

ESSENTIAL TO THE FIGHT: Immigrants in the Military, Five Years After 9/11

by Margaret D. Stock*

"We come from the farms and the city streets and a hundred foreign lands
And we spilled our blood in the battle's heat
Now we're all Americans"

--Lyrics from the song "Dixieland," by Steve Earle

EXECUTIVE SUMMARY

From the Revolutionary War to the current conflicts in Afghanistan and Iraq, immigrants have made significant contributions to the United States by serving in our military forces. Today, immigrants voluntarily serve in all branches of the U.S. military and are a vital resource in the Global War on Terrorism. To recognize their unique contribution, immigrants serving honorably in the military who are not yet U.S. citizens are granted significant advantages in the naturalization process. Over the past five years, Congress has amended military-related enlistment and naturalization rules, allowing for expanded benefits for immigrants and their families and encouraging recruitment of immigrants into the U.S. armed forces. Without the contributions of immigrants, the military could not meet its recruiting goals and could not fill the need for foreign-language translators, interpreters, and cultural experts.

Among the findings of this report:

- As of December 2004, there were 69,299 foreign-born individuals serving in the armed forces, representing 4.9 percent of the 1.4 million military personnel on active duty. Roughly 57 percent of foreign-born service members were naturalized citizens, while the remaining 43 percent were not U.S. citizens.
- In Fiscal Year (FY) 2005, 4,614 members of the military were naturalized. Naturalizations of immigrants in the military are at their highest during times of war.
- The September 11th attacks precipitated immediate changes in policies on immigrants in the military. Once the nation was at war, immigrants in the armed forces were eligible for naturalization under the special wartime military naturalization statute. As of October 2006, more than 25,000 immigrants had taken advantage of this provision to become U.S. citizens, and another 40,000 were thought to be eligible to apply.
- Recognizing that immigrants could provide special assistance to the armed forces as translators, Congress in 2006 passed a law providing for up to 50 immigrant visas per year for translators serving in Iraq and Afghanistan. Given the great need for Arabic, Pashto, Dari, and other translators, it is not clear why Congress chose this low number.
- Congress has failed to act on the few legislative proposals that would significantly increase the participation of immigrants in the military.

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INTRODUCTION

From the Revolutionary War to the current conflicts in Afghanistan and Iraq, immigrants have made significant contributions to the United States by serving in our military forces. Today, immigrants voluntarily serve in all branches of the U.S. military and are a vital resource in the Global War on Terrorism. The laws governing their service are complex, but generally speaking, immigrants residing in the United States who are not citizens—both legal and undocumented—have the same obligation to defend the United States as U.S. citizens. To recognize their unique contribution, immigrants serving honorably in the military who are not yet U.S. citizens are granted significant advantages in the naturalization process. Over the past five years, Congress has amended military-related enlistment and naturalization rules, allowing for expanded benefits for immigrants and their families and encouraging recruitment of immigrants into the U.S. armed forces. These changes have substantially enhanced America's ability to fight. Moreover, because of these changes, many immigrants continue to see military service as an attractive career option. According to figures from the Defense Manpower Data Center in the Department of Defense, there were 69,299 foreign-born individuals serving in the armed forces as of December 2004, representing 4.9 percent of the 1.4 million military personnel on active duty. Roughly 57 percent of foreign-born service members were naturalized citizens, while the remaining 43 percent were not U.S. citizens.¹

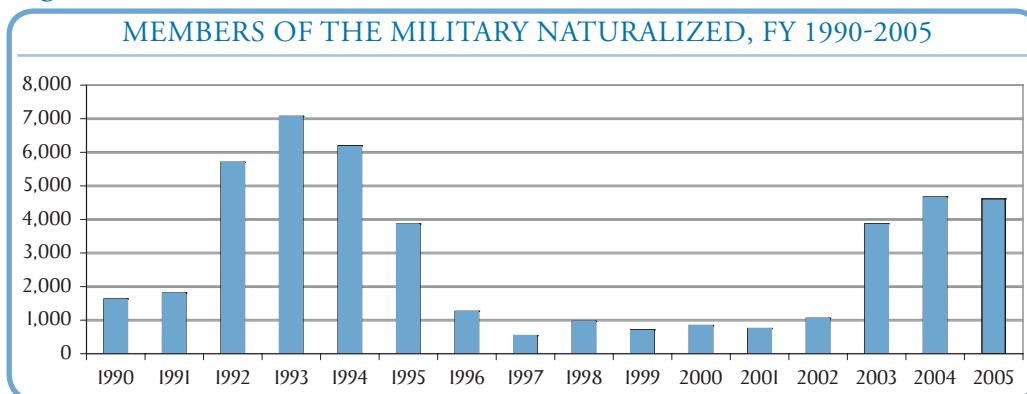
HISTORY OF IMMIGRANTS IN THE MILITARY

Immigrants have been eligible to enlist in the U.S. military since the Revolutionary War and have served in times of war with great distinction. Many have won the Congressional Medal of Honor, this nation's highest military decoration. It has long been an American tradition that service in the armed forces can lead to U.S. citizenship. Immigrants who have served in the U.S. military and by so doing earned their citizenship include Alfred Rascon, an undocumented immigrant from Mexico who won the Medal of Honor during the Vietnam War and later became a U.S. citizen and eventually the Director of the Selective Service System. Immigrants also have been promoted to the highest ranks of the U.S. military. The most prominent contemporary example is General John Shalikashvili, former Chairman of the Joint Chiefs of Staff, who came to the United States from Poland shortly after World War II. In Fiscal Year (FY) 2005, 4,614 members of the military were naturalized {Figure 1}. Naturalizations of immigrants in the military are at their highest during times of war {see Appendix}.²

IMMIGRANTS IN THE MILITARY BEFORE 9/11

As the attacks against the World Trade Center and the Pentagon unfolded on September 11, 2001, immigrants were serving in all branches of the U.S. military. The vast majority were lawful permanent residents (LPRs) who had

Figure 1:



Source: Office of Immigration Statistics, U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2005*, Table 20.

¹ Jennifer Yau, "The Foreign Born in the Armed Forces," *Migration Information Source* (<http://www.migrationinformation.org>). Washington, DC: Migration Policy Institute, May 1, 2005.

² Office of Immigration Statistics, U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2005*, Table 20: "Petitions for Naturalizations Filed, Persons Naturalized, and Petitions for Naturalizations Denied: Fiscal Years 1907 to 2005."

enlisted after having obtained their “green cards.” Enlistment in the different branches of the military was governed by different statutes and regulations, but generally speaking, the military services were not permitted to accept recruits who were not U.S. citizens or LPRs. For example, the 2001 Army enlistment statute stated: “In time of peace, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence....”³

Immigrants serving in the military could, however, obtain U.S. citizenship in an expedited fashion. While most LPRs were required to wait five years before applying for U.S. citizenship, those in the military were permitted to apply after three years. Yet they could not apply unless they had LPR status and they were subject to all other naturalization requirements, including the requirement that they be present in the United States to take their oath of allegiance.⁴

All immigrants who did not come to the United States on non-immigrant visas also were—and are—potentially subject to the draft. Congress has long required all foreign-born males age 18 to 26 who are living in the United States to register for Selective Service and to serve in the military if drafted.⁵ Even undocumented immigrants are required to register.⁶ While there has been no serious effort to start a draft, the military services could draft undocumented immigrants should the draft be reinstated. Failure to register for Selective Service may temporarily or permanently bar an immigrant from naturalizing. A conviction for desertion in time of war or a claim of exemption from military service on the grounds

of “alienage” (that is, not being a native of the United States) usually results in a permanent bar to naturalization.⁷

WARTIME NATURALIZATION POWERS AFTER 9/11

The September 11th attacks precipitated immediate changes in policies on immigrants in the military. Once the nation was at war, immigrants in the armed forces were eligible for naturalization under the special wartime military naturalization statute. Section 329 of the Immigration & Nationality Act (INA) gives the President authority to proclaim that, when the nation is engaged in armed conflict, immigrants who are in the military can obtain their U.S. citizenship regardless of their length of residency or immigration status.⁸ Presidents have long invoked this statute to bestow citizenship benefits on immigrants in the military and President Bush did so on July 3, 2002, proclaiming that all immigrants who have served honorably on active duty in the armed forces after September 11, 2001, shall be eligible to apply for expedited U.S. citizenship.⁹ His order—which effectively meant that one day’s service on active duty would make an immigrant eligible to apply for U.S. citizenship—included undocumented immigrants. After the order was issued, many undocumented immigrants who had ended up in the military by accident¹⁰ or through the use of false documentation¹¹ were able to naturalize, despite their lack of LPR status.¹² As of October 2006, more than 25,000 immigrants—both LPRs and others—had taken advantage of this provision to become U.S. citizens, and another 40,000 were thought to be eligible to apply.¹³ President Bush’s declaration that immigrants in

³ 10 U.S.C. §3253 (2001).

⁴ INA §328(a), 8 U.S.C. §1439 (2001).

⁵ 50 U.S.C.S. Appx § 453 (2003).

⁶ See Selective Service System, “Who Must Register? – Chart,” at <http://www.sss.gov/must.htm> (last updated November 16, 2005).

⁷ See INA §314, 8 U.S.C. §1426; see also National Immigration Project of the National Lawyers Guild & Daniel Levy, *U.S. Citizenship & Naturalization Handbook*. Eagan, MN: Thomson West, 2006, §8:26-8:32 (military-related bars to naturalization).

⁸ Section 329 of the INA [8 U.S.C. § 1440].

⁹ Ex. Or. No. 13,269 of July 3, 2002, 67 Fed. Reg. 45, 287 (July 8, 2002).

¹⁰ Some immigrants with an Employment Authorization Document (EAD) but not a green card mistakenly believe that they are eligible to enlist, and some military recruiters have been unaware of the difference between an EAD and a green card and have inadvertently allowed immigrants to enlist who are not actually eligible to do so under military regulations requiring a green card for enlistment.

¹¹ See Douglas Gillison, “The Few, the Proud, the Guilty: Marines Recruiter Convicted of Providing Fake Documents to Enlist Illegal Aliens,” *Village Voice*, October 13, 2005.

¹² Florangela Davila, “Army Private Receives New Rank: U.S. Citizen,” *Seattle Times*, February 12, 2004.

¹³ Adriana Garcia, “Many Taking Military Shortcut to U.S. Citizenship,” Reuters, October 16, 2006.

the military were eligible for expedited naturalization also triggered the application of Section 329A of the INA, an existing statute allowing for posthumous U.S. citizenship to be granted to immigrants who die on active duty during periods of conflict.¹⁴

CONGRESSIONAL ACTIONS TO ENHANCE MILITARY IMMIGRATION BENEFITS

Faster Naturalization

On November 24, 2003, Congress passed a budget authorization for the Department of Defense that included additional naturalization and other immigration benefits for military members and their families. The National Defense Authorization Act for Fiscal Year 2004¹⁵ reduced the period of peacetime service required for immigrants to qualify for naturalization from three years to one year. This provision was made retroactive to September 11, 2001.¹⁶ The same law waived all naturalization fees for military members, effective October 1, 2004;¹⁷ allowed for revocation of citizenship if a person naturalized through military service and then separated from the armed forces with less than an honorable discharge before serving for five years;¹⁸ authorized naturalization proceedings to be conducted entirely overseas, effective October 1, 2004;¹⁹ and extended military naturalization benefits, retroactive to September 11, 2001, to members of the “Selected Reserve” of the “Ready Reserve.”²⁰ Finally, the law extended eligibility for citizenship to the surviving spouses

of military members granted posthumous citizenship, and granted special adjustment-of-status benefits to the foreign spouses, parents, and children of U.S. citizens, LPRs, and other immigrants granted posthumous citizenship when the military member died in combat.²¹

Changes in Enlistment Statutes

In January 2006, Congress substantially changed the military enlistment statutes, repealing the separate statutes that had previously governed enlistment in each of the services and replacing them with a single statute. This new statute gave the Secretaries of the separate services authority to waive the requirement that a person seeking to enlist have U.S. citizenship or LPR status if they determine “that such enlistment is vital to the national interest.”²² The new statute also deleted the former statutory distinction between “time of peace” and “time of war.”²³ Although a senior Pentagon official has testified before Congress that he is aware of this new authority,²⁴ the military services to date have made no public effort to enlist immigrants who are not LPRs or naturalized citizens.

New Visas for Translators

Recognizing that immigrants could provide special assistance to the armed forces as translators, Congress in 2006 also passed a law providing for up to 50 immigrant visas per year for translators serving in Iraq and Afghanistan.²⁵ Given the great need for Arabic, Pashto, Dari, and other translators, it is not clear why Congress chose this low number. The Pentagon did,

¹⁴ INA §329A, 8 U.S.C. §1440-1, added by Section 2 of the Posthumous Citizenship for Active Duty Service Act of 1989, Pub. L. 101-249, 104 Stat. 94 (Mar. 6, 1990).

¹⁵ National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136 [hereinafter NDAA 2004].

¹⁶ NDAA 2004, §1701(a).

¹⁷ NDAA 2004, §1701(b).

¹⁸ NDAA 2004, §1701(c)(2).

¹⁹ NDAA 2004, §1701(d).

²⁰ NDAA 2004, §1702. The Selected Reserve includes members of the Reserve Components who are obligated to “drill” on a regular basis and who are more likely to be mobilized.

²¹ NDAA 2004, §1703.

²² 10 U.S.C. §504 (2006).

²³ The elimination of this distinction will create a legal problem if in the future any non-LPR immigrants are permitted to enlist in peacetime. In time of war, such immigrants would have an avenue for obtaining U.S. citizenship; but in time of peace, they would not since the U.S. military cannot normally sponsor them for LPR status. Thus, in peacetime, the military would have authority to enlist them but could not help them to become citizens, leaving them in a legal limbo of sorts—without LPR status, they cannot naturalize in peacetime and service in the military will not qualify them for LPR status.

²⁴ Statement of David S. C. Chu, Under Secretary of Defense for Personnel and Readiness, before the Senate Committee on the Armed Services, regarding “Contributions of Immigrants to the United States Armed Forces,” July 10, 2006.

²⁵ National Defense Authorization Act of 2006, §1059, Pub. L. 109-163, 119 Stat. 3136.

however, provide additional avenues for qualified translators to serve in the military. The Army in particular devised a special “9L” translator aide program for enlisted soldiers²⁶ and sought recruits through Arabic language advertising during World Cup soccer matches.²⁷ Recruits like Kuwaiti-born Corporal Yousef A. Badou, a Marine who has served three tours of duty in Iraq and who speaks Arabic fluently, are said to be “force multipliers” for the armed forces in that they strengthen the military far more than their numbers alone would suggest.²⁸

AGENCY ACTIONS TO ENHANCE MILITARY IMMIGRATION BENEFITS

In response to these changes in the law, U.S. Citizenship and Immigration Services (USCIS), the agency in the Department of Homeland Security charged with processing the immigration-related petitions of military members, held its first overseas military naturalization ceremonies in 2004.²⁹ More than 1,000 immigrant members of the military became citizens in overseas ceremonies in FY 2005.³⁰ USCIS also announced that it had reduced the processing time for military naturalization applications substantially by instituting a special procedure that allowed military members to consent to the use of their enlistment fingerprints for immigration purposes.³¹ Many military members, however, have continued to report problems with their applications due to USCIS’s inability to complete security checks in a timely manner.³² Finally, more than 100 immigrant military members earned their citizenship posthumously after dying in combat in Afghanistan and Iraq.³³ A few have died while

their naturalization applications were being processed, such as Army Reserve Specialist Kendell K. Frederick, who was killed while traveling in a convoy on his way to a base in Iraq where he could check on his citizenship paperwork.³⁴

RECOGNITION OF THE ROLE OF IMMIGRANTS IN THE MILITARY

In April 2005, the Center for Naval Analyses published a comprehensive report on immigrants in the military. The report noted that immigrants add valuable diversity to the armed forces and perform extremely well, often having significantly lower attrition rates than other recruits. The report also pointed out that “much of the growth in the recruitment-eligible population will come from immigration.”³⁵ Similarly, the February 2006 Quadrennial Defense Review highlighted the key role that immigrants play in the Department of Defense and called for increased recruitment in all branches of the military of immigrants who are proficient in languages other than English—particularly Arabic, Farsi, and Chinese.³⁶

On July 10, 2006, the Senate Armed Services Committee held an unusual field hearing devoted entirely to the role of immigrants in the military. At the hearing, Dr. David S. C. Chu, the Undersecretary of Defense for Personnel and Readiness, testified that immigrants are “a vital part of this country’s military” and provide “the Services with a richly diverse force in terms of race/ethnicity, language, and culture.”³⁷ The Chairman of the Joint Chiefs of Staff, Peter Pace,

²⁶ Andrea Elliott, “For Recruiter, Saying ‘Go Army’ Is A Hard Job,” *New York Times*, October 7, 2006.

²⁷ Michelle Tan, “New Recruiting Ads Target Arab Speakers,” *Army Times*, June 21, 2006.

²⁸ Ken Melton, “Profile: U.S. Marine Corps Cpl. Yousef A. Badou: Kuwaiti-born Marine on Third Deployment in Iraq,” *DefendAmerica News* (<http://www.defendamerica.mil/about.html>), October 28, 2005; Andrea Elliott, “For Recruiter, Saying ‘Go Army’ Is A Hard Job,” *New York Times*, October 7, 2006.

²⁹ U.S. Citizenship & Immigration Services, Press Release: “First U.S. Military Naturalizations in Europe and the Middle East,” October 6, 2004.

³⁰ Gina Cavallaro, “His Country, His Cause: Gambia Native, 30 Other Soldiers Become Citizens,” *Army Times*, September 11, 2006.

³¹ Statement of Emilio T. Gonzalez, Director of U.S. Citizenship and Immigration Services, before the Senate Committee on the Armed Services, regarding “Contributions of Immigrants to the United States Armed Forces,” July 10, 2006.

³² Sean Cockerham, “Russian Native with Strykers Waits for Citizenship,” *The News Tribune*, October 6, 2006.

³³ Statement of David S. C. Chu, July 10, 2006; Adriana Garcia, “Many Taking Military Shortcut to U.S. Citizenship,” Reuters, October 16, 2006.

³⁴ Laura Barnhardt, “Fallen Soldier Was Seeking U.S. Citizenship,” *Baltimore Sun*, November 2, 2005.

³⁵ Anita U. Hattiangadi, et al., *Non-Citizens in Today’s Military: Final Report*. Alexandria, VA: Center for Naval Analyses, April 2005, p. 5.

³⁶ Department of Defense, *Quadrennial Defense Review Report*, February 6, 2006, p. 78-79.

³⁷ Statement of David S. C. Chu, July 10, 2006.

testified that more than 8,000 immigrants were joining the armed forces each year and that nearly 200 of them had won significant awards in combat since 9/11.³⁸ USCIS Director Emilio Gonzalez testified that his agency was making efforts to improve the processing of petitions from military members, including special procedures for expediting the processing of fingerprints and security checks.³⁹

THE DREAM ACT FAILS TO PASS

Despite the important contributions of immigrants to the military in the Global War on Terrorism, Congress remains reluctant to increase their participation. One proposal that would allow more immigrants to serve in the armed forces has made little headway in the past five years despite bipartisan support. The Development, Relief, and Education Act for Alien Minors (DREAM) Act (S. 1545) would legalize young undocumented immigrants who entered the United States before the age of 16, have at least five years' continuous presence in the United States, graduated from a U.S. high school, and stayed out of trouble with the law. Upon applying for benefits under the DREAM Act, an undocumented immigrant would be granted six years of "conditional lawful resident" status. During that time, the immigrant must (1) graduate from a two-year college, or (2) complete at least two years towards a four-year college degree, or (3) serve honorably in the U.S. military for at least two years. At the end of the six years, if the immigrant has continued to show "good moral character," he or she would be granted LPR status without conditions.⁴⁰ Because attending college is a very expensive proposition, the third option—joining the armed forces—is a likely choice for many of the young people who would be affected by the bill, hundreds of whom have already demonstrated an interest in joining the military.

Although opponents of the DREAM Act have argued that it is a "sugar-coated amnesty" rewarding those who have violated U.S. immigration laws, passage of the bill would be highly beneficial to the U.S. military. At a time when several military services are experiencing difficulties recruiting eligible enlisted soldiers and therefore have been lowering the qualifying standards for military service, passage of this bill could substantially reduce the armed forces' enlisted recruiting woes while also providing a new source of soldiers with foreign language qualifications. In March 2005, the Army reported missing its enlistment goals for the first time in five years and the Marine Corps reported similar troubles. Five of the six military reserve components did not meet their recruiting goals during the first four months of FY 2005. Over the coming years, it will become increasingly difficult for the armed forces to attract enough qualified recruits.⁴¹ The Armed Forces did meet their recruitment goals for FY 2006, in part by accepting more applicants with extremely low scores on standardized aptitude tests and by raising the maximum allowable age for recruits.⁴²

The DREAM Act requires no change to military rules for enlisting recruits and allows the military to tap an overlooked pool of home-grown talent. The Migration Policy Institute has estimated that "if the act is signed into law in 2006, about 279,000 unauthorized youth would be newly eligible persons for college enrollment or the U.S. military."⁴³ Under current immigration law, they have no means of legalizing their status. Despite having attracted more than 200 cosponsors from both sides of the political aisle, DREAM Act bills have repeatedly failed to pass in both the House and Senate since first being introduced in 2003. One version of the bill passed the Senate in May 2006, but its counterpart did not pass in the House.⁴⁴ The Pentagon already has statutory authority under its new enlistment statute to implement the provisions contained in the DREAM Act, but has apparently chosen not to do so.⁴⁵

³⁸ Statement of General Peter Pace, Chairman of the Joint Chiefs of Staff, before the Senate Committee on the Armed Services, regarding "Contributions of Immigrants to the United States Armed Forces," July 10, 2006.

³⁹ Statement of Emilio T. Gonzalez, July 10, 2006.

⁴⁰ See S. 2611, Title VI, Subtitle C, 109th Cong. (2006).

⁴¹ Eric Schmitt, "Army Officials Voice Concern Over Shortfall in Recruitment," *New York Times*, March 4, 2005.

⁴² Thom Shanker, "Army and Other Ground Forces Meet '06 Recruiting Goals," *New York Times*, October 10, 2006.

⁴³ Jeanne Batalova & Michael Fix, *New Estimates of Unauthorized Youth Eligible for Legal Status under the DREAM Act*. Washington, DC: Migration Policy Institute, October 2006, p. 1.

⁴⁴ A version of the DREAM Act passed the Senate as part of the Comprehensive Immigration Reform Act of 2006, S.2611 (Title VI, Subtitle C) in May 2006, but has not been passed by the House of Representatives.

⁴⁵ See Statement of David S. C. Chu, July 10, 2006. ("Under current law, these young people are not eligible to enlist in the military, until and unless the Armed Services determine that it is vital to the national interest as provided by [10 U.S.C. §540].").

CONCLUSION

The United States has been at war for more than five years. As a global war on terrorism, it has been and is being fought all over the world and in many different languages. Immigrants play key roles in military, intelligence, and information operations. Thousands of immigrants serve in all branches of the military. Without them, the military

could not meet its recruiting goals and could not fill the need for foreign-language translators, interpreters, and cultural experts. Given the unique and valuable functions that immigrants often perform in the military, they are a critical asset in national defense. Immigrants have been and continue to be essential to the fight.

APPENDIX: MEMBERS OF THE MILITARY NATURALIZED, FY 1918-2005

1918	63,993	1940	2,760	1962	2,335	1984	2,965
1919	128,335	1941	1,547	1963	2,560	1985	3,266
1920	51,972	1942	1,602	1964	2,605	1986	2,901
1921	17,636	1943	37,474	1965	3,085	1987	2,402
1922	9,468	1944	49,213	1966	2,561	1988	2,296
1923	7,109	1945	22,695	1967	2,691	1989	1,954
1924	10,170	1946	15,213	1968	2,438	1990	1,630
1925	*	1947	16,462	1969	5,458	1991	1,804
1926	92	1948	1,070	1970	10,616	1992	5,702
1927	4,311	1949	2,456	1971	9,549	1993	7,069
1928	5,149	1950	2,067	1972	8,475	1994	6,194
1929	531	1951	975	1973	7,796	1995	3,862
1930	1,740	1952	1,585	1974	6,848	1996	1,261
1931	3,224	1953	1,575	1975	6,214	1997	538
1932	2	1954	13,745	1976 †	7,144	1998	964
1933	995	1955	11,958	1977	5,305	1999	712
1934	2,802	1956	7,204	1978	5,126	2000	839
1935	*	1957	845	1979	5,874	2001	749
1936	481	1958	916	1980	4,595	2002	1,055
1937	2,053	1959	1,308	1981	4,090	2003	3,870
1938	3,936	1960	1,594	1982	3,617	2004	4,668
1939	3,638	1961	1,719	1983	3,196	2005	4,614

* Special provisions for military naturalizations expired or suspended.

† Includes July 1, 1975 to September 30, 1976 because the end date of fiscal years was changed from June 30 to September 30.

Source: Office of Immigration Statistics, U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2005*, Table 20: Petitions for Naturalizations Filed, Persons Naturalized, and Petitions for Naturalizations Denied: Fiscal Years 1907 to 2005.

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