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 CLERK OF DISTRICT COURT
 DISTRICT OF NEVADA
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PETITION
 DAVID C. AMESBURY, ESQ.
 LAW OFFICES OF AMESBURY & SCHUTT
 703 South Eighth Street
 Las Vegas, Nevada 89101
 Attorneys for Petitioner,
 Wilsonis Ayala-Villanueva

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

WILSONIS AYALA-VILLANUEVA

Petitioner,

CV-S-03-0856-KJD-RJJ

v.

**TOM RIDGE, Secretary, Department of Homeland
 Security; ASA HUTCHINSON, Under Secretary,
 Department of Homeland Security;
 MICHAEL GARCIA, Director, Bureau of
 Immigration and Customs Enforcement;
 STEPHAN FICKETT, District Director,
 Bureau of Immigration and Customs Enforcement;
 KAREN DORMAN, Officer in Charge, Bureau of
 Immigration and Customs Enforcement,
 Las Vegas Sub-Office; FRANK GALVAN,
 Supervisory Detention and Deportation Officer**

Respondents,

CIVIL ACTION NO.

**PETITION FOR WRIT OF HABEAS CORPUS
 AND COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF DECLARING PETITIONER
 A UNITED STATES CITIZEN AND ORDERING HIS RELEASE FROM CUSTODY**

Petitioner, Wilsonis Ayala-Villanueva, by and through his undersigned counsel, hereby respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention, and to direct his release from custody by the Respondents and to declare that he is a citizen of the United States. The Respondents, their subordinate employees, and their predecessors of the of the Immigration and Naturalization Service have no jurisdiction over Petitioner. His detention is and has been unlawful. He is a United States citizen by derivation 8 U.S.C. 1432.

CUSTODY

Petitioner is in the physical custody of the Department of Homeland Security in Clark County Detention Center since July 9, 2003. His arrest on that day was clearly without legal authority and in disregard of his United States citizenship.

JURISDICTION AND VENUE

This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. Section 1101 et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. Section 701 et seq. This Court has jurisdiction under 28 U.S.C. Section 2241 (c)(1) & (3), art 1 Section 9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. Section 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. Section 2241, the Administrative Procedure Act, the Declaratory Judgment Act, 28 U.S.C. Section 2201 et seq. and the All Writs Act, 28 U.S.C. Section 1651.

Venue lies in the United States District for the District of Nevada, the judicial district in which Petitioner is detained.

PARTIES

The Petitioner is a native of El Salvador. He was admitted to the United States for lawful permanent residence on October 23, 1982. He became a derivative citizen of the United States by operation of law, 8 U.S.C. 1432 upon the Naturalization of his mother on February 19, 1987 in the United States District Court for the Eastern District of Virginia. Her Naturalization Certificate Number is 12334471.

Petitioner was convicted in the Eighth Judicial District Court, State of Nevada, for the offense of possession of stolen property in violation of Nevada Revised Statutes, Section 205 (275). He was sentenced to a term of imprisonment of 12 to 48 months. He served 9 months and was released. Under the mistaken belief that Petitioner was an alien and in reliance upon the definition of aggravated felony in 8 U.S.C 1101 (G), defining as an aggravated felony “a theft offense” (including

• • • •

1 receipts of stolen property) or burglary offense of which the term of imprisonment is at least one
2 year. The Immigration and Naturalization Service, the predecessor to the Department of Homeland
3 Security, initiated removal proceedings. The case was called before Immigration Judge, Irene Weiss
4 on July 9, 2003. Counsel informed Judge Weiss that there were issues including the claim of the
5 United States citizenship which would divest the Immigration Court of jurisdiction and requested
6 a continuance. The continuance was granted until August 27, 2003 to enable the Petitioner to pursue
7 his claim of citizenship. Following the court appearance, agents of the Respondents surrounded the
8 Petitioner, handcuffed and arrested him in the presence of his mother and sister, each of whom are
9 United States citizens.

10 The Respondent, Tom Ridge, is the Secretary of the Department of Homeland Security. The
11 Respondent, Asa Hutchinson is the Under Secretary of the Department of Homeland Security. The
12 Respondent, Michael Garcia is the Director of the Bureau of Immigration and Customs Enforcement.
13 The Respondent, Stephan Fickett is the District Director of the Bureau of Immigration and Customs
14 Enforcement. The Respondent, Karen Dorman is the Officer In-Charge of the Las Vegas Office of
15 the Bureau of Immigration and Customs Enforcement. The Respondent, Frank Galvan is the
16 Supervisory Detention and Deportation Officer of the Las Vegas Office, and upon information and
17 belief, it was on his direction that the Petitioner was arrested and detained.

18 **LEGAL BACKGROUND**

19 Petitioner is in custody pursuant to INA Section 236(c), 8 U.S.C. Section 1226(c), which
20 mandates the detention of those aliens convicted of aggravated felonies BUT the Petitioner is not
21 an alien. He is a United States citizen and the Respondents have no legal right to detain him.

22 Petitioner was born on July 28, 1973 in El Salvador. He was born out of wedlock, the son
23 of Maria Dolores Villanueva. His birth certificate is attached as Exhibit "A". Petitioner's mother
24 was Naturalized on February 19, 1987 in the United States District Court for the Eastern District of
25 Virginia. Her Naturalization Certificate is attached to as Exhibit "B".

26 8 U.S.C. 1432, which was the law on the date of the Naturalization of Petitioner's mother,
27 provided for the automatic acquisition of United States citizenship by a child born outside the United
28 States of alien parents upon the Naturalization of the parent having legal custody of the child if the

1 child was born out of wedlock and if the paternity of the child has not been established by
2 legitimation, providing the Naturalization takes place while the child is not married and under the
3 age of 18 years. It is quite clear that Petitioner was unmarried and he was about 12 when his mother
4 was Naturalized.

5 Petitioner never knew the true identity of his father until this proceeding commenced and he
6 had friends in El Salvador obtain his certificate of birth. He was, until then, unaware that he has born
7 out of wedlock.

8 **CLAIM FOR RELIEF**

9 Wilsonis Ayala-Villanueva, the Petitioner, respectfully prays for an Order directing his
10 release from custody.

11 Petitioner further prays for the grant of a Writ of Habeas Corpus.

12 Petitioner further prays for declaration that his incarceration under Section 236(c) of the
13 Immigration and Nationality Act violates the Fifth Amendment of the United States Constitution.

14 Petitioner further prays for an award of reasonable costs and attorney's fees and the grant of
15 any and other further relief which this Honorable Court deems just and proper.

16 DATED this 21st day of July, 2003.

17 Respectfully submitted by,

18 LAW OFFICES OF AMESBURY & SCHUTT

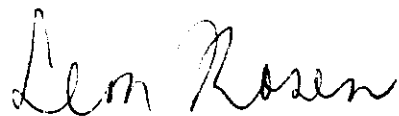
19 

20 DAVID C. AMESBURY, ESQ.
21 703 South Eighth Street
22 Las Vegas, Nevada 89101
23 Attorneys for Petitioner,
24 Wilsonis Ayala-Villanueva
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 21st day of July, 2003, I personally served a copy of the Petition for Writ of Habeas Corpus with supporting Exhibits upon the individual listed below:

Daniel Bogten
United States Attorney
333 Las Vegas Blvd. South
Las Vegas, Nevada 89101



LEON ROSEN, ESQUIRE

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EX. A

(Seal)

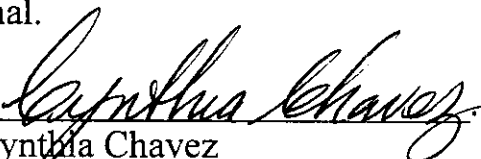
Number six hundred eightysix. - Willsonis Villanueva Ayala, Boy, born at the twentieth hour on the day of the 28th of last month en the Hospital San Pedro of this city, being son of Maria Dolores Villanueva, originally of Estanzuelas, housewife, nationality Salvadorian, domicile in this city. This data was given by Jose Tiburcio Ayala Gaitan, Student of Twenty one years of age, originally of Estanzuelas, domicile in this city and nationality Salvadorian, who attests being the father of the 1 recent birth, showed his Cedula of Identity Five-one-nine one thousand six hundred fifty three, issued by the municipal authority of this city and signs; The head of civil registry gives faith of knowing the father informant. Usulután, Eight of August of nineteen seventy three.

(signature)
Head of Registry
Samuel Navas Y Garcia

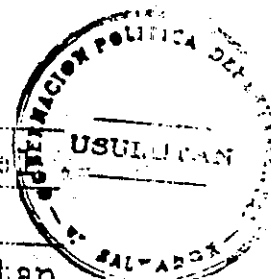
(signature)
Informant
Jose Tiburcio Ayala Gaitan

TRANSLATION:

I Cynthia Chavez am knowledgeable in both the English and Spanish Languages and certify this to be a true and correct translation of the original.


Cynthia Chavez

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PARTIDA NUMERO seiscientos ochenta-y seis.-WILLSONIS VILLANUEVA AYALA,
varón, nació a la 8 veinte horas del día veintiocho de
mes próximo pasado, en el Hospital San Pedro de esta ciudad,
 siendo hij o de María Dolores Villanueva, originaria de Estan
zuelas, de oficios domésticos, de nacionalidad salvadoreña
 del domicilio de esta ciudad .- Dió estos datos José Tiburcio Ayala Gaitán,
Estudiante, de veintiún años de edad, originario de Estanzuelas,
 del domicilio de esta ciudad y de nacionalidad salvadoreña,
 quien manifiesta ser padre de 1 recién nacido - O, exhibió su Cédula de Identidad Personal Número Cinco-
uno-nueve mil seiscientos cincuenta y tres, expedida por la Autoridad Municipal de
esta ciudad y firma en tal concepto
 ; el Infrascrito Jefe del Registro Civil
 da fe de conocer al padre-informante. Usulután, ocho de agosto
de mil novecientos setenta y tres.- Sobre borrado-nueve mil-vale.-
Emendado-tres.-Vale.-

JEFE DEL REGISTRO CIVIL

Samuel Navas Y García.-

INFORMANTE

José Tiburcio Ayala Gaitán.-

EL INFRASCRITO JEFE DEL REGISTRO DEL
ESTADO FAMILIAR DE ESTA CIUDAD, CERTIFICA
QUE LA PAGINA ORIGINAL, DE LA PRESENTE
FOTOCOPIA SE ECUENTA EN EL LIBRO
2 FOLIO AÑO
1973 Y SE EXPIDE PARA EFECTOS

LEGALES, ALCALDIA MUNICIPAL-USULUTAN
11 DE JUNIO DEL AÑO 2003

Firma

Jefe del Registro del Estado Familiar

RICARDO ALFONSO SARAVIA.



ISDEM
ES N° 515342

REPUBLICA DE EL SALVADOR
ISDEM

ORIGINAL - Para el Contribuyente
ALCALDIAS MUNICIPALES DE EL SALVADOR
RECIBO DE INGRESO

SERIE "B"
ES N° 15336

Alcaldía Municipal de Usulután 11 de Junio de 2003

Por 2.10

WILLSON VILLANUEVA
(Nombre del Contribuyente)

ENTREGO EN ESTA OFICINA LA CANTIDAD DE:
DOS DOLARES CON DIEZ CTVS.

En letras

Enc. Contab. Mpal.

CONCEPTO O MANDAMIENTO DE INGRESO	CARGO EN CAJA, RUBROS O CUENTAS AFECTADAS		
	Fondo Municipal	Especif. Mpls.	Especif. Fiscales
CERTIF. QUE EXPIDE EL REG. ESTADO DE FAMILIA	1.65		
SERVICIOS ADMINISTRATIVOS	0.11		
H. USULUTAN			0.04
5 % F. PATRONALES		0.10	
		0.10	0.04

ALCALDIA MUNICIPAL USULUTAN
10 JUN 2003

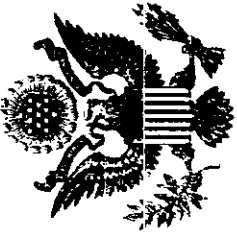
Form. 27-3-SAM
EL SALVADOR, C.A.

Receipt of money
paid to
Obtain Birth Cert.

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EX. B

No. 12334471



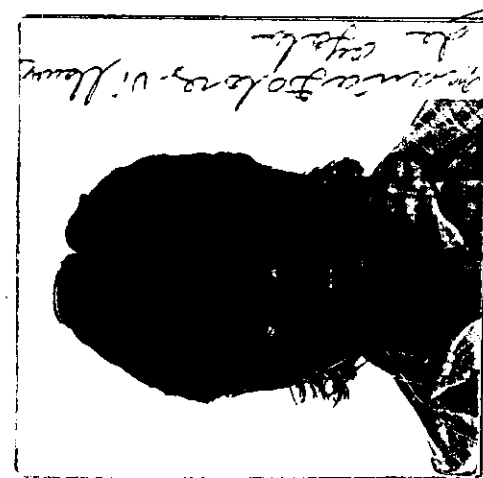
• ORIGINAL •

Petition No. 34538

Registration No. A37 010 652

Personal description of holder as of date of naturalization: Date of birth May 3, 1954 sex Female
 complexion Medium color of eyes Brown color of hair Black height 5 feet 2 inches;
 weight 135 pounds; visible distinctive marks Mole on left side of face
 Marital status Married Country of former nationality El Salvador

I certify that the description above given is true, and that the photograph of said holder is a likeness of me.



Maria Dolores Villanueva de Ayala
 (Complete and true signature of holder)

UNITED STATES OF AMERICA } ss:
 EASTERN DISTRICT OF VIRGINIA }

Be it known, that at a term of the United States District Court of
 Eastern District of Virginia Alexandria, Virginia
 held pursuant to law at February 19, 1987 the Court having found that
 on MARIA DOLORES VILLANUEVA DE AYALA
 then residing at 1805 S. Nelson Street, Arlington, Va.

is entitled to reside permanently in the United States (when so required by the
 Naturalization Laws of the United States), that in all other respects, compliant with
 the applicable provisions of such naturalization laws, and was entitled to be
 admitted to citizenship, thereupon ordered that such person be and (she) was
 admitted as a citizen of the United States of America.

In testimony whereof the seal of the court is hereunto affixed this 19th
 day of February nineteen hundred and
 Eighty-seven

DORIS R. CASEY

IT IS PUNISHABLE BY U. S. LAW TO COPY,
 PRINT OR PHOTOGRAPH THIS CERTIFICATE.

U. S. District Court.
 By *Edward M. Casey* Deputy Clerk.