

COUNTING DUAL U.S.-E.U. CITIZENS

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I. Introduction

Dual citizenship has recently been at the center of vigorous public debate around the world. The question of whether the citizens of one nation should be free to become citizens of another nation without first renouncing their allegiance to the first is a question that is being thrashed out in every corner of the globe from Europe to the Americas to Africa, Asia and Oceania.¹ Despite the breadth of the debate, there is very little information about the number dual citizens in the world. And without the numbers, it is difficult to know how important the debates really are.

This paper looks at why it is so difficult to count dual citizens – particularly dual U.S.-E.U. citizens – and proposes a method for developing statistical estimates.

II. The Law of Dual Citizenship In the United States

A. Defining “Citizen”

A “citizen” is “[a] member of a . . . society possessing all of the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties.”² The rights of citizenship can be grouped into a three bundles: civil, political, and social.³ Within the territory of the United States, civil rights – the legal protections against abuse by the state – are extended to non-citizens as well as citizens with equal force and effect.⁴ While there are some legal consequences to not being a non-citizen residing in the United States (being ineligible for some, but not most government jobs), the real value of being or becoming a U.S. citizen is that you gain the right to participate in politics⁵ and may improve your social standing within the community.⁶

¹ Recent national legislative debates on the subject have taken place in Ireland, Italy, Hungary, Germany, Turkey, Kenya, India, South Korea and Australia. Public debates on the matter are nearly ubiquitous.

² BLACK’S LAW DICTIONARY, revised fourth edition entry at “Citizen.” (1968).

³ Derek Heater, A BRIEF HISTORY OF CITIZENSHIP 113 (summarizing an analysis provided by T.H. Marshall) (2004).

⁴ *Gramham v. Richardson*, 403 U.S. 365 (1971) (“The Court’s decisions have established that classifications [state actions] based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.”)

⁵ Only citizens can vote in elections and only citizens are eligible to stand for elective office. In recent years, several municipal governments have contemplated allowing noncitizens to vote in local elections. Stanley Renshon, *Allowing Non-Citizens to Vote in the United States? Why Not* (Sept. 2008) available at <http://www.cis.org/noncitizenvoting> (last visited May 30, 2010).

B. *Applicable legal theories of citizenship*

Since its inception, United States law has given effect to principles of *jus soli* (right of soil), *jus sanguinis* (right of blood) and naturalization. Within the federalist structure of the U.S. system of government, immigration and citizen questions are exclusively the purview of the national government; the various states of the Union have no authority to make laws impacting immigration or citizenship.⁷

1. Jus soli (birthplace) citizenship

The original text of the United States Constitution did not expressly define what citizenship was or how citizenship status was to be conferred upon a person. A limited legal structure supporting *jus soli* citizenship was inferred from the language of the Constitution. However, it required the ratification of the 14th Amendment⁸ in 1868 to make it clear that all persons born within the national territory are citizens of the United States.⁹ Residents of U.S. territories acquire citizenship at birth, but by operation of a set of statutes, not the 14th Amendment.¹⁰

Today, except for the children of diplomats, anyone born on U.S. soil is automatically a United States citizen. Just over 4 million babies are born in the United States each year¹¹ and every one of them is instantly considered a legal citizen regardless of their parents' immigration or citizenship status. Even tourists who give birth while visiting the United States are the proud parents of a U.S. citizen.¹²

⁶ Recent public opinion polls suggest that Americans have some degree of hostility even towards legal immigrants. In a survey conducted by CNN, two-thirds say the number [of *legal* immigrants] in the U.S. should remain the same. Only a quarter think that number should increase. Three percent want to deport all *legal* immigrants. CNN Poll: Support for border crackdown grows, CNN (May 26, 2010) available at <http://politicalticker.blogs.cnn.com/2010/05/26/cnn-poll-support-for-border-crackdown-grows/?fbid=gisuiHpCE6k> (last visited May 30, 2010).

⁷ While in theory, the states have retained the power to define who is and who isn't a state (e.g. New York, Texas or California) citizen, federal Constitutional prohibitions against favoring local people have made such definitions essentially meaningless. "Resident" status rather than "citizen" status is the operative concept at the sub-national levels.

⁸ U.S. Const. amend. XIV.

⁹ See *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

¹⁰ See, for example, the Guam Organic Act of 1950, 48 U.S.C. § 1421 et seq. (declaring Guam a U.S. territory and granting its residents U.S. citizenship).

¹¹ Brady E. Hamilton, Joyce A. Martin and Stephanie J. Ventura, *National Vital Statistics Reports, Volume 57, Number 12 March 18, 2009, Births: Preliminary Data for 2007*, National Center for Health Statistics, Division of Vital Statistics (March 18, 2009) available at http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_12.pdf (last visited May 25, 2010).

¹² In April, 2010, ABC news reported that federal government officials believe that about 7,000 children were born to "birth tourists" in 2009 and that there is an emerging industry of travel agencies and hotel chains seeking to profit from people willing to travel to the U.S. to give birth so as to provide their children with dual citizenship. Devin

2. Jus Sanguinis (blood right) citizenship

Again, the original language of the Constitution did not establish hereditary citizenship. However, since the First Congress in 1790, American law has provided that under limited circumstances the children of U.S. citizens born overseas are themselves entitled to full citizenship.¹³ The *jus sanguinis* principle is not as strong as the *jus soli* principle in U.S. law. The parents of U.S. citizens born abroad have long expressed frustration about residency,¹⁴ documentation and procedural requirements imposed on them and their children.¹⁵

Under the current statutory arrangement, there are separate rules for the transmission of citizenship for mothers and fathers, married parents and unwed parents whose children are born outside of the United States.

An unmarried father may not transmit his citizenship to a child born abroad to an alien mother unless he has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.¹⁶ The rule for an unmarried mother is that she can transmit her citizenship to her children born outside the United States so long as she has resided in the United States or its territories for at least one continuous year at some time in her life.¹⁷ Married couples can transmit U.S. citizenship to a child born outside the country so long as either of the U.S. citizen parents has resided in the U.S. for at least one year.¹⁸

Citizenship is not transmitted automatically from an unmarried father. The citizenship of an unmarried U.S. father whose child is born abroad is only transmitted to the child if:

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,

Dwyer, *A New Baby Boom? Foreign 'Birth Tourists' Seek U.S. Citizenship for Children*, ABC NEWS, April 14, 2010 available at <http://abcnews.go.com/Politics/birth-tourism-industry-markets-us-citizenship-abroad/story?id=10359956&page=1> (last visited on May 26, 2010).

¹³ The Act of March 26th, 1790, 1 Stat. 103, for example, provided: “The children of citizens of the United States that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.”

¹⁴ See 8 U.S.C. §1401(c) and (d) (providing a list of residency requirements).

¹⁵ See for example Association of Americans Residing Overseas, *Transmitting of Citizenship* available at <http://aaro.org/transmitting-citizenship> (last visited May 30, 2009).

¹⁶ 8 U.S.C. § 1401(g). See also *Miller v. Albright*, 523 U.S. 420, 429-30 (1998).

¹⁷ 8 U.S.C. § 1401(c). See also *Miller v. Albright*, *supra* note 22.

¹⁸ 8 U.S.C. § 1401(c).

- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
 - a. the person is legitimated under the law of the person's residence or domicile,
 - b. the father acknowledges paternity of the person in writing under oath, or
 - c. the paternity of the person is established by adjudication of a competent court.¹⁹

The Supreme Court has upheld the statutory scheme, at least with regard to the requirement that paternity must be acknowledged or established.²⁰

3. Naturalization

An individual who was not born in the United States or not born to a U.S. citizen, can become a U.S. citizen through a legal process known as “naturalization.” Typically, the naturalization process requires that the individual seeking U.S. citizenship must demonstrate a commitment to the community by (1) being a lawful permanent resident (e.g. the holder of a “Green Card”) for at least 5 years, (2) being able to read, write, and speak English, (3) have knowledge and an understanding of U.S. history and government (civics), and (4) being a person of good moral character, with attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.²¹ Special rules apply to foreign-born person who serve in the U.S. military,²² children adopted by U.S. parents²³ and direct Congressional naturalization through the granting of honorary citizenship,²⁴ or citizenship by private bill.²⁵

¹⁹ 8 U.S.C. § 1409(a).

²⁰ *Miller v. Albright*, *supra* note 22.

²¹ *See* 8 U.S.C. §316(a), *see also* United States Department of Homeland Security, *General Paths to Citizenship*, available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=86bd6811264a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=86bd6811264a3210VgnVCM100000b92ca60aRCRD> (last visited May 31, 2010).

²² *See* 8 U.S.C. §§ 328-329, *see also* United States Department of Homeland Security, Citizenship and Immigration Services, *Fact Sheet: MILITARY NATURALIZATIONS* (Oct. 1, 2004) available at http://www.uscis.gov/files/pressrelease/Military_Natz_FS_10_01_04.pdf (last visited May 31, 2010).

²³ Under the [U.S.] Child Citizenship Act of 2000, adopted children “automatically” become U.S. citizens upon entering the United States to live with an adoptive parent who is a U.S. citizen. *See* 8 U.S.C. §1431. There were 78 such adoptions in 2008. United States Department of State, 2008 INTERCOUNTRY ADOPTION ANNUAL REPORT 17, 18. U.S. Department of State (2008). United States Department of State, 2008 INTERCOUNTRY ADOPTION ANNUAL REPORT 15, 16. U.S. Department of State (2009), available at http://adoption.state.gov/pdf/fy2009_annual_report.pdf (last visited May 26, 2010).

²⁴ Honorary citizenship accounts for an inconsequential number of cases. In the United States only five people in history have received citizenship by this means. *See* United States Senate, *List of Honorary United States Citizens*,

C. Constitutional context of dual citizenship

The United States Constitution neither expressly permits nor expressly prohibits dual citizenship. The Supreme Court has held that that dual citizenship is a "status long recognized"²⁶ and that "a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both."²⁷ "The mere fact that he asserts the rights of one citizenship does not, without more, mean that he renounces the other."²⁸ The Supreme Court has also ruled that a naturalized U.S. citizen has the right to return to her native country and to resume her former citizenship, and also to remain a U.S. citizen even if she never returns to the United States.²⁹

Finally, in 1967, in *Afroyim v. Rusk*, the Court reversed an earlier decision³⁰ and interpreted the Constitution as preventing the U.S. government from stripping U.S. citizens (native-born or naturalized) of their citizenship status once established.³¹ In a case involving a naturalized citizen from Poland who voted in an Israeli election, the Supreme Court held:

We reject the idea ... Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent. This power cannot ... be sustained as an implied attribute of sovereignty possessed by all nations. Other nations are governed by their own constitutions, if any, and we can draw no support from theirs. In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or

available at http://www.senate.gov/pagelayout/reference/three_column_table/HonoraryCitizens_US.htm (last visited May 30, 2010).

²⁵ In the United States, citizenship can be legislatively bestowed upon an individual. Private bills are rare and in the immigration context are more often aimed at providing permanent resident status than citizenship. Typically, Congress passes a hand full of private immigration bills each year, mostly aimed at providing relief from administrative technicalities that prevent an otherwise qualified person from becoming a permanent resident. See U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Boarder Security and International Law, RULES OF PROCEDURE AND STATEMENT OF POLICY FOR PRIVATE IMMIGRATION BILLS 105th Cong. Available at <http://judiciary.house.gov/hearings/pdf/111privimmigbills.pdf> (last visited May 25, 2010). See also United States Senate, *Legislation, Laws, and Acts* available at http://www.senate.gov/legislative/common/briefing/leg_laws_acts.htm#1 (last visited May 25, 2010).

²⁶ *Kawakita v. United States*, 343 U.S. 717, 723 (1952).

²⁷ *Id.*

²⁸ *Id.* at 724.

²⁹ *Schneider v. Rusk*, 377 U.S. 163 (1964).

³⁰ *Perez v. Brownell*, 356 U.S. 44 (1958).

³¹ A special case exists where citizenship was secured by fraud.

those that are necessary and proper to carry out the specifically granted ones. The Constitution, of course, grants Congress no express power to strip people of their citizenship, whether, in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power. And even before the adoption of the Fourteenth Amendment, views were expressed in Congress and by this Court that, under the Constitution the Government was granted no power, even under its express power to pass a uniform rule of naturalization, to determine what conduct should and should not result in the loss of citizenship.³²

D. Expatriating statute

In 1978, Congress repealed a statute designed to strip U.S. citizens of their citizenship status if they voted in foreign elections.³³ Despite the language in *Afroyim* that suggests there may be no grounds upon which the government can revoke citizenship, Congress has not repealed other provisions of law that purport to authorize nullification of citizenship when U.S. citizens take certain “expatriating” actions that are deemed to be evidence of an intention to renounce citizenship.³⁴ These expatriating actions include (1) taking an oath of allegiance to a foreign state, (2) serving in the armed forces of the hostile foreign state or serving as a commissioned officer or noncommissioned officer in the armed forces of any foreign state, (3) holding any office or post of employment in a foreign state’s government if one is a national of that foreign state, (4) making a formal renunciation of citizenship or (5) committing treason.³⁵

Given the Court's decision in *Afroyim*, the mere commission of an act of expatriation identified in the statute cannot result in loss of citizenship, but can be used by the government as evidence of intent to relinquish citizenship.³⁶

E. Problems arising from dual citizenship under U.S. policy

Given the Supreme Court’s holding that the government has no legal authority to strip a citizen of citizenship even if he or she chooses to remain or become a citizen of another state, the official government position on dual citizenship is that “[t]he U.S. Government recognizes that dual nationality exists but does not encourage it as a matter of policy because of the problems it may cause.”³⁷ The government generally has not taken action under the expatriating statute, even in high-profile cases, such as that of Valdas Adamkus, who campaigned for, and was

³² *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967).

³³ Margaret Mikuung Lee, *Dual Citizenship, A Report for Congress* 3, Congressional Research Service available at opencrs.com/document/98-819/1998-10-01/ (last visited May 29, 2010).

³⁴ *See* 8 U.S.C. §1481.

³⁵ Margaret Mikuung Lee, *supra* note 38.

³⁶ *Id.*

³⁷ United States Department of States, *US State Department Services Dual Nationality*, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html (last visited May 30, 2010).

elected, President of Lithuania while holding dual U.S.-Lithuanian citizenship.³⁸ In the case of Milan Panic, who served briefly as Prime Minister of Yugoslavia in the early 1990s, the U.S. State Department is said to have provided express approval of Panic's intention to retain both of his citizenships.³⁹

The biggest problem that routinely arises among dual citizens may be that they are denied security clearances necessary for sensitive government or government contracting positions. Because "no one has a 'right' to a security clearance"⁴⁰ and because the relationship between the government and those it hires to handle sensitive information is one of trust, government has denied security clearances to dual citizens.⁴¹

III. How Many U.S. Citizens Are Also E.U. Citizens?

Determining the number of dual U.S.-E.U. citizens is complicated by law, administrative realities and a shortage of meaningful statistics. This section attempts to make some educated guesses about how many citizens from the U.S. and E.U. acquire dual U.S.-E.U. citizenship each year. The section also suggests where data might be found to provide better estimates in the future.

In theory, the flowchart in Figure 1 could be used as a template for identifying data source for a fairly comprehensive estimate of the population of dual E.U.-U.S. citizens. While it is a complex problem, it isn't insoluble. In fact, it is relatively easy to chart when individuals become E.U. citizens, when they become U.S. citizens and when they acquire dual citizenship. Finding the data that corresponds to the events that give rise to citizenship claims is more difficult.

The Legal framework

The United States and many European Union member states apply *jus soli* (right of soil or birthplace), naturalization and *jus sanguinis* (right of blood) rules in determining citizenship claims and obligations. The rules differ from country to country, but the following flowchart (Figure 1) provides a general description of the principal paths to dual citizenship.

³⁸ Margaret Mikuung Lee *supra* note 38 at 7. Adamkus renounced his U.S. citizenship after being elected because he had made a campaign promise to do so.

³⁹ Margaret Mikuung Lee *supra* note 38 at 7.

⁴⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

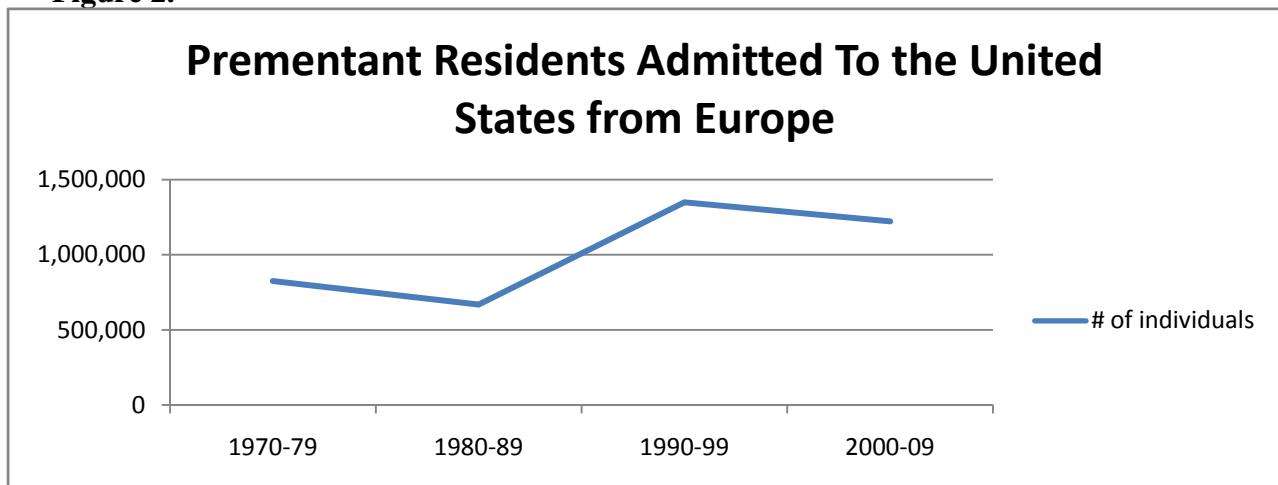
⁴¹ See ISCR Case No: 06-25756.h1, Decision of Administrative Judge Claude R. Henry (Aug. 29, 2007) available at <http://www.dod.gov/dodgc/doha/industrial/06-25756.h1.pdf>.

A. *Toward an estimate of annual dual citizenships cases rising from U.S. naturalization*

While precision is not possible at this point, it seems fairly safe to estimate that 35,000 to 45,000 E.U. citizens become dual U.S. citizens each year through the U.S. naturalization process.

Figure 2 shows the broad 40-year trend in immigration into the United States from all European nations. The Department of Homeland Security's online publications do not provide data on country of origin for naturalized citizens before 1990. However, the permanent resident admissions data establish that immigration into the United States from Europe has been fairly stable over the last 40 years. Further, because permanent residency is a prerequisite to naturalization, the residency admissions data indicate the number of Europeans who have been eligible to apply to become naturalized citizens has also been fairly stable.

Figure 2.



Source: U.S. Department of Homeland Security, Yearbook of Immigration Statistics, Table 2, PERSONS OBTAINING LEGAL PERMANENT RESIDENT STATUS BY REGION AND SELECTED COUNTRY OF LAST RESIDENCE: FISCAL YEARS 1820 TO 2009.

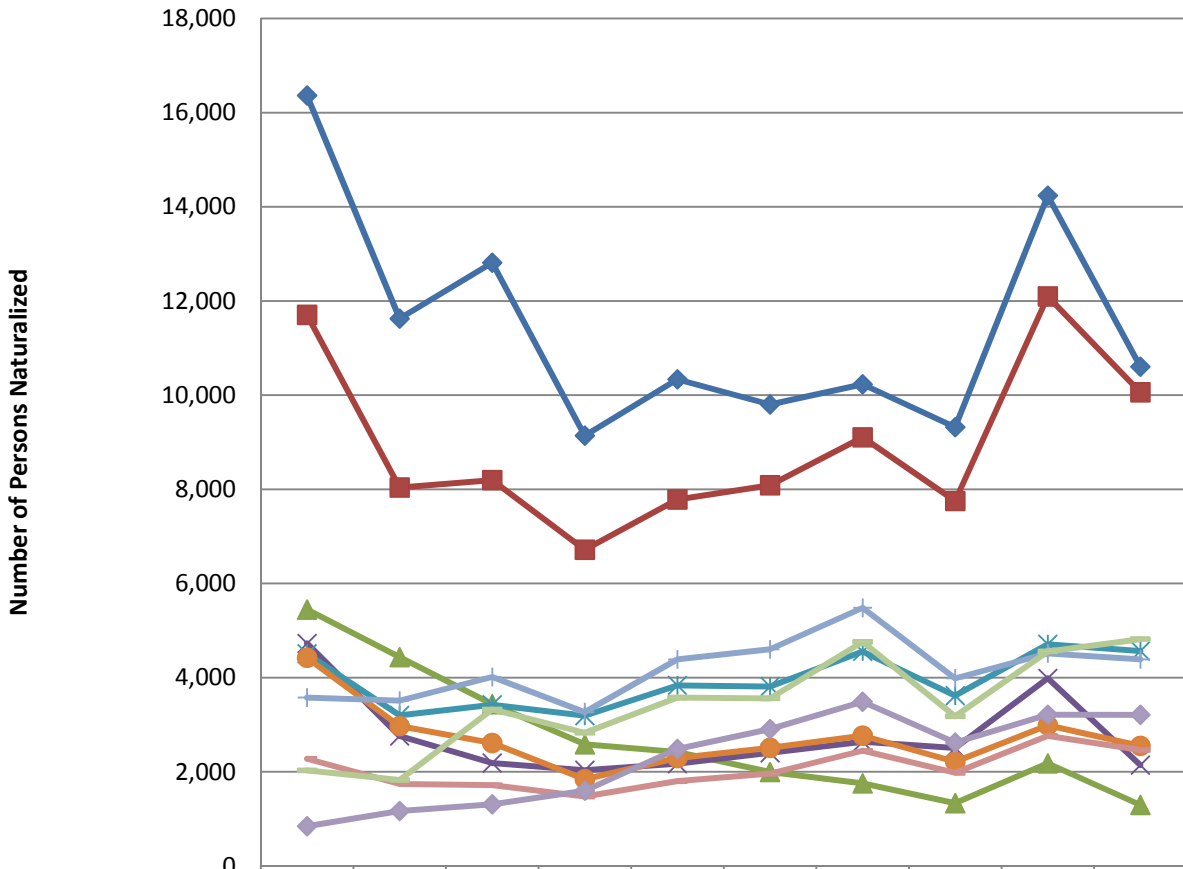
Between 2000 and 2009, there were 1,299,643 emigrants from Europe who sought permanent resident status in the United States. During that period, 52% (677,531) of all Europeans seek permanent resident status were from one of the 27 members states of the European Union.⁴²

The statistics for naturalization from E.U. member states since 1990 show that while there have been some spikes in the number of petitions for citizenship by British and Polish citizens, generally, the number of applications for citizenship through naturalization have been fairly steady. The number of individuals from Bulgaria, Greece and Romania who have become U.S. citizens increased slightly from 2000 to 2009. The number of Irish applicants for U.S. citizenship declined slowly but steadily over the decade. Figure 3 shows that the ten-year trend in citizenship applications approvals for each of the ten largest E.U. sending nations.

⁴² United States Department of Homeland Security, YEARBOOK OF IMMIGRATION STATISTICS, Table 3, *Persons Obtaining Legal Permanent Resident Status by Region and Country of Birth: Fiscal Years 2000 to 2009* available at <http://www.dhs.gov/files/statistics/immigration.shtm> (last visited May 30, 2010). Note the federal fiscal year runs from October 1 each year.

Figure 3.

EU Citizens Naturalized As U.S. Citizens, 2000-2009 (Top 10 EU Contributing States)



	1	2	3	4	5	6	7	8	9	10
◆ Poland	16,363	11,625	12,811	9,139	10,335	9,801	10,230	9,320	14,237	10,604
■ United Kingdom	11,704	8,038	8,194	6,717	7,785	8,087	9,104	7,752	12,095	10,060
▲ Ireland	5,448	4,437	3,438	2,583	2,421	1,995	1,754	1,335	2,179	1,296
✕ Portugal	4,728	2,762	2,187	2,034	2,173	2,403	2,638	2,506	3,988	2,143
✱ Germany	4,508	3,200	3,424	3,192	3,836	3,811	4,556	3,617	4,708	4,564
● Italy	4,425	2,972	2,614	1,845	2,295	2,511	2,769	2,217	2,991	2,552
+ Romania	3,577	3,512	4,014	3,267	4,388	4,602	5,484	3,986	4,515	4,388
— France	2,278	1,742	1,718	1,476	1,802	1,963	2,449	1,979	2,765	2,464
— Greece	2,032	1,828	3,326	2,831	3,577	3,561	4,760	3,181	4,557	4,819
◆ Bulgaria	845	1,169	1,310	1,599	2,487	2,906	3,488	2,621	3,213	3,211

Source: United States Department of Homeland Security, YEARBOOK OF IMMIGRATION STATISTICS, Table 21 (2009).

In 2009, a total of 743,715 people became naturalized citizens of the United States.⁴³ There were 90,149 new U.S. citizens from European countries (EU and non-EU) and 49,954 from European Union member states.⁴⁴

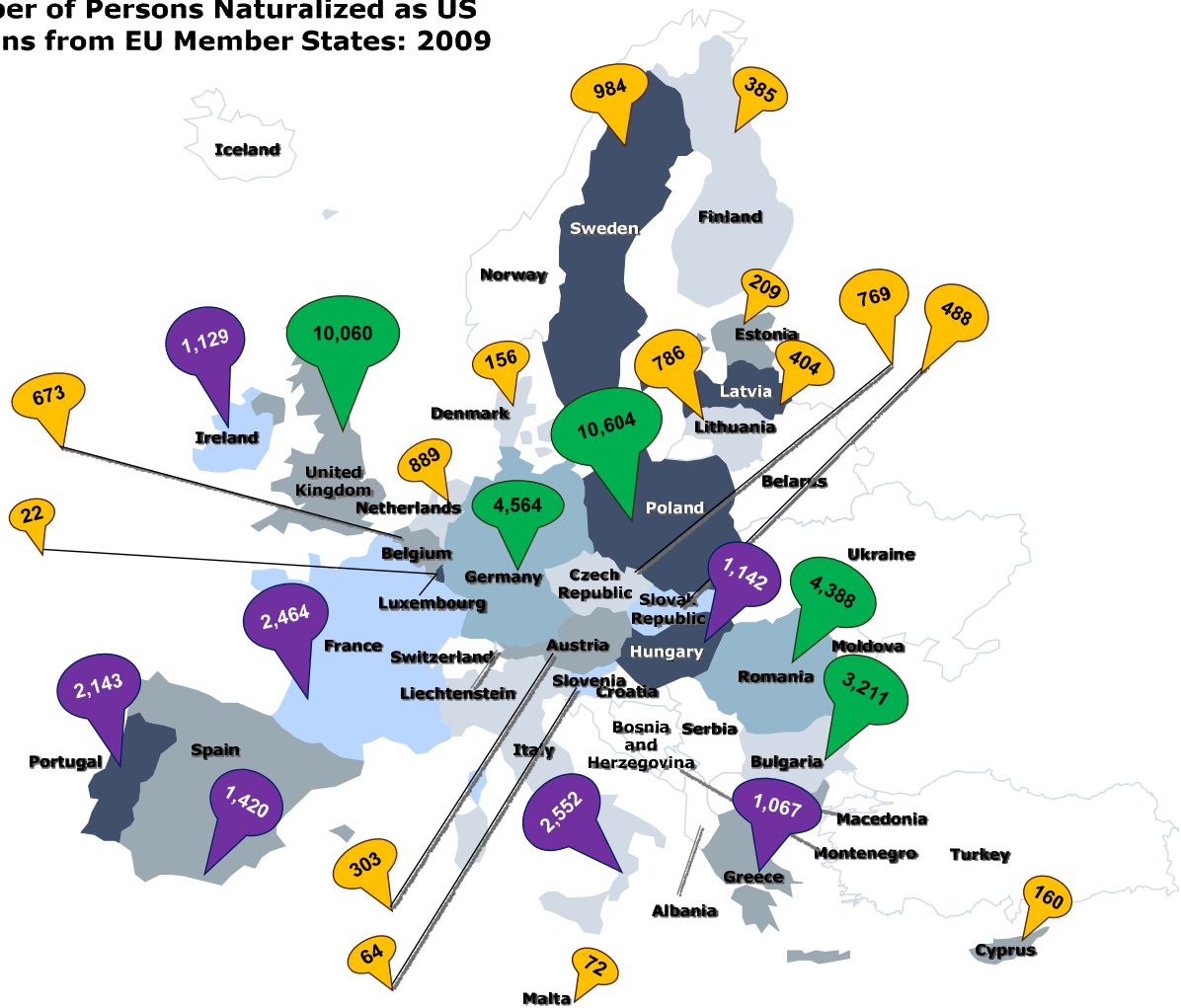
Figure 4 shows the number of citizens from E.U. member states who became U.S. citizens in 2009. Every E.U. member state contributed to the total. The largest contributing nations were: Poland (10,604), the United Kingdom (10,060), Germany (4,564), Romania (4,388) and Bulgaria (3,211). It's important to note that naturalization is a lagging indicator of immigration. In 2009, the average person completing the naturalization process had immigrated to the United States seven year earlier.⁴⁵

⁴³ James Lee, *Annual Flow Report, Naturalizations in the United States: 2009*, United States Department of Homeland Security, Office of Immigration Statistics, April 2010 available at http://www.dhs.gov/xlibrary/assets/statistics/publications/natz_fr_2009.pdf (retrieved on May 25, 2010).

⁴⁴ United States Department of Homeland Security, *YEARBOOK OF IMMIGRATION STATISTICS, Table 21, Persons Naturalized by Region and Country of Birth: Fiscal Years 2000 to 2009* available at <http://www.dhs.gov/files/statistics/immigration.shtm> (last visited May 30, 2010).

⁴⁵ James Lee, *supra* note 5 at 4.

Figure 4.
Number of Persons Naturalized as US
Citizens from EU Member States: 2009



Source: United States Department of Homeland Security, *Yearbook of Immigration Statistics, 2009* Table 21, PERSONS NATURALIZED BY REGION AND COUNTRY OF BIRTH: FISCAL YEARS 2000 TO 2009

Many E.U. member states do not give legal effect to the renunciation oath that U.S. naturalized citizens are required to make upon accepting U.S. citizenship and the U.S. government has no legal mechanism for forcing the revocation of foreign citizenships.⁴⁶ At least 14 of the 27 E.U. member states do not automatically revoke an individual’s citizenship upon becoming a U.S. Citizen.⁴⁷ Among the 14 “non-revocation” nations the legal treatment of those who become U.S. citizens varies greatly, though the practical result is the same. Italian law, for example, expressly provides that Italian citizens remain Italian citizens even after uttering the

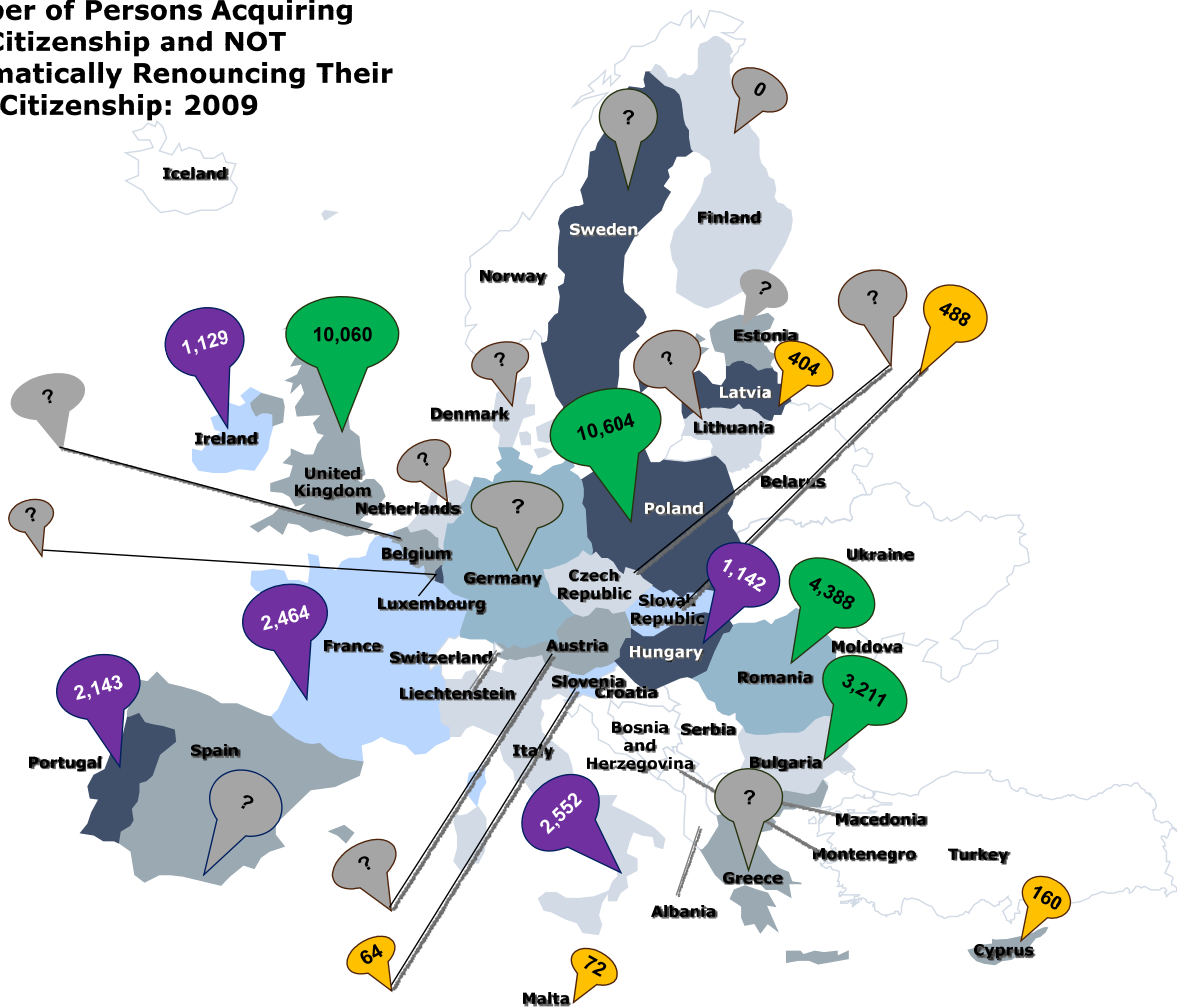
⁴⁶ Margaret Mikuung Lee, *Dual Citizenship, A Report for Congress 2*, Congressional Research Service available at openocrs.com/document/98-819/1998-10-01/ (last visited May 29, 2010).

⁴⁷ See United States Office of Personnel Management, *CITIZENSHIP LAWS OF THE WORLD* (2001) <http://www.opm.gov/extra/investigate/IS-01.pdf> (last visited May 29, 2010).

American oath and becoming U.S. citizens. Poland, on the other hand, does not officially recognize the U.S. citizenship granted to Polish citizens, unless the individual has formally renounced his or her Polish citizenship⁴⁸ – a situation which leads essentially to *de facto* dual citizenship in most circumstances.

Figure 5 below shows the fourteen non-revocation nations and the number of people from each who became U.S. citizens in 2009. There were 38,881 people from E.U. countries that do not prohibit acquisition of a second nationality who became U.S. citizens through the naturalization process in 2009.

Figure 5.
Number of Persons Acquiring U.S. Citizenship and NOT Automatically Renouncing Their Prior Citizenship: 2009



Source: Based on a 2001 United States Office of Personnel Management survey of citizenship laws (*Citizenship Laws of the World*) and Data from the United States Department of Homeland Security, *Yearbook of Immigration Statistics, 2009* Table 21, PERSONS NATURALIZED BY REGION AND COUNTRY OF BIRTH: FISCAL YEARS 2000 TO 2009

⁴⁸ See *id.* at 160.

Without conducting a survey of renunciation records, it's impossible to say that all 38,881 naturalized U.S. citizens from the 14 nations identified with numbered pins on the map in Figure 5 did in fact become dual citizens. There are reasons why an individual might choose to formally renounce a prior citizenship even if not legally required to do so.

On the other hand, it would be a mistake to assume that none of the U.S. naturalized citizens from the nations identified with question-mark pins on the map in Figure 5 retained their prior citizenship. Germany and Austria, both allow their citizens to retain their native citizenship if they request and are granted permission prior to naturalizing in the United States.⁴⁹ Other nations that revoke the citizenship of persons who become U.S. citizens provide special dispensation in certain cases.

B. Toward an estimate of annual dual citizenships cases rising from E.U. naturalization

In 2007, E.U. member states granted citizenship to 699,791 people.⁵⁰ Prior U.S. citizens accounted for a small portion of the total. A review of data available through the European University Institute's European Union Democracy Observatory online database suggests that between 1999 and 2008 fewer than 10,000 people from the United States became naturalized citizens of an E.U. member state each year.⁵¹ According to Eurostat, in 2007, the United States was among the top five sending nations to only two E.U. member states: Ireland (with a total of 1,841 U.S. citizens acquiring citizenship) and Slovakia (with 110 U.S. citizens becoming Slovak citizens).⁵² Based on the available data, it appears that the United Kingdom grants citizenship to more U.S. citizens than any other E.U. member state – averaging 2,356 grants per year for the period between 1999 and 2008,⁵³ about 2% of the UK's total.⁵⁴

⁴⁹ See CITIZENSHIP LAWS OF THE WORLD *supra* note 9. California Governor Arnold Schwarzenegger is a naturalized U.S. citizen who was granted permission to retain his Austrian citizenship, a fact that led to controversy in Austria in 2005 when the Governor permitted the state execution of a convicted gang leader. See *Schwarzenegger 'damages Austria'*, BBC NEWS available at <http://news.bbc.co.uk/2/hi/americas/4198633.stm> (last visited May 29, 2009). See also Richard Bernstein, *Hometown Snubs Schwarzenegger Over Death Penalty*, NEW YORK TIMES, 27 Dec. 27, 2005 available at <http://www.nytimes.com/2005/12/27/international/europe/27austria.html> (last visited May 29 2009).

⁵⁰ Fabio Sartori, *Acquisition of citizenship in the European Union: Total number of acquisitions of citizenship slightly decreasing in 2007 compared to previous years*, Eurostat, available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-09-044/EN/KS-QA-09-044-EN.PDF (last visited May 28, 2010)

⁵¹ Data for Bulgaria, Cyprus, France, Ireland, Latvia, Slovenia were not immediately available for analysis and data for Belgium, Estonia, Greece, Italy, Lithuania, Poland and Sweden were not available for the entire ten-year period. See *Eudo Citizenship Statistics*, "Citizenship of origin" files, European University Institute available at <http://eudo-citizenship.eu/stat/index.php?type=2&stat=3> (Last visited May 25, 2010).

⁵² Fabio Sartori, *supra* note 12.

⁵³ *Eudo Citizenship Statistics supra* note 13.

⁵⁴ Estimate based on average U.K. grants to U.S. citizens between 1999 and 2008 and average total grants by U.K. to citizens of all nations between 1998 and 2007. See *Eudo Citizenship Statistics supra* note 13.

Figure 6 shows the flow of emigrants from the U.S. and the E.U. who might potentially become dual citizens through naturalization on the opposite side of the Atlantic.

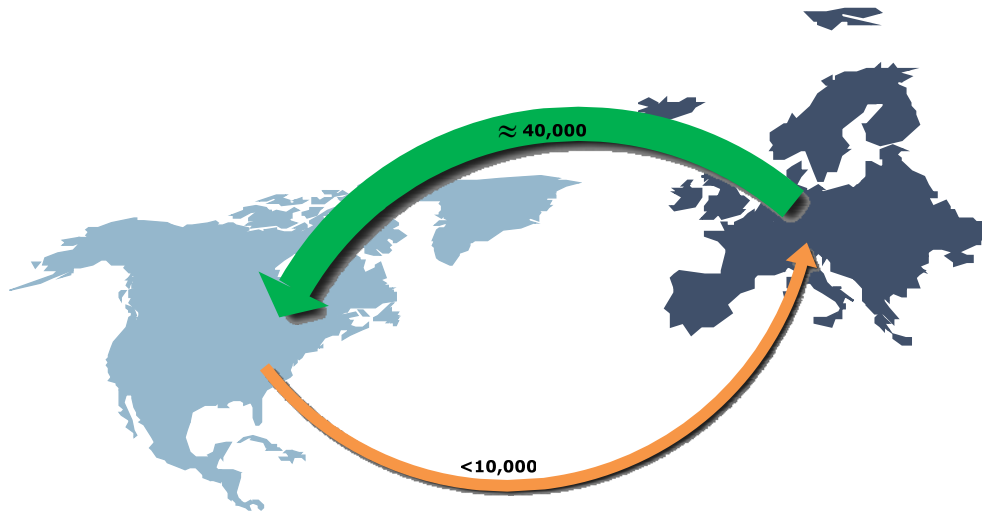


Figure 6.

D. A guess at how many Europeans are born in the United States each year

Unfortunately, U.S. demographic statistics are generally compiled and reported in ways that makes it difficult, and in some cases, impossible to distinguish between births to European parents and births to other non-native parents. When demographic data pertaining to European-origin are available, they often do not distinguish between E.U. and non-E.U. nations.

The publically accessible database maintained by the National Center for Health Statistics does not provide country of origin data for European woman who have given birth in the United States. The data are aggregated and reported as numbers for all women who emigrated from “Europe.” However, using statistics from the Department of Homeland Security and the Bureau of the Census, it’s possible to develop a dreadfully rough estimate of the number of children born to E.U. mothers residing in the United States.⁵⁵

⁵⁵ The United States Constitution, as amended, provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Constitution, 14th Amendment. *See United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (holding that a child born in the United States is a U.S. citizen even if the parents of the child are subjects of a foreign power). The phrase “subject to the jurisdiction [of the United States]” has seldom been commented on by the courts. In practice, any child documented to have been born in the United States is deemed a citizen, unless it can be demonstrated that the child was not subject to U.S. jurisdiction at the moment of birth.

Today, there are about 4.5 million people in the United States who were born somewhere in Europe.⁵⁶ About one-half of the European immigrants in the United States are from an E.U. member state⁵⁷ and about one half of all E.U. immigrants to the United States are women.⁵⁸ If we assume that the age demographics of E.U. immigrant women are roughly the same as the population in general, then about 40% of E.U. immigrant woman in the U.S. are of child bearing age.

If there are 450,000 E.U. women of child bearing age residing in the United States and if we assume that E.U. women give birth in the United States at the same rate as non-EU European women residing in the United States,⁵⁹ then it can be roughly estimated that there are about 23,850 children born to women from the European Union who are residing in the United States each year.

Obviously this is a rough estimate, but it is confirmed by a 1994 Census Bureau report that 32,000 European-born women had given birth in the United States in prior year.⁶⁰ Assuming that half of those births were to E.U. member state natives, there were roughly 16,000 births to E.U. women residing in the United States in 1993.

Estimating the number of children born in the United States, whose fathers, but not mothers are E.U. citizens is more complicated and would require a special tabulation of microdata that are available from U.S. government sources.

Without a specific statistic derived from birth certificate data, the best estimate of the total population of E.U. citizens born in the United States may be one based on an Urban Institute tabulation reported in a fact sheet on immigration trends in October 2009. According to the Urban Institute, in 2007, there were 1.8 million children in the United States who were members of a family from Europe, Canada or Australia (as a group). We know from the Department of

⁵⁶ Steven A. Camarota, *Immigrants at Mid-Decade: A Snapshot of America's Foreign-Born Population in 2005*, Table 4. *Region of Birth and Year of Entry in 2005*, Center for Immigration Studies, <http://www.cis.org/articles/2005/back1405.html> (last visited May 26, 2010).

⁵⁷ As noted earlier, between 2000 and 2009, there were 1,299,643 immigrants from Europe to the United States. During that period, 52% (677,531) of all European immigrants were from one of the 27 members states of the European Union. YEARBOOK OF IMMIGRATION STATISTICS, *supra* note 4 at Table 3 (2009).

⁵⁸ European women actually appear to migrate to the U.S. at slightly higher rates than men, so the estimate produced by this assumption will tend to understate the number of births to E.U. women. See Census Bureau, *Characteristics of the Foreign-Born Population by World Region of Birth*, Table 3.1 *Foreign-Born Population by Sex, Age, and World Region of Birth: 2008* available at <http://www.census.gov/population/www/socdemo/foreign/cps2008.html#gen> (last visited May 25, 2010).

⁵⁹ In 1994, the Census Bureau pegged the fertility rate for European-born women giving birth in the United States at of 53 births per 1,000 women for women between the ages of 15 and 44. See Amara Bachu, *Current Population Reports, Population Characteristics, Series P20-482, Fertility of American Women: June 1994*, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census available at <http://www.census.gov/prod/2/pop/p20/p20-482.pdf> (last visited May 25, 2010).

⁶⁰ *Id.* at Table N. (Women Who Have Had a Child in the Last Year and Children Ever Born Per 1,000 Women, by Age and Place of Birth: June 1994).

Homeland Security data that between 1990 and 2007, European immigrants accounted for 8 out of 10 of the immigrants from the Urban Land Institute's Europe-Canada-Australia grouping. It can reasonably be assumed for purposes of establishing a broad estimate that 8 out of 10 of the children in the Urban Land Institute tabulation were members of European immigrant families and approximately one half that number, or 750,000, were from families where at least one parent was from an E.U. member state.⁶¹

Based on the birth rate data that are available and the estimate of a total of 750,000 children from E.U. families residing in the United States, my guess is that there are between 20,000 and 40,000 E.U. children born in the United States each year.

E. Venture no guess at how many Americans become dual citizens by virtue of being born in the E.U. each year.

Aside from the difficulty of resolving the legal puzzle created by the patch work of rules in place for various E.U. member states, determining the number of children who are dual E.U.-U.S. citizens by virtue of being born in the E.U. to U.S. parents is made impossible by the dearth of data. The U.S. Census Bureau does not count Americans living abroad and while the Census Bureau was going to attempt to conduct an overseas count as part of the 2010 Census,⁶² the effort was ultimately abandoned.⁶³ Further, while the United States Department of State issues certificates of citizenship to persons born overseas, data regarding such certificates is not publicly available. The only figure widely published is a State Department estimate that there are 1.448 million Americans living in all of Europe.⁶⁴

⁶¹ With further study, this figure might substantiate the birth rate estimate calculation above. Taking the estimate universe of 750,000 children and dividing it by 18 (the number of years a child is in fact a child) we come to about 41,666 children per year, which is higher than the birth rate calculated above, but may be reconciled by accounting for 1) possible under statement of children born to E.U. women suggested in note 23 above, 2) children who come into the United States with their parents who are not born here and 3) children with E.U. fathers and non-E.U. mothers.

⁶² See *Issues of Counting Americans Overseas in Future Censuses*, a report to Congress, Bureau of the Census (September 28, 2001) available at <http://www.census.gov/population/www/socdemo/overseas/overseas-congress-report.html> (last visited May 30, 2010). See also Elizabeth Olson *AT HOME ABROAD: Trial census count is planned*, NEW YORK TIMES (Oct. 25, 2003) available at http://www.nytimes.com/2003/10/25/news/25iht-rcensus_ed2.html (last visited May 30, 2010).

⁶³ See Bureau of the Census, *2010 Census Constituent FAQ 5* available at <http://2010.census.gov/partners/pdf/ConstituentFAQ.pdf> (last visited May 30, 2010).

⁶⁴ American Citizens Abroad, *Government estimate of overseas Americans* (April 12, 2010) available at http://www.aca.ch/joomla/index.php?option=com_content&task=view&id=308&Itemid=94 (last visited May 30, 2010).

IV. Conclusion

Tens of thousands of new E.U.-U.S. dual citizens are created each year by operation of law. The two largest groups of dual U.S.-E.U. citizens are those born in Europe and naturalized in the United States and those born in America to European parents. U.S. native-born citizens naturalizing in E.U. member states appear to account for a relatively small portion of E.U.-U.S. dual citizens. Children born to U.S. parents residing in Europe also appear to contribute little to the total number of dual citizens.

Determining the number of dual citizens, whether U.S.-E.U. or other, is complicated. Counting, or even estimating, the number of dual citizens requires an analysis of both U.S. and foreign laws as well as findings of basic biographic facts about members of an increasingly mobile global community.

More work must be done to develop better estimates of the number of dual citizens, but the occurrence of dual U.S.-E.U. citizenship still appears to be relatively rare, probably amounting to a number well below 100,000 cases per year – a figure far less than 1% of populations of either the United State or the European Union.

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