

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
)  
*Plaintiff,* )  
)  
v. )  
)  
ROBERT ALAN SOLOWAY, )  
)  
*Defendant.* )  
)

NO. CR07-187MJP  
**DEFENDANT'S REPLY  
MEMORANDUM IN SUPPORT  
OF MOTION TO REVIEW  
DETENTION ORDER**

I. INTRODUCTION.

Before responding to the legal arguments raised in the government's Response in Opposition to Motion for Review of Detention Order, a few comments are in order regarding the government's factual summary. While Mr. Soloway disputes many of the government's factual allegations, including the factual basis for the crimes alleged, now is not the time to try this case. Those disputes will properly be resolved at some future date. But some matters cannot go without a response at this time.

Contrary to the government's assertions, Mr. Soloway made no effort to "hide his Internet tracks." Government's Response ("Response" herein) at 2. Robert used many different domain names, not to hide his tracks, but because some ISP providers shut down his domain sites in response to complaints. If a site was shut down, he opened another.

**DEFENDANT'S REPLY MEMORANDUM  
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1 But all of the emails he sent from those sites were linked to him and his company.  
2 Otherwise, he couldn't have done business (if people didn't know the identity of his  
3 company, they couldn't purchase his products). He began using Chinese sites because they  
4 would not shut him down, and their domain sites were cheaper than other sites.  
5

6 Second, by placing the recipient's name in the header of an email as both the  
7 sender and the recipient (*e.g.*, to JoeSmith@aol.com, from JoeSmith@aol.com), Mr.  
8 Soloway did not "conceal his identity - and his responsibility- for sending the emails."<sup>1</sup>  
9 Response at 3. If the emails were read, they would link directly to Mr. Soloway's  
10 business, Newport Internet Marketing. Obviously, the recipients of the emails were not  
11 fooled into thinking that they had sent the emails to themselves. That would have been  
12 pointless. The whole idea behind the email was to attract business to Soloway's internet  
13 marketing company. The responsibility for who sent the email was thus unmistakable.  
14 The "forged" header was merely a device to avoid a spam filter.  
15

## 16 II. ARGUMENT.

### 17 A. MJR 12 OF THE LOCAL MAGISTRATE JUDGE'S RULES DOES NOT APPLY TO 18 REVIEW OF A MAGISTRATE JUDGE'S ORDER OF DETENTION.

19 MJR 12 provides, in relevant part, as follows:

#### 20 MJR 12. APPEALS TO DISTRICT JUDGE

21 \* \* \*

22 (c) **From Other Orders.** See also Rules MJR 3(b) and 4(c).

23 Any ruling by a magistrate judge, which by law is  
24 reviewable by a district judge, but as to which no other  
25 review procedure is otherwise prescribed, shall be subject to  
26 review upon a motion filed within ten days of the entry of  
27 the ruling. (emphasis supplied)

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28 <sup>1</sup> It is this conduct that the government has labelled "aggravated identity theft."

1 By its express terms, this rule does not apply to review of a magistrate judge's  
2 order of detention, because review of a magistrate's detention order is prescribed in MJR  
3 11, which provides as follows:  
4

5 **MJR 11. REVIEW OF CONDITIONS OF RELEASE**

6 A district judge shall conduct any review of a magistrate  
7 judge's order of release or detention, pursuant to 18 U.S.C.  
8 §3145(a) or (b). All other applications for review of  
9 conditions of release in criminal cases shall be heard by a  
magistrate judge unless otherwise directed by a district  
judge.

10 MJR 11 contains no time limit for filing such a motion. 18 U.S.C. §3145(b) also contains  
11 no time limit for filing a motion for review of a Magistrate's order of detention.  
12 Moreover, review of a magistrate's order of detention is not an appeal.<sup>2</sup>

13 **B. MR. SOLOWAY DOES NOT HAVE A HISTORY OF FLEEING JURISDICTIONS IN**  
14 **WHICH HE POTENTIALLY FACES CRIMINAL PROSECUTION.**

15 The government has constructed a clever, but deceptive, argument that if true  
16 would provide a credible basis to believe that Robert is a risk of flight. The argument,  
17 however, is constructed with smoke and mirrors, and is undermined by the actual facts.  
18

19 \_\_\_\_\_  
20 <sup>2</sup> Whereas MJR 12 is entitled "Appeals to District Judge," review of a magistrate's order  
of detention is not an appeal.

21 But the person detained then has a right to "file, with the court having *original*  
22 *jurisdiction* over the offense, a motion for revocation or amendment of the order."  
23 *Id.* at §3145(b). It is not without significance that this provision is for a motion to  
24 revoke or amend, not an appeal, and that it is made in the court of original  
25 jurisdiction. *See Thibodeaux*, 663 F.2d at 522 ("Because the district court was the  
court of original jurisdiction of the felonies charged, the district court judge was  
not exercising appellate jurisdiction"). That court, unlike a court of appeals, is  
equipped to explore and redetermine factual issues if that proves necessary.

26 *United States v. Koenig*, 912 F.2d 1190, 1192 (9th Cir. 1990).  
27

28 **DEFENDANT'S REPLY MEMORANDUM**  
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1 While it is true that Mr. Soloway was the subject of a complaint in California in  
2 1999, it is not true that Robert fled the jurisdiction in order to avoid prosecution. In fact,  
3 he had an attorney representing him during the entire period that the investigation was  
4 open, including after he relocated to Oregon. The attorney, Stephen Gallenson of Santa  
5 Rosa, California, kept the police and prosecuting attorney apprised of Robert's address,  
6 and he was never "out of reach of California state authorities." The end result was that  
7 after a thorough investigation, the State declined to prosecute Mr. Soloway. See  
8 Declaration of Stephen Gallenson, a copy of which is attached hereto as Exhibit A.  
9 Lamentably, the government chose not to inform this Court of the prosecutor's decision  
10 not to prosecute, preferring instead to leave the false impression that the California  
11 investigation was somehow derailed because Mr. Soloway slipped away in the middle of  
12 the night.  
13  
14

15 Likewise, Mr. Soloway did not leave Oregon because he was under investigation.  
16 This is borne out by the government's own exhibits. According to the government, Mr.  
17 Soloway "suddenly departed that jurisdiction; relocating his residence/business to Seattle  
18 in late 2003." Response at 6. The government also observes that "by no later than  
19 August, 2003" the Oregon Attorney General's Office had received a complaint about Mr.  
20 Soloway's business. From the government's exhibits, it appears that the first complaint  
21 received by the Oregon Attorney General was on August 10, 2003. Government's  
22 Attachment E, Bates No. 000075. However, Mr. Soloway was not notified of the  
23 existence of the complaint until September 1, 2004, almost a year after he had moved to  
24 Seattle. Government's Exhibit E, Bates No. 000080. Thus, Mr. Soloway's move to  
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28 **DEFENDANT'S REPLY MEMORANDUM  
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1 Seattle could not have been motivated by knowledge of the Oregon investigation, which  
2 also did not result in any charges being filed.

3  
4 **C. THERE IS NOTHING UNLAWFUL OR EVEN IMPROPER IN CHOOSING NOT TO  
DEFEND AGAINST A CIVIL ACTION.**

5 Mr. Soloway was sued in the State of Oklahoma by Robert Braver (who is  
6 reportedly a serial filer of civil suits claiming damages based on alleged unlawful emails).  
7 Initially, Mr. Soloway retained counsel to defend against the action. His counsel then  
8 made a strategic decision to remove the action to federal court. However, as the litigation  
9 progressed, Mr. Soloway's attorneys withdrew from the case in a fee dispute. Mr.  
10 Soloway, bled dry by legal fees in the Microsoft suit, found it economically unfeasible to  
11 continue to defend the action in Oklahoma, and defaulted. A substantial civil judgment  
12 was entered against him and his company, as well as a restraining order, enjoining similar  
13 conduct in the future.  
14

15  
16 The government now equates Mr. Soloway's decision to default in the civil action  
17 with a "clear failure to appear in U.S. District Court." Response at 7. But allowing a  
18 default judgment to enter in a civil action is not the same as failing to appear in a criminal  
19 case, and the fact that Mr. Soloway defaulted in a civil case cannot support an argument  
20 that he will not appear in this case. That is, quite simply, comparing apples to oranges.  
21

22 **D. MR. SOLOWAY'S CONNECTIONS TO SWEDEN ARE MINIMAL AND DO NOT  
ESTABLISH THAT HE IS A FLIGHT RISK.**

23 Mr. Soloway has dual United States/Swedish citizenship by virtue of birth, pursuant  
24 to Swedish law (a child born to a Swedish mother is automatically a Swedish citizen) that  
25 went into effect nine days before his birth. Robert's mother obtained Robert's first  
26 Swedish passport in 1991 (at age 11) based on advice she received from a U.S. Customs  
27

28 **DEFENDANT'S REPLY MEMORANDUM  
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1 official. See declaration of Rachele Soloway, attached hereto as Exhibit B. To avoid  
2 losing his Swedish citizenship, it was necessary for Robert to make application to the  
3 Swedish government for permanent citizenship before age 22. Accordingly, Robert  
4 submitted an application in 2001, just prior to his 22nd birthday. The application was  
5 approved on July 10, 2001. It had nothing to do with the fact that "he was aware that at  
6 least one jurisdiction (California) had opened a criminal investigation . . ." Response at  
7 9. In fact, at the time Robert obtained his permanent Swedish citizenship, he was aware  
8 that the California investigation had been closed with no charges having been filed.  
9

10  
11 As set forth in his Motion for Review, Robert's connections to Sweden are quite  
12 tenuous. His only "close" relative in Sweden is his eighty-five year old grandmother, who  
13 he has seen only once in the last twenty years (on a trip with his mother to celebrate his  
14 grandmother's eightieth birthday). Robert does not speak Swedish, and his grandmother  
15 does not speak English.

16  
17 The government also complains, without any factual support, that Mr. Soloway has  
18 a "history of stealing and using the identities of other real people to further his crimes."  
19 Response at 9. The only allegations of identity theft, other than Count 18 of the  
20 indictment--which Robert vehemently denies--involve Robert's use of "forged" headers in  
21 emails in which he substituted the recipient's name for his own in order to avoid spam  
22 filters. However, those emails linked directly to Robert's business. The government has  
23 not produced evidence of a single instance where Mr. Soloway obtained identification  
24 documents of a another person, or that he has the capability of doing so.  
25

26 Even more disingenuous is the government's argument, made for the first time  
27

28 **DEFENDANT'S REPLY MEMORANDUM  
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1 here, that Robert is "sophisticat[ed] in the use of computers and the internet." The  
2 government never made that argument at the detention hearing, and for good reason.  
3 Prior to Magistrate Judge Donohoe making that finding (without factual support in the  
4 record), AUSA Warma on more than one occasion told counsel that the government did  
5 not believe that Robert's computer skills were at all sophisticated. During the search of  
6 Robert's office, which was in his home, FBI agents found one lone computer. Shortly  
7 after Robert's arrest in this case, Ms. Warma, referring to Robert's computer, was quoted  
8 in the media as saying "That wasn't a highly powered, screaming computer or even a high  
9 end laptop as one would expect to see." Others, who have been following and  
10 commenting upon Robert's alleged spam scheme on the internet with almost religious zeal,  
11 have observed:  
12

14 Flood Robert strikes me as not that bright with computers.  
15 I can back this up as

- 16 1. he can't write to cd media (thats if he did it) that s usings  
17 windows as well
- 18 2. latest domain register is a full on Chinese site (I  
19 somehow doubt Robert writes chinese)
- 20 3. web designs are ripped off from others
- 21 4. most hosts appear to be windows boxes.

22 <http://blog.opsan.com/archive/2006/05/25/28138.aspx>.

23 Finally, the government surmises that "it is reasonable to conclude that, if released,  
24 Soloway could well flee to Sweden, and once there the United States would not be able  
25 to extradite." Notably, however, even the government doesn't go so far as to suggest that  
26 if released it is likely that Robert would flee to Sweden. The fact that he could flee  
27 (although without a passport that would be impossible) is not a basis to detain him. The

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1 standard the government must meet is to establish by a clear preponderance of the  
2 evidence that Mr. Soloway is a flight risk, and that there are no conditions, or combination  
3 of conditions, that will reasonably assure his appearance. *United States v. Motamedi*, 767  
4 F.2d 1403, 1406 (9th Cir. 1985).

5  
6 Moreover, despite its protestations about Swedish law prohibiting extradition, the  
7 Convention on Extradition Between the United States of America and Sweden, attached  
8 to the Response as Exhibit I, expressly provides authority for the extradition of Swedish  
9 nationals to the United States for the very crimes for which Robert stands accused. Article  
10 II of the Convention provides, in relevant part, as follows:

11  
12 Extradition shall be granted, subject to the provisions of this  
13 Convention, for the following offenses:

14 . . . .  
15 15. Making use of the mails or other means of  
16 communication in connection with schemes devised or  
intended to deceive or defraud the public or for the purpose  
of obtaining money under false pretenses.

17 Article VII provides that while there is no obligation to grant the extradition of a  
18 person who is a national of the requested State, "the executive authority of the requested  
19 state shall . . . have the power to surrender a national of that State if, in its discretion, it  
20 be deemed proper to do so." Thus, contrary to the government's assertion, Response at  
21 9, the Convention does not prohibit extradition of a Swedish national for the crimes  
22 alleged in this case.

23  
24 **E. MR. SOLOWAY HAS SIGNIFICANT TIES TO THE SEATTLE COMMUNITY.**

25 Robert has lived in Seattle for over four years. This is his home. Other than his  
26 parent's home in Palm Desert, California, he does not have ties to any other community.

27  
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1 Robert's uncle and his family are long time residents of Seattle. His parent's are frequent  
2 visitor's to Seattle. He has many cousins here, as well as dozens of friends. Indeed,  
3 during the detention hearing the government made reference to the large parties that  
4 Robert threw for his many friends. And, as the government notes, the rent on his  
5 apartment was prepaid for six months, and the premises are leased through July, 2008.  
6

7 The government also complains that Robert liquidated two "expensive" vehicles in  
8 2006. The 1996 BMW, with 145,290 miles, was sold to his parents for \$6,262.  
9 Response, Attachment L, Bates Nos. 000207-000208. The 1999 Porsche, with 53,200  
10 miles, was sold for \$39,500. Attachment L. Bates Nos. 000209-000210. However, of  
11 the \$39,500 sale price, approximately \$36,500 went to the bank to pay off the bank loan  
12 secured by the car. Only \$3,000 went to Robert. The vehicles were liquidated because  
13 Robert could no longer afford to keep them. This is not an indication of facilitating quick  
14 flight. It is an indication that he was cash poor.  
15

16 **F. THE USE OF OTHER PEOPLE'S PAYPAL ACCOUNTS WAS NEVER DONE TO**  
17 **HIDE ASSETS.**

18 All of Robert's internet sales were dependent on electronic payments. The business  
19 did not accept cash or checks. After the Microsoft suit, Robert's PayPal accounts were  
20 frozen. He then offered to pay some friends to receive funds on his behalf. He agreed  
21 that if his friends used their Paypal accounts to receive the funds, Robert would pay them  
22 a percentage of each transaction. They would then write a check payable to Newport  
23 Internet Marketing for the amount of the transaction, less their fee. Robert then deposited  
24 the checks into the NIM account. Thus, there was no effort to disguise the income, since  
25 it all went into NIM's bank account.  
26

27  
28 **DEFENDANT'S REPLY MEMORANDUM**  
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1 **G. THE CHANGE IN ROBERT'S MEDICATION CAME ONLY AS A RESULT OF THE**  
2 **MOTION FOR REVIEW OF DETENTION ORDER BEING FILED.**

3 The undersigned counsel has been advised by the legal staff at the FDC that the  
4 Bureau of Prisons ("BOP" herein) reversed itself with respect to prescribing Klonopin for  
5 Robert only after being confronted with the allegations raised in Mr. Soloway's motion for  
6 review of the detention order. Because the FDC was concerned that the Court might order  
7 the BOP to prescribe proper medication if Robert was not released, District Counsel for  
8 the BOP finally prevailed upon the appropriate authorities to reverse their position. While  
9 it is commendable that the BOP has now agreed to prescribe Klonopin for Robert, it is  
10 lamentable that they did so only because they feared judicial intervention, and that Robert  
11 had to needlessly suffer for two months.

12  
13 With respect to providing Robert with a computer, counsel has also been advised  
14 that while a computer can be made available to him, Robert would "not have the more  
15 open access that other inmates have" in terms of time available to him, because he will not  
16 be granted access to the room where the computers are located. Instead, they will give  
17 Robert access to a laptop computer in a visiting room, but that access would likely be  
18 limited, at least initially, to two hours twice a week.

19  
20 **H. EVEN IF THE COURT CONCLUDES THAT MR. SOLOWAY IS A RISK OF FLIGHT OR**  
21 **A DANGER TO THE COMMUNITY, THERE ARE CONDITIONS, OR A COMBINATION**  
22 **OF CONDITIONS, THAT WILL REASONABLY ASSURE HIS APPEARANCE AND THE**  
23 **SAFETY OF THE COMMUNITY.**

24 Pretrial Services has recommended Robert's release on his personal recognizance,  
25 with conditions. We concur with the conditions Pretrial Services has recommended.  
26 However, if the Court is not satisfied with those conditions, the Court could also impose  
27 additional conditions, including a third party custodianship, or placement in a half-way

28 **DEFENDANT'S REPLY MEMORANDUM**  
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1 house.<sup>3</sup> Mr. Soloway's parents are also willing to allow Robert to live with them (in  
2 California) and to supervise him pursuant to 18 U.S.C. §3142((c)(1)(B)(i). They would  
3 also be willing to live with Robert in his apartment in Seattle. Such conditions are clearly  
4 preferable to detention, in that Robert's release will greatly enhance his ability to assist  
5 his counsel in his defense.  
6

7 **III. CONCLUSION.**

8 For all of the reasons hereinabove set forth, there are conditions that will  
9 reasonably assure Robert's appearance at all future hearings in this case, and that will also  
10 assure the safety of other persons and the community. We concur with Pretrial Services'  
11 recommendation for release, and with the conditions they have recommended. Robert is  
12 also willing to abide by any other condition the Court may deem appropriate.  
13 Accordingly, we respectfully request the Court to revoke the detention order and to order  
14 Robert's release on conditions.  
15

16 DATED this 17<sup>th</sup> day of September, 2007.

17  
18 RICHARD J. TROBERMAN, P.S.

19  
20 By: 

21 RICHARD J. TROBERMAN

22 WSB #6379

23 Attorney for Defendant

24 Robert Allen Soloway

25  
26 <sup>3</sup> We do not advocate for placement in a half-way house, because despite the substantial  
27 restriction on his liberty, Robert would receive no credit for such time against a possible sentence  
28 of incarceration.

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**EXHIBIT A**

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**DECLARATION OF STEPHEN M. GALLENSON**

I, Stephen Gallenson, declare:

1. I am an attorney licensed by the State of California to practice before all courts in said state.
2. I am a partner in the Law Offices of Andrian & Gallenson, whose business address is 1100 Mendocino Avenue, Santa Rosa, California 95401.
3. During 2000, I represented ROBERT SOLOWAY and his company, Newport Internet Marketing, in connection with an investigation concerning possible violations Business & Professions Code § 17538.4, which regulated the transmission of unsolicited advertising material.
4. During the course of the investigation Mr. Soloway and I met voluntarily with an investigator with the Healdsburg Police Department. Thereafter, I had discussions with the Sonoma County District Attorneys Office regarding this matter.
5. At all times material hereto, I kept the District Attorneys Office informed as to my client's location, including the fact that he was then residing in Oregon.
6. After completing his review of the file, the District Attorney advised me, in writing, on June 22, 2000, that since the reports he had received dealt with complaints lodged by only one consumer and since the conduct did not demonstrate a pattern of unlawful business practice, no further action was contemplated.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 17 day of September 2007 at Cloverdale, California.

  
\_\_\_\_\_  
STEPHEN M. GALLENSON

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**EXHIBIT B**

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**AFFIDAVIT OF RACHELLE SOLOWAY**

On July 1, 1979, Sweden inaugurated a law that a child born after that date to a Swedish mother would automatically become a Swedish citizen. Robert Soloway was born nine days after this law went into effect and was a Swedish citizen upon birth.

I did not apply for a Swedish passport for Robert until 1991 when a U.S. customs agent told me that as I was traveling on a Swedish passport and Robert on a US passport, Robert and I would be separated in case of an airline hijacking and that I should apply for a Swedish passport for Robert.

Consequently, I did apply and Robert was issued his first Swedish passport on June 25, 1991 (see attached copy of passport). He has continued to maintain a valid Swedish passport (see acceptance below).

The following verbiage is taken from the Swedish Immigration Board posted at <http://www.migrationsverket.se/english.jsp?english/emedborg/emedborg.html>:

"Swedish citizenship legislation is based on the origin principle. This means it is the parents' nationality that determines the child's nationality.

A child born to a Swedish mother automatically receives Swedish citizenship at birth (as of 1 July 1979). The child of a Swedish father also receives Swedish citizenship if the birth takes place in Sweden. If the father is married to the child's foreign mother, the child receives Swedish citizenship regardless of where the birth took place."

At age 22, one has to request to the Immigration Board to receive permanent Swedish Citizenship. This was accepted on July 10, 2001, according to the law (2001.82), Request #: 9-578470, signed by Mr. Conny Ahlberg and Ms. Johanna Stromberg.

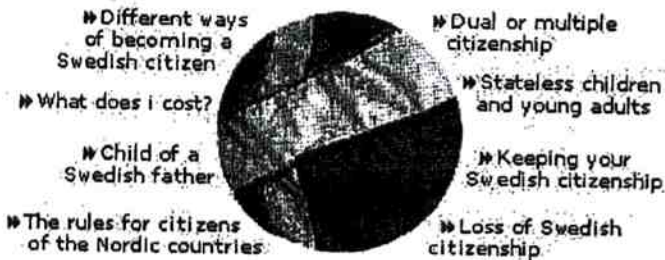
  
Rachelle Soloway      Date 9/14/2007

Encs:      Copy of Robert Alan Soloway's first Swedish passport

Pages 1 and 9 of the text from the Swedish Immigration Board website.



## Swedish citizenship



Frequently asked questions

**NOTE:** When applying for a Swedish citizenship from 1 April 2005:

- Always send your national passport together with your application.
- Your application must be signed by you and paid for – you shall attach a receipt of payment (or other document stating that you have paid the fee) to your application
- Make sure that your application is complete and that you have send all the enclosures according to the list on the last page of the application form

This makes it possible for the Migration Board to start handling your application as soon as it arrives to us.

Please, don't send in your application until you have been in Sweden for a sufficient time - otherwise you risk that your application will be rejected.

Also, please make sure that you fulfil the other requirements for Swedish citizenship.

### Different ways of achieving a Swedish citizenship

You can become a Swedish citizen through:

- application (naturalisation)  
or
- notification (children, young adults aged 18-20 and Nordic citizens).

You can also become a Swedish citizen automatically through

- birth
- adoption  
or
- legitimisation (marriage of parents)
- 

### Becoming a Swedish citizen by application (naturalisation)

### **Becoming a Swedish citizen by birth**

Citizenship legislation around the world is based on one or other of the following two basic principles:

- The origin principle - the child is given the same nationality as the parents.
- The territorial principle - the child is given the nationality of its country of birth.

Swedish citizenship legislation is based on the origin principle. This means it is the parents' nationality that determines the child's nationality.

A child born to a Swedish mother automatically receives Swedish citizenship at birth (as of 1 July 1979). The child of a Swedish father also receives Swedish citizenship if the birth takes place in Sweden. If the father is married to the child's foreign mother, the child receives Swedish citizenship regardless of where the birth took place.

A child to a foreign mother, who is legally registered for partnership or is cohabiting with a Swedish woman, acquires Swedish citizenship at birth if the Swedish woman has agreed to the insemination and the child was born in Sweden.

A child who acquires the mother's or father's Swedish citizenship at birth is entitled to dual nationality

## Swedish citizenship

### **Keeping your Swedish citizenship**

#### **Born and living abroad**

To avoid losing your Swedish citizenship if you were born and are still living abroad, you can apply to keep it. You must do so before the age of 22. You do not need to make an application if you have lived in Sweden during any period of your life or if you visit Sweden regularly.

If you are one of the first generation born abroad, your application will be granted. Subsequent generations born abroad may also be allowed to keep their Swedish citizenship as long as they have not completely severed their ties with Sweden.

You can order the application form from the nearest [Swedish embassy or consulate](#) or, if you are visiting Sweden, from the Migration Board's [Distribution Section](#), Sweden. Forms are available here as [PDF documents](#) (only in Swedish).

Applications to keep Swedish citizenship are to be submitted to the nearest Swedish embassy or consulate. If you are visiting Sweden, you can send your application directly to the Migration Board in Norrköping.

