guarantee that Elian stays here immediately, forever. It merely would move the case away from the INS for the decision to be made by a family court which would consider what is in the boy's best interest. I thought that was pretty reasonable. I am frankly surprised on both sides of the aisle that my colleagues for some reason believe that they really

know what is in the boy's best interest. I mean, I find that really kind of surprising, given the little bit of information that they know and picking and choosing what information they want to believe. The only way that I think the truth is going to come out is if, in fact, there is a true discussion about what is in the boy's best interest.

Sometimes, I realize that there is bait thrown out on the table to get us to respond to, but I have to respond to the innuendo of "driven by politics." I am very proud to say that in my 18 years in the Congress, both in the House and the Senate, I have been committed to those who struggle for freedom and, while it has not been particularly popular in some parts of my State, did exactly the same thing—I wish Mr. Rangel were here to hear this—did exactly the same thing with respect to Haitian immigrants, because to me there is no difference whether an individual is Chinese or Haitian or Cuban.

It is a natural part of who we are as humans to seek freedom, and so that is what motivated me to continue the effort in helping those who are struggling for freedom, and do it in a way in which the little boy's best interest would be taken into consideration.

The question that I would ask the panel, though, because I think it fits in with the discussion this morning, because there does seem to be a sense of parity or similarity that somehow or another if Elian goes back to Cuba, he will have the opportunity to be raised the same way in Cuba, that all mothers and fathers have the same rights and all of them have the same desires in Cuba as they do in the United States—and the reality is, as individuals, they do, but I gather from what you have said they do not have those same rights as we in this country have with respect to our rights as a mother or father.

I have heard there is such a thing called a child's code or something that has to do with the rights of the parents. Would each of you try to elaborate a little bit for me about who really has the right with respect to raising a child in Cuba?

Ms. FERNANDEZ. The state raises the child. The state decides what he will eat, what he will wear, what school he will go to. And as I mentioned in my speech, the state decides when he doesn't have any right anymore to drink milk. It is when he will get to be 7, no milk. When he will get to be in the secondary studies, between 10 and 11 years, he will be sent to an internal school and he will be allowed to visit the parents 3 days a month. That school is decided by the state, too, the career he will study. Until last year, when the Pope went to Cuba, religion was forbidden or was a reason not to give some university careers to those religious people. So the state decides everything.

Senator MACK. Does anybody else want to comment on that?

Mr. FORMELL (interpreted from Spanish). It is important to say that in this stage of the dictatorship in Cuba, the parents know without even thinking about it that they have no rights at all, not knowing the way you would know if it got taken away from you tomorrow. It is just the way life is.

But what has been evident to me since being in this country is that people here don't understand that a country functions in this way. And the truth is that the child, Elian, symbolizes the love and

the freedom of Cuba, and the love of a family who received him with all their heart. And Fidel Castro knows this very, very well because his dictatorship is based on symbols that are known to the Cuban people.

And he said in one of his press conferences in Cuba that Elian is the Baby Jesus, so that now I ask this country what does a dictator like Fidel Castro want with the Baby Jesus? He wants to eat him, he wants to kill him. And it is a situation that is something more than what we see externally, and this is the moment for this country and for the entire world to open their hearts to understand the reality of Cuba and the mission of all Cubans of my age, of my generation and Elian's generation, and it is to get rid of hatred, to end hatred that Fidel Castro promotes within his system and out of his system.

This country has a great opportunity to show that the greatest force there is in love and in what is internal, and to get rid of the idea of distortion that Fidel always does in his manifestations about what the child symbolizes and what Cuba symbolizes. In this moment I would like—if my testimony could have power and force, I would give freedom and I would give citizenship to this child. I would give up my music, I would give up what I created, and if I had to be the one to go back to Cuba, I would go back, but please don't send Baby Jesus back to Cuba.

Senator MACK. Mel, before you respond, I don't know how to describe what is going on in the country. They either do not want to hear or have just chosen not to hear what life is really like in Cuba. And so I want to just take this one step further and take it beyond kind of anecdotal comments to just raising this point and asking you whether this is accurate or not.

It is my understanding that there is a Code of the Child. Is that part of Cuban law now?

Mr. MARTINEZ. It is part of the Cuban constitution.

Senator MACK. Part of the Cuban constitution.

Mr. MARTINEZ. It is a whole section of the constitution devoted to how the state has an obligation for the socialist formation of the child; i.e., a child has no choice but to be socialist. And it is the state's obligation, over and above the parents' wishes about that issue, to ensure that the child is raised as a good soldier and as a good socialist.

Ms. FERNANDEZ. Through an organization called the Pioneers Organization. So they have this scarf, blue and white. Everybody is obligated to wear that from when they are 3 years old, maybe.

And then I forgot to say something, too. The state will decide when you are to become a guerrilla fighter, you know. The Cubans have the experience of being in Angola, in El Salvador, in Nicaragua, in Afghanistan, in Iraq, in Iran. I can name the rest of the world, and we have a lot of disappeared people.

Senator MACK. There is part of that Code, as I understand it, that says that society and the state watch to ascertain that all persons who come in contact with the child constitute an example for the development of his communist personality.

Mr. MARTINEZ. That is in the Cuban constitution.

Senator MACK. So it is part of the constitution. What you all are saying to us here today is it is carried out probably from the age

of 3 on. At age 7, another thing happens, school. This little boy would eventually end up at a school chosen by the state, in which he would then have 3 days a month in which to visit the—

Ms. FERNANDEZ. That happens when they are 10 to 11, secondary studies.

Mr. MARTINEZ. They do farm labor half the day and half the day they go to school, but they are in a labor farm, essentially a labor camp, where they are living under difficult circumstances. Sometimes, they are not supervised. Boys and girls run, as boys of that age might, with very little supervision.

Ms. GONZALEZ. And if you don't attend there, you could not go to school anymore.

Mr. MARTINEZ. Senator Mack, if I could, I thought Senator Schumer's analogy with Hitler and Jewish people was a very good one because I often wonder—people think of Cuban Americans as a little crazy about the passion that we feel about this issue, and it is a perfect analogy to the very passion that any oppressed people have felt toward their oppressor.

And I was so glad that he brought up that issue about the parallel between the Jewish people and their, to some, not understandable passion about Hitler. But I would also point out that as he went on in his comments, I was disappointed that he didn't see the importance of what we are doing here for Elian because in 1938 or 1939, there was a lady by the name of Penny Powers who, in Britain, began something called the Kinder Transport, which was taking children out of Germany and into Britain to escape Naziism.

It was that same lady, Penny Powers, who in 1959 found herself in Cuba and in 1961 was one of the originators of Operation Pedro Pan and who saw me obtain freedom through that same process. And so there is a continuity here of those same types of issues where I can't imagine Senator Schumer would have ever wanted a child in Britain to have been sent back to Nazi Germany to be with his father or to be with his mother or to be with any relative. There are times when family separation is desirable over unification for the sake of other issues that are more important.

Senator MACK. A last question, since I am getting a sense that I have gone on too long here. In your comments, Ms. Gonzalez, you had indicated that the mother said to one of the two survivors, get Elian to shore, something about getting his foot onto land.

Ms. GONZALEZ. Yes.

Senator MACK. Can you explain? I mean, even though I know what that is, I think it is important for people to understand what the significance of that comment was.

Ms. GONZALEZ. Yes. Almost at the end, she was only left with Elian and the other two survivors and an older woman. She told the male survivor, which was the last male left, I have no more strength, I can't hold on anymore, you are the only male left, please allow him to make it to shore, please let him touch land.

The reason she stated this was because if they don't touch land, they would have all been returned back to Cuba in regard to the law of this country. If you don't touch land, they catch you in the middle of the sea; they will return you back to Cuba. And he said that he promised that he will make it to land.

Senator MACK. So getting on land meant a right to stay?

Ms. GONZALEZ. A right to stay here. He wouldn't be returned to Cuba. To my understanding, there is a law that if you have fear to be taken somewhere of persecution, they can't take you, right? And I feel that he has this fear and that he should have his asylum to be heard, as every other Cuban that has come to this country. If they ask for political asylum, they hear them. To this point, they haven't allowed Elian to present anything. They don't hear nothing from him. He has no rights in this country.

And as we all know, every other Cuban that sails and makes it here, they have the rights for parole, they have the rights for an asylum, they have all types of rights. And they gave us that parole and then they denied it. How can you contradict yourself like that?

Senator MACK. Thank you.

The CHAIRMAN. I want to thank all of you for being here today, especially you, Ms. Fernandez, for coming all the way from Spain. It is wonderful to see you again, and it has been a while since I have seen you, but it is good to see you again.

Mr. Formell, we are honored to have you and I am looking forward to—now, I think you need to be fair here. You need to get a CD to our ranking member as well. Will you do that? It just isn't right.

Senator LEAHY. What he is afraid of, Mr. Formell, is that if you don't, I am going to be camped out in his office listening to your CD and he won't be able to get rid of me.

The CHAIRMAN. I am not sure I could tolerate that today, the way things are going. [Laughter.]

So if you will do that, you could send it to me and I will hand-deliver it to him.

Mel Martinez, you have been a particularly persuasive advocate here today. I want to compliment you for, I think, the reasoned way that you have conducted yourself. I have a lot of respect for you.

Mr. MARTINEZ. Thank you, sir.

The CHAIRMAN. I just want you to know that having come through what you have come through in life is really amazing, and to be where you are. So we are very proud to have you here.

Mr. MARTINEZ. Thank you.

The CHAIRMAN. And you, Ms. Gonzalez, I just have such deep respect and great feelings for you. We appreciated your, I think, very moving testimony here today, and you have done your nephew really proud as far as I am concerned. And I think you have done your cousin proud who is still in Cuba with his wife and son. You are a very good person.

Ms. GONZALEZ. Thank you.

The CHAIRMAN. And I just want you to know that meeting you again has meant a great deal to me and I think everybody on this committee. So we appreciate you being here.

I would like to just come down and shake hands with all of you before we call up our next panel, if that is all right. Is that OK? Well, thank you all for being here.

Ms. GONZALEZ. Thank you.

[Pause.]

The CHAIRMAN. We have received a written statement of Sister Jeanne O'Laughlin which we will insert in the record at this point.

[The prepared statement of Sister Jeanne O'Laughlin follows:]

PREPARED STATEMENT OF SISTER JEANNE O'LAUGHLIN

On Tuesday, January 25, at the request of INS Commissioner Doris Meissner, I agreed to host a meeting at my home between Elian Gonzalez, his Miami relatives and Elian's two grandmothers. This was done to ensure a safe and secure environment for both families.

Prior to the meeting, my view on Elian's case was simple: I believed the boy should be returned to his father. Somewhat naively I felt this was a straightforward custody issue, and that the boy should be returned to his surviving parent. My position changed, however, after absorbing the events that unfolded at my home and witnessing the fear that filled the grandmothers and all involved.

I sat with INS personnel in my kitchen just prior to the scheduled meeting on Wednesday, January 26. Frantic phone calls between INS and Cuban officials sought to solve perceived problems. Any of these issues could have caused the meeting to be canceled. Cuban officials complained about the lack of sufficient security. They demanded to see plans and pictures of my home, repeatedly demanded that the boy's Miami relatives avoid any contact with the grandmothers. The INS diligently sought to answer every demand, while it appeared that the Cuban officials were doing all they could to avoid having the meeting take place.

We were told that any outside communication was prohibited, to allow the grandmothers uninterrupted time to visit Elian. After the grandmothers arrived, Joan Campbell of the National Council of Churches asked them if they had any phones. They said no. Shortly thereafter, while the grandmothers were visiting with Elian, a phone rang in their room. It was a call from Cuba. Major Robbins of the Miami Beach Police Department entered the room and asked politely for the phone.

After their meeting was completed, the grandmothers spoke upstairs privately with Joan Campbell and Odel Marichal, a member of the Cuban National Assembly and Cuban National Council of Churches. The grandmothers' appearance changed dramatically after the meeting. Just after visiting the boy, they had been brighter and happier. Something apparently was said then by Mr. Marichal, because they left trembling and very frightened.

It was clear from my observations that the Cuban government was exerting control over Elian's grandmothers and the National Council of Churches. Bob Edgar, NCC president, confirmed this to me in a statement that night. He told me that the National Council was no longer in charge, that instead he believed Castro was calling the shots. He told me then that he intended to withdraw the Council from the situation, formally letting the Cuban Interest Section take control. The next day, he did just that.

Most disturbing to me was the Cuban official's insistence that family members not be permitted to see each other. The grandmothers, I believe, were under strict instruction not to see or speak to anyone other than Elian. I found it particularly poignant that Doris, the sister of Raquel (the maternal grandmother), asked if she could convey condolences to Raquel for the loss of her daughter. She at least wanted a chance to embrace her. The answer to both requests was cold rejection. This seemed unnatural to me. It reinforced by belief that the grandmothers could not act under their own free will.

I am convinced now that the situation was controlled by Cuban officials. It seems apparent that if the Cuban government uses these type of pressure tactics, exerting complete influence over Elian's grandmothers, that the boy's father is also acting under the Cuban government's strict instructions. His true feelings for the future of his child cannot be freely expressed. He should be permitted to come to the United States, along with his parents, his infant child, and his common-law wife, so he can participate in the judicial process. He needs to be permitted to speak free of fear from retribution and harm to his family.

My concern and involvement in this case stem from one thing: my concern for Elian's best interest. After the meeting I noticed how he reacted with joy when he was reunited with Marisleysis, his cousin. I witnessed a strong bond between Elian and Marisleysis. He clung to her as a child does to his mother. I think of how the boy has lost his mother to the seas, and how he might face a second traumatic loss in three months if he is sent back right away. I believe the courts must take this into any future plans for Elian.

Other factors have contributed to my decision to support judicial intervention:

- I was told of evidence of spousal abuse by Juan Miguel Gonzalez, Elian's father.
- I was told that one of the grandmothers wished to defect to the United States.
- I was told that Juan Miguel was aware that Elian was coming to the United States prior to his departure.

I would like to emphasize that I didn't learn any of these factors from the grandmothers. Rather, I heard these things from independent sources, including INS officials, American family members, and other persons present on the day of the meeting. At this time I am even more convinced that only a court can sort out the truths surrounding this case.

There are many unknowns regarding his environment in Cuba. Pressures and expectations placed upon his return must be weighed against his potential life in the United States. All of that made me seriously question the decision to return this child without a court's assistance.

I believe that a family court is the best place to evaluate both environments for Elian before making an irreversible decision to return him to Cuba. At a minimum, I hope we can hold an asylum hearing to help us evaluate the evidence and determine what harm, psychological and otherwise, might occur to Elian if he is returned to Cuba. I ask this body to provide Elian with an opportunity to be heard.

We must find a process to assure that the truth surrounding this case be fully examined. We must bring the justice he deserves while reverencing the last wish of his dying mother.

The CHAIRMAN. We have three witnesses on our second panel this morning, if I could have order. Our first witness is Mr. Walter Benda, of Virginia, who will discuss matters regarding international custody with us.

Second, we have Mr. Manuel Gonzalez, of Florida, who is one of Elian's great uncles. Mr. Gonzalez, I appreciate the difficulties involved in your being here today and we greatly welcome you.

Finally, we have Dr. Kilari Anand Paul. Dr. Paul, like others, traveled to Cuba to reunite Elian with his father, but his experiences there dramatically changed his view, and he will share some of these experiences with us today.

I want to thank you all for being here. Mr. Benda, we will begin with you, and then we will go to Mr. Gonzalez, and then we will go to Dr. Paul. Now, I am running out of time. That took a lot longer than I thought it would, so if you can sum up your remarks, we will put all formal statements into the record. If you can do it in 5 minutes, I would appreciate it, but we will certainly give you a little leeway.

**PANEL CONSISTING OF WALTER BENDA, CHILDREN'S RIGHTS COUNCIL, MAX MEADOWS, VA; MANUEL GONZALEZ, MIAMI, FL; AND K.A. PAUL, PRESIDENT, GLOBAL PEACE INITIATIVE, HOUSTON, TX**

#### **STATEMENT OF WALTER BENDA**

Mr. BENDA. My name is Walter Benda. I am cofounder of the Japan Chapter of the Children's Rights Council, a non-profit child advocacy organization with chapters in 32 States, Washington, DC, and Japan. I really appreciate this opportunity to testify before the Senate Judiciary Committee today.

I want to start out first by making it perfectly clear I have no particular interest in the relations or lack of relations of the United States and Cuba. These are two governments that have to resolve their political differences one way or another. I am here today to tell you how the case of Elian Gonzalez affects me personally and how keeping this young child here could seriously hurt thousands of American children and families like mine.

I am the parent of two beautiful, intelligent, lovely daughters, Mari and Ema, who were born in the United States and spent their early here in the United States. Almost five years ago, my wife ab-

ducted our two daughters in Japan, where we were temporarily residing. My daughter, Mari, was 6½ years old, Ema was almost 5 years old at the time of the abduction, which is about the same age as Elian when he was abducted without the prior knowledge of his father.

Since that time, my family, including Mari's and Ema's grandparents and their uncle, their aunt, their cousins and I, have been denied personal relations and direct contact with my daughters—no phone contact, no written contact, no personal contact, nothing. I have exhausted every possible channel in the Japanese legal system, all the way up to the Japanese supreme court. I was up against a very aggressive Japanese attorney retained by my ex-wife's father, who is a high corporate official in Toshiba and retired army general from the Japanese Self-Defense Forces, who has connections in high places in Japan.

In the case of Elian Gonzalez, there are influential groups in the United States who are at work to influence the United States Government to keep the child away from his natural parent, ignoring the universal bond of father and son and the child's right to be with his father.

My daughters have been illegally detained in Japan just like Elian is being wrongfully detained in the United States. In the process, my daughters have been manipulated, isolated and alienated from their father and their U.S. relatives, just as I fear is happening with Elian's father and relatives in Cuba.

There is no way to express how it feels, the heartbreak that happens when your children, the children you love more than anything in the world, children who are literally a part of you, are ripped away from you. According to legal and psychological experts, child abduction is child abuse. It is psychological abuse not just for the children, but also the family members who are victims of this.

I have been fighting for almost 5 years to get my daughters back, or at least to be able to have some connection to their lives. I can understand why Elian's father has not come to the United States to try to get his son. I, too, avoided subjecting myself to the Japanese legal system because I felt I could not get a fair hearing in a foreign country, and I was right. After years of jumping through legal hoops in Japan, I still don't have my children. I don't even have a minimum level of access to them. Precious time has passed, and now I fear my little girls might not even remember who I am.

We hear a lot in this country about family values. People here and all over the world have worked hard to pass international standards to preserve the sanctity of the family worldwide. The United States joined these agreements precisely because they help American citizens. It would endanger all of our children if the United States openly disregards these international agreements with the whole world watching.

Not sending Elian back to his father would set back the clock on making family values a priority worldwide. According to State Department figures, there are at least 1,100 American children who have been abducted. Their families in the United States might never see them again if the U.S. Government does not enforce the INS ruling to return Elian to his father. The unofficial estimates are much, much higher. The Children's Rights Council estimates

that each year there are more than 10,000 American children illegally taken or retained overseas by a parent.

The State Department has stated that its effectiveness in dealing with children's issues depends on two fundamental concepts. The first concept is respecting the parent-child relationship, and the second one is respecting the notion that a child should live in the country of his or her habitual residence.

My parents are getting older. We fear they may never get to see their grandchildren again. Our family has been torn apart. For all American families enduring similar situations who continue to fight for their children, guided by the laws that exist to keep families together, it is absolutely imperative that our country abide by the rules and send Elian back to his family in Cuba.

If he is returned to Cuba, Elian will not be living with Fidel Castro, he will be living with his family. Many psychiatric reports have suggested Elian is suffering trauma from the loss of his mother and father, a trauma that may become permanent and lead to a personality disorder or other serious ailment after 4 months.

I am encouraged by all the energy that is being focused on Elian. I only hope that this energy will also be applied to the thousands of American children in the same situation as Elian being held wrongfully overseas and isolated from their American families.

One final point I would like to note is the fact that an issue like this cuts both ways. We need to consider the impact of this case on very similar scenarios affecting U.S. children. For example, what happens if there is an international parental abduction by a U.S. father or a U.S. mother which results in some kind of accident in which the United States abducting parent dies and the U.S. citizen child ends up in the hands of distant relatives in a foreign country which is not particularly sympathetic to the United States?

In such a case, as well as in all the existing thousands of cases of American children being retained in overseas countries, the United States will have no moral grounds whatsoever to demand the return of American children to their U.S. parents and U.S. families if we set a dangerous precedent by keeping Elian apart from his father and family in Cuba.

Thank you for considering these points.

The CHAIRMAN. Thank you, Mr. Benda. Your case is a moving, moving story.

[The prepared statement of Mr. Benda follows:]

PREPARED STATEMENT OF WALTER BENDA

I am Walter Benda, co-founder of the Japan chapter of the Children's Rights Council, a non-profit, child advocacy organization, with chapters in 32 States, Washington, D.C. and Japan. I appreciate this opportunity to testify before the Senate Judiciary Committee.

I must start out by making it perfectly clear I have no particular interest in the relations or lack of relations between the United States and Cuba. These are two governments that will have to resolve their political differences one way or another. I am here today to tell you how the case of Elian Gonzalez affects me personally and how keeping this young child here could seriously hurt thousands of American children and families like mine.

I am the parent of two beautiful, intelligent, lovely daughters, Mari and Ema, who were born in the U.S. and spent their early years here in the U.S. Almost five years ago, my wife abducted our two daughters in Japan where we were temporarily residing. Mari was 6½ years old and Ema was almost 5 years old at the time of the abduction, about the same age as Elian when he was abducted. Since that time, my

family, including Mari and Ema's grandparents and their uncle, aunt and cousin and I have been denied personal relations and direct contact with my daughters. No phone contact, no written contact, no personel—nothing!

I have exhausted every possible channel in the Japanese legal system all the way up to the Japanese Supreme Court. I was up against a very aggressive Japanese attorney retained by my ex-wife's father, a high corporate official in Toshiba and a retired army general from the Japanese Self-Defense Forces, with connections in high places. In the case of Elian Gonzalez, there are influential groups in the U.S. who are at work to influence the U.S. Government to keep the child away from his natural parent, ignoring the universal bond of father and son and the child's right to be with his father.

My daughters have been illegally retained in Japan, just like Elian is being wrongfully detained in the U.S. In the process, my daughters have been manipulated, isolated and alienated from their father and U.S. relatives. Just as I fear is happening with Elian's father and relatives in Cuba.

There is no way to express how it feels, the heartbreak that happens, when your children—children you love more than anything in the world, children who are literally a part of you—are ripped from your life.

I have been fighting for almost five years to get my daughters back or at least be able to have some connection to their lives.

I can understand why Elian's father has not come to the U.S. to try to get his son. I too avoided subjecting myself to the Japanese legal system because I felt I would not get fair hearing in a foreign country. And I was right! After years of jumping through legal hoops in Japan, I still don't have my children, not even a minimum level of access to them. Precious time has passed and now I fear my little girls might not even remember who I am.

We hear a lot in this country about family values. People here and all over the world worked hard to pass international standards to preserve the sanctity of the family worldwide. The U.S. joined these agreements precisely because they help American citizens. It would endanger all of our children if the U.S. openly disregards these international agreements with the whole world watching.

Not sending Elian back to his father would set back the clock on making family values a priority worldwide. According to State Department figures, there are at least 1,000 American children whose families in the U.S. might have never see them again, if the U.S. government does not enforce the INS ruling to return Elian to his father. The unofficial estimates are much, much higher. The Children's Rights Council estimates that each year there are more than 10,000 American children illegally taken or retained overseas by a parent.

The State Department said "Our effectiveness in doing all of the consulate services that we do, but particularly children's issues, depends on our ability to adhere to the principles that we espouse. Those include respecting the parent-child relationship and the notion that a child should live in the country of his or her habitual residence." Those are fundamental human concepts understood by all. They are the ties that bind, the blood ties.

My parents are getting older. We fear they may never get to see their grandchildren again. Our family has been torn apart. For all American families enduring similar situations, who continue to fight for their children guided by the laws that exist to keep families together, it is absolutely imperative that our country abide by the rules and send Elian back to his family in Cuba. If returned to Cuba, Elian will not be living with Fidel Castro, he will be living with his family.

Elián is suffering trauma from the loss of his mother and dad, a trauma that may become permanent, and lead to a personality disorder or other serious ailment four months, according to psychiatric reports I have heard of.

I am encouraged by all the energy being focused on Elián; I hope it will result in our political leaders focusing on the thousands of American children in the same situation as Elián, being held wrongfully overseas and isolated from their American families.

One final point I would like to note is the fact that an issue like this cuts both ways. We need to consider the impact of case on very similar scenarios affecting U.S. children. For example, what happens if there is an international parental abduction by a U.S. father or mother which results in some kind of accident in which the U.S. abducting parent dies and the U.S. citizen child ends up in the hands of distant relatives in a foreign country, not particularly sympathetic to the U.S.? In such a case, as well as in all the existing thousands of cases of will have no moral grounds whatsoever to demand the return of American children to their U.S. parents and U.S. families, if we set a dangerous precedent by keeping Elián apart from his father and family in Cuba.

Thank you for considering these points.

[From The Roanoke Times (VA), June 22, 1996]

WALTER, PLEASE FORGIVE ME FOR LEAVING YOU THIS WAY

(By Michael Croan)

Walter Benda can see his two young daughters any time he wants—but only on a fragmented videotape.

Benda's wife, Yoko, sent him the home video after leaving him and taking their children, Mari and Ema, nearly a year ago.

"It's kind of like a hostage video," Benda said of the tape, which was carefully edited so as not to reveal location or other personal information. The girls "obviously have no idea that they were being filmed for me."

Benda last saw his children, now 7 and 5, on July 21, 1995, before leaving for work in Japan. That morning was normal, he said. "Each gave me a little hug and saw me off."

When Benda came home from work that evening, he knew something was wrong. "All the bicycles were gone. All the shoes were gone. In Japan, you usually leave your shoes outside the door. But they were all gone," he said.

The walls were stripped and household valuables were missing. There was a note on the table that began, "Dear Walter, Please forgive me for leaving you this way."

Benda knew his marriage was over, but that wasn't a major surprise.

"We had a perfect marriage, as far as I was concerned, up to 1992," when Benda lost his job as manager of statistics for Northwest Airlines, he said. The family then moved to Japan, partially for his wife's benefit.

Soon after the move, Benda said, his wife "kind of seemed to look down on America more and criticized America more." She became increasingly active with the followers of a man who claimed to be the human reincarnation of a Hindu god.

Yoko Benda's expanding religious beliefs included his faith in UFO abduction and channeling, her husband said.

"It wasn't something we agreed about, but it created kind of a void in our relationship," Benda said. "She started getting very involved with things, and I don't have my interest in them."

What Benda didn't know, however, was that his wife had made it impossible for him to contact his children.

Benda soon found out that his telephone account had been canceled and that he had been assigned a new number. "The children knew how to dial home, [but] there was no way for them to call me," he said.

He said he discovered that Yoko had withdrawn more than \$100,000 from their bank account over 2½-year period.

In the months that followed, Benda said he sent out more than 300 letters and faxes to relatives, friends and various organizations searching for any sign of his family.

He went to his children's former school but was unable to obtain any updated information concerning their whereabouts, he said, even after enlisting the help of the U.S. Embassy in Japan.

He went to Japanese police stations with interpreters but said the authorities did nothing to help him.

Benda said he even tried to get old phone records from his home, but that his wife had them erased monthly without his knowledge since the account was in her name. "I did everything I could think of," he said.

After months of searching for any sign of his children and nearly a year without direct contact or communication with them, Benda came back to the United States and turned to the law for assistance.

On re-entry papers submitted to the Immigration and Naturalization Service, Yoko Benda had listed her expected address as Max Meadows in Wythe County, the home of Benda's parents and the town to which Benda expected his family to relocate.

Consequently, as a "permanent resident" of the United States according to her re-entry permit, Yoko Benda was indicted this week by a federal grand jury in Roanoke on a charge of international parental kidnapping.

If arrested, she faces prosecution under a 3-year-old federal statute applied in situations where parents either intentionally leave the United States with their children or who, as alleged in this case, keep children in another country in order to deprive the other parent access to them.

The Hague Convention, as international treaty formulated in 1980, was designed to prevent such situations. Assistant U.S. Attorney Karen B. Peters said.

Peters said that Japan helped put together the treaty but never signed it.

In 1993, she continued, Congress recognized there was a hole in trying to address and resolve international parental kidnapping.

The result was the statute under which Benda was indicted. The law is designed to be "a last-ditch effort to resolve parental abduction situations," Peters said.

Yoko Benda faces up to three years in prison and/or a fine of \$250,000 if convicted.

However, she will escape prosecution unless she is either extradited to the United States or is arrested while voluntarily on U.S. soil. That could be a state, a territory or the U.S. Embassy, Peters said.

Peters plans to refer the case to the Office of International Affairs in the Justice Department to see what international efforts can be made. This is the first time the law has been used by Roamoke prosecutors.

"It's new and different to me," she said, "and I've been here a long time."

Peters doesn't expect much assistance from Yoko Benda's native country. Current extradition treaties are far too old to provide for the new statute under which Benda is being prosecuted.

"I would suspect Japan would not extradite for an offense of this type," Peters said.

Members of the Japanese Embassy in Washington, D.C., confirmed Peters suspicions.

First Secretary Tatsays Sakoma said the likelihood of extradition is slim, especially if physical force or deceptive measures were not used to take the children.

"If there is . . . no physical violence used in the abductions of the children, I think that it would not fall under the conditions of dual criminality," he said. "Japan has not criminalized such conduct."

Walter Benda found that out the hard way. The Japanese police "won't step in family matters," he said, even in cases of domestic abuse, child abuse or sexual abuse.

In recent months, Benda has been active in assisting the Children's Rights Council, a non-profit organization based in Washington, D.C.

He helped establish the first chapter of the Children's Rights Council in Japan, and the organization aims to pursue changes in international laws, treaties and policies in order to advocate its slogan, "The best parent is both parents."

"I'm very disappointed in the Japanese system," Benda said. "Their constitution says parents have equal rights, but I found out that's not really true."

The CHAIRMAN. Mr. Gonzalez, we look forward to hearing your testimony.

#### STATEMENT OF MANUEL GONZALEZ

Mr. GONZALEZ (interpreted from Spanish). Good afternoon. First and foremost, I need to tell you that I feel destroyed. Emotionally, I feel comforted for having met you, meeting you and other people with very nice feelings here, with very good values.

On behalf of Juan Miguel and myself, I would like to thank you and the whole world for the importance attached to this child and for the way in which he has been loved and the support he has received and continues to receive. But especially I would like to thank the very brave man who saved Elian, who rescued Elian, who found him.

All my family has suffered tremendously because of this problem, and continues to suffer. It is a miracle that this child survived and a very serious, unfortunate thing that Elizabeth has died, along with the other people who died. But I wanted to say something, and that is when I was in Cuba, I had rights. I had my rights enforced as a father and I knew how to fight for my children. And I saw Juan Miguel grow as a seed, and grow as a seed into leaves of the family tree, which makes him a part of my family, as my father taught me and others in my family.

When I traveled to the United States, I was not wrong. Since I was 16, I had a business and I was able to struggle for myself and was able to have a family. And when I came to the United States

with my children, my mind only focused on their future, but life set a trap for me. But I lost what I brought here to see myself in him, my son. He died of cancer.

That is why I am struggling vis-a-vis you and other people with reasoned minds such as yourselves to help return this child to his father, who needs him. This is not a whim. Every son needs the father, the character of his father, and his father's tenacity, regardless of where he is, so that the child might follow the right path. We all know this as parents.

Since the unfortunate event whereby Elian lost his mother, I had everything. I had vacations and plans to travel to Spain with my wife. Hours before, I was told that Elian was found, and I found out through my other relatives that he has set to come to the United States. My sister, Caridad, the eldest, who is promoting family reunification, who never wanted anybody to travel unless it was through legal means—since 1980, Caridad requested family reunification for all of us.

So she was the one to call my home. She told me that the child had been found, that he was at the hospital, and that he was fine. She told me that Lazaro and Delfin and she were going to pick him up. I had little time, and since it was in the hands of my family, we were sorry, but we left to the airport because we had very little time before the flight.

So we left and we were in Spain, and during our stay in Spain my daughters thought that it was best not tell me how things were developing because before that I had had a heart procedure. And so for this reason, so that I wouldn't feel bad, they hid the facts from me.

When I was going back to Madrid from La Coruna, I came upon a passenger who was reading a newspaper and I asked him to lend me his newspaper, and that is how I began to find out about what was happening over there. I don't want to go on and on, but when I arrived in Miami at 9, 10 p.m. or so, I decided to wait until the next day to see my brothers.

So the next day, as early as I could I went there, or at the earliest hour, rather, I went there to see the child and to speak with my brothers. They told me what was happening and I asked them to organize a family meeting and to engage in a debate and so debate the situation. What is more, I said that if I had to travel to Cuba, I would do so to over there find out what the father had decided. And I said that a decision should not be made insofar as what they wanted, and they said no, absolutely no. They said that they would come; they had to come.

I left after I spent some time discussing things with them. I went back to work. I leave work at 10 p.m. I work from 9 a.m. And I decided to go back because I think that things should not remain there. So I went back and they did not want to say hello in that household. They were not on my side.

That was the first time that I was hurt. It was like being a persona non grata because I did not share their ideas, and I left shattered to my home. And with my brother, Delfin, there was a discussion regarding something that appeared in the papers, in the Herald, and I think it was either on the 9th or the 10th of December, I think.

I asked him to tell me what the paper said. I was being accused of favoring the return of the child to Cuba, and that I was sympathetic to the regime. My brother denied this to me and I asked him to make a statement to retract what the paper said in keeping with the truth, but nothing like that happened and time passed.

My niece invited me, Marisleysis, to visit her home, that there was nobody was there. Her father was not there, she said, which really didn't matter because I feel that although he doesn't want to talk to me, he is my brother and I can talk to him. And proof of that is the fact that I returned to that household, and I will continue to go.

And when I went there, the press was there. My brother, Delfin, was there. We discussed, and my life was shattered because there are two nephews and nieces that are pulling me with respect to one same issue. When I went into the bedroom, the child hardly knew me, and I found it difficult for him to give me a kiss. What I want to say is that Marisleysis had to ask him to give me a kiss and he gave me a kiss.

As I said, I was already hurt. I saw this child being born. I went 4 times to Cuba and I saw him repeatedly up until a year before this unfortunate event. I like that kid very much. I liked the way he was and I played with him a lot, and he felt close to me because I resemble his grandfather very much, the other brother; that is, Juan Miguel's father. And he would play with me at times, thinking that I was his grandfather.

When I was leaving the home of Marisleysis, I dared try something again. I said, Pepo, don't you remember me? Don't you remember that your uncle taught you a prayer that says, guardian angel, don't leave me day and night? I taught him that prayer. Once when there was a light—the electricity went out in Cuba and he was very nervous. He was with his mother, but he was very nervous and he didn't want to go to sleep. And I took him in my arms and I put him sleep and he fell asleep while listening to this prayer.

The CHAIRMAN. Let me interrupt a second, Mr. Gonzalez. We are running out of time. As I understand it, you at first felt that Elian should go back to Cuba, but you have changed your opinion.

Mr. GONZALEZ. No.

The CHAIRMAN. Your opinion is he should go back?

Mr. GONZALEZ. If you want me to be brief, I will be brief—

The CHAIRMAN. If you can be brief, I would appreciate it.

Mr. GONZALEZ. But I want you to know the reason why I think he should be returned to Cuba.

The CHAIRMAN. Give us that reason, then.

Mr. GONZALEZ. The way I think is that that child is going through a shock. He doesn't know where he is, and one must act urgently and give this child the attention he needs. It seems to me that the family that brought him up, the family that gave him nurturing to date, the family who understands him and really understands him, should provide the therapy that that child needs at this time.

The CHAIRMAN. All right. Well, we appreciate your testimony, Mr. Gonzalez. Is there anything else you would care to say?

Mr. GONZALEZ. Should I be brief?

The CHAIRMAN. Yes.

Mr. GONZALEZ. That is enough.

The CHAIRMAN. Well, thank you.

We will turn now to Dr. Paul. Dr. Paul, we are going to limit you to 5 minutes because we are out of time.

#### STATEMENT OF K.A. PAUL

Mr. PAUL. Thank you for inviting me here. I come before this committee as a man who has dedicated his entire life to Christ and the gospel. I am Indian by birth. My embrace of Christianity has been subjected to calculated acts of violence, religious intolerance, and vicious ethnic prejudice. I have personally been beaten and left for dead on the streets of India because of a simple declaration of faith.

I wear those scars proudly, for they are a daily reminder of my commitment to Christ and the principles upon which he lived and died. As a result, I understood only too well how an entire society anywhere on this globe can teeter on the brink of an abyss that makes bigotry an accepted, even celebrated national trait. I have seen firsthand the dynamics of crowd mentality where the world of right and wrong is turned upside down and truth becomes an afterthought.

There are far more studied men and women than I who have written in-depth reports on the nature of regimes that regard liberty and religion as threats. Nevertheless, from my own travel around the world, I can personally offer testimony regarding the methods by which despots manipulate their society, their citizens, and their perception of reality.

It is with a sense of despair that I must report to this committee that I have become a reluctant expert on this matter. So it is against this backdrop that I report to you regarding my mission to Cuba.

I believe that the Havana government is engaged in the cold, calculating and cynical use of Elian Gonzalez' father for the purpose of scoring an international propaganda victory unseen since the Bay of Pigs invasion some 40 years ago.

I initially traveled to Cuba prepared to work toward reuniting Elian with his father in his native Cuba because I believe that is the natural order of things. What I found when I arrived was a political environment so controlled that it makes other authoritative governments around the world look like an enlightened democracy.

While virtually every move I made was monitored, I was able to speak to credible sources who risked their freedom to indicate that Elian's father wants his son to remain in a nation where freedom from fear is a way of life. I would submit to the members of this committee that this is the ultimate sacrifice a father can make and requires unimaginable courage.

Mr. Gonzalez is under, for all intents and purposes, government house arrest where his public comments, his living accommodations and his travel arrangements are all monitored and controlled. The Cuban government understands the power of this story and they are using it to write what may be the last closing chapter of the chronicles of the Cold War. I was in Fidel Castro's office in the building to witness this.

How it will end is unclear to me, but I left Cuba a humbled man. I thought I understood what was at stake here, the simple return of a boy and his father. What I found is that Big Brother is alive and well and is casting a shadow on Elian and his father that seeks to smother the human spirit.

Members of the committee, I do not have a political agenda. I speak from only one perspective, that of a man who seeks to bring Christ to a world suffering from poverty and pain and persecution. In traveling to Cuba, my motives were indifferent to the politics one finds there. I was focused on one thing, and one thing only, reuniting a broken family. After my experiences in that land, I must speak from the heart and respectfully suggest to you that if this Nation does not grant citizenship to Elian, we will be creating a stain upon the fabric of this democracy that will last for generations to come.

To answer your question quickly, sir, you have raised a wonderful question which no one could really bring to your attention. I have challenged the chief of staff of the Fidel Castro central committee. I was there for 3 days. All the questions that are going on in American minds—why would he not send the father and his present wife and the stepson and the family members, relatives and grandmothers to America and let them speak once they are in a land of freedom, rather than being manipulated and controlled and speaking for the government rather than themselves?

I have challenged that we would, with our committee members and the board who have our own airplanes, bring the family even in an exchange. I will keep my family there, my wife and three children, or my two associates, and let them come here and speak for themselves.

The question is why am I involved. This week, I am supposed to speak to a million people. Why am I here? It breaks my heart to see—after being to 65 countries personally, worked in countries in the Middle East and China 2 dozen times, and working with about 18 heads of state around the world, I have never seen a man, which was the first time my eyes were open, so successful controlling millions of people for 4 decades, and seeing millions of people literally die.

People would rather leave Cuba and die in the middle of the sea than live there. I met 150 leaders, including street children, street people, to the bishop of that nation whose priest hosted 9 days of grandmothers. I met the governmental people. I met with doctors and engineers and professional people, because I am not a politician. I have no personal agenda and our organization has helped tens of thousands of children around the world. We want to help make possible the boy to be reunited.

As a matter of fact, as a witness, I was talking to members of the Congress. My friends, why are you fighting to keep the boy here? When the mother died, we should return the boy back to his father. I have talked to my committee, board members like Coach Bill McCartney and E.V. Hill and Bunker Hunt and J.B. Hunt, great leaders who believed that the boy should be sent back originally, and the chairman of our board.

After I talked to many of these leaders and after I went to Cuba, when I found the truth, when I was in a situation where they in-

vited me to meet the father and then would not let me meet the father alone—and they would only ask me to meet the father in Castro's building with five others, like Barbara Walters had an interview. The father is not able to speak for himself. It is very true. Anybody that has common sense and knows the truth at all would speak the truth. The truth is Fidel Castro is taking advantage.

As a matter of fact, I have been informed by the people in Cuba recently that I am on one of his hit lists. And on national television and radio it was announced in Cuba I have been given millions of dollars. They don't know this. I personally earn millions of dollars and not a dime I keep. I live in a little rented house and I do not own anything in this world, and we help 300,000 children and millions of people around the world and we have no personal agenda.

As a matter of fact, I am praying with 8.5 million of my prayer partners that Castro will repent. It is time for him to change his mind and repent and keep his political agenda aside and let the people—let the boy stay here, family come here, and people to be free. It is enough because God is watching all these things and enough is enough. We don't need any more bloodshed, we don't need any more millions of people to suffer.

Thank you for you taking a stand, and the rest of all the committee members, and please do whatever you can as soon as possible for justice to be served. God bless you all.

Thank you.

The CHAIRMAN. Thank you, Dr. Paul.

[The prepared statement of Dr. Paul follows:]

PREPARED STATEMENT OF DR. K.A. PAUL

I come before this Committee as a man who has dedicated his entire life to Christ and the gospel. Indian by birth, my embrace of Christianity has been subjected to calculated acts of violence, religious intolerance and vicious ethnic prejudice. I have personally been beaten and left for dead on the streets of India because of a simple declaration of faith. I wear those scars proudly for they are a daily reminder of my commitment to Christ and the principles upon which he lived and died.

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I would welcome your questions.

The CHAIRMAN. I am going to turn to Senator Leahy for any questions he has.

Senator LEAHY. Mr. Chairman, I know we have gone way over time and I just have one question for Mr. Benda, if I might.

With the Children’s Rights Council, you deal with a lot of other families and a lot of other parents involved in international custody matters. I have talked with a couple of friends of mine who are in situations like this. I wonder if you might tell us, do you have any expression from some of the people you talk with about how they feel about the way the United States is handling the Elian Gonzalez case, whether it is helping or hurting their efforts to get their children back?

Mr. BENDA. Yes. I get an e-mail on a daily basis from a network of parents who have had their American children abducted overseas or retained overseas, and with very few exceptions, they universally feel that Elian should be reunited with his father in Cuba. I mean, we all feel that children should be returned to their natural parents and the Government shouldn’t interfere, like is happening here.

My perspective is I feel like Elian was abducted without his father’s knowledge, which in this country is viewed as a felony crime. And I don’t know about the laws in Cuba, but if we respect the concepts we have in this country, we need to return him to his father.

Senator LEAHY. Thank you.

Lastly, Senor Gonzalez, I am both a parent and a grandparent, nowhere near the number of grandchildren that the chairman has, but he is much older than I am.

The CHAIRMAN. That is true.

Senator LEAHY. I appreciate the expressions of love you have stated for this young boy, just as I appreciate the expressions of love that Ms. Gonzalez stated earlier. There seems to be a lot of love for this little boy, and I would hope you would continue to show that to him no matter how this turns out because he has gone through so much in just these few months, so much more than any little boy should have to go through.

And I fear that some of the efforts of well-meaning people on both sides have just made it worse. So I would hope that with his family members either here or in Cuba, he can have the protective

embrace of love because the Lord knows this little boy is going to need love far, far more than most little boys of his age.

Thank you.

The CHAIRMAN. Well, thank you. I appreciate all of your testimony. It has been very helpful here today. Mr. Benda, I have great sympathy for you and what you have gone through. I have worked with some families whose children have been abducted, and when you have countries that aren't subject to or aren't going to abide by the Hague and other conventions, it is a real problem.

But here we are talking about a case where there has not been an abduction, where the mother tried to escape and bring her child to freedom and died along the way. And this problem has to be resolved and I am hopeful that we can get it resolved one way or the other, but it needs to be resolved in the best interests of this young boy.

We have had some very dramatic testimony today on both sides of this issue and it has been helpful, and with that I think I won't ask any questions. I think we will just recess until further notice.

Mr. GONZALEZ. I wanted to know whether I could hand you a letter that Juan Miguel sent me.

The CHAIRMAN. Of course, you can. That would be fine. We will take that and we will read that and we will put it in the record.

[The letter referred to appears in the appendix.]

The CHAIRMAN. With that, we will adjourn until further notice. Thank you.

[Whereupon, at 1:30 p.m., the committee was adjourned.]

#### ADDITIONAL SUBMISSIONS FOR THE RECORD

##### PREPARED STATEMENT OF HON. SHEILA JACKSON-LEE, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

My statement for this hearing will be limited to Sen. Mack's bill to make Elian Gonzalez a citizen of the United States, *For the relief of Elian Gonzalez-Brotons*, S. 1999.

I am the ranking member of the Subcommittee on Immigration and Claims in the House of Representatives. Many people have asked me why the Immigration and Naturalization Service wants to deport a little boy to Cuba. This is a misunderstanding. The Immigration Service does not intend to deport Elian. He is not in immigration proceedings; he has never been in immigration proceedings; and the Immigration Service has no intention of ever putting him in immigration proceedings.

Elian was paroled into the United States for emergency medical treatment and then placed in the physical care of his great uncle, Lazaro Gonzalez. Although Elian is in the United States physically, he is technically still at the border. The Immigration Service can permit him to remain in the United States in parole status, or it can revoke his parole status and return him to his father.

I have been assured by representatives of the Cuban government that Elian's father can have an exit permit to come to the United States for the purpose of taking Elian home, and I am confident that his wife and child in Cuba would be allowed to go with him to dispel any concern about whether he would be free to speak and act freely while he is here.

I have also been asked whether a private bill is necessary to make it possible for Elian to remain in the United States permanently. This is based on a misunderstanding too. The Department of Justice has been willing from the beginning to permit Elian to remain in the United States. With his father's permission, he would be permitted to stay here and become a lawful permanent resident of the United States under the Cuban Adjustment Act. If Elian returns to Cuba, it will be because his father decided that he should return.

There is only one way to keep Elian Gonzalez in this country and that is to prevent his father from being the person who decides where Elian will live. Elian's great uncle, Lazaro Gonzalez, is trying to do that right now in federal court proceedings. I filed an amicus brief in that case last week with the Children and Family Justice Center from the Northwestern University School of Law. We appreciate the fact that Lazaro Gonzalez and his family love Elian and want him to be able to stay in the United States, but that does not justify what they are doing to Elian's father.

All of the great uncle's arguments are predicated on the assumption that he has a legal right to speak on behalf of another man's six-year-old child. In the words of Attorney General Janet Reno, the issue in this case is, "Who speaks for the child?" No credible authority on child development would sanction ceding responsibility for critical decisions about his future to a child of such tender years. See *Bellotti v. Baird*, 433 U.S. 622 (1979). That question was properly addressed and answered by the Immigration Service. We agree with the Immigration Service's decision that Elian's father, Juan Miguel Gonzalez, and only Juan Miguel Gonzalez, should be allowed to speak for Elian. I want to add now that I do not think Congress should weigh in and try to overrule the Immigration Service's decision.

I am concerned about the risk we take when we interfere with the right of the father to speak for his young son. We must guard that right. It is a fundamental tool for safeguarding the family unity values of our society.

I know some people believe that interference is justified in this case to prevent this little boy from being returned to Cuba. Frankly, I do not know what is in Elian's "best interests." I do know, however, that his father should decide what is in his best interests, not me, or Lazaro Gonzalez, or the Congress. The "best interests" standard only applies to disputes between two parents. The Supreme Court held in *Santosky v. Kramer*, 455 U.S. 745 (1982), that before a court can even explore the subject of a child's so-called "best interests" when the dispute is not between two parents, it must first determine through a finding of parental unfitness that the parent has failed to meet minimally acceptable standards for the care of the child. Moreover, the Court in *Santosky* sets a particularly high standard for ending the legal relationship between a parent and a child, requiring that the initial showing of parental unfitness must be supported by "clear and convincing evidence." *Id.* at 769. This high standard derives from the basic tenet of family law, presuming that the individuals best suited to nurture and protect a child will normally be the child's parents. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

The purpose of such safeguards is to ensure that children are not separated from their families for reasons that have more to do with the racial, religious, or cultural biases of the decision maker than with legitimate concerns for the protection of the children. Our laws have created a standing doctrine and other gatekeeping devices that regulate incursions into parent-child relationships not only protect parents from decisions that could ultimately strip them of their authority without just cause, but also shield families from the unnecessary burden of expensive, intrusive, and protracted legal proceedings.

The history of family law is replete with examples of the harm caused when children are forcibly removed from parents for reasons inappropriately laden with subjective and culturally-based value judgments. For example, in *Roe v. Conn*, 417 F. Supp. 769 (M.D. Ala. 1976), a federal district court struck down a state statute that permitted the removal of a child from his mother for "neglect" based solely on the fact that she was living with a man of a different race. The passage of the Indian Child Welfare Act is another example. It was the result of decades of pernicious cultural and ethnic stereotyping that led to the decimation of many Native American communities through the forcible removal of their children by non-Indian child welfare authorities.

The sanctity of the family is central not only to U.S. law but to international law as well. The United Nations Convention on the Rights of the Child, Preamble and Articles 5, 10 and 13, recognize the fundamental importance of the rights of parents regarding care of their children and the duty of participating states to treat applications to reunify children with their parents in a positive, humane, and expeditious manner.

The main thing that you would achieve by making Elian a citizen of the United States would be to take away the Immigration Service's responsibility to decide who should speak for him. As a citizen of the United States, that decision would be made by a state court judge. However, this is not at all likely to change the outcome of the dispute over whether Elian will be returned to his father.

Lazaro Gonzalez has already brought an action in state court to obtain the right to speak on Elian's behalf. The issue in that suit will not be whether it is in Elian's best interests to stay in the United States. Lazaro Gonzalez will have to show by

clear and convincing evidence that Elian's father is an unfit parent, and he cannot prove that Elian's father is an unfit parent simply because he is a Cuban who wants to raise his children in Cuba.

Elian is being harmed by the delay in returning him to his father and his grandmothers. I want to reunite this family as soon as possible. I have not met his father, but I have met his grandmothers. They begged me to do what I can to return Elian to his family. I was so moved by their tears when they pleaded for my help that I cried too.

I submitted a letter from Dr. Bennett L. Leventhal with my amicus brief. Dr. Leventhal is a Professor of Psychiatry and Pediatrics at the University of Chicago. He believes very strongly that it is wrong to prolong the agony of Elian's present situation.

According to Dr. Leventhal, "it would appear that prior to November 1999, Elian lived in a stable, reasonably healthy environment." He observes that "Since that time, he has been exposed to grave dangers, the death of his mother and a horrendous struggle over him and where he is to live. His privacy has been violated. \* \* \* He has been directly and persistently exposed to an apparently interminable and incomprehensible, intense dispute amongst adults. And, his current situation is so unstable that he does not know where he will live, and who can and will take care of him." Dr. Leventhal emphasizes that, "Any one of these circumstances would place any child at great risk for developmental disturbance but the combination of so many problems must be an overwhelming stress for this child. Dr. Leventhal concludes that, "The duration and intensity of the conflict and his exposure to them must end immediately."

I urge you to respect the right of Elian's father, Juan Gonzalez's, to decide where Elian will live and not to prolong this stressful situation unnecessarily by making an unsolicited grant of citizenship.

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PREPARED STATEMENT OF HON. CHARLES RANGEL, A U.S. REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF NEW YORK

Elian Gonzalez and his family—who have already suffered terrible loss—remain separated so that those obsessed with the Castro regime can score points by shamelessly appealing to the emotions of the Cuban-American community.

If permitted to testify today before this committee as originally proposed, I would have voiced my profound disappointment in my government and the Cuban government for also letting a child be used as a political football on the playing field of U.S.-Cuba relations. How could a 6-year-old boy who had just lost his mother and floated alone at sea be placed in the hands of adults with questionable backgrounds and plunged into the middle of a three-ring media circus?

In the supposed name of freedom, much psychological and emotional damage has already been inflicted on Elian by isolating him from the father he needs now more than ever. After they met with their grandson in Miami, Elian's two grandmothers told me and other concerned members of congress that they found this once happy, secure, mischievous, and otherwise normal boy to be strangely sad and withdrawn. Without the love and comfort of those who raised him to guide him through the grieving process, the chances grow that this harm will be irreversible.

In a blatantly political attempt to circumvent the laws, rules, and diplomatic accords used for resolving immigration decisions in this country, some members of Congress tried to delay Elian's return to Cuba by advocating the unprecedented step of making a young child a citizen or permanent resident without the consent of his parents. This is despite the fact that in the great majority of cases, congress has naturalized individuals in order to reunite, not separate families.

Proposals to grant Elian citizenship or permanent resident status are unfair to thousands of refugees who flee other countries in search of a better life. Normally, refugees are immediately deported if they come illegally, or forced to wait years to become citizens if they arrive through legal channels. The proposals are also unfair to other Cuban Americans who, though receiving extraordinary guarantees upon reaching our shores, still must wait to become permanent residents and then citizens. Do we really want to encourage desperate parents in other nations to risk the lives of their children under the false hope that they too might receive special treatment?

U.S. citizenship should be treated as the precious gift that it is, not as a political tool. It's sad that some members of Congress are eager to cheapen the hard work and sacrifice made by so many immigrants who play by the rules by pandering to special interests in Miami. In proposing such outrageous measures to derail Elian's

return to Cuba, they would set a dangerous precedent and in the process demean the legislative branch.

Thanks to pleas for sanity from Elian's grandmothers, an overwhelming majority of the American public, and a group of Democrats and Republicans including some of the strongest family values advocates in Congress, this misguided effort was stopped before it got off the ground. They all recognized that both legally and morally, a boy clearly belongs with his father, and it is the sole surviving parent who bears the right and responsibility for deciding what's best for his son. The INS and Justice Department were granted by Congress the authority to deal with immigration and international custody cases, and they have done so effectively this time by carefully considering all relevant U.S. statutes and regulations, bilateral accords with Cuba, and all available evidence on the father's relationship with his son. Congress now should let them do their job as it was originally intended.

As we await the ruling from the federal court in Miami—which according to legal experts should by all logic reaffirm the INS decision in this case—those in Congress who have insisted on prolonging the political circus around Elian should reconsider their actions. If we truly believe in the meaning of citizenship, in obeying our own laws and bilateral agreements, in legal and fair immigration, and most important of all, in the sacred bond between a child and his parents, then we should send Elian back to his father as soon as possible. Anyone trying to invent new rationales for slowing down this process is grasping at straws and should be ashamed for showing so little concern for the welfare of one innocent boy and his family.

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PREPARED STATEMENT OF SILVIA WILHELM, EXECUTIVE DIRECTOR, AMERICANS FOR HUMANITARIAN TRADE WITH CUBA

Mr. Chairman and Esteemed members of the Senate Judiciary Committee; first of all I want to express my deepest gratitude for having been asked to testify at this hearing which will discuss the possibility of granting Elian Gonzalez, the six year old Cuban boy found floating on an inner tube off the coast of Florida on Thanksgiving day and now living with distant relatives in Miami, the citizenship of the United States of America. I am submitting a written statement for the Committee since I will be unable to testify in person for I am on my way to California to greet the arrival of my second grandchild and as important as this hearing is, family has and will always come first. And this is exactly what this hearing should be all about, the importance and integrity of the family.

I have the honor to serve as the Executive Director of Americans for Humanitarian Trade with Cuba, a national coalition of business, humanitarian, religious and Cuban Americans, all working together to end the present United States embargo of food and "de facto" embargo of medicine and medical products to Cuba. But I am not here to testify in that capacity but in my capacity as a Cuban American woman resident of Miami, a wife, mother and grandmother who cares deeply about my adopted country, as well as Cuba, the country of my birth.

In January of 1961, when I was a child, my family made one of the most important and difficult decisions of their lives and that was to send me alone to the United States in what is now known as "Operacion Pedro Pan" which eventually took over 14,000 unaccompanied minors from Cuba in order to flee Communism. They did this for two reasons: (1) The changes happening in Cuba at the time as a result of the revolutionary government new policies and the possibility of new and more drastic changes made my family apprehensive about my future and they elected to send me to the United States, a country they knew well and where they felt confident I would be safe from harm. In 1961 and the realities the Cold War, this was a logical assumption; (2) My family was equally confident that this separation would be short lived for they believed the United States of America would not permit a Communist government 90 miles away from their shores. The separation was indeed short lived for after the Bay of Pigs fiasco they also left the country in August of 1961.

Forty years later, I find myself still in this country. I have always accepted my parents decision for it was a decision made out of love and care and have always felt immensely fortunate to have been given first shelter and then innumerable opportunities growing up as a citizen of this great country. The Pedro Pan's history can only be compared to Elian's tragedy in the sense that we also were separated as children from our parents, our country of birth, our friends and everything we knew and loved. But our parents made the decision to send us—otherwise we would not have left. This is not entirely true in the case of Elian.

Elian Gonzalez is a minor, who through absolutely no fault of his own, is caught in a tragedy that seems to never end. His mother made the decision to leave Cuba

on a small leaking, crowded boat in order to arrive at the United States and in so doing, she died and lost all further legal rights. Elian has a father, one that remains in Cuba and that by all accounts has been deeply involved in his care and wants him with him. The child needs his father and the father needs and demands his child. No one in the world would dispute these rights. They are internationally recognized by all civilized nations. There seems to be an exception, and it is those who have always wanted to make a political issue out of any controversy between the United States and Cuba in their continuing battle over the outcome of a revolution that is now entering its 5th decade. They will go to any and all means to win what they consider a victory over Fidel Castro and so doing nothing matters, not even the most basic parental rights.

This child is a minor whose only surviving parent happens to live in Cuba, a country ruled by a Communist government. Parental rights superseded and always have superseded ideology, country of birth, systems of government. The integrity of a family, the rights of parents, unless the parents are found to be abusive, are above all those other considerations. Elian Gonzalez has not requested to be a citizen of the United States and even if he had, Elian Gonzalez is a minor who cannot legally speak for himself. Only his legal guardian, in this case his father, can speak for him and so has been recognized by the Immigration and Naturalization Services of this country.

This tragic event is profoundly shaking my confidence in our system of laws and I am quite distressed as to what message we in the United States are trying to convey to the rest of the world by keeping this child in this country after close to three months of his illegal arrival and after the Immigration and Naturalization Services of this country has ruled on behalf of his return to his father in Cuba.

Why is this hearing taking place at all? What message are we in the United States trying to convey to the rest of the world, that a child, even with a loving-surviving parent who lives in a foreign country whose government we disagree with has no rights? That raising a child in the United States of America, even if it means separating him from his father, takes precedence before the integrity of the family and the sanctity of a parent's right? What is happening to our system of laws? The top law enforcement officer in this country, the Attorney General, has agreed with the decision of the INS in the case, that the only person to speak on behalf of the child is the father and the father wants him with him, why our inability to enforce the law? Have we become hostages to a small group that because of their hurt have lost all sense of reason and decency and only advocate revenge and victory at all costs? Are we going to allow one more victim in this 42 year old conflict?

I firmly believe that the psychological damage that will be done to this child by separating him from his only surviving parent and having distant relatives raise him will be much more harmful than his being raised by his father and grandparents, no matter where they live and under what system of government. These are the members of his immediate family and we have no right to take their rights away.

The last three months have been immensely painful for us Cuban Americans who through witnessing Elian's tragedy have had to once again relive our departure from our homeland close to 40 years ago. We have had to relive the pain of that initial separation from our loved ones and even though we were loved and cared for in their absence, we know that no one and nothing would have ever taken their place. This tragedy has also made us even more aware and conscious and has reinforced our belief in the importance of the family unit, in the integrity of keeping the family together for it is within this family unit that one gets the care and nurturing necessary to grow into a decent human being.

Elian has already lost his mother. No one will ever take her place. I know from the experience of having lost my father at the age of seven. Don't allow him now to lose his father and become an orphan. Don't allow this process to be politicized! After all like Attorney General Janet Reno clearly said, "this is all about a six year old". It is about a six year old, who after witnessing the tragic death of his mother has a father and four grandparents who miss him and want him home.

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PREPARED STATEMENT OF ELISA GREENBERG, CUBAN AMERICAN ALLIANCE  
EDUCATIONAL FUND

First and foremost I'd like to express my gratitude and honor for the opportunity to address this august legislative committee. I am speaking to you as a mother, a grandmother, and as a concerned Cuban American citizen who has lived in this great country as a boarding school student in the 1950's, and later as a naturalized citizen. I have lived "The American Dream." My American born husband and I have

raised a beautiful family, ran a successful business that went public, from which now we are retired. I have served as an active member and sat on the board of several religious, civic, charitable and academic organizations. One of these organizations is the Cuban American Alliance Educational Fund. The Alliance is an inclusive organization dedicated to create an environment where the education in and the discussion of, Cuban American issues can take place. Some of our members are involved in humanitarian causes in Cuba, such as, our work with the physically handicapped. Others, such as myself, are involved in helping to create academic exchanges between American and Cuban universities. One of our most important endeavors is that of family reunification.

This background should help explain my particular perspective on the Elian Gonzalez case; a perspective based on total respect for the laws of the country; a profound belief in our system of checks and balances; a philosophical conviction that the family is at the core of all social structures; and a committed dedication to try to bring lucidity, equanimity and respect to the discourse of U.S.-Cuba issues.

Elian Gonzalez is not a symbol of freedom. He is no more responsible for recognizing life as a precious gift than the rest of us who, existentially speaking, are also called upon to answer for the quality of a life well lived. Elian Gonzalez is neither a means to punish a political enemy, nor a prize to be handed to a political ally. Elian Gonzalez is a six year old child who suffered the horrible experience of losing his mother under unimaginable circumstances, and now finds himself away from the only people he has known in his young life. The relatives in Miami, however well meaning, are but distant not well known relatives. He has a father who according to all reports is a caring, involved parent, even while divorced from Elian's mother. Elian's father who, according to our laws, is the person called upon to speak for this minor, has made clear his desire that his son be returned to him and be raised by him. This is fact, all else is conjecture.

That the country to which Elian is to be returned is Cuba should not enter into consideration. Should American children in similar circumstances not be returned to the United States, because the government of those countries where they now reside consider our system of government evil? That his father is a member of the communist party and that the U.S. relatives are able to give Elian more material goods is also a non-issue. It would be a sad day in this country when parental acumen is measured by your social-economic level and/or your political affiliation. This would set an obviously dangerous precedent. This is a clear case involving parental rights and U.S. immigration policies. Our laws are clear on both issues. The sanctity of the family should always take precedence.

American citizenship for the foreign born is earned through hard honest work, compliance of the laws of the land, and respect for such American values as the sanctity of the family. It should not be used in order to circumvent laws we wish to avoid, however tempting the situation or humanitarian or intent. That your decision would make Fidel Castro happy or sad is totally immaterial. He is the president of Cuba, not the president of the United States. However good, bad or indifferent a leader he may be should not be a deciding factor in this case for the U.S. Congress. Our elected officials foremost consideration should be the best interest of the people of the United States. I sincerely believe that it is in the best interest of the people of the United States that you abide by the expressed wishes of the Majority of U.S. citizens, and honor this father's request as our laws so indicate. To do otherwise would be a betrayal of our laws, of our responsibility as world leaders, and of our commitment to uphold our proclaimed values of the sanctity of the family.

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HAVANA, *February 25, 2000.*

UNCLE MANOLO: I want to send you the letter that I sent to Janet Reno and Doris Meissner on February 22, which is the third one that I have felt obliged to write to them in less than a month, claiming the rights that they themselves have admitted are mine, and that they have not applied.

As for the content of this letter, I don't need to explain much to you. In it, I have clearly defined my position at this time with respect to Elián's situation and the legal processes that are taking place, and especially my disapproval and my upset with the INS's refusal to move the child to his home and its failure to reply to any of my complaints.

Apparently, they have no intention of doing anything that could cause them problems, but I am going to continue to fight with all my might until he is at my side.

On my request to the INS, I alert you that what I have asked for is that they transfer temporary custody from Lázaro to you, until they return Elián to me. This

is very different from appointing a guardian ad litem, with which I am not in agreement, because what that would do is to complicate and drag out the legal process.

Precisely because the matter is so delicate, it is important that you consult with me about any step you are going to take, thereby avoiding possible complications.

I want to thank you personally for all your support and the support of your family to get them to return the child to me, even at the expense of your health, your own tranquility and that of your family, which is also our family. Here, not only I, but all of us appreciate your outlook and your help in this battle to have Elián returned to us.

The child is very fond of you and you have had much more of a relationship with him than they have, even from the time when Elisa was pregnant and you even have videos of that.

Take good care of yourself. Greetings to America and to the girls and grandchildren.

With love,

JUAN MIGUEL.

