A Double Standard for Our Children

By Timothy W. Maier

The case of 6-year-old Elian Gonzalez has received attention at the highest levels of government, while the plight of American children kidnapped abroad isn’t on the agenda.

Should he stay or should he go? That no longer may be the question for 6-year-old Elian Gonzalez, because the U.S. Immigration and Naturalization Service, or INS, has decided the boy must be returned to Cuba by Jan. 14 and has been trying to arrange with the Cuban government to transport the boy’s father to this country so he can claim his son in Miami. Thousands of Cuban exiles responded by saying they’d create a human chain around the boy’s home in Miami to prevent his return to Cuba and demanded a local hearing to decide Elian’s fate. At press time, word from Cuba was that Elian’s father, Juan Gonzalez, steadfastly was refusing to come to the United States — arguing that Florida is too “hostile” and that under international law it is the responsibility of the United States to return the child.

While the father’s refusal to rush to his son has perplexed American parents, there was speculation that it resulted from Fidel Castro’s control over the father and grandparents in Cuba. Some news reports even suggested the father also had been planning to escape to the United States, but he has denied the allegation.

Regardless, the case has triggered a sticky international incident, with Elian’s Cuban relatives and Castro charging the boy is being “tortured” psychologically and “bribed” with toys and Walt Disney World trips. His family in Cuba has demanded his return since he was rescued Thanksgiving Day after spending two harrowing days and nights clinging to an inner tube on the open sea following the capsizing of an aluminum boat filled with refugees fleeing Cuba to the United States.

He was one of three survivors rescued by two fishermen near where 10 Cubans — including the boy’s mother and stepfather — perished. Elian since has been living comfortably with uncles and aunts who have been in Miami since the 1960s. He attends a private school that has pitched in $40,000 to pay for his education. In Cuba, the boy’s father claims the mother kidnapped the child without paternal consent, which is disputed by the Miami relatives.

INS Commissioner Doris Meissner says the father is not being pressured by Castro and wants his son back home. “This little boy, who has been through so much, belongs with his father,” she said at a news conference.

Elian’s relatives in Miami, as well as Cuban-American politicians and activists, say it would be a travesty to repatriate the boy to the country his mother died trying to help him escape. The Florida relatives claim the father is being controlled by Castro; the Cuban dictator denies he would ever do such a thing, alleging Juan Gonzalez has been offered $2 million by the “yankee dogs” to travel to Miami but has refused. Meanwhile, one of
the boy’s relatives in Cuba, whose name has not been released, wrote a passionate letter to first lady Hillary Rodham Clinton, pleading: “Don’t send Elian [back to Cuba] to be the puppet of his mother’s murderer.”

As the INS attempted to broker a deal to bring the father here, attorneys for the Miami relatives said that would not be enough. They wanted the child’s maternal and paternal grandparents to accompany the father if such arrangements were made to ensure no one is being held hostage to guarantee a return trip. The risk for Castro was that, once here, all might defect and further embarrass his regime.

Castro continued to issue assorted warnings even as the Clinton administration bobbed and weaved to try to find a politic way to send back the boy. The Cuban dictator ordered his countrymen to stage protests, which were countered in Miami by protests from exiles opposed to the Castro regime. Castro since has applauded the INS decision but urged the U.S. government to control the “Cuban-American mafia and the extreme right in Congress, who will try by all means possible to prevent the boy’s return to Cuba.”

President Clinton, who supports the INS decision to return the boy, says he wanted to “keep this decision out of politics.” But according to the New York Times, the ramifications of either decision were discussed at the highest levels of government because Clinton wants better relations with Cuba. Gestures have included wholehearted support for Major League Baseball playing exhibition games against Cuban teams last summer despite Cuban-American protests.

Critics of the INS decision say it is clear that, if this were a Republican administration, Elian would be staying in this country. The Republican National Committee and the two leading Republican presidential candidates, George W. Bush and John McCain, angrily blasted Clinton’s decision to send the boy back to Cuba.

On the Democratic side, Vice President Al Gore blamed Castro for forcing a choice between freedom and living with his father, while Bill Bradley said he wouldn’t second-guess the INS. However, Gore’s initial support of the decision could result in serious political damage for his candidacy — particularly in south Florida, where there is a prominent Cuban-American population that wants Elian to live in Miami. After a poll by the Miami Herald showed 90 percent of Cuban-Americans there oppose returning the boy, Gore backed off, saying he would await the court appeals before commenting further.

Rep. Ileana Ros-Lehtinen, a Florida Republican who represents the Little Havana neighborhood of Miami, charged, “Although we are all well aware of the record the Clinton administration has of kowtowing to the Castro regime, I would have expected our U.S. officials to abide by INS’ stated commitment to protect the needs of refugee children. This is unconscionable and flies in the face of humanitarian principles.”

She added that the Clinton administration chose to ignore the needs and welfare of Elian by making a decision based “solely on information provided by the Castro regime and on controlled interviews with the father.”

Ros-Lehtinen says there is a legal problem because the INS, in an unprecedented
move, failed to hold a hearing to determine the boy’s fate. “This decision by INS ignores its very own guidelines on children’s-asylum cases which were designed to protect children from governments such as the Castro regime. These guidelines specifically refer to a number of violations which apply in Elian’s case because these are activities in which the Castro regime is engaged. However, it was also INS’ responsibility to look at the future threat which Elian would be exposed to.”

The INS, which falls under the jurisdiction of Attorney General Janet Reno, had not backed down from its decision despite a letter from the boy’s Miami relatives urging the Clinton administration to honor the wishes of his mother. Attorneys for the boy’s relatives were moving quickly to ask a federal judge for a restraining order, which could delay the deportation of the child for months. Such delays in American custody cases often have ended with a ruling that it would be too disruptive to the child to be turned over to another parent — even when evidence showed the child was kidnapped by the parent with de facto custody.

American parents whose children have been kidnapped by ex spouses to foreign countries tell Insight that they are frustrated that Clinton has put so much energy and money into this case while putting recovery of American children on a back burner (see “Justice Ignores Stolen Kids,” Nov. 29, 1999).

Mitch Goldstein of Georgia whose daughter, Kelly Michelle, was abducted to Switzerland by her mother in 1996 says: “I have found it quite ironic that so many people have become involved in this incident — all the way up to President Clinton himself — while the plight of our own U.S.-born children continues to be ignored. If our government showed half the resolve they have displayed in this case to bring our children home, I have no doubt the majority of them would be home where they belong. Whereas I do not claim to have an easy answer to this difficult situation, I do feel the father of the boy should be allowed to come to the U.S. and decide whether he wants his son to remain here or return with him to Cuba.”

The diplomatic flap has put Florida Republican Gov. Jeb Bush in an awkward position because he is known to favor state legislation to help American parents who remain abroad after being victimized by parental kidnapping. He sought to treat the case as an immigration matter and to allow the federal authorities to handle that part of the case before stepping into it.

Most parents who have experienced parental abduction see the issue as a no-brainer — enforce international law and return the boy. Under the Hague Convention, the United States is required to hold a custodial hearing and then return the child, though Cuba is not a party to the treaty. But because of the political issue the U.S. government decided to review the situation carefully before surrendering the boy. INS officials flew to Cuba in December and met with the lad’s father, who provided a birth certificate and other records supporting paternity and status of an involved parent. Elian now is listed as an INS parolee, eligible to apply for permanent U.S. residence in one year. But, because he is underage, a legal representative must make the application for him.

In Washington, Senate Foreign Relations Committee Chairman Jesse Helms of North Carolina hopes to bypass any INS arrangement by introducing legislation that would grant immediate U.S. citizenship to Elian. Helms sent a sharply worded letter to
Reno urging her not to bow to Castro, saying: “If an East German mother had died trying to cross the Berlin Wall with her child, can you imagine for one instant throwing the child back over the wall?” Helms declared: “Elian must not be thrown back over the wall simply because his mother did not survive the crossing.”

But some American parents see it differently and note that, unlike Clinton, the Cuban dictator fights for his own. “I guess politics will always be in conflict with the law and human rights. My child, Nadia, was abducted seven years ago when she was only 2 years old,” says Maureen Dabbagh of Virginia Beach, Va., who founded PARENTS, a group that assists victims of parental abduction. “I do not even know what she looks like or where she is. So much for the superpower. There may be a conflict of politics between the United States and Cuba but, as a mother, I wish Clinton would do for my child what Castro is doing for this little Cuban child.”

Oklahoma father Randy Rider, whose two children were kidnapped by his ex-wife, also wishes the Clinton administration would fight for American children. “I have two of my own that I have not seen in over six years,” he says. “They are in Mexico and my government will not intervene to bring them home to me. I know my children need me and I need them, too. I know that father needs his son and his son needs him, too. I feel for that Cuban boy and his dad.”

New York mother Amy Wheeler Hughes, whose two daughters, Saran and Harriet, were kidnapped abroad by their father, notes other ironies: “It appears to me that the father of the Cuban boy should be held responsible for coming to the aid of his son in America. If and when my daughters are found it will be my responsibility to go and get them. The father of this child should be required to go to Florida and show a sincere effort to recover his son. I believe that this would not only provide the emotional support that his boy needs after losing his mother but would also show that his son’s emotional well-being is just as much a priority as his physical custody. In other words, show up and show you care” about the good of the child.

Miami mother Jean Henderson, whose son, Roman, was kidnapped abroad and returned recently because he is terminally ill with cancer, also believes the Cuban boy should be returned. “I know nothing of Elian’s relationship with his father, but the man says he wants to parent his child in his native country. Obviously, parents who abduct their children and leave the U.S.A. also believe that they are taking them to a better country. The Hague Convention was intended to deal with such issues. Some people argue that Elian has expressed the wish to remain here. What child of barely 6 years of age wouldn’t want to stay where he or she is getting so much attention, going to Disney World, etc.?”

But those who know Communist Cuba firsthand and have lived with this situation see it differently. The parents of Miriam Hernandez-Davis fled Cuba and now reside in Miami with her and her daughter Yasmeen. The daughter was kidnapped by her father to Saudi Arabia but, fortunately, was rescued in April. “Elian should stay in this country because his mother risked her life and ended up dying in order to pursue freedom and give her child a better life,” she says. “I have had distant cousins visit and have heard the horror stories about Cuban life nowadays. I can understand how a parent would do anything to secure that her child gets out of there.”
What the Law Says

Since Cuba is not a party to the Hague Convention — an international treaty to help solve parental-abduction cases to foreign countries — the case of Elian Gonzalez has been treated as an immigration matter. That put it into an administrative process in which the U.S. Immigration and Naturalization Service, or INS, might decide the fate of the 6-year-old boy without giving jurisdiction to the anti-Castro courts of south Florida.

Thus, INS moved to decide who could speak for Elian. Since he only has one natural surviving parent, his father, Juan Gonzalez — who had visitation rights after a divorce and has been determined by INS to be competent — the father was named by INS to speak for Elian.

The effect was to give the father, rather than his Miami relatives, standing to ask for an asylum hearing — a federal court proceeding allowing Cuban exiles to prove that should they return to their homeland they would be persecuted for their religion, race, political opinions or membership in a particular social group.

But because Elian is underage, none of this is likely to come into play, claims a source familiar with the case. The INS has ruled that he does not have to have an asylum hearing, making the issue of who could demand one in his name a crucial issue. Never mind that it is unprecedented for a Cuban exile to be denied an asylum hearing.

The INS is playing hardball. If the mother had survived she might have been charged on a complaint by the Cuban father with federal kidnapping because Elian was taken to the United States without the father’s consent, claims an inside source knowledgeable of the law. She also might have lost custody had the Justice Department argued that she failed to act in the best interests of the child by subjecting a 6-year-old to such a dangerous trip.

As a practical matter in anti-Castro south Florida, however, neither of these possibilities was likely.

While Elian’s relatives may seek asylum for him on the grounds that the United States offers better medical care, economic opportunity and freedom, this in itself would not be enough to prevent him from being returned to Cuba, say authorities. The INS has returned children to parents from countries with even worse medical care, and seeking economic opportunity is not legal grounds for claiming asylum.

So how might this boy be kept in the United States despite the apparent willingness of the INS and the Clinton/Gore administration to have him returned to Castro’s Cuba? Simple enough, says a longtime Senate staffer: Any House or Senate committee chairman with an interest in the matter could put him on indefinite subpoena for hearings to include the attorney general and the director of the INS.