



## *Eric Holder Nomination as U.S. Attorney General*

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### *Elian Gonzalez Situation*

While the exact degree of Eric Holder's direct involvement in ordering heavily-armed federal agents to snatch Elian Gonzalez from his relatives' home in Miami in 2000 is unclear, it is clear that, as the Deputy Attorney General at the time, Holder was a staunch supporter of the government's decision to return Elian to his father in Cuba.<sup>1</sup>

For example, before and after the Elian crisis, Holder repeatedly supported the government's actions and decision-making process. In an interview with CNN in 2000, Holder stated that "our hope is that we will now be able to, with the father's presence here in the United States, get father and son reunited . . . . I think the bottom line is we want to get father and son physically reunited as fast as we can."<sup>2</sup> Holder continued, "There have been some who have claimed that the government has acted in a heavy-handed manner. I reject this notion."<sup>3</sup> Further, Holder said in an official DOJ statement in April 2000 that "[t]his father and his son need to be together. And in the coming days we will do all that we can to ensure that happens."<sup>4</sup>

A few hours after the DOJ-sanctioned raid took Elian into custody, Holder appeared on Fox News to deny the charge that the DOJ had taken Elian by force, apparently unaware that Fox was simultaneously, on split screen, showing a photo of federal agents pointing weapons at a screaming Elian.<sup>5</sup>

### *Pardon of Two Weather Underground Members*

As Deputy Attorney General under President Clinton from 1997 to 2001, Eric Holder was among those responsible for overseeing the vetting of the Clinton Administration's 176 last-minute pardons.<sup>6</sup> Among those pardoned were Weather Underground members Susan Rosenberg

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<sup>1</sup> *Newsweek: Obama to name Eric Holder AG*, HOTAIR, (Nov. 18, 2008), <http://hotair.com/archives/2008/11/18/newsweek-obama-to-name-eric-holder-ag/>; Carol Felsenthal, *What Does Elian Gonzalez Have to Do With Obama's Search for a VP?* THE HUFFINGTON POST (Nov. 20, 2008), [http://www.huffingtonpost.com/carol-felsenthal/what-does-elian-gonzalez\\_b\\_108961.html](http://www.huffingtonpost.com/carol-felsenthal/what-does-elian-gonzalez_b_108961.html); Mark Wittington, *Eric Holder Tapped for Attorney General*, ASSOCIATED CONTENT (Nov. 18, 2008), [http://www.associatedcontent.com/article/1223074/eric\\_holder\\_tapped\\_for\\_attorney\\_general.html](http://www.associatedcontent.com/article/1223074/eric_holder_tapped_for_attorney_general.html).

<sup>2</sup> *Deputy Attorney General Eric Holder Addresses Arrival of Juan Miguel Gonzalez in the U.S. from Cuba*, Transcript, CNN (Apr. 6, 2000), available at <http://transcripts.cnn.com/TRANSCRIPTS/0004/06/se.01.html>.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Department of Justice, *Statement of Deputy Attorney General Eric Holder, Jr. On The Arrival Of Juan Miguel Gonzales* (Apr. 6, 2000) available at <http://www.usdoj.gov/opa/pr/2000/April/178dag.htm>.

<sup>5</sup> *Id.*

<sup>6</sup> Office of the Pardon Attorney, <http://www.usdoj.gov/pardon/>; *Clinton's Last-Day Clemency Benefits 176; List Includes Pardons for Cisneros, McDougal, Deutch and Roger Clinton*, Washington Post, Jan. 21, 2001.

and Linda Evans who were both still serving their sentences.<sup>7</sup> Rosenberg was convicted of a 1981 robbery of a Brinks' truck in which two police officers and a security guard were killed.<sup>8</sup> Evans was convicted for bombing the U.S. Capitol in 1983.<sup>9</sup>

Following these pardons, the Justice Department would not comment on whether it supported or opposed the pardons, but Pardon Attorney Roger Adams said, "We certainly made the White House aware on a number of occasions that there were victims in the crimes committed by Rosenberg and that we were aware of their feelings."<sup>10</sup> "At the time of their release from prison, Sen. Chuck Schumer (D-NY) joined then New York Mayor Rudolph Giuliani, a Republican, in criticizing the decision to set free Susan Rosenberg, convicted on weapons and explosives counts, and connected to the Weather Underground's robbery of an armored car in Rockland County, New York that led to the deaths of two police officers and a Brinks' guard. Schumer's spokesman at the time, Phil Singer, called it a 'terrible injustice.' Singer worked for the Clinton campaign this year."<sup>11</sup> The pardons were also opposed by New York's U.S. Attorney, Mary Jo White.<sup>12</sup>

In the April 16, 2008 Democratic Presidential Primary Debate, Sen. Obama defended his alleged association with Bill Ayers by criticizing Sen. Clinton for the Rosenberg and Evans pardons, "By Senator Clinton's own vetting standards, I don't think she would make it, since President Clinton pardoned or commuted the sentences of two members of the Weather Underground."<sup>13</sup>

The exact degree of Holder's involvement in the decision to grant clemency to Rosenberg and Evans is unclear; this has allowed those who support Holder to try to exonerate him while allowing those who oppose Holder to question his judgment. For example, "[a]lthough the petitions for Rosenberg and Evans were filed with the Justice Department, according to their attorney, [Lanny Davis (former Clinton White House Special Counsel)] Holder had 'no role at all' in the Weather Underground decisions."<sup>14</sup> On the other hand, a National Review Online writer stated:

Holder was one of the officials who signed off on [Marc] Rich's pardon, although there's an argument to be made that the rest of the Clinton Administration gave Holder little time or opportunity to give Rich's case a proper review. No one has found the recommendation of Eric Holder on the pardons of the Weather Underground members. Lanny Davis, a Holder friend, argued that Holder had no role in the pardons of those members, a curious explanation. The Deputy Attorney General assigned to oversee pardon recommendations to the President never had

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<sup>7</sup> '60s Radicals Become Issue in Campaign of 2008, New York Times, Apr. 17, 2008.

<sup>8</sup> Clinton's Rosenberg Case, National Review, Nov. 29, 2004.

<sup>9</sup> *Id.*

<sup>10</sup> Clinton's Last-Day Clemency, *supra* note 6.

<sup>11</sup> Avni Patel & Brian Ross, Obama's VP Screener Missed Problems with Controversial Clinton Pardons; Eric Holder Said He Failed to Focus on Controversial Pardon of Financier Marc Rich, June 20, 2008, ABC News, <http://abcnews.go.com/Blotter/story?id=5211771&page=1>.

<sup>12</sup> Pardons on the Sly, New York Times, Jan. 25, 2001.

<sup>13</sup> '60s Radicals Become Issue, *supra* note 7.

<sup>14</sup> Patel & Ross, *supra* note 11.

an opinion on this one? If Barack Obama thought the Clinton administration's pardons of Weather Underground members were worth bringing up in a debate, did he ask Holder about it before he put him on his veep selection team?<sup>15</sup>

### *Pardon of FALN Terrorists*

A CNS News article accurately summarizes the findings of the report issued by the House Committee on Government Reform on Dec. 12, 1999:

Eric Holder, the long-time Washington lawyer chosen by President-elect Barack Obama to be the next attorney general, was a central figure in the controversy surrounding the clemency petitions of 16 convicted terrorists during the Clinton administration.

Holder, who was deputy attorney general from 1997 until 2001, oversaw all of the requests for clemency filed during those years, including requests from former domestic terrorists, drug traffickers and a number of disgraced politicians.

Most notable among the petitions for clemency granted during Holder's tenure is the request from 16 members of a Puerto Rican Marxist terrorist group, the Armed Forces of National Liberation, known by its Spanish acronym FALN, which engaged in a robbery and terror campaign in both the U.S. and Puerto Rico during the 1970s and 1980s.

The clemency petition, which was supported by Reps. Luis Gutierrez (D-N.Y.), Jose Serrano (D-N.Y.) and Nydia Velazquez (D-N.Y.), became the subject of fiery controversy after it was revealed that none of the convicted terrorists had renounced violence and that their victims had not been consulted during the clemency process.

The clemency petition was opposed by the FBI, the U.S. attorneys who had prosecuted the terrorists, and even the Justice Department's own Office of Pardon Attorney – an office that was established to deal with the Clinton administration's overwhelming number of pardon requests.

As deputy attorney general, Holder was responsible for overseeing the investigations of the individuals filing for clemency in order to determine whether or not their requests should be granted by then President Bill Clinton, who possesses the constitutional authority to grant pardons.

A report issued by the House Committee on Government Reform on Dec. 12, 1999 states that senior Justice Department officials met with those who were

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<sup>15</sup> Jim Geraghty, *Holder's Role on Obama's Campaign Contradicts The Candidate's Debate Zinger (UPDATED)*, June 24, 2008, National Review Online.

asking for clemency for the terrorists, but the victims of the FALN were denied meetings.

“Victims were unable to get meetings with the White House or Department of Justice,” the report said. “Some had tried to schedule meetings; they were simply rebuffed. Activists seeking clemency did get such meetings.”

In fact, the report found that *Holder met with the New York congressmen about the clemency petitions, once in November of 1997 and again in April of 1998.*

*Holder also played a central role in drafting the clemency report that was delivered to President Clinton – one that gave no clear recommendation as to whether he should or should not grant clemency to the separatists; a position that ran against Justice’s earlier recommendations against clemency as late as March 1999.*

*The congressional report criticized this ambiguous position, saying its reversal looked like the Justice Department was seeking to find a way to legitimize a legally suspect decision.*

“By refraining from giving a clear recommendation, it is almost as if the Justice Department is doing the best that it can to bolster a decision that had already been made,” the report said.

The report went on to criticize Justice for apparently bending its own rules regarding clemency due to the politically charged nature of the requests.

“It appears that the Justice Department has bent and even changed its rules to accommodate this politically charged clemency,” the report found. . . .<sup>16</sup>

The House committee report discusses in detail the series of bombings and robberies committed by FALN in the name of Puerto Rican independence from American “colonialism.” Holder was involved in meeting with supporters of clemency and calling U.S. Attorneys that opposed clemency once the final decision had been made. Some of the specifics of the internal decision-making between the White House and DOJ are unknown due to President Clinton’s claim of executive privilege, but the House committee interpreted the DOJ’s change from recommending no clemency to taking an officially neutral position as an effort to support a decision that the White House had already made in favor of clemency.

Here are some relevant excerpts from the House report:

Those Offered Clemency Were Very Unlikely Candidates for Clemency. Prior to the offer of clemency to the 16 FALN and Macheteros terrorists, President Clinton had received 3,229 requests for clemency. He had acted favorably on only

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<sup>16</sup> Matthew Cover, *Obama’s AG Choice was Key Figure in Clinton Terrorist Clemency Controversy*, Nov. 20, 2008, cnsnews.com (emphasis added).

3 of these requests. The 16 terrorists appear to be most unlikely candidates. They did not personally request clemency. They did not admit to wrongdoing and they had not renounced violence before such a renunciation had been made a quid pro quo for their release. They expressed no contrition for their crimes, and were at times openly belligerent about their actions. . . .

The White House Seemed to Want Clemency More Than the Terrorists. Notwithstanding the fact that the 16 did not express enough personal interest in the clemency process to file their own applications, the White House appeared eager to assist throughout the process. Meetings were held with supporters, and some senior staff even suggested ways to improve the likelihood of the President granting the clemency. Overall, the White House appears to have exercised more initiative than the terrorists themselves. . . .

The Department of Justice Appears to Have Changed its Recommendation to the White House in Order to Help the White House. The first Justice Department recommendation to the White House appears to have taken an unambiguous stand against clemency. Later, in June 1997, the White House recognized that the Justice Department still opposed clemency. In July 1999, however, according to a publicly reported leak from the Justice Department, a second report was sent by the Department of Justice to the President and no official recommendation was made. Instead, according to the Justice Department source, the report “contained what law-enforcement officials said was a more carefully worded analysis that presented the President with multiple options for each prisoner, from unconditional release to no leniency whatsoever.” If this is true, the Committee is concerned that the Justice Department side-stepped giving an unambiguous recommendation. . . .

The Clemency Decision Undermines the U.S.’ Position in the International Fight Against Terrorism. The decision to grant clemency to the FALN and Macheteros terrorists sends a clear message that our demands for severe punishment, and our willingness to mete out severe punishment for terrorism, can be hollow. Of greater significance, it sends a message of encouragement to terrorists themselves. . . .

The Clemency Decision Empowered Two Dangerous Terrorist Organizations. As the FBI made clear in a written statement prepared for the Committee’s September 21, 1999, hearing: “The FALN and Macheteros terrorist groups continue to pose a danger to the U.S. Government and to the American people, here and in Puerto Rico. . . . The challenge before us is the potential that the release of these individuals will psychologically and operationally enhance the ongoing violent and criminal activities of terrorist groups, not only in Puerto Rico, but throughout the world.” . . .

On August 11, 1999, the President granted clemency to 16 individuals who were members of the Puerto Rican terrorist groups the FALN and the Macheteros. . . .

The decision to grant clemency to these individuals convicted of terrorist acts took over 6 years to make. Although the clemency process is normally lengthy, the process for these individuals not only was drawn out, but also was handled in a manner different than the average petition. This suggests that the decision was subject to numerous political considerations. However, because President Clinton claimed executive privilege over all documents that might shed light on the reasons for the clemency, the public does not know all of the facts.

. . . . [Typically,] [a]fter the Pardon Attorney has gathered all of the relevant information relating to the petitioner, he drafts a proposed recommendation for action, which is sent to the Deputy Attorney General for review, and action. Such a recommendation is supposed to reflect the views of the Department of Justice. If the Deputy Attorney General concurs with the Pardon Attorney's recommendation, he will sign the recommendation and return it to OPA for transmittal to the Counsel to the President. Should the Deputy Attorney General disagree with the recommendation, he may send it back to OPA to change the proposed recommendation.

Once the Deputy Attorney General has approved the recommendation, it is transmitted to the Counsel to the President. Ostensibly, the Counsel to the President uses the Department of Justice's report as the basis for his recommendation to the President. It is then solely the President's decision on whether or not to grant clemency. . . .

On November 9, 1993, Ofensiva '92 filed a petition for executive clemency on behalf of 18 members of the FALN and Macheteros organizations convicted of Federal offenses. . . . The Pardon Attorney had informed Dr. Nieves Falcon that Department of Justice rules required that prisoners file their own petitions. . . .

Despite its own regulations, the Justice Department accepted the petition filed by Ofensiva '92 on behalf of the prisoners. The petition makes clear that the prisoners considered themselves "political prisoners," and similar to their trials, they refused to take part in any process that would legitimize the government's actions against them, therefore they refused to file their own petitions. The Ofensiva '92 petition went on to explain that in considering the clemency request, OPA must take into account 'the political nature of the entire matter, beginning with the colonial nature of the relationship between the United States and Puerto Rico.' In addition, the petition argued that the OPA should compare the prisoners to the forefathers of the United States who fought against their colonial status with Britain, thereby exculpating the prisoners from any acts they may have committed. . . .

The individuals working to secure release of the prisoners mounted a campaign to show support for clemency. Early in the process they involved numerous other groups to lobby for clemency, including Members of Congress and the religious community. Most active in the campaign for release were Congressmen Luis

Gutierrez and Jose Serrano, along with Congresswoman Nydia Velazquez. Supporters made the same arguments that had been made in the petition for clemency, namely that these were political prisoners and their sentences were disproportionately long. They also focused on the benefits the release would bring to United States and Puerto Rico relations. Many of the supporters were granted meetings with the Pardon Attorney, as well as high-ranking officials in the Department of Justice and the White House. . . .

The Pardon Attorney had her first meeting with the attorneys and advocates of the FALN and Macheteros prisoners on July 19, 1994. . . . Aside from their meetings with OPA, *supporters of clemency also met with Counsel to the President Jack Quinn in October 1996, and later meetings were held with Deputy Attorney General Holder, Attorney General Reno, and White House Counsels Quinn and Ruff.*

As part of the clemency process, the Pardon Attorney reported regularly to the Attorney General's office on status of the clemency for the FALN and Macheteros members and on any new information in the case. By December 1996, the Pardon Attorney made a recommendation against clemency and that recommendation was forwarded to the White House. Nevertheless, OPA continued to meet with or respond to requests from the supporters of the FALN and Macheteros clemency.

By fall of 1997, the clemency remained pending, even though the White House had received the Pardon Attorney's recommendation in December 1996. From a September 1997 memorandum from the Pardon Attorney, it appears that the Justice Department had been getting inquiries about the FALN and Macheteros from both the White House and outside parties. *In November 1997, Deputy Attorney General Eric Holder met with clemency supporters Congressmen Jose Serrano, Luis Gutierrez, and Nydia Velazquez. The Members of Congress argued for commutation of the prisoners' sentences and asked Deputy Attorney General Holder that he "render to us the ability to be here (in Congress) when these people are released."*

*Deputy Attorney General Holder mentioned to the Representatives that the prisoners had not petitioned for clemency on their own, and asked whether that made them unrepentant. Congressman Gutierrez replied that the fact that the prisoners did not apply "reinforce(d) the political nature of who they are." However, the Congressman said that the prisoners would provide a written statement answering the question of why they did not apply. Mr. Holder pressed the question on how the prisoners had changed since they committed the crimes, and Congressman Gutierrez said that the prisoners would reflect on that question also and respond in writing.*

No decisions had been made on the clemency by the spring of 1998. On April 8, 1998, *Deputy Attorney General Holder again agreed to meet with a group of supporters, this one from the religious community. During that meeting, the*

*supporters of the prisoners finally delivered the prisoners' statements promised during the meeting with Congressman Gutierrez in November 1997. According to notes of the meeting, the Deputy Attorney General discussed whether the prisoners would renounce violence if offered clemency. Reverend Paul Sherry responded that they "would not change their beliefs." The Department of Justice participants interpreted that statement to mean that "they would not change their beliefs about the desirability of Puerto Rican independence, although (Reverend Sherry) gave a carefully phrased answer that did not make it entirely clear that they had renounced the use of violence."*

*. . . In addition, in response to questions from the supporters as to the timing of the report, the Deputy Attorney General told them that "it would likely be fairly quickly" and added that they "had delayed its final preparation until after (that) meeting." . . .*

After meeting with numerous supporters of clemency and reviewing materials produced on behalf of the prisoners, the Department of Justice transmitted its second report on the prisoners to the White House on July 8, 1999. . . . Leading up to the 1996 report, the Department of Justice appeared to be following the normal process in reviewing the petition filed on behalf of the FALN and Macheteros members. However, *it is apparent that between December 1996 and the fall of 1997, the Department began to write another report and recommendation to the President. This is particularly odd because the Justice Department report is only a recommendation that the President need not follow.*

. . . . As part of the clemency process, OPA requested the recommendations of the U.S. Attorneys' Offices that tried the cases involving the FALN and Macheteros members. Although the President has claimed privilege over the actual recommendations, it became clear through documents and testimony that the U.S. Attorneys, sentencing judges, and FBI all opposed a grant of clemency to the proposed individuals.

As early as 1994, the U.S. Attorneys from Connecticut and the Northern District of Illinois informed OPA of their opposition to clemency for the FALN and Macheteros members. However, the President has claimed executive privilege over those letters. Through other documents produced by the Justice Department, it became clear that the U.S. Attorneys offices opposed clemency. *After the decision on clemency was made, Deputy Attorney General Eric Holder prepared to make courtesy calls to the U.S. Attorneys for the districts in which the 16 clemency grantees were convicted. . . .*

. . . it appears that none of the FALN's victims were contacted, much less consulted, during the clemency review process.



. . . Further, those victims who were aware that clemency for the FALN terrorists was under consideration were rebuffed in their efforts to involve themselves in the review process. . . .

. . . . Throughout the closing months of 1997 it appears that Deputy Attorney General Eric Holder was active in the issue. The privilege log reflects at least two notes regarding his questions on the clemency or his thoughts on the matter. . . .

On May 19, 1998, Pardon Attorney Adams sent Deputy Attorney General Holder a 48-page draft memorandum to the President, "concerning clemency for Puerto Rican Nationalist prisoners." . . .

On July 8, 1999, Deputy Attorney General Holder sent to the President a "memorandum regarding clemency matter." This was the second report sent to the White House regarding clemency for the members of the terrorist groups FALN and Los Macheteros. At the end of July 1999, Counsel to the President Ruff personally spoke with an attorney in the office of the Deputy Attorney General regarding the clemency. On August 9, 1999, OPA and the Deputy Attorney General's office held a meeting about the clemency. The President announced the clemency 2 days later on August 11, 1999.

. . . . During a November 5, 1997, meeting with Representatives Gutierrez, Serrano, and Velazquez, Deputy Attorney General Holder asked that they get a written statement from the prisoners on how they had changed and whether they were repentant. Five months later, OPA had not received any statement. Ultimately, Pardon Attorney Adams had to call Representative Gutierrez' office and request the statement. . . . It is clear from the fact that the prisoners' statements were identical that the prisoners did not truly feel remorse. A group statement tends to defeat the idea of personal remorse or repentance. Fernandez also warned that the statement would probably not be what the Deputy Attorney General had asked for in his meeting . . . .

The decision to offer clemency to the 16 FALN and Macheteros terrorists has ramifications that go beyond the typical dangers posed by the release of violent criminals back into society. First, this is the first time in the history of the United States that clemency has been offered to such a large number of individuals who are all members of like-minded terrorist organizations. The President's failure to require cooperation to solve numerous unsolved murders, coupled with the failure to require any type of contrition by the individuals or the group, sends a message that an organization has received preferential treatment. This is troubling because terrorist organizations do not necessarily act in a rational manner and might indeed be encouraged by a group being singled out for preferential treatment. . . .

A related concern is how this decision will impact our relations with foreign governments. Eliminating terrorist groups and initiatives requires foreign governments to cooperate with U.S. law enforcement initiatives. The decision to

grant clemency to the FALN and Macheteros terrorists sends a clear message that our demands for severe punishment, and our willingness to mete out severe punishment, can be hollow. Of greater significance, it sends a message of encouragement to terrorists themselves. . . .

Another area of concern is the intellectual inconsistency inherent in the rationale for the decision. When the United States decided to strike at the terrorist organization of Osama bin Laden, the President did not target only those proven to have committed acts of violence. He struck at the organization as a whole, and he presumably did so because all members were deemed to be responsible for the atrocities committed against others. Similarly, when Terry Nichols, the co-conspirator in the Oklahoma City bombing that killed 168 individuals, was given a life sentence without the possibility of parole, the President did not deplore the sentence. Thus, the White House has used a very different standard for the FALN terrorists than the standard used in statements or actions that are directed at other terrorist organizations. . . .<sup>17</sup>

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<sup>17</sup> *The FALN and Macheteros Clemency: Misleading Explanations, A Reckless Decision, A Dangerous Message*, H. Comm. on Govt. Reform, 106 H. Rpt. 488, 106th Cong., 1st Sess., Dec. 10, 1999 (emphasis added).