

I do not for a moment question the intentions of those who support the resolution before us. I respect most, if not all, of the people who are advocating this change. But, in my view, let us be clear. No amendment and no amount of amendments to the Constitution will in and of themselves result in greater respect for the flag and for the free and democratic nation that it symbolizes. You cannot mandate nor legislate patriotism. You carry it in your heart and soul. But I cannot write it for you. I cannot force it down the throats of the citizens I represent. We can change laws but we cannot change hearts by changing laws. We can only attempt to change conduct and to enshrine in our laws the eternal principles that have guided our Nation from its earliest days—principles such as liberty and equality.

Let us leave to statutory law—those already on the books, and those along the lines proposed by several of our colleagues—to sanction those who would with criminal intent burn our beloved flag. But let us leave the Constitution unsullied by a proposal such as this that would needlessly, in my view, restrict our liberties as a people.

The great genius of our Constitution is that it enshrines in word the eternal aspirations of humanity. We may try to amend it, but if we do so in a manner at odds with those aspirations, then we act at our peril and in folly.

As Alexander Hamilton said:

The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sunbeam in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power.

Let us not trifle with the Bill of Rights, a document that has never been changed, not one comma, not one semicolon, not one word, in 210 years of history. Let us not change that today over this issue.

I urge the defeat of this resolution.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. L. CHAFEE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HAGEL). Without objection, it is so ordered. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. I thank the Chair.

(The remarks of Mr. SMITH of New Hampshire pertaining to the introduction of S. 2314 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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MEASURE READ THE FIRST
TIME—S. 2314

Mr. SMITH of New Hampshire. Mr. President, I rise for the purpose of in-

troducing another bill that I send to the desk and ask that it be read for the first time.

The PRESIDING OFFICER. The clerk will report the bill or title.

The legislative clerk read as follows:

A bill (S. 2314) for the relief of Elian Gonzalez and other family members.

Mr. SMITH of New Hampshire. Mr. President, I now ask for the second reading and, on behalf of the minority, I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read for the second time on the next legislative day.

Mr. SMITH of New Hampshire. Mr. President, this bill refers to a matter that is on everyone's mind. I know the Senator from Nebraska has had some concerns on this. I rise to explain what this legislation does.

I think timeliness is important. This is an urgent matter. I introduced this bill along with my colleagues from Florida, Senators MACK and GRAHAM. I am pleased to have their support in introducing the bill. I am doing it today to correct an injustice.

There is an injustice being committed, as we speak, by the Attorney General and the Immigration and Naturalization Service against Elian Gonzalez. I thank Senator MACK for his leadership in sponsoring a private relief bill to grant Elian Gonzalez citizenship. A grant of citizenship to Elian Gonzalez has the practical effect of removing the Elian Gonzalez controversy from the immigration law and places the controversy in the Florida courts for a custody proceeding.

This bill today does not grant Elian Gonzalez citizenship. Again, I am doing this with the full support of Senator MACK and Senator GRAHAM. This grants what is called family permanent residency to the family of Elian Gonzalez—that would be Elian, Elian's father in Cuba, Elian's father's current wife in Cuba, Elian's father's son in Cuba or child in Cuba, Elian's two grandmothers and one grandfather, all of them—so they can now come to America, sit down as a family and resolve this matter. If they have to go to custody court, it takes it out of immigration and puts it into the custody court. This does not grant citizenship. It does not interfere in any way other than to say, let's do it in a custody matter, the same way as any other 6-year-old boy would have to do.

Permanent residency status will settle the status of Elian Gonzalez under immigration and nationality law and leave the case to be resolved in the Florida State courts in a custody matter, not an immigration matter.

Some ask: What is the difference between permanent residency and citizenship? Why are they doing this as opposed to citizenship? Frankly, a lot of my colleagues have expressed concern about citizenship. We want to make it palatable because of the confrontation that is beginning to brew now and may come to a head as early as tomorrow

morning where we have a deadline of 9 a.m., where literally this boy could be dragged kicking and screaming from the arms of his uncle, put on a plane, and sent to Havana.

Do we want to see that in America tomorrow? Do we want to see that? That is a confrontation I don't want to see. It is not called for. We don't have to let it happen. This Senate could act today, but under the rules, we may have to act on Tuesday or Wednesday, if it is delayed. Apparently, some have indicated they want to delay it.

I wish to make it clear, it could be acted on if there weren't delays being called for. Permanent residency status would make Elian Gonzalez a resident alien. Resident aliens don't have the privileges of citizenship. They are not allowed to vote and can be deported for committing a crime. Their status is as a resident alien, subject to Federal laws regarding deportation provisions. A citizenship bill would grant the individual all the rights of citizenship: voting rights, no deportation, and all other rights associated with being a citizen.

Do I support that? I happen to support that. I would be glad to give Elian Gonzalez citizenship. I know a majority of my colleagues do not. I am looking out not for what BOB SMITH wants to do but I want to do what is right for Elian Gonzalez. I want Elian to have his day in court as any other child would have in a custody matter where relatives were trying to determine who should have custody.

At 4 p.m. today, Lazaro Gonzalez, his uncle, Elian's uncle in Miami, is going to meet with representatives of the INS. They are going to ask Lazaro, in this meeting at 4 o'clock, to give up all rights to this boy, all rights to keep the boy in the country pending a possible appeal to the U.S. Supreme Court. If Lazaro Gonzalez says, "No, I will not give up those rights," then as early as 9 a.m. tomorrow, Elian Gonzalez's parole status will be revoked and the boy could be sent back to Cuba without Elian's appeal being heard by the Eleventh Circuit Court of Appeals.

Very seldom do we come down on the floor with an issue as urgent as this. This is an outrage. This is urgent. I have heard some people say: We don't want to vote on this thing. We should not have to vote on this. We don't want to deal with it. It is too hot to handle. We are not going to vote on this.

Whatever way they vote, I am not trying to tell Senators how to vote. I am asking for a vote. I think the Senate should say to the United States of America, to Fidel Castro, and to the Cuban American community, that we don't want to see this confrontation—and frankly, to Janet Reno—at 9 a.m. tomorrow or 9 a.m. on Friday or 2 o'clock on Saturday or Sunday or next week or next month. I don't want to see on my television screen pictures of Elian Gonzalez being dragged from his home in Miami and placed on that airplane crying and screaming and kicking. I don't want to see that. Not only

do I not want it to happen, I don't want to see it happen, either.

It doesn't have to happen. We can stop it. But if we wait and we delay and delay, and we don't send this message to the Attorney General that we mean business, it will happen. She has backed the family into a corner. Why, I will never know, but she has. We can stop it right here. We can stop it. I want my colleagues to know that if we don't vote and this happens, then it is on our conscience. We can stop this; we have the capacity to do it.

The INS and Justice Department to this day have not spoken to Elian Gonzalez.

Isn't it interesting? I spoke to him. I met with him for 2 hours. Diane Sawyer has spoken to him. She spoke to him. Senator BOB SMITH spoke to him. He is available. But Janet Reno can't speak to him. Do you know why? He doesn't have any rights. I say to anybody out there who has a 6-year-old child—and I have had three in my time, but they are long past 6 now, and they were pretty smart—at 6 years old, you know what is going on.

Do you know what happened to this little boy? I bet it didn't happen to too many boys anywhere in the world. He saw his mother die, slip under the waves and drown. The last words that came out of her mouth to the other survivors were: Please get Elian to America. That is my dying wish.

He didn't come here on a yacht. He wasn't escorted in some rich boat somewhere and brought to the shores and kidnapped. He was found drifting at sea for 3 days, surrounded by sharks. He survived, and his mother wanted him to be here. His mother had custody. She died. She can't speak for him. Do you know what? If she had lived—this is the irony—this would not be before the Senate. It would not be before the INS. They would have 13 months to work this out. He would be allowed to stay. So because his mother died, Elian is now being punished. So Diane Sawyer can talk to him, BOB SMITH can talk to him, but the Attorney General can't be bothered with it because Elian has no rights.

Are we in the Senate going to stand by and tolerate that? Do we want that on our conscience? I hope not. We need a vote on Senator MACK's bill for citizenship, if you wish, or on my bill on permanent residency status, if you wish. It doesn't matter to me. I want to have the vote on what we can get the most votes on so we can win, so that Elian wins, so that the process wins.

This is a little boy we are talking about, who endured more than most children would ever endure collectively throughout the world. I hear all the stuff about it is a family matter. Do you know what? It is a family matter, and we make it a family matter if we pass this resolution because then the family can come here from Cuba, if they care about this little boy. No restraints, no restrictions. Just come and sit down with Elian's family here in

America, with the Cuban family, and work it out. If you can't work it out, then go to custody court in Florida, where this matter should be played out.

Without this vote—and I will repeat it for clarity—if we don't take a vote on this, Elian Gonzalez likely will be dragged kicking and screaming from the arms of his Uncle Lazaro and sent off to Cuba. Without this vote, that will happen, most likely. Or another alternative—perhaps worse—is violence, because people are up in arms about this, and they have a right to be. They have been very restrained.

I am proud of the Cuban American community for the way they have conducted themselves in this matter. But we don't need to let this kind of confrontation happen. Do you remember Waco? Janet Reno is doing the same thing again. So we need a vote. Now, if we vote and we vote no, at least you were heard; you are on record. The American people can say, Senator SMITH, or Senator so and so, this is how you voted. We heard you and you voted however you voted; we know how you felt about it.

At least have the courage to cast your vote on this matter.

My legislation grants Elian's family in Cuba permanent residency status. For the record, it includes Juan Miguel Gonzalez, Elian's father, for permanent residency status in America; Nelsy Carmenate, Juan Miguel's wife; Gianni Gonzalez, Juan Miguel Gonzalez's son; Mariella Quintana, Elian's paternal grandmother; Raquel Rodriguez, Elian's maternal grandmother; and Juan Gonzalez, Elian's grandfather. It grants all of them permanent residency. Does it mean that if they come to America, they have to stay? No. But it means if you care about Elian, then you have to come to America and talk to the family here.

I have been told by members of Elian's extended family that Juan Miguel Gonzalez, Elian's father, had expressed an interest in coming to the U.S. a few months before Elian was supposed to arrive.

The cold war is over, they say. It is over every place, I guess, but in the Senate because we want to say that Elian doesn't have any rights and we want to let Fidel Castro dictate what happens. Why would we want to let Fidel Castro determine the fate of Elian Gonzalez? Let Juan Gonzalez come here. If Castro cares, let the Gonzalez family come here. We are not going to keep them. They can stay if they want and they can go home if they want. We just want them to come and meet with the family here in Miami.

I am deeply concerned about this arbitrary deadline. I repeat it again for emphasis: I am very concerned about this 9 a.m. deadline. I am very concerned that such a deadline would be imposed because it is inflammatory to remove this parole status of Elian Gonzalez.

The goal in introducing this bill is to get the Justice Department and the INS out of the case and turn it over to the Florida courts and make it a case for custody, so that any 6-year-old boy—if you think of America today, there are custody cases going on right now as we speak. And to say this child doesn't have any rights—how about a child abuse case? Children are interviewed by psychiatrists and psychologists all the time under allegations of child abuse. In custody battles and divorces, they hear from children in custody battles. They are heard every day. Yet Elian can't be heard because of this decision—a regrettable decision—by the Attorney General.

I am going to end with a plea to the Attorney General: Please remove the arbitrary 9 a.m. deadline. Let the courts hear Elian Gonzalez's appeal. This is America. We have courts to resolve custody issues. It is not an immigration issue. He didn't immigrate here. He didn't immigrate into this country. He didn't emigrate from Cuba. He left Cuba. He wanted to get out of there and so did his mother. His mother died, and you are punishing him because she died. The other two people who survived—and I met with them as well—are adults, and they are here for 13 months. They are here. No problem. But Elian doesn't have any rights. Find a place in the law that says there is any age limit. At what age does he have rights? Is it 6, 7, 8, 9, 13, or 14? Find it in the law, Madam Attorney General. It is not in there.

We have courts to resolve these matters. Let the Eleventh Circuit Court of Appeals hear Elian's case before you attempt to send him back to Castro's open arms. Don't make the 6-year-old boy be paraded through the streets of Havana by Fidel Castro. Please, remove the arbitrary deadline. Let the Senate be heard. We will be heard, I hope, as early as Tuesday, perhaps Wednesday or Thursday—whenever we can work this through.

I appreciate the cooperation of the majority leader, who has been very helpful in this matter. I am grateful for that. But there are certain things he can't control. Senators have rights to delay, and that is what is happening. Please, I say to the Attorney General, don't try to impose that deadline. Remove it and let reason prevail.

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FLAG DESECRATION CONSTITUTIONAL AMENDMENT—Continued

UNANIMOUS CONSENT AGREEMENT

Mr. SMITH of New Hampshire. Mr. President, on behalf of the leader, I ask unanimous consent that, notwithstanding rule XXII, the following Senators be recognized for debate on the pending flag desecration legislation for the designated times, and following the use for yielding back of time, the joint resolution be read the third time and a vote on passage occur, all without any intervening action or debate. Those Senators are as follows: Senator BYRD