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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Alfredo Carrillo-Lozano,

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No. CV-09-1948-PHX-NVW

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Petitioner,

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**ORDER**

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vs.

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Eric H. Holder, Jr., Attorney General,

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Respondent.

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On April 27, 2010, the Court conducted a bench trial at which both Petitioner and Respondent submitted documentary and testimonial evidence relevant to the status of Petitioner's United States citizenship. At trial, to counter a certification of a marriage record indicating that Petitioner's parents were married at the time of his birth, Petitioner offered into evidence his proposed Exhibit 4B, a document that purports to be a handwritten account of his parents' marriage ceremony signed by his mother but possibly not his father. Because the document lacked attestation and final certification, it was tentatively excluded pursuant to Fed. R. Civ. P. 44(a)(2) and Fed. R. Evid. 901(a). The Court indicated, however, that it may reconsider its ruling at a later time.

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On June 8, 2010, the Court issued preliminary findings of fact based on all evidence except Petitioner's proposed Exhibit 4B. (Doc. 161.) There was some concern, however, that Petitioner's parents' marriage record, upon which a number of the Court's preliminary findings were based, may have been derived in whole or in part from

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1 proposed Exhibit 4B. (*Id.*) To avoid the delay and expense associated with ascertaining  
2 the document's origin and obtaining a complete copy, the Court appointed expert witness  
3 Lic. Nicolas Jesus Olea Osuna to render an opinion as to whether the possible absence of  
4 Petitioner's father's signature on the document had any legal effect on the validity of his  
5 marriage to Petitioner's mother under Mexican law at the time. (*Id.*)

6 Mr. Olea issued his opinion on June 28, 2010. (Doc. 173.) He concluded that  
7 Petitioner's parents' marriage "is valid because it has not been nullified by a final  
8 resolution of a competent judge, in a trial in which the interested parties can participate."  
9 In reaching his conclusion, Mr. Olea relied on Article 123 of the Zacatecas Family  
10 Relations Act in effect at the time of the marriage. The English translation of Article 123  
11 provides that "the marriage, once contracted, is presumed valid; it shall only be  
12 considered null when it is declared to be so by a judgment that becomes final." Mr. Olea  
13 also relied on a judicial opinion establishing that Zacatecas legislation "does not authorize  
14 the acknowledgment of nullity by operation of law" and that "nullities have to be declared  
15 by a judicial authority, in all cases, after a formal proceeding has been executed."

16 The Court hereby adopts Mr. Olea's opinion as its own. Because there is no  
17 evidence that Petitioner's parents' marriage was ever declared void by final judgment of a  
18 court of law, whatever Petitioner's proposed Exhibit 4B purports to show has no bearing  
19 on the validity of the marriage. The Court therefore adopts the findings of fact and  
20 conclusions of law stated in its June 8, 2010 Order (Doc. 161) as final and further  
21 concludes:


- 22 (1) Petitioner's parents were legally married at the time of Petitioner's birth on  
23 February 25, 1953, in Mexico.
- 24 (2) Petitioner was not born out of wedlock.
- 25 (3) Petitioner is not a United States citizen under INA § 309(c), 8 U.S.C. § 1409, or  
26 INA § 301(a)(7), 8 U.S.C. § 1401(a)(7) (1950).

1 A declaratory judgment in accordance with the final findings of fact and  
2 conclusions of law is entered herewith. The parties are reminded that pursuant to the  
3 Order of the Court of Appeals for the Ninth Circuit (Doc. 1), the parties are to file a copy  
4 of this Court's judgment, findings of fact, and conclusions of law with the Ninth Circuit  
5 Court of Appeals within 14 days from the date of judgment. Petitioner is further  
6 reminded that he must file his opening brief with the Court of Appeals within 40 days  
7 from today, the date of judgment.

8 IT IS THEREFORE ORDERED that Declaratory Judgment be entered in the form  
9 filed herewith. The Clerk shall terminate this action.

10 IT IS FURTHER ORDERED that the Clerk of this Court file with the Clerk of the  
11 Court of Appeals copies of this order, the order filed June 8, 2010 (Doc. 161), and the  
12 Declaratory Judgment filed herewith.

13 Dated: August 20, 2010.

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Neil V. Wake  
United States District Judge