CURRENT DEVELOPMENT

PUTIN'S REFUGEE CRISIS: THE UNITED STATES AND EUROPEAN UNION MUST EXPAND ACCESS TO BOTH UKRAINIAN AND RUSSIAN REFUGEES DRIVEN AWAY BY PUTIN'S WAR OF AGGRESSION

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Introduction: The Fastest Growing Refugee Crisis in Europe Since World War II

Vladimir Putin's invasion of Ukraine has caused the largest refugee crisis in Europe since World War II.¹ According to the United Nations High Commissioner for Refugees (UNHCR), over 4.6 million refugees have fled Ukraine between February 24 and April 12, 2022.² As of April 12, 2022, refugees from the conflict have arrived in at least seven countries neighboring Ukraine, including over 1.5 million in Poland alone.³ The growing stream of refugees fleeing Russia's war in Ukraine has already begun to put a major strain on some of Ukraine's neighbors, as these countries have varying capacities to welcome the rapid influx of Ukrainian refugees. For example, Moldova, Ukraine's neighbor to the southwest, has seen 368,000 arrivals as of March 8, amounting to a nearly 11 percent increase in the country's population.⁴ More recently, on March 11, the Ukrainian State Border Guard Service announced that the Polish cities of Warsaw and Krakow could "no longer accept refugees," adding that the two cities had received approximately 300,000 Ukrainian refugees since the conflict began.⁵ With few signs

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^{1.} Luke Harding, 'We Couldn't Stand It': The Ukrainians Travelling for Days to Flee Russian Bombs and Rockets, GUARDIAN (Mar. 8, 2022), https://perma.cc/3PL7-VTPF.

^{2.} U.N. HIGH COMM'R FOR REFUGEES, UKRAINE REFUGEE SITUATION (2022), https://perma.cc/72M5-DCE7 (last visited Apr. 12, 2022).

^{3.} Id.

^{4.} Ukrainian Borders: More Than Two Million Arrivals to Neighbouring States, Strong Community Response in Poland, Hungary Introduces Tougher Controls, Moldova Under Pressure, Eur. Council on Refugees & Exiles (Mar. 11, 2022), https://perma.cc/GQZ6-ZTAC.

^{5.} Warsaw, Krakow Can No Longer Accept Refugees from Ukraine—Border Guard Service, INTERFAX UKRAINE (Mar. 11, 2022), https://perma.cc/X2D2-73VT.

of the conflict abating, 6 the European Union (EU) and the United States must take urgent action to address the growing refugee crisis.

Origins of the Crisis and Moscow's Use of Refugees as A POLITICAL WEAPON

The origins of Russia's war in Ukraine can be traced back to the Euromaidan in 2014, in which the pro-Russian government of Viktor Yanukovich was ousted by protestors seeking a more open government and closer relations with Europe.⁷ In that conflict, Russian forces seized the Crimean Peninsula from Ukraine and fomented a separatist insurgency to the new Ukrainian government in the eastern regions of Luhansk and Donetsk.8 Russian President Vladimir Putin, insisting that Ukraine's slow shift towards the Western world posed a grievous threat to Russian security interests, further escalated tensions in late 2021 and early 2022, demanding that the North Atlantic Treaty Organization (NATO) draw down its forces in eastern Europe and that Ukraine officially declare neutrality. On February 21, 2022, Putin gave a speech questioning Ukraine's sovereignty and declared the Russian Federation's recognition of two separatist governments in eastern Ukraine.¹⁰ On February 24, Putin ordered Russian forces—who had been conducting military exercises in Russian regions bordering Ukraine and neighboring Belarus—into Ukraine in what he termed a "special military operation" to "defend people who for eight years are suffering persecution and genocide by the government of Ukraine," a claim unsupported by the facts on the ground.11

Since the start of the conflict, Ukrainian soldiers and civilians have boldly resisted the far more numerous and well-equipped Russian army invading their country.¹² Despite superior firepower, Russian forces have become increasingly bogged down as they attempt to encircle and seize major Ukrainian population centers, including the capital Kyiv.¹³ However, even though Russian forces have performed poorly, Russian assaults on urban areas and increasing food shortages due to the conflict have driven massive refugee flows from areas under attack to safer regions within Ukraine, as well

^{6. &#}x27;No Progress' as Top Russia, Ukraine Diplomats Talk in Turkey, AL JAZEERA (Mar. 10, 2022), https://perma.cc/H755-UBSC.

^{7.} Jen Kirby & Jonathan Guyer, Russia's War in Ukraine, Explained, Vox (Mar. 6, 2022), https:// perma.cc/XQ6J-KMUR.

Dan Bilefsky, Richard Perez-Pena & Eric Nagourney, The Roots of the Ukraine War: How the Crisis Developed, N.Y. TIMES (Mar. 10, 2022), https://perma.cc/7FKX-VT6K.

^{10.} Kirby & Guyer, supra note 7.

^{12.} Ben Connable, Ukrainian and Russian Will to Fight: An Early-War Assessment, LAWFARE (Mar. 4, 2022) https://perma.cc/44C2-37VE; see also, Fred Kaplan, No, You're Not Imagining It: Russia's Army is Inept, SLATE (Feb. 28, 2022), https://perma.cc/53QP-7Z8R.

^{13.} Mason Clark, George Barros & Kateryna Stepanenko, Russian Offensive Campaign Assessment, March 10, INST. FOR STUDY OF WAR (Mar. 10, 2022), https://perma.cc/TL8Y-A6DM.

as in neighboring countries.¹⁴

Commentators have observed that Moscow is likely to "weaponize" the refugee crisis against the EU. Most recently during the Syrian civil war, Russia was accused of working with the Assad regime to target civilian population centers such as Aleppo. ¹⁵ Indiscriminate attacks in areas against population centers forced millions to flee the conflict, seeking refuge in neighboring countries such as Turkey and the EU. ¹⁶ The ensuing flow of refugees seeking safety in Europe spurred an anti-migrant backlash throughout Europe and led to vastly differing responses to the influx of refugees in various European capitals. ¹⁷ Moscow's weaponization of refugee flows represents a part of its broader strategy to divide the EU in order to achieve Russian geopolitical and security goals. ¹⁸ However, the European reaction to the rapid and increasingly large flow of Ukrainian refugees has varied in notable ways from the reaction to refugees fleeing the Syrian Civil War.

II. THE INITIAL EUROPEAN RESPONSE: LESSONS LEARNED FROM SYRIA, OR A DOUBLE STANDARD?

Over 1 million refugees from the Syrian Civil War sought refuge in EU member states. ¹⁹ Yet when Syrian refugees arrived, Europe erupted into political conflict, with certain countries, such as Germany accepting relatively large numbers of refugees, while other countries such as Hungary erected border fences to avoid hosting any refugees at all. ²⁰ There is a stark contrast between the European reaction to refugees fleeing the Syrian Civil War and those forced out of Ukraine by Moscow's aggression.

In some EU member states, the contradiction is readily apparent. In 2016, Denmark passed a controversial law allowing authorities to seize items worth over a certain value from refugees in order to finance their stay in Denmark.²¹ Although the law was not used by Danish authorities during the Syrian refugee crisis, the Danish government at the time argued that the law was needed

^{14.} *Ukraine Conflict Update 11*, INST. FOR STUDY OF WAR (Feb. 28, 2022), https://perma.cc/W3CD-CES5. *See also*, Carlotta Gall, *In Ukraine's West, Lviv Makes Itself a Vital Rear Base*, N.Y. TIMES (Mar. 5, 2022), https://perma.cc/K399-KU9U.

^{15.} James Phillips, *Putin Weaponizes Refugees in Ukraine, Just as He Did in Syria*, HERITAGE FOUND. (Mar. 4, 2022), https://perma.cc/AB3X-VG3R.

^{16.} Id

^{17.} Andreas Kluth, *Putin's Refugees Will Make or Break Europe*, BLOOMBERG (Feb. 26, 2022), https://perma.cc/J48G-HARG.

^{18.} Ron Synovitz, *Is Russia 'Weaponizing Refugees' to Advance Its Geopolitical Goals?* RADIO FREE EUROPE/RADIO LIBERTY (Feb. 19, 2016) https://perma.cc/2KMU-J9DS. *Cf.* Max Fisher, *Putin Has Long Tried to Balance Europe. Now He's Working to Reset It*, N.Y. Times (Jan. 29, 2022), https://perma.cc/3XXB-U9YM.

^{19.} Deena Zaru, Europe's Unified Welcome of Ukrainian Refugees Exposes 'Double Standard' for Nonwhite Asylum Seekers: Experts, ABC News (Mar. 8, 2022), https://perma.cc/NK93-48U6.

^{20.} Anne Applebaum, Europe's Multi-Layered Hypocrisy on Refugees, WASH. POST (Sept. 4, 2015), https://perma.cc/43HB-5E5B.

^{21.} Danish Government Likely to Exempt Ukrainians from Controversial Refugee 'Jewelry Law,' LOCAL (Mar. 3, 2022), https://perma.cc/YPN8-NQDX.

to reduce the flow of refugees into the country.²² Now, the Danish government plans to exempt Ukrainians from the rule.²³ Further, the Danish government seeks to suspend asylum rules for Ukrainian refugees, making it easier for Ukrainians to "quickly start in school, on an education or in a job."²⁴ These proposed steps are welcome changes to asylum law in Denmark, but they expose a double standard being applied to Ukrainian refugees—fellow Europeans—and Syrian refugees.

Discrimination towards refugees of color continues to play out in realtime—with new reports of African refugees fleeing the conflict in Ukraine facing discrimination during the flight. African students fleeing the violence described being segregated at the border from other fleeing refugees, with some even reporting that they were initially obstructed from fleeing Ukraine at all.²⁵ In Poland, nationalists harassed and attacked groups of African, South Asian, and Middle Eastern refugees fleeing Ukraine, forcing police to issue statements warning that far-right groups in the country were spreading false information about refugees.²⁶

Overall, Europe's response to the growing Ukrainian refugee crisis has been swifter and more unified when compared to the Syrian refugee crisis response. On March 4, 2022, less than two weeks after the onset of fighting, the European Council unanimously adopted a Temporary Protection Directive "due to the massive influx of persons fleeing Ukraine as a consequence of the war."27 Temporary protection "is an exceptional measure to provide immediate and temporary protection to displaced persons from non-EU countries and those unable to return to their country of origin."²⁸ The directive's purpose "is to alleviate pressure on national asylum systems and to allow displaced persons to enjoy harmonized rights across the EU," including "residence, access to the labor market and housing, medical assistance, and access to education for children."29 The directive will be in place for a minimum of one year, after which it may be automatically extended for a

^{22.} Denmark Passes Controversial Bill to Take Migrants' Valuables, LOCAL (Jan. 26, 2016), https:// perma.cc/3RDK-UWNY.

^{23.} Danish Government Likely to Exempt Ukrainians from Controversial Refugee 'Jewelry Law, supra note 21.

^{24.} Tara John, Denmark Opens Its Arms to Ukrainians, While Trying to Send Syrian Refugees Home, CNN (Mar. 10, 2022), https://perma.cc/LX5Z-RLVK.

^{25.} Stephanie Busari, Nimi Princewill, Shama Nasinde & Mohammed Tawfeeq, Foreign Students Fleeing Ukraine Say They Face Segregation, Racism at Border, CNN (Mar. 4, 2022) https://perma.cc/ Z557-DCFP; see also Monika Pronczuk & Ruth Maclean, Africans Say Ukrainian Authorities Hindered Them from Fleeing, N.Y. TIMES (Mar. 1, 2022), https://perma.cc/9YJ8-VU2V.

^{26.} Lorenzo Tondo & Emmanuel Akinwotu, People of Colour Fleeing Ukraine Attacked by Polish Nationalists, Guardian (Mar. 2, 2022), https://perma.cc/T7A5-MFP8.

^{27.} Temporary Protection, European Comm'n, https://perma.cc/9S9E-EVEM (last visited Apr. 12, 2022).

^{28.} Id.29. Ukraine: Council Unanimously Introduce Temporary Protection for Persons Fleeing the War, EUR. COUNCIL (Mar. 4, 2022), https://perma.cc/QYR7-N7RU.

maximum of another year or by European Council vote for a third and final year.³⁰

III. A ROLE TO PLAY FOR THE UNITED STATES

Thus far, I have described the developing situation for Ukrainian refugees—both Ukrainians and foreigners living in Ukraine—in Europe. The United States also has a critical role to play. President Biden has granted temporary protected status (TPS) to Ukrainians who were in the United States without proper legal documentation as of March 1, 2022—essentially, giving permission to stay in the country and work for eighteen months.³¹ However, the TPS designation will not apply to any Ukrainians arriving in the United States after March 1, 2022.³² In total, the U.S. Department of Homeland Security (DHS) estimates that about 75,000 Ukrainians will be eligible for the eighteen-month TPS designation.³³ Additionally, on March 3, 2022, U.S. Immigration and Customs Enforcement (ICE) announced the suspension of deportation flights to Ukraine, as well as seven other European countries due to the Russian invasion.³⁴

Unfortunately, the United States missed an opportunity to get ahead of the ongoing crisis using pre-existing authorities. For example, under the Lautenberg Amendment, originally passed in 1990, the United States can offer refugee status to members of designated religious minorities in the former Soviet Union, including members of the Ukrainian Orthodox Church, among several other faiths.³⁵ Unlike most refugees, those admitted under the Lautenberg Amendment do not have to prove they could face persecution on an individual basis.³⁶ Advocates urged the United States to intensify the use of the Lautenberg program to allow more Ukrainian refugees into the country as tensions rose in early 2022. As the tensions heightened in early 2022, there were no indications of an expedited process from the State Department.³⁷ However, DHS later announced in April 2022 that the United States would seek to, "provide eligible Ukrainians with greater access to refugee resettlement processing" through the Lautenberg program.³⁸ While the announcement did not provide extensive details, greater access through the Lautenberg

³⁰ Id

^{31.} U.S. DEP'T OF HOMELAND SEC., Secretary Mayorkas Designates Ukraine for Temporary Protected Status for 18 Months (Mar. 3, 2022), https://perma.cc/SDF3-6V7T.

^{32.} *Id*

^{33.} Ben Fox, Explainer: What Is the US Doing to Help Ukraine Refugees? Associated Press (Mar. 6, 2022), https://perma.cc/75E6-D5FX.

^{34.} Camilo Montoya-Galvez, U.S. Suspends Deportations to Ukraine, Russia, and 7 Other European Countries, Citing "Humanitarian Crisis," CBS News (Mar. 3, 2022), https://perma.cc/WS34-UUM6.

^{35.} Pub. L. No. 101-167, 103 Stat. 1263. (Nov. 21, 1989).

^{36.} Camilo Montoya-Galvez, Will the U.S. Receive Ukrainian Refugees?, CBS NEWS (Mar. 11, 2022), https://perma.cc/35VO-SUOC.

^{37.} Yilun Cheng, Columbus Advocate Urges Biden to Quickly Relocate Eligible Ukrainian Refugees, Columbus Dispatch (Feb. 18, 2022), https://perma.cc/H7VB-T36N.

^{38.} U.S. Dep't of Homeland Sec., President Biden to Announce Uniting for Ukraine, a New Streamlined Process to Welcome Ukrainians Fleeing Russia's Invasion of Ukraine (Apr. 21, 2022), https://perma.cc/TQ8X-U5P8.

program would be a welcome addition to the United States' toolkit for providing assistance to Ukrainians fleeing the conflict.

President Biden stated that he "will welcome Ukrainian refugees" and that the United States should "welcome them here with open arms," however, the rapidly developing situation in Ukraine demonstrates the need for more urgent action. One way to provide immediate relief would be to offer humanitarian parole to Ukrainians. The Immigration and Nationality Act (INA) allows for noncitizens who are otherwise inadmissible to enter the United States when there is an urgent humanitarian reason or significant public benefit to the United States. 40 This is the same provision that the United States used to admit approximately 70,000 Afghan refugees during its withdrawal from Afghanistan in 2021. 41 Early indications illustrate that the Biden administration may be ready to apply the lessons learned from the Afghanistan withdrawal to the ongoing crisis in Ukraine to ensure a timely process for Ukrainian refugees to seek safety in the United States via humanitarian parole. 42 On April 21, 2022, DHS announced a new streamlined system, named "Uniting for Ukraine," that will allow "U.S.-based individuals and entities to sponsor Ukrainian citizens who have been displaced" by the conflict for humanitarian parole.⁴³ Ukrainians found eligible to enter the United States through the program would have the opportunity to apply for parole for a period up to two years and could seek work authorization once paroled.⁴⁴

Beyond humanitarian parole, the United States can still act to ease the burden on Ukrainians fleeing violence and the European states currently accepting the massive flows of refugees. The United States could take steps to expedite the processing of existing Ukrainian immigration applications. Even though the number of pending applications is likely small compared to the over 3 million Ukrainians now fleeing the conflict, a surge of resources to expedite pending applications would be a small step in the right direction. Another creative proposal suggests creating a version of the Central American Minors (CAM) program for Ukrainian refugees, over half of whom are children. Such a program would allow children to enter the United States faster, avoiding some of the complex background checks normally part of the asylum

^{39.} Jacob Knutson, *Biden: U.S. to Welcome Ukrainian Refugees "with Open Arms*," AXIOS (Mar. 11, 2022) https://perma.cc/9REM-4Y2V.

^{40. 8} U.S.C. § 1182(d)(5)(A).

^{41.} U.S. DEP'T OF HOMELAND SEC., DHS ANNOUNCES FEE EXEMPTIONS, STREAMLINED PROCESSING FOR AFGHAN NATIONALS AS THEY RESETTLE IN THE U.S. (Nov. 8, 2021), https://perma.cc/2TWF-5UCY.

^{42.} On March 24, 2022, the Biden administration announced that the United States planned "to welcome up to 100,000 Ukrainians and others fleeing Russia's aggression through the full range of legal pathways, including the U.S. Refugee Admissions Program." See Fact Sheet: The Biden Administration Announces New Humanitarian, Development, and Democracy Assistance to Ukraine and the Surrounding Region, WHITE HOUSE (Mar. 24, 2022), https://perma.cc/FP7C-KDMT.

^{43.} U.S. DEP'T OF HOMELAND SEC., *supra* note 38.

^{44.} *Id*.

^{45.} Matthew La Core, How We Can Confront the Ukrainian Refugee Crisis Despite Our Flawed Immigration System, NISKANEN CTR. (Mar. 16, 2022), https://perma.cc/724Y-AFVD/.

system. 46 Further still, the United States could take the small step of issuing Special Student Relief (SSR) to the approximately 2,000 Ukrainian students in the country. SSR allows the United States to designate a country for the suspension of certain regulatory requirements for F-1 student visa processing when "emergent circumstances" such as "world events that affect F-1 Students from a particular region and create significant financial hardships, such as but not limited to: natural disasters, wars, and military conflicts." 47

IV. RUSSIANS AS REFUGEES OF PUTIN'S WAR

A final chapter of the refugee crisis caused by Vladimir Putin's war in Ukraine concerns Russians themselves. As international pressure on Putin's regime intensifies through sanctions and dozens of corporations voluntarily cease their business dealings with Russia, some Russians and their businesses in the United States have faced discrimination and even threats.⁴⁸ In response to the war, some American politicians have even called for the expulsion of Russian students from American universities.⁴⁹

The United States' response should avoid this tendency to lash out at Russian people for the actions of the Kremlin. Only about 5,000 Russian students were studying in the United States as of 2020–2021 academic year—29th among countries of origin tracked for students in the United States in the 2021 Open Doors Report. Expelling these 5,000 Russian students would have little, if any, impact on Moscow's war in Ukraine and would needlessly punish Russian students seeking an education in the United States for the actions of a government in which they have little voice. Instead, the United States should offer asylum to Russians who wish to seek safety from political repression in Russia.

As the Putin regime continues to crack down on its citizens' freedoms⁵¹ and international economic sanctions increase the economic hardship of everyday Russians, there is likely to be a continued flow of Russians seeking safety, freedom, and economic prosperity abroad. In fact, the number of Ukrainians and Russians attempting to cross the U.S.-Mexico border in Fiscal Year 2022 has already exceeded the previous two years.⁵² From August 2021 to January 2022, over 8,600 Russians sought asylum at the

^{46.} Id.

^{47.} U.S. Dep't of Homeland Sec., Special Student Relief, https://perma.cc/LUN7-8NYG (last visited Apr. 12, 2022).

^{48.} Austin Williams, Russian-Owned Businesses in US Face Discrimination, Vandalism over Ukraine Invasion, Fox 10 Phoenix (Mar. 12, 2022), https://perma.cc/9LN3-9FY5.

^{49.} Paul Blest, Actually, Kicking Out Russian Students Is a Terrible Idea, VICE (Feb. 25, 2022), https://perma.cc/2ZGV-BAZG.

^{50.} OPEN DOORS, ALL PLACES OF ORIGIN, https://perma.cc/46BT-L456 (last visited Apr. 12, 2022).

^{51.} Russia: Kremlin's Ruthless Crackdown Stifles Independent Journalism and Anti-War Movement, Amnesty Int'l (Mar. 10, 2022), https://perma.cc/B3LS-XEDP.

^{52.} Jasmine Aguilera, Ukrainians and Russians at the U.S. Border Puts Pressure on Biden's Immigration Restrictions, TIME MAG. (Mar. 11, 2022), https://perma.cc/567T-ULGH.

U.S.-Mexico border—thirty-five times the number that sought asylum during the same period from 2020 to 2021.⁵³

Some commentators have suggested offering asylum to Russian soldiers who surrender on the battlefields of Ukraine and wish to defect to Ukraine, other European nations, or the United States.⁵⁴ With reports of morale dropping among Russian forces operating in Ukraine and a significant number of Russian troops deployed in the operation being young conscripted soldiers, the idea of offering asylum to Russian soldiers has been floated as a potential way to slow down the Kremlin's war machine.⁵⁵ As part of the backlash towards Russians mentioned above, some may also express security concerns related to an influx of Russian asylum seekers, particularly defecting soldiers, as a form of espionage threat to United States national security. However, analysis of confirmed spies on American soil from 1990 through 2019 identified only 35 spies of Russian origin on American soil during this period, 56 a small number compared to the approximately 400,000 people born in Russia living in the United States in 2020.⁵⁷ Given that conscription is already unpopular in Russia, conscripts receive less training and are generally less professionalized than Russian "contract" soldiers. Morale among conscripts is also notoriously low in part due to the *dedovschina* hazing system.⁵⁸ Thus, offering protection to Russian conscripts who seek asylum is the right choice for the United States, as well as its European allies.

Conclusion

Putin's war of aggression against Ukraine has created the largest and fastest-growing refugee crisis in Europe since World War II and has so far shown no signs of abating. In addition to the growing number of Ukrainians displaced from their homes due to the war, an increasing number of Russians seeking asylum from the tightening restrictions of Putin's regime in Russia are also likely to seek protection in Europe and the United States. Although some early actions by the EU and United States have begun to address the massive flow of persons displaced as a result of the Kremlin's war in Ukraine, the continuing conflict and the sheer number of refugees demonstrate that continuing steps will need to be taken in the future on both sides of the Atlantic.

^{53.} We Had No Choice: Over 8,000 Russians Seek US Refuge in Six-Month Period, GUARDIAN (Mar. 14, 2022), https://perma.cc/4QR9-K34E.

^{54.} Jasmine Aguilera, Some Argue the U.S. Should Offer Refuge to Russian Troops Who Defect. Could It Even Work? TIME MAG. (Mar. 9, 2022), https://perma.cc/M2KJ-55BR.

^{55.} Id.

^{56.} Alex Nowrasteh, Espionage, Espionage-Related Crimes, and Immigration: A Risk Analysis, 1990–2019, CATO INST. (Feb. 8, 2021), https://perma.cc/NPP6-AS6W.

^{57.} UNITED STATES CENSUS BUREAU, PLACE OF BIRTH FOR THE FOREIGN-BORN POPULATION IN THE UNITED STATES, https://perma.cc/2T85-VA78 (last visited Apr. 12, 2022).

^{58.} Suzanne B. Freeman & Katherine Kjellstrom Elgin, What the Use of Russian Conscripts Tells Us about the War in Ukraine, POLITICO (Mar. 17, 2022), https://perma.cc/7BY2-47LQ.