

HUMANITARIAN PAROLE: A TALE OF TWO CRISES

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In 2021 and 2022, massive conflicts erupted in Afghanistan and Ukraine, prompting two wildly different responses by the United States to the resulting refugee flows. The United States turned to a temporary immigration status, humanitarian parole, to welcome both Afghan and Ukrainian refugees. Through a brand-new government program, Uniting for Ukraine, Americans everywhere rallied to host Ukrainian refugees who were swiftly granted parole at no cost. Meanwhile, the U.S. government ignored tens of thousands of Afghan applications for humanitarian parole and collected millions of dollars in fees from them. This Note explores the reasoning behind such troubling disparities. Some can be blamed on the logistical challenges to hosting an extensive parole program that are present in Afghanistan but not Ukraine. Two other justifications for Afghans' dismal access to humanitarian parole are contemplated: 1) a greater sense of U.S. responsibility for the Russo-Ukrainian War than the Taliban takeover in Afghanistan, and 2) national security concerns that Afghans, but not Ukrainians, present for the United States. However, this Note finds that neither of these justifications fully accounts for the United States' deliberate failure to protect Afghans while simultaneously opening its arms to Ukrainians. Instead, this Note argues that this failure by the United States is fueled by the government's resistance to multiculturalism and specifically, nonwhite Muslim immigrants. Ignoring Afghans' applications for parole while championing Ukrainians' reflects the U.S. government's fear of Afghanistan's non-Western culture and desire to exclude it from the country.

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INTRODUCTION

In 2021 and 2022, new conflicts erupted in Afghanistan and Ukraine. The botched U.S. withdrawal from Afghanistan in 2021 led to the Taliban takeover, and the following year, Russia invaded Ukraine. Thousands of refugees fled these conflicts and sought protection in the United States. Luckily, the United States is seasoned in receiving migrants seeking protection from conflict in their home countries; the country has officially received refugees and

asylum seekers since after World War II.¹ Since then, policymakers have creatively employed U.S. immigration law in different ways to handle migrant flows to the United States resulting from humanitarian crises. In response to its sloppy withdrawal from Afghanistan and the Russian invasion of Ukraine, the United States turned to humanitarian parole to allow these refugees to enter the country lawfully and stay for a short time. For Ukrainians, the United States created an unprecedented, fully electronic, free-of-charge humanitarian parole program called Uniting for Ukraine (U4U). For Afghans, the United States maintained its standard humanitarian parole application process, requiring applicants to send paper applications by international mail, travel out of Afghanistan for an interview, and pay hefty filing fees. After U.S. immigration agencies collected \$20 million in fees from Afghans' applications but denied almost all of them, international outcry ensued. Three potential explanations for this unequal access to humanitarian parole do not fully explain why Afghans, but not Ukrainians, were prevented from seeking protection in the United States. These partial explanations include logistical challenges unique to Afghanistan, the United States' increased feeling of responsibility toward Ukrainian rather than Afghan refugees, and national security concerns about Afghan refugees. Ultimately, only racial prejudice and Islamophobia perpetuated by the U.S. government can fully connect the dots. This prejudice, historically present in U.S. immigration law and policy, disparages nonwhite Muslim immigrants, labeling them less worthy of lifesaving protection in the United States.

I. WHAT IS HUMANITARIAN PAROLE?

Humanitarian parole is a temporary immigration status derived from section 212 of the Immigration and Nationality Act (INA).² If Department of Homeland Security (DHS) officials, acting on behalf of the Attorney General, determine that an applicant located abroad has a sufficiently urgent humanitarian reason to enter the United States, the applicant will be granted parole and permitted to enter the country lawfully.³ Parole confers no long-term or permanent immigration status; DHS may authorize a parolee's status for as little as a few days or a maximum of one year or longer.⁴ One year is typical. Parolees can apply for work authorization during this time, but they

1. See OFF. OF REFUGEE RESETTLEMENT, HIST. (Nov. 21, 2021), <https://perma.cc/PYX7-F5EW>.

2. 8 U.S.C. § 1182(d)(5)(A) ("the Attorney General may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons. . .").

3. See U.S. CITIZENSHIP AND IMMIGR. SERVS., POLICY MANUAL ("CBP officers make the ultimate determination. . . whether to parole the noncitizen into the United States. . . the parole allows the noncitizen to stay temporarily in the United States."), <https://perma.cc/G6ML-QA8K>.

4. See U.S. CITIZENSHIP AND IMMIGR. SERVS., HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE FOR INDIVIDUALS OUTSIDE THE UNITED STATES (Sept. 9, 2022) [hereinafter HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE], <https://perma.cc/9BQ6-EQDD>.

generally do not qualify for state or federal benefits.⁵ They may travel within the United States, but will automatically terminate their parole status if they leave the country without advance approval by USCIS.⁶ When one's parole status expires, they must possess a valid immigration status to fall back on or depart the United States.⁷ If the parolee does not depart the United States, they are subject to forced removal (deportation) by DHS.⁸

Humanitarian parole is not a standard immigration status. It is granted on a case-by-case basis pursuant to DHS discretion. Throughout history, humanitarian parole has been used to address unique humanitarian crises. For example, under Operation New Life in 1975, approximately 130,000 refugees from Vietnam were granted humanitarian parole after the U.S. withdrew from the country.⁹ Similarly, in response to the 2014 influx of arrivals of unaccompanied Central American youth at the southern border, humanitarian parole was used to create the Central American Minors Program (CAM).¹⁰ This program grants parole for two years to qualifying minors—currently about 1,500.¹¹ Recently, DHS announced it will grant parole for two years for 30,000 eligible applicants per month from Cuba, Haiti, Nicaragua, and Venezuela in response to the countries' mass exoduses.¹²

Given this historic use of humanitarian parole for regulating distinct refugee flows into the United States, it was not surprising that DHS turned to it once again in response to the humanitarian crises created by the U.S. withdrawal from Afghanistan in 2021 and the Russian invasion of Ukraine in 2022.

II. HUMANITARIAN PAROLE FOR AFGHANS FOLLOWING U.S. WITHDRAWAL FROM AFGHANISTAN IN 2021

Following the September 11, 2001 attacks against the United States by terrorist group Al Qaeda, the United States invaded Afghanistan to overthrow its extremist Taliban government.¹³ This invasion gave way to the decades-long “War on Terror” in the Middle East that became increasingly unpopular

5. *Explainer: Humanitarian Parole*, NAT'L IMMIGR. F. (Mar. 24, 2022) [hereinafter *Explainer: Humanitarian Parole*], <https://perma.cc/XB92-LMC2>.

6. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

7. *Explainer: Humanitarian Parole*, *supra* note 5.

8. See *id.*

9. *Id.*; COMP. GEN., ID-76-63, REPORT TO THE CONGRESS: EVACUATION AND TEMPORARY CARE AFFORDED INDOCHINESE REFUGEES—OPERATION NEW LIFE 2 (June 1, 1976), <https://perma.cc/E7VQ-99RH>.

10. *Central American Minors (CAM) Refugee and Parole Program*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (June 22, 2022), <https://perma.cc/8ZSN-6GJG>.

11. MARK GREENBERG, STEPHANIE HEREDIA, KIRA MONIN, CELIA REYNOLDS & ESSEY WORKIE, *RELAUNCHING THE CENTRAL AMERICAN MINORS PROGRAM: OPPORTUNITIES TO ENHANCE CHILD SAFETY AND FAMILY REUNIFICATION* 13, 6 (2021), <https://perma.cc/7E8A-DFTZ>.

12. *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Nov. 18, 2022), <https://perma.cc/7E8A-DFTZ> (30,000 total parolees per month is cap at the time of this writing).

13. See *The U.S. War in Afghanistan*, COUNCIL ON FOREIGN RELS., <https://perma.cc/Y2EG-GKNE> (last visited Apr. 15, 2023).

with the American public.¹⁴ Accordingly, the Obama administration began slowly reducing U.S. military presence in Afghanistan in 2011.¹⁵ But this withdrawal was not fully accomplished until August 2021, when the Biden administration abruptly removed all U.S. military forces from the country without warning the U.S.-backed Afghan National Security Forces.¹⁶ With no residual support from the United States, Afghanistan was immediately recaptured by the Taliban.¹⁷

Chaos ensued following this controversial withdrawal and resurgence of the Taliban as Afghans feared persecution under an extremist regime.¹⁸ Civilians who worked for the U.S. government during the war as interpreters and embassy employees were especially at risk.¹⁹ The United States and its allies provided limited evacuation flights for their own citizens and some Afghans with ties to the U.S. government.²⁰ Thousands of civilians overran Kabul International Airport, desperately trying to secure a spot on one of the evacuation flights.²¹ In total, 76,000 Afghans were evacuated to the United States.²² But given the chaotic, disorderly nature of the evacuations, these evacuees did not arrive with an immigration status that would allow them to lawfully enter the country.²³ To quickly solve this problem, DHS granted the evacuees humanitarian parole as part of the new military initiative, Operation Allies Welcome.²⁴

A. *Humanitarian Parole For Afghan Evacuees*

The 76,000 Afghan evacuees, mostly longtime employees of the U.S. government, received parole for two years upon entering the United States and passing a security vetting process.²⁵ They were then transported to eight domestic military bases for additional vetting and temporary shelter until refugee resettlement agencies could resettle them elsewhere.²⁶ With humanitarian parole, the evacuees may apply for work authorization, but they do not have a clear path to any long-term immigration status.²⁷ They may travel within the United States, but they will lose their parole status if they depart

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See* Nick Schifrin & Teresa Cebrian Aranda, *U.S. allies in Afghanistan fear for their lives under Taliban rule*, PBS (Aug. 17, 2022, 6:45 PM), <https://perma.cc/9KNC-VMS4>.

19. *See id.*

20. *See id.*

21. *See* Abigail Hauslohner, *Thousands of Afghans were evacuated to the U.S. Will America let them stay?*, WASH. POST (Mar. 29, 2022, 5:00 AM), <https://perma.cc/SUNH-UQE4>.

22. *Id.*

23. *See id.*

24. *See Operation Allies Welcome*, DEP'T HOMELAND SEC. (Mar. 13, 2023), <https://perma.cc/8K8S-HVG2>.

25. *See* Camilo Montoya-Galvez, *U.S. relocates all Afghan evacuees from military sites, completing first resettlement phase*, CBS NEWS (Feb. 19, 2022, 4:31 PM), <https://perma.cc/TL5W-B4LD>.

26. *See id.*

27. *See id.*

the country.²⁸ Unless they become eligible for another form of immigration status, they will be expected to leave the United States after two years.²⁹

B. *Humanitarian Parole For Afghans Left Behind*

Operation Allies Welcome granted humanitarian parole solely to the 76,000 evacuees.³⁰ This operation did not include Afghans who were left behind after the evacuation flights. Instead, U.S. lawmakers and immigration advocates encouraged those left behind to apply for humanitarian parole from Afghanistan through the standard application process, with slight modifications to account for extenuating circumstances, such as the suspension of operations at the U.S. Embassy in Kabul.³¹ Any Afghan, including those with no history of employment by the U.S. government, could apply for parole this way.

To begin this application process, the Afghan applicant, or someone on their behalf, needed to complete several U.S. Citizenship and Immigration Services (USCIS) application forms.³² Form I-131, Application for Travel Document (Form I-131) is the principal parole application that must be submitted for every individual—including children within a family unit—who seeks to enter the United States.³³ The cost to file each Form I-131 is \$575.³⁴ This fee can be waived by filing Form I-912, Request for Fee Waiver (Form I-912) with Form I-131.³⁵ USCIS adjudicates the application for parole independently of the application for a fee waiver.³⁶ Finally, Form I-134, Declaration of Financial Support (Form I-134) and supporting documentation must be filed with each Form I-131.³⁷ This form is an affidavit of financial support that details how the applicant, or a U.S.-based sponsor, will financially support the parolee during their time in the United States.³⁸

After sending these forms to USCIS by mail, USCIS will either deny the application or issue a Notice of Continued Parole Processing.³⁹ If the

28. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

29. In August 2022, the Afghan Adjustment Act was introduced in the Senate. This bill enjoys significant bipartisan support, but as of this writing, it has not passed the Senate. This bill would allow Afghans who were paroled into the U.S. after being evacuated under Operation Allies Welcome to apply for legal permanent residency. If this bill does not become law, Afghan parolees will be forced to leave the U.S. once their parole status expires. See S. 4787, 117th Cong. (2022).

30. *Operation Allies Welcome Announces Departure of Last Afghan Nationals from Fort McCoy, Wisconsin*, DEP'T HOMELAND SEC. (Feb. 15, 2022), <https://perma.cc/9A9H-2D3F>.

31. See Najib Aminy & Dhruv Mehrotra, *The US Has Approved Only 123 Afghan Humanitarian Parole Applications in the Last Year*, REVEAL (Aug. 19, 2022), <https://perma.cc/6ZXV-EE49>.

32. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

33. See *id.*

34. U.S. CITIZENSHIP AND IMMIGR. SERVS., I-131, APPLICATION FOR TRAVEL DOCUMENT (Jan. 23, 2023), <https://perma.cc/64AE-4BSM>.

35. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

36. U.S. CITIZENSHIP AND IMMIGR. SERVS., ADDITIONAL INFORMATION ON FILING A FEE WAIVER (June 22, 2022), <https://perma.cc/4N9T-9QZ8>.

37. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

38. See *id.*

39. See *id.*

application is denied, there is no further action.⁴⁰ If a Notice of Continued Parole Processing is received, the applicant must then submit the Department of State (DOS) Form DS-160, Online Nonimmigrant Visa Application (Form DS-160), which must be completed and submitted online.⁴¹ As part of the application, the applicant must attend an in-person interview at the nearest U.S. Embassy or Consulate, provide biometric information, and pass a medical screening.⁴² Since the U.S. Embassy in Kabul suspended its operations following the withdrawal, applicants who reside in Afghanistan must travel to the nearest U.S. Embassy or Consulate, often in neighboring Pakistan. DOS then issues the final decision on the application.⁴³ If parole is granted, the applicant receives a physical travel document, known as a boarding foil, that is valid for entering the United States by air within thirty days.⁴⁴ The parolee must fund and arrange their own travel.⁴⁵ However, the applicant can file a motion requesting USCIS to reconsider the decision or reopen the proceeding (for a \$675 fee).⁴⁶ Alternatively, if significant new facts have arisen, the applicant can file an entirely new application.⁴⁷ There is no limit to the number of applications an individual can file.⁴⁸

C. *Humanitarian Parole For Afghans Left Behind: In Practice*

Despite the complexity of this application process, at-risk Afghans rushed to apply for humanitarian parole. Afghans submitted over 66,000 applications after the U.S. withdrawal, generating \$20 million in fees for USCIS.⁴⁹ But as of August 2022, fewer than 8,000 of those applications had been processed, and a mere 123 were granted.⁵⁰ These processing delays and the astoundingly dismal approval rating sparked outrage among U.S. senators,⁵¹ immigrant advocates,⁵² and the American public.⁵³ Then, the Biden administration announced that on October 1, 2022, humanitarian parole would no longer be available to Afghans as a means to enter the country.⁵⁴ With this

40. *See id.*

41. *See id.*

42. *See id.*

43. *See id.*

44. *Id.*

45. *See id.*

46. *Id.*; U.S. CITIZENSHIP AND IMMIGR. SERVS., I290-B, NOTICE OF APPEAL OR MOTION (Jan. 27, 2023), <https://perma.cc/X276-VKRE>.

47. *See* HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

48. *Id.*

49. Aminy & Mehrotra, *supra* note 31.

50. *Id.*

51. *See* Letter from Members of Congress to Hon. Joseph R. Biden, Jr. President of the U.S.; Hon. Alejandro Mayorkas, Sec'y of Homeland Sec.; Hon. Ur Jaddou, Dir. of U.S. Citizenship and Immigr. Servs. (May 26, 2022) [hereinafter Letter from Members of Congress], <https://perma.cc/BG93-KXBC>.

52. Complaint for Declaratory and Injunctive Relief at 3, *Am. Immigr. Council v. U.S. Citizenship and Immigr. Servs.*, No. 1:22-CV-05312 (S.D.N.Y. June 23, 2022).

53. *See* Aminy & Mehrotra, *supra* note 31.

54. Camilo Montoya-Galvez, *U.S. to Discontinue Quick Humanitarian Entry for Afghans and Focus on Permanent Resettlement Programs*, CBS NEWS (Sept. 2, 2022, 6:27 PM), <https://perma.cc/8CQ6-VKCB>.

announcement, the administration began Operation Enduring Welcome, which focuses on permanently resettling a limited group of eligible Afghans rather than evacuating the larger group of those stuck in Afghanistan. While USCIS still accepts humanitarian parole applications from Afghans under special circumstances, the agency no longer accepts them from those whose sole reason for applying is to escape the Taliban.⁵⁵

III. HUMANITARIAN PAROLE FOR UKRAINIANS FOLLOWING RUSSIAN INVASION OF UKRAINE IN 2022

In February 2022, Russia invaded Ukraine, prompting one of the largest refugee surges since World War II.⁵⁶ Over eight million people in Ukraine have been internally displaced, and over seven million Ukrainians have fled the country.⁵⁷ Although the Biden administration pledged unwavering support for Ukraine in this war, it refuses to engage in the conflict directly as long as the United States and its allies remain unharmed by Russia.⁵⁸ However, the United States has supplied Ukraine with billions of dollars' worth of military-grade vehicles, weaponry, and humanitarian aid.⁵⁹ President Biden also promised to accept up to 100,000 Ukrainian refugees.⁶⁰

Initially, Ukrainian refugees arrived on foot at the U.S.-Mexico border. At the time, refugees of most nationalities—especially Mexicans, Central Americans, and Haitians—who arrived this way were permanently expelled to Mexico under Title 42 and not permitted to apply for protection in the United States.⁶¹ However, DHS exempted the Ukrainians arriving at the border from Title 42, granting them parole for two years. About 22,000 Ukrainians received parole this way.⁶² This processing at the southern border continued until April 25, 2022, when USCIS launched Uniting for Ukraine

55. See GUIDANCE ON EVIDENCE FOR CERTAIN TYPES OF HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE REQUESTS, U.S. CITIZENSHIP AND IMMIGR. SERVS. (June 23, 2022), <https://perma.cc/5XMR-M3X2> (providing that parole is not intended to protect individuals from “generalized risk of harm” and outlining stringent evidentiary standards for eligibility for humanitarian parole based on harm in country of origin).

56. See Omer Karasapan, *Forcibly Displaced Ukrainians: Lessons from Syria and Beyond*, BROOKINGS INST. (June 21, 2022), <https://perma.cc/GC97-GH98>.

57. *Id.*

58. See Joseph R. Biden Jr., *President Biden: What America Will and Will Not Do in Ukraine*, N.Y. TIMES (May 31, 2022), <https://perma.cc/9N56-TKU3>.

59. See U.S. DEP'T OF STATE, BUREAU OF POL.-MIL. AFFS., FACT SHEET: U.S. SECURITY COOPERATION WITH UKRAINE (March 20, 2023), <https://perma.cc/E352-ZLGV>.

60. THE WHITE HOUSE, FACT SHEET: THE BIDEN ADMINISTRATION ANNOUNCES NEW HUMANITARIAN, DEVELOPMENT, AND DEMOCRACY ASSISTANCE TO UKRAINE AND THE SURROUNDING REGION (Mar. 24, 2022), <https://perma.cc/5HHK-792Q>.

61. Title 42 is a nearly century-old public health law that allows CBP to deny migrants entry to the U.S. in order to prevent the spread of disease. Under this law, asylum seekers and migrants who enter the U.S. illegally can be immediately expelled from the U.S. (most often to Mexico) with no opportunity to apply for asylum or other legal protections. Title 42 was reactivated at the onset of the Covid-19 pandemic in March 2020 and remains in use by the Biden administration. See *Explainer: Title 42 and What Comes Next at the Border*, NAT'L IMMIGR. F. (Feb. 1, 2023), <https://perma.cc/4VC7-ZJNG>.

62. Camilo Montoya-Galvez, *More than 45,000 Americans have applied to sponsor Ukrainian refugees in the U.S.*, CBS NEWS (June 3, 2022, 6:00 AM), <https://perma.cc/M7TL-KKKM>.

(U4U).⁶³ U4U is a fully online program that adjudicates parole applications by Ukrainians who seek temporary protection in the United States.⁶⁴ Instead of traveling to the southern border and requesting parole there or waiting out the years-long refugee resettlement process, U4U quickly provides parolees with an electronic travel document that allows them to fly to the United States and enter lawfully through any port of entry.⁶⁵

A. *Uniting For Ukraine Application Process*

To be eligible for this program, an applicant must be a Ukrainian citizen and possess a valid Ukrainian passport.⁶⁶ They also must have resided in Ukraine immediately before the Russian invasion, at least through February 11, 2022, and be displaced because of it. Applicants are also required to pass biographic and biometric security checks. The key eligibility requirement for this program is financial sponsorship for the duration of the applicant's stay by any U.S.-based individual with lawful immigration status.

To begin the application process, the sponsor files Form I-134, Declaration of Financial Support on behalf of the beneficiary (the Ukrainian seeking parole). The beneficiary cannot self-support. Also covered by this sponsorship, if applicable, is the beneficiary's spouse or common-law partner and unmarried children under the age of twenty-one.

Once the I-134 is approved, the beneficiary must confirm their biographic information online through a USCIS portal and complete vaccination requirements. Upon approval, the beneficiary will receive a travel document, known as a boarding foil, through this portal. It remains valid to enter the United States via air within ninety days. The parolee is responsible for funding and arranging their own travel. No DOS interview or Form DS-160 is required, and the standard \$575 filing fee is waived.

B. *Uniting For Ukraine: In Practice*

As of March 2023, U4U remains active and without a cap on the number of applicants who may be granted parole. In the first month of the program, over 45,000 Americans filed the I-134 to sponsor Ukrainian beneficiaries.⁶⁷ That number has since grown to over 177,000 Americans.⁶⁸ U4U applications

63. See Camilo Montoya-Galvez, *U.S. to extend legal stay of Ukrainian refugees processed along Mexican border*, CBS NEWS (Mar. 13, 2023, 7:43 PM), <https://perma.cc/W2SP-WRTD>.

64. See *id.*

65. See U.S. CITIZENSHIP AND IMMIGR. SERVS., UNITING FOR UKRAINE (Nov. 21, 2022) [hereinafter UNITING FOR UKRAINE], <https://perma.cc/DLV8-9M6B>.

66. All statements in this section derive from the following source unless otherwise noted: UNITING FOR UKRAINE, *supra* note 65.

67. Montoya-Galvez, *supra* note 53.

68. FISCAL YEAR 2022 PROGRESS REPORT, U.S. CITIZENSHIP AND IMMIGR. SERVS. 9 (Dec. 2022), <https://perma.cc/UG2C-DCKS> ("USCIS has confirmed the financial suitability of over 177,000 supporters for the Uniting for Ukraine (U4U) process." While every one of these 177,000 supporters may not have ended up actually sponsoring a Ukrainian beneficiary, 177,000 U.S.-based supporters at least submitted the I-134 to USCIS for approval. Adjudication of the I-134 largely entails evaluating the

are processed in weeks, or even days, and they have already resulted in over 82,000 arrivals.⁶⁹ U4U has been applauded as a great success that demonstrates USCIS's ability to respond to a massive humanitarian crisis rapidly and innovatively. This response also shows the willingness of Americans to support Ukrainian refugees.

IV. HUMANITARIAN PAROLE FOR AFGHANS VERSUS UKRAINIANS

A. *Differences*

There are similarities between USCIS' use of parole in 2021 for Afghans who were not evacuated and for Ukrainians in 2022. Both groups received parolee status for up to two years and were automatically authorized to work in the United States incident to this status.⁷⁰ Both groups were subject to the same rights and restrictions as parolees, and both were granted special exemptions from the government's general ban on conferring federal benefits to parolees.⁷¹ Both groups were required to arrange their own flights to the United States, and both groups initiated the application process abroad through USCIS.

But the differences in how USCIS used parole for the two groups are more remarkable than the similarities. The most infamous inconsistency is that the \$575 filing fee was waived for Ukrainian applicants, but not Afghans.⁷² Every Afghan applicant, including children, had to file their own Form I-131, and each one cost \$575 to submit. Therefore, even small families faced over \$1,000 in filing fees, an incomprehensible amount of money for applicants from a country whose per capita yearly income is \$500.⁷³ One family of twenty-two applicants, facing persecution by the Taliban, was required to pay \$12,650 in filing fees to apply for parole.⁷⁴ Unable to raise the money, the family was forced to stay put. One of the family members was then murdered by the Taliban for having served in the Afghan military.⁷⁵ Members of Congress and the public urged USCIS to waive the \$575 filing fee for all

supporter's ability to financially support the beneficiary (parolee). This number has likely passed 177,000 since the publication of this report)

69. *Id.*

70. *See Certain Afghan and Ukrainian Parolees Are Employment Authorized Incident to Parole*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (NOV. 21, 2022), <https://perma.cc/65GN-RZ68>.

71. *See Benefits for Ukrainian Humanitarian Parolees*, OFF. OF REFUGEE RESETTLEMENT (May 2022), <https://perma.cc/DQJ7-R6AG>; *Benefits for Afghan Humanitarian Parolees*, OFF. OF REFUGEE RESETTLEMENT (Oct. 2021), <https://perma.cc/UK3X-4WTC>

72. *See Information for Afghan Nationals on Requests to USCIS for Parole*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (NOV. 18, 2022), <https://perma.cc/S36M-VZ4H>.

73. *GDP per capita (current US\$) – Afghanistan*, WORLD BANK (2020), <https://perma.cc/9LZ9-TSF8>.

74. *See* Cathryn Miller-Wilson, *Why the U.S. government should waive fees for Afghan refugees seeking humanitarian parole*, WHYY PBS (Aug. 27, 2021), <https://perma.cc/3YVG-63ZX>.

75. *See id.*

Afghans, as permitted by federal law, calling it “red tape.”⁷⁶ Ultimately, USCIS collected nearly \$20 million in fees from Afghan parole applicants.⁷⁷ Contrarily, Ukraine’s per capita yearly income is nearly \$5,000—ten times that of Afghanistan.⁷⁸ Yet, USCIS charges *no fee* to U4U applicants.

The second inconsistency lies in the application process for parole: it was immensely more time consuming and burdensome for Afghans than Ukrainians. Afghans were first required to file—by international mail—multiple forms with USCIS: Form I-131, Application for Travel Document, Form I-134, Declaration of Financial Support, and if seeking a waiver of the \$575 fee, Form I-912, Request for Fee Waiver. Then, they awaited a decision from USCIS. The agency claims to adjudicate most parole applications within ninety days of receipt.⁷⁹ But, after the U.S. withdrawal, Afghans faced average processing times of over 180 days, with some applications left pending for one year.⁸⁰

If conditionally approved by USCIS, Afghans then had to electronically complete and submit the DS-160 Online Nonimmigrant Visa Application and travel to a U.S. Embassy or Consulate for an interview with DOS.⁸¹ Each individual applicant was required to submit a DS-160, and the \$160 filing fee is waived for humanitarian parole applicants.⁸² After submitting the DS-160, Afghan applicants waited for DOS to schedule them for an in-person interview. Since the U.S. Embassy in Kabul is closed, they had to travel to a nearby country for this interview.⁸³ DOS then had up to 120 days to adjudicate the parole application.⁸⁴

In contrast, U4U is conducted entirely online and eliminates the DOS components of the application process. Ukrainian applicants do not apply for parole themselves. Instead, their sponsor submits Form I-134, Declaration of Financial Support, on their behalf. Unlike for Afghans, USCIS alone fully approves or denies U4U parole applications. Since DOS is not involved, U4U beneficiaries do not have to file the DS-160 Online Nonimmigrant Visa Application or attend an in-person interview. Upon approval by USCIS, beneficiaries submit biographic information and then receive their travel authorization documents. With USCIS employees specially trained to adjudicate these applications, the entire process takes just a few weeks.⁸⁵

76. *Id.*; see Letter from Josh Harder, Member of Cong. to Hon. Alejandro N. Mayorkas, Sec’y of Homeland Sec.; Hon. Ur M. Jaddou, Dir. of U.S. Citizenship and Immigr. Servs. (Oct. 15, 2021), <https://perma.cc/2S7C-P9W6>.

77. Aminy & Mehrotra, *supra* note 31.

78. *GDP per capita (current US\$) – Ukraine*, WORLD BANK (2020), <https://perma.cc/239H-W9ZH>.

79. HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

80. *Afghanistan Humanitarian Parole (HP) Data*, REVEAL (Aug. 19, 2022), <https://perma.cc/6MSU-RY8Q> (USCIS records obtained by Reveal through a Freedom of Information Act (FOIA) request).

81. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

82. *Id.*; see *Filing Humanitarian Parole for Afghans*, PARS EQUAL. CTR. AFGHAN SUPPORT PROJECT (Aug. 21, 2021), <https://perma.cc/RS7U-VKTP>.

83. See HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE, *supra* note 4.

84. *Id.*

85. See Montoya-Galvez, *supra* note 28.

The third inconsistency that made parole less accessible for Afghans than Ukrainians was the requirement that Afghans prove they were the victim of targeted, individualized persecution.⁸⁶ According to USCIS, “parole is not intended to . . . provide protection from generalized violence.”⁸⁷ Therefore, Afghans needed to provide extensive documentation showing that they were uniquely at risk of individualized harm by the Taliban.⁸⁸ A lawsuit against DHS by the American Civil Liberties Union (ACLU) even alleges that USCIS deliberately heightened the standard for individualized harm in order to deny most applications.⁸⁹ Contrarily, no such requirement existed for Ukrainians: to qualify for U4U, they only needed to prove residence in Ukraine leading up to Russia’s invasion.⁹⁰ Similarly, there are no geographical limits to U4U eligibility: applicants can have resided in all corners of the country, even those removed from conflict zones.⁹¹

A fourth inconsistency between the two groups’ access to parole is the cap, or lack thereof, that USCIS placed on the number of parole approvals it would grant. After the U.S. withdrawal, USCIS and DOS received over 66,000 parole applications from Afghans who were not evacuated.⁹² The agencies processed less than 10,000 of them and approved *just a few hundred*.⁹³ Then, on October 1, 2022, USCIS terminated humanitarian parole as a form of relief for Afghans *entirely*, except under especially exigent circumstances.⁹⁴ Fleeing the Taliban does not constitute an especially exigent circumstance. While parole is now essentially defunct for Afghans, there is no cap on the number of U4U applications that USCIS can approve for Ukrainians.⁹⁵

B. *The Effects Of These Differences*

It is virtually impossible for most Afghans remaining in the country to obtain parole.⁹⁶ Meanwhile, U4U operations continue successfully.⁹⁷ The fully electronic, expeditious nature of U4U makes applying for parole easier

86. See Letter from Members of Congress, *supra* note 51.

87. *Information for Afghan Nationals on Requests to USCIS for Parole*, *supra* note 73.

88. See *Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Requests*, *supra* note 22.

89. See Complaint for Declaratory, Injunctive, and Mandamus Relief at 2, *Roe v. Mayorkas*, No. 1:22-cv-10808-MLW (D. Mass. filed May 25, 2022).

90. See *Uniting for Ukraine*, *supra* note 65.

91. See *Carrier Liaison Program: Uniting for Ukraine*, U.S. CUSTOMS & BORDER PROT. (Apr. 21, 2022), <https://perma.cc/3GG2-F2P6>.

92. Aminy & Mehrotra, *supra* note 31.

93. *Id.*

94. See Jonathan Landay, *U.S. to Revise Afghan Resettlement Policy – U.S. Official*, REUTERS (Sept. 1, 2022, 3:25 PM), <https://perma.cc/8CQY-QNS7/>.

95. *Frequently Asked Questions About Uniting for Ukraine*, U.S. CITIZENSHIP AND IMMIGR. SERVS. (Nov. 21, 2022), <https://perma.cc/6N5K-PTB3>.

96. See Aminy & Mehrotra, *supra* note 31.

97. See Camilo Montoya-Galvez, *A year into war, U.S. sponsors apply to welcome 216,000 Ukrainian refugees under Biden policy*, CBS NEWS (Feb. 24, 2023, 8:00 AM), <https://perma.cc/7XTC-VQ74>.

and faster for Ukrainians. Less stringent requirements—no filing fee, no DS-160, no in-person interview—and no numerical cap have turned U4U into a highly successful program through which over 115,000 Ukrainians have already entered the United States.⁹⁸ Contrarily, Afghans were expected to pay exorbitant filing fees, file paper documents by international mail, and even leave Afghanistan for an in-person interview with DOS.⁹⁹ USCIS’s significantly delayed processing times and astoundingly dismal approval rates exacerbated Afghans’ restricted access to parole.¹⁰⁰ Despite both groups applying for the same immigration status under the same statute, they experienced incredibly unequal application processes and prospects of approval.

C. *Attempting To Explain These Differences*

The public quickly labeled this shocking inequality the product of racism and Islamophobia, and members of Congress called it “troubling.”¹⁰¹ There are multiple other potential explanations for this inequality. The following sections will explore these explanations.

1. *USCIS Could not Create a U4U-Type Program in Afghanistan Due to Logistical, Operational Challenges*

USCIS claims that, even if it wanted to, it could not establish a U4U-type program in Afghanistan because of purely logistical challenges unique to that country.¹⁰² The first of these challenges is passport availability and strength. Due to preexisting inefficiencies in the Afghan government’s passport services, as well as the subsequent Taliban takeover, it was unlikely that most Afghans possessed a valid passport when they applied for parole.¹⁰³ U4U applicants were more likely to already possess a valid passport when they applied.¹⁰⁴ Ukraine’s passport is also more globally acceptable than Afghanistan’s.¹⁰⁵ According to USCIS, this immediate passport availability made U4U possible.¹⁰⁶ A U4U-type program could not function the same in

98. *Id.*; see Muzaffar Chishty & Jessica Bolter, *Welcoming Afghans and Ukrainians to the United States: A Case in Similarities and Contrasts*, MIGRATION POL’Y INST. (July 13, 2022), <https://perma.cc/K8S7-4XNB>.

99. *See id.*

100. *See id.*

101. Letter from Members of Congress, *supra* note 51; see, e.g., Quil Lawrence, *U.S. is Accused of a Double Standard When it Comes to Afghan and Ukrainian Refugees*, NPR (July 6, 2022, 7:21 AM), <https://perma.cc/XE6L-XSUY>; Ilya Somin, *A Double Standard Between Ukrainian and Afghan Refugees?*, REASON (May 26, 2022, 4:39 PM), <https://perma.cc/Q5WT-4Q9K>; Cody Copeland, *‘Humanitarian parole’ for Ukrainians highlights racial bias in US immigration policy*, COURTHOUSE NEWS SERV. (April 1, 2022), <https://perma.cc/H4D2-CSBD>.

102. *See* UCLA Center for Immigration Law and Policy, *Inside the U.S. Immigration System: USCIS Dir. Ur M. Jaddou in Conversation with Prof. Arulanantham*, YOUTUBE (Aug. 29, 2022) [hereinafter *Inside the U.S. Immigration System*], <https://perma.cc/L37B-6H9R>.

103. *See* Charlotte Greenfield, *Afghanistan to Start Issuing Passports Again After Months of Delays*, REUTERS (Oct. 5, 2021, 6:42 AM), <https://perma.cc/6ZA2-7452>.

104. *See* *Inside the U.S. Immigration System*, *supra* note 103.

105. *See* *The Henley Passport Index*, Henley & Partners (2022), <https://perma.cc/7JWV-ELB4>.

106. *See* *Inside the U.S. Immigration System*, *supra* note 103.

Afghanistan because passport unavailability would significantly delay processing. Even if Afghans tried to rapidly obtain a passport, the Taliban did not issue them for several months after the takeover, and the United States would likely not accept the passport of a terrorist group that it did not recognize as the legitimate governing authority of Afghanistan.¹⁰⁷ Since passports are a critical part of most immigration processes before USCIS, the agency arguably could not relax the passport requirement to accommodate Afghans.

The second logistical challenge that prohibited USCIS from establishing a U4U-type program in Afghanistan is the collapse of U.S.-Afghanistan relations.¹⁰⁸ The success of U.S. operations in a foreign country depends on the relationship between the United States and that country. Prior to the Russian invasion of Ukraine, the United States and Ukraine already counted on three decades of friendly relations.¹⁰⁹ The United States maintains a permanent embassy in Ukraine's capital, and while it closed briefly when Russia invaded, it reopened and resumed operations a few months later.¹¹⁰ The support of U.S. government officials who were permanently physically present in Ukraine was critical for establishing U4U.¹¹¹

In stark contrast, the government of Afghanistan collapsed entirely following the U.S. withdrawal, leading to permanent closure of the U.S. Embassy in Kabul. The United States does not recognize the Taliban as Afghanistan's official government, so there exists no governing entity with which USCIS can coordinate a U4U-type program in the first place.¹¹² The prospects for a U4U-type program in Afghanistan are especially dismal because of the Taliban's hostility toward the United States and its presence in Afghanistan. Unlike in Ukraine, a U4U-type program in Afghanistan would likely not be welcome.

Finally, U4U is more feasible in Ukraine than Afghanistan because of applicants' greater financial resources and access to the Internet. With a per capita yearly income ten times greater than Afghans', Ukrainians are more likely to be able to afford a plane ticket to the United States.¹¹³ Additionally, much of U4U's success derives from its fully electronic operations. Therefore, applicants need readily available, reliable internet access to apply. This access was not an issue in Ukraine, since 75% of the population used the Internet as of 2020.¹¹⁴ But in Afghanistan, just 18% of the population was

107. See Akmal Dawi, *Taliban Make Millions From Passports Issued to Fleeing Afghans*, VOA (Aug. 24, 2022, 3:53 PM), <https://perma.cc/Q2TK-3WWL>.

108. See *Inside the U.S. Immigration System*, *supra* note 103.

109. See *U.S.-Ukraine Relations*, U.S. EMBASSY IN UKR., <https://perma.cc/4E7S-HC8D>.

110. See Christopher Miller & Nahal Toosi, *U.S. reopens embassy in Ukrainian capital*, POLITICO (May 18, 2022, 2:43 PM), <https://perma.cc/V6AD-LDL5>.

111. See *Inside the U.S. Immigration System*, *supra* note 103.

112. Bureau of South and Central Asian Affs., *U.S. Relations With Afghanistan*, U.S. DEP'T OF STATE (Aug. 15, 2022), <https://perma.cc/JA4Z-GEY6>.

113. See *GDP per capita (current US\$) – Ukraine*, *supra* note 79.

114. *Individuals using the Internet (% of population) – Ukraine, Afghanistan*, WORLD BANK (2020), <https://perma.cc/3CF6-CVB6>.

using the Internet in 2020.¹¹⁵ Without increased internet access in Afghanistan, a U4U-type program could not function.

The logistical challenges of passport availability, foreign relations, and resource constraints explain why USCIS could not enact a U4U-type program in Afghanistan, and they do not reflect prejudice against Muslim immigrants by the U.S. government as they are simply logistical. But these logistical challenges only *partially* explain the inconsistencies in the parole process for Afghans and Ukrainians.

2. USCIS Established U4U Because the United States Feels Responsible for Financially Fueling the Conflict That Created so Many Ukrainian Refugees. It Does Not Feel This Responsibility for the Refugee Crisis That Resulted from its Withdrawal from Afghanistan

Since Russia invaded Ukraine in February 2022, the United States has provided Ukraine with over \$10 billion of support in the form of military vehicles, weapons, humanitarian aid, and more.¹¹⁶ While the United States is not directly involved in the war, this support fuels Ukraine's defense against Russia, prolonging the war.¹¹⁷ Arguably, the United States thus created U4U because it felt partly responsible for Ukraine's refugee crisis due to its role in prolonging the war that displaced Ukrainian refugees.¹¹⁸ The Biden administration could have directed USCIS to find a way to absorb these refugees as compensation for contributing to their displacement.¹¹⁹

It is possible that the United States did not feel the same responsibility toward the Afghans who were not evacuated because the United States did not *actively, affirmatively* contribute to the 2021 Taliban takeover in the same way that it bankrolled the Russo-Ukrainian war. Instead, the United States withdrew from Afghanistan, *ceasing* to act there. The humanitarian crisis that followed this withdrawal was caused by the terrorism of the Taliban—not an active action or policy of the United States. The United States further displayed its unwillingness to accept responsibility for the Afghan refugee crisis even before the withdrawal was complete. On July 2, 2021, the United States deserted the Bagram Air Base—where it had maintained a continuous presence for twenty years—in the middle of the night, allegedly without

115. *Id.*

116. CHRISTINA L. ARABIA, ANDREW S. BOWEN & CORY WELT, CONG. RSCH. SERV. IF12040, U.S. SECURITY ASSISTANCE TO UKRAINE I (2022).

117. See John Cherian, *The U.S.'s actions prolonging the conflict in Ukraine*, FRONTLINE (May 15, 2022, 6:00 AM), <https://perma.cc/5EBU-E9XV> (“Investigative reports published in the U.S. media in the first week of May confirmed the widely held view that the major factor in prolonging the conflict has been the growing involvement of the U.S. military.”).

118. See Elena Chachko & Katerina Linos, *Sharing Responsibility for Ukrainian Refugees: An Unprecedented Response*, LAWFARE (Mar. 5, 2022, 9:42 AM), <https://perma.cc/8F8E-RV24> (explaining that states may feel a duty to accept large influxes of refugees because they contributed to the crisis that produced such refugees).

119. *See id.*

notifying the Afghan military or the base's new Afghan commander.¹²⁰ Unprepared for the United States' departure, the Afghan military scrambled to take control of the base and evict looters who ransacked it after the United States shut off the electricity and left.¹²¹ As a result of this hasty departure, the Taliban captured the Bagram Air Base about one month later, nearing their goal of taking control of the capital, Kabul, and ultimately the entire country.¹²² The United States' desertion of the Bagram Air Base indirectly fueled the Taliban's advancement in Afghanistan, further endangering millions of Afghans—especially those who assisted the U.S. government during the war. The United States never apologized for this botched departure from Bagram or helped Afghan forces deal with the consequences of it, showing that it assumed no responsibility for the resulting endangerment of Afghans.

Unlike the logistical challenges that limited USCIS's ability to create a U4U-type program in Afghanistan, this responsibility-based explanation for the inequality of the two parole processes is incorrect. If this sense of responsibility informed U.S. refugee policies, then the United States would have tried to create a U4U-type program in Afghanistan when it withdrew from the country in 2021, even if the program could not be as seamless and efficient as it was in Ukraine. While the U.S. withdrawal may be considered inaction, realistically, it was an affirmative action that deliberately placed Afghanistan in Taliban control.¹²³ Prior to the withdrawal, the only forces seriously preventing a Taliban takeover were those of the United States and the U.S.-backed Afghan government.¹²⁴ Therefore, the withdrawal contributed directly to the Taliban takeover and the resulting refugee crisis—and the United States knew it. U.S. allies condemned the Biden administration's botched withdrawal, blaming the United States for abandoning Afghans who were left to the Taliban rule.¹²⁵

Even though the United States knew it was partly responsible for the resulting humanitarian crisis in Afghanistan, it still did not attempt to create a U4U-type program in Afghanistan or even simplify the parole application

120. See Kathy Gannon, *US left airfield at night, didn't tell new commander*, AP NEWS (July 6, 2021), <https://perma.cc/AJ8U-XXVM>.

121. See *id.*

122. See *Afghan forces surrender Bagram air base to Taliban*, ECON. TIMES (Aug. 15, 2021, 4:38 PM), <https://perma.cc/X9EA-S2JE>.

123. See W.J. Hennigan & Kimberly Dozier, *Joe Biden's Botched Withdrawal Plunges Afghanistan Into Chaos*, TIME (Aug. 15, 2021, 9:39 PM) <https://perma.cc/UW9J-PD74>.

124. See *id.*

125. See, e.g., *Allies round on US over Afghanistan 'debacle'*, FRANCE24 (Aug. 16, 2021, 6:02 PM), <https://perma.cc/HX3F-2DUT>; Asma Khalid, *How U.S. allies view the country a year after its withdrawal from Afghanistan*, NPR (Aug. 29, 2022, 4:20 PM), <https://perma.cc/FQ4W-MA3B>; Steven Erlanger, *Afghan Fiasco Raises Hard Questions for Europe*, N.Y. TIMES (Oct. 12, 2021), <https://perma.cc/97QX-JMLZ>.

process.¹²⁶ Therefore, this sense of responsibility cannot explain the grave inconsistencies between the parole processes for Afghans and Ukrainians.

3. *Since the United States Perceives Afghans as a Greater National Security Threat Than Ukrainians, USCIS Decided it Needed to be More Restrained in Granting Them Humanitarian Parole*

To the U.S. government and public, Afghanistan appears to be a breeding ground for terrorism: the Taliban, the terrorist organization now in control of Afghanistan, originated there, and the Taliban remains a close ally of Al Qaeda, the group responsible for the September 11, 2001 attacks.¹²⁷ The Islamic State, a jihadist terrorist organization, and its many affiliates are also highly active in Afghanistan, frequently attacking civilians and members of the Taliban with bombs.¹²⁸ Afghanistan constantly ranks the highest on the Global Terrorism Index as over 1,000 people are killed in terrorist attacks there every year.¹²⁹ Given this prevalence of terrorism in Afghanistan, the U.S. government and public expressed concern that the 76,000 Afghans who were evacuated by plane to the United States pose a national security threat.¹³⁰ Of the 76,000 Afghan refugees, the Department of Defense (DOD) identified fifty who present a potential security threat to the United States.¹³¹ In light of this unsettling number and Afghanistan's reputation for terrorism in the eyes of the United States, it is conceivable that the U.S. government felt the need to be more restrictive in granting parole to Afghans than Ukrainians.

But this national security justification is incorrect. It is true that terrorism is significantly more prevalent in Afghanistan than in Ukraine. While Afghanistan ranked first on the Global Terrorism Index in 2021, Ukraine ranked sixty-second, even below the United States.¹³² However, this disparity does not warrant the assumption that the extremists in Afghanistan are synonymous with, or hidden among, the Afghan civilians trying to escape this very terrorism in their country. Most Afghans denounce the Taliban and other terrorist groups and express support for liberal values like democracy, freedom

126. See generally Robert D. Crews, *America's Afghan Refugee Crisis*, FOREIGN POL'Y (Feb. 4, 2016, 10:18 AM), <https://perma.cc/2LGB-5Y2H> (summarizing the U.S.'s contribution to the "humanitarian catastrophe" that has plagued Afghanistan for decades).

127. See Asfandyar Mir, *Al-Qaeda, the Taliban, and the Future of U.S. Counterterrorism in Afghanistan*, GW PROGRAM ON EXTREMISM 1–2 (Sept. 8, 2022), <https://perma.cc/6T7P-Z5XV>.

128. See Catrina Doxsee, Jared Thompson & Grace Hwang, *Examining Extremism: Islamic State Khorasan Province (ISKP)*, CTR. FOR STRATEGIC & INT'L STUD. (Sept. 8, 2021), <https://perma.cc/7SBW-AA2Q>.

129. *2021 Global Terrorism Index*, VISION OF HUMAN. (2021), <https://perma.cc/7SBW-AA2Q>.

130. See Caleb Kieffer, *Afghan Refugee Resettlement Efforts Ignites Ugly Rhetoric Despite Popular Support*, S. POVERTY L. CTR. (Dec. 2, 2021), <https://perma.cc/4GX8-K2ZT>.

131. INSPECTOR GEN.: DEP'T OF DEF., DODIG-2022-065, *EVALUATION OF THE SCREENING OF DISPLACED PERSONS FROM AFGHANISTAN* 10 (2022), <https://perma.cc/9BSU-NHBE>.

132. *2021 Global Terrorism Index*, *supra* note 130.

of speech, and women's rights.¹³³ For decades, Afghan immigrants in the United States have shown no higher propensity for terrorism or crime than other immigrant groups, or even native-born U.S. citizens.¹³⁴ Furthermore, many Afghan parole applicants were former employees of the U.S. military.¹³⁵ If they truly presented a national security threat to the United States, the military would not have employed them.¹³⁶

Furthermore, vetting is an integral part of U4U that could be equally applied to Afghans in a U4U-type program. U4U parolees submit biographic information with their applications and undergo additional security vetting by U.S. Customs and Border Protection (CBP) upon arrival at a port of entry.¹³⁷ If a parolee is deemed a national security threat, they are referred to Immigration and Customs Enforcement (ICE) for detention and removal.¹³⁸ If DHS possessed sufficient resources to vet over 50,000 Ukrainian parolee arrivals in 2022, there is no reason it could not have vetted a similar number of Afghan parolees in 2021. But even if U4U's vetting process would not have put national security concerns to rest, the United States could have employed the more intensive two-level vetting process that it used for the Afghans who were evacuated and resettled in the United States. In the first level of the vetting process, the Biden administration sent officials from DHS, DOD, the Federal Bureau of Investigation (FBI), and the National Counterterrorism Center to Afghanistan to screen Afghans before they boarded the evacuation planes.¹³⁹ In the second level, the parolees were vetted again upon arrival in the United States according to the standard CBP process for parolees from all countries. While some questioned the effectiveness of this two-level vetting process, it was largely successful.¹⁴⁰ There is no reason it could not have also been used to vet the Afghans who did not board an evacuation flight and applied for parole instead. Therefore, the national security justification for restricting parole for Afghans but not Ukrainians is incorrect.

133. See Lindsay Maizland, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN RELS. (Jan 19., 2023, 10:45 AM), <https://perma.cc/DVU8-3PX5>.

134. See Alex Nowrasteh, *There Is No Good Reason to Block Afghan Refugees*, CATO INST. (Aug. 16, 2021, 1:47 PM), <https://perma.cc/XT47-WBTG>.

135. See Miriam Jordan, *Afghans Who Bet on Fast Path to the U.S. Are Facing a Closed Door*, N.Y. TIMES (Feb. 16, 2022), <https://perma.cc/NMC8-7S2P>.

136. See 10 U.S.C. § 1564b (requiring the Department of Defense to uniformly screen and vet any foreign national, U.S. citizen with dual citizenship, or U.S. legal permanent resident before they can access any of the agency's "systems, facilities, personnel, information, or operations").

137. See *Uniting for Ukraine*, *supra* note 65.

138. See *id.*

139. See Off. of the Spokesperson, *U.S. Dep't of State Briefing With Senior U.S. Government Officials On Operation Allies Welcome Relocation Assistance Efforts for Non-SIV Holders*, U.S. DEP'T OF STATE (Sept. 14, 2021), <https://perma.cc/6Q5S-7AUY>.

140. See INSPECTOR GEN.: DEP'T OF DEF., *supra* note 132.

D. *The truth behind these differences*

While *some* of the inconsistencies in how USCIS utilized parole for Afghans and Ukrainians are correctly attributed to pure logistical challenges, logistics alone do not explain why USCIS refused to waive the filing fees for Afghans, processed and approved barely any of their applications, and refused to meaningfully simplify the application process for them—even amidst outrage from Congress and the public. Arguably, this logistics-based justification can be supplemented by justifications rooted in the United States' sense of responsibility for the Ukrainian refugee crisis, in addition to national security concerns. But neither of these additional justifications completely explain the discrimination in how USCIS used parole for Afghan versus Ukrainian refugees. So, where does this discrimination come from?

This differential treatment is rooted in the U.S. government's aversion to multiculturalism, and more specifically, nonwhite Muslim immigrants. Multiculturalism promotes the absolute autonomy and peaceful coexistence of multiple cultures within one country—even if a culture's practices are unacceptable to the natives of that country.¹⁴¹ According to proponents of multiculturalism, a government should not expect any culture or individual practicing a culture to conform to the greater culture of the host country.¹⁴² In making it nearly impossible for the Afghans left behind after Operation Allies Welcome to obtain parole, the United States exhibited a resistance to Afghanistan's Islamic culture that it did not to Ukraine's predominantly Christian culture.¹⁴³ This resistance reflects intolerance for multiculturalism.

The United States is a Western liberal state that prides itself on protecting individual rights and autonomy over the rights and autonomy of groups, whether they be groups defined by culture, religion, political party, etc.¹⁴⁴ Contrarily, Afghanistan is not located in the West, and it is not a liberal state.¹⁴⁵ Public and private actors in Afghanistan have historically violated Afghans' individual rights, especially those of women and girls, religious minorities, LGBTQ+ individuals, political dissidents, and other minority groups.¹⁴⁶ This illiberalism is part of what motivated the United States to invade Afghanistan in the first place: it sought to liberalize the country by

141. See BHIKHU PAREKH, *RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY* 172 (2d ed. 2006).

142. *See id.*

143. *See generally* The World Factbook, *Afghanistan*, CENT. INTEL. AGENCY (Dec. 6, 2022), <https://perma.cc/EDD6-VJ73>; The World Factbook, *Ukraine*, CENT. INTEL. AGENCY (Dec. 2, 2022), <https://perma.cc/AK3E-35HT> (identifying Afghanistan as a predominantly Muslim nation and Ukraine as a predominantly Christian nation).

144. *See* WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 75 (1995).

145. *See Afghanistan*, FREEDOM HOUSE (2022), <https://perma.cc/MJ8V-ND9H>.

146. *See* Huma Saeed, *The Unending Cycle of Violence and Human Rights Violations in Afghanistan*, ITALIAN INST. INT'L POL. STUD. (Oct. 11, 2021), <https://perma.cc/HK3M-5VUG>.

rebuilding its government to mimic that of a Western liberal democracy.¹⁴⁷ In contrast, the United States and its Western allies do not consider Ukraine, an overwhelmingly Christian nation, to be such a threat to liberalism, as evidenced by their unwavering support for the country since Russia's invasion.¹⁴⁸ U.S.-Ukraine relations have been strong since Ukraine's founding, and the United States applauds the country for embracing staples of liberalism, such as a democratic government, a market economy, and membership in Western liberal organizations.¹⁴⁹ While Ukraine's human rights record is not praiseworthy, it is more reflective of liberalism than Afghanistan's, causing Ukrainians to be viewed as more worthy of admission to the United States than Afghans.¹⁵⁰

Afghans' unequal access to parole compared to Ukrainians' is a manifestation of U.S. intolerance for Afghanistan's illiberal Islamic culture. The U.S. government and the American public are more willing to solidarize with foreigners who resemble them.¹⁵¹ Most Ukrainians are white, Christian, and the product of a democratic state and free market system, mirroring a large segment of the U.S. population. Many Afghans are darker-skinned, Muslim, and citizens of a nondemocratic state that advances illiberal values condemned by the United States.¹⁵² USCIS's unforgiving parole process for Afghans shows a lack of solidarity toward foreigners who are too different from a certain conception of "Americans" to deserve a speedy, government-sponsored escape to the United States. Many Americans fly Ukrainian flags and support limitless resettlement of Ukrainian refugees in the United States.¹⁵³ Over 177,000 Americans have even offered to personally sponsor Ukrainian refugees.¹⁵⁴ Afghan refugees seeking to enter the United States have not been

147. See Rashmi Singh, 'Defensive Liberal Wars': *The Global War on Terror and the Return of Illiberalism in American Foreign Policy*, 23 REV. DE SOCIOLOGIA E POLÍTICA 99, 106 (2015) ("Freedman categorises the [war] fought in Afghanistan... as [a] 'defensive liberal [war]', i.e. [war] of necessity, fought to ensure survival, to defend and preserve the Western way of life").

148. See Ivo H. Daalder & James M. Lindsay, *The West Holds Firm: Why Support for Ukraine Will Withstand Russian Pressure*, FOREIGN AFFS. (Sept. 15, 2022), <https://perma.cc/29M8-J3D2>.

149. See Bureau of Eur. and Eurasian Affs., *U.S. Relations With Ukraine*, U.S. DEP'T OF STATE (Aug. 27, 2021), <https://perma.cc/PE72-P5AH>.

150. See William Byrd, *Why Have the Wars in Afghanistan and Ukraine Played Out So Differently?*, U.S. Inst. of Peace (June 23, 2022), <https://perma.cc/P79U-QB33> (describing Ukraine as more "Western-oriented" and having "far better human and social indicators" than Afghanistan); Michael Young, *Ukraine and the West's selective values: Less 'clash of civilisations', more rift*, QANTARA (May 20, 2022), <https://perma.cc/76PU-BY95> (arguing that the U.S. is more willing to solidarize with refugees who it believes identify with like American liberal values).

151. See David Goodhart, *Too diverse?*, PROSPECT (Feb. 20, 2004), <https://perma.cc/R8QA-AJ53>.

152. See David De Coninck, *The Refugee Paradox During Wartime in Europe: How Ukrainian and Afghan Refugees are (not) Alike*, INT'L MIGRATION REV. 5 (Aug. 2, 2022), <file:///Users/amciullo/Downloads/DeConinckThe-refugee-paradox-during-wartime.pdf>; Secretary General's Statement on International Day of Democracy, Cmty. of Democracies (Sept. 15, 2022), <https://perma.cc/GH6Q-88VQ>.

153. See Patsy Widakuswara, *What's Behind American Support for Ukraine?*, VOA NEWS (Apr. 29, 2022, 10:58 PM), <https://perma.cc/T9TF-YABP>.

154. FISCAL YEAR 2022 PROGRESS REPORT, *supra* note 69.

afforded the same solidarity by the U.S. government or the American people, suggesting racial and religious prejudice.¹⁵⁵

But liberals and anti-multiculturalists would attribute these inconsistencies not to an inherent prejudice against nonwhite Muslims, but to resistance against the illiberal Islamic culture that Afghans would bring with them to the United States.¹⁵⁶ They argue that making it as easy for Afghans to obtain parole as it is for Ukrainians would have resulted in the admission of massive numbers of Afghans into the United States and an invasion by their illiberal Islamic culture.¹⁵⁷ Even though their parole status would only be valid for up to two years, they could then pursue other immigration statuses or remain in the United States undocumented. Either way, liberals and anti-multiculturalists argue that a U4U-type program in Afghanistan would have led to the formation of large Afghan immigrant communities that would impose their illiberal culture on the United States.

This imposition is more likely among Afghan than Ukrainian immigrant communities because Muslim immigrants are arguably more resistant to assimilation than non-Muslim immigrants.¹⁵⁸ Research from some countries suggests that they are less likely than non-Muslim immigrants to pursue meaningful employment, follow the host country's laws, and respect the host country's citizens.¹⁵⁹ They refuse to adjust their illiberal culture to meet the expectations of the liberal Western host country.¹⁶⁰ According to liberals and anti-multiculturalists, granting Afghans parole at the same rate as Ukrainians would result in the forced imposition of Afghan culture on Americans, subjecting them, especially women, to mistreatment and injustices that the United States would never tolerate from native-born Americans or immigrants from liberal states.¹⁶¹

Anti-multiculturalists would argue that this resistance to immigration from Afghanistan is not racist or Islamophobic. Instead, it reflects the concern that granting parole to as many Afghans as Ukrainians would lead to uncontrollable growth of an illiberal, hostile immigrant community that would not

155. See Isabelle Grassel, *Ukrainian Refugees—the Rule or the Exception?*, CHICAGO COUNCIL ON GLOB. AFFS. (Aug. 25, 2022), <https://perma.cc/K4AL-JH24>.

156. See AYAAN HIRSI ALI, PREY: IMMIGRATION, ISLAM, AND THE EROSION OF WOMEN'S RIGHTS, ch.12 (2021) (arguing that Islamic culture is inherently illiberal and that upon immigrating to Western countries, Muslims cannot reconcile this illiberalism with the liberal values of the receiving country. As a result, Muslim immigrants are less likely to assimilate and more likely to commit crimes, especially in the context of sexual assault of white women by Muslim immigrant men.).

157. See Marianna Sotomayor, *Divisions emerge among Republicans over how to handle Afghan refugees*, WASH. POST (Aug. 19, 2021, 6:00 AM), <https://perma.cc/5NZ7-P53S>; Kieffer, *supra* note 131.

158. See HIRSI ALI, *supra* note 157, at 178–79.

159. See *id.* at 190.

160. See *id.* at 195–95.

161. See *id.* at 185. See generally Susan Moller Okin, “Mistresses of Their Own Destiny”: Group Rights, Gender, and Realistic Rights of Exit, 112 ETHICS 205 (2002) (arguing that multicultural acceptance of illiberal cultures most harms women).

embrace U.S. nationalism or respect the individual rights of Americans that the country so vehemently champions.¹⁶² In denying parole for almost all Afghans who were left behind after the U.S. withdrawal, USCIS was protecting U.S. nationalism—not exhibiting inherent prejudice against nonwhite Muslim refugees.

But this anti-multiculturalist explanation for why Afghans were essentially barred from parole is incorrect because unlike in Europe, Muslims generally assimilate willingly and successfully into American society.¹⁶³

Not all Muslim immigrants in the United States are from Afghanistan, and Muslim immigrants' assimilation experience in the United States varies based on country of origin.¹⁶⁴ However, Muslims' shared commitment to Islam and its guiding principles of life suggests that the Afghans who applied for parole would have experienced similarly successful assimilation in the United States. Muslim immigrants in the United States proudly consider themselves American, report having non-Muslim friends, believe their religion is compatible with American democracy, and condemn Islamic terrorism—all indications of successful integration into American society.¹⁶⁵ This success shows that there is nothing inherent to Islam or Muslim immigrants themselves that makes them resistant to assimilation. While their assimilation is more problematic and less successful in Europe, this is likely the result of European countries' less inclusive national identities and lower tolerance for religious pluralism compared to the United States.¹⁶⁶ Muslim immigrants' demonstrated propensity for assimilation in the United States indicates that Afghan parolees would have likely achieved similarly successful assimilation.

Still, circumstances unique to Afghanistan may have hindered the assimilation of Afghan parolees in ways that would not affect non-Afghan Muslim immigrants. For example, Afghanistan's culture is significantly more illiberal than that of other Muslim-majority countries like Indonesia, Morocco, Tunisia, and Albania.¹⁶⁷ Originating from a more strict, illiberal culture would have possibly made Afghan parolees more hostile toward liberal

162. See Park MacDougald, *A Different Way to Think About White Identity Politics*, INTELLIGENCER (Mar. 1, 2019), <https://perma.cc/TG65-6U4N>. See generally ERIC KAUFMANN, *WHITESHIFT: POPULISM, IMMIGRATION, AND THE FUTURE OF WHITE MAJORITIES* (2019) (arguing that populism is the expression of whites' anxiety about demographic changes, and that this anxiety is not necessarily racist).

163. See Alex Nowrasteh, *Muslim Immigration and Integration in the United States and Europe*, CATO INST. (Oct. 31, 2016, 1:47 PM), <https://perma.cc/DEE3-ZTE9>.

164. See generally Ronald Inglehart & Pippa Norris, *Muslim Integration into Western Cultures: Between Origins and Destinations* (John F. Kennedy Sch. of Gov't, Harv. U., Working Paper No. RWP09-007, 2009), <https://perma.cc/P8XG-HE2V> (analyzing different trends in assimilation of Muslim immigrants in Western nations based on their country of origin).

165. See *U.S. Muslims Concerned About Their Place in Society, but Continue to Believe in the American Dream*, PEW RSCH. CTR. (July 26, 2017), <https://perma.cc/2JAL-XPTQ>.

166. See Jeremy L. Neufeld, *Do Muslim Immigrants Assimilate?*, NISKANEN CTR. (Apr. 3, 2017), <https://perma.cc/R54C-XG2U>.

167. See *Global Freedom Scores*, FREEDOM HOUSE (2022), <https://perma.cc/RQG3-KDDH>.

American values, ultimately impeding their assimilation.¹⁶⁸ Additionally, cultural isolation is more likely in Afghanistan due to the country's mountainous terrain and dismal infrastructure that makes interaction with different cultures within and beyond the country less common.¹⁶⁹ This cultural isolation in Afghanistan may have impeded Afghan parolees' assimilation because the culture shock upon arriving in the United States would feel more jarring to individuals who had little meaningful prior exposure to Western cultures or more liberal Muslim cultures.¹⁷⁰ This shock would likely result from misunderstanding and confusion, potentially causing hostility and resistance to American culture and ultimately impeding Afghans' assimilation.

That the unique circumstances of Afghanistan would have possibly challenged the assimilation of Afghan parolees does not warrant barring their access to parole. Instead, the United States would need to accept these challenges, if they were to arise, and revise the country's expectations for assimilation of Afghan parolees.

Unlike their Muslim immigrant counterparts who reside permanently and voluntarily in the United States, Afghan parolees would have been arriving in the United States for emergency humanitarian protection—not through the typical family or employment-based channels of voluntary, permanent, legal immigration. This protection would be highly temporary, and it was only needed in the first place because of a crisis fueled by the United States: the sudden Taliban takeover after the botched U.S. withdrawal left Afghanistan up for grabs. This abrupt takeover would have left Afghan parolees with little voluntariness and autonomy in their decision to immigrate to the United States compared to those who voluntarily immigrate permanently through family or employment-based channels. These parolees would have been labeled “involuntary refugees” by Canadian philosopher Will Kymlicka because they would have felt forced to leave Afghanistan as the only way to escape the Taliban.¹⁷¹ Kymlicka argues that host countries should be more tolerant when involuntary refugee groups are unwilling to fully assimilate because, unlike voluntary immigrants, they did not willingly waive their right to live and work in their own culture.¹⁷² Therefore, Afghan parolees' potential unwillingness to fully assimilate in the United States should not have dictated their deservingness of parole.¹⁷³ As involuntary immigrants, they, just

168. See HIRSI ALI, *supra* note 157; Jason Richwine, *Afghans in America: A Potentially Severe Culture Clash*, CTR. IMMIGR. STUD. (Aug. 27, 2021), <https://perma.cc/ZVH4-GP76>.

169. See Larry Goodson, *The Fragmentation of Culture in Afghanistan*, 18 ALIF: J. COMPAR. POETICS, 269, 270 (1998).

170. See Renita Murimi, *On the complexity of assimilation in urban communities*, 6 Applied Network Sci. 1, 8 (2021) (“As expected, an increase in the foreignness increases the complexity of assimilation of the immigrant community with the native community”).

171. See Kymlicka, *supra* note 145, at 99.

172. See *id.* at 96, 99.

173. See *id.*

like U4U Ukrainian parolees, would be entitled to a greater right to maintain their own culture than voluntary immigrants.¹⁷⁴

Any such entitlement should not threaten the United States because first, parole is granted for up to only two years and offers no pathway to a longer-term immigration status. While some parolees would possibly have claims to other more long-term immigration relief, most would arrive with the ability to stay in the United States for only two years. Parolees would not be able to meaningfully alter American culture or weaken American nationalism in that short time.¹⁷⁵ Second, in the West, involuntary refugee groups are usually too small and dispersed to create their own self-governing communities.¹⁷⁶ In 2019, the Afghan immigrant population in the United States numbered just 132,000 people—less than .001% of the country's total population—and less than 10% of those immigrants were involuntary refugees.¹⁷⁷ Third, even if the U.S. government granted Afghan parolees greater concessions for maintaining their native culture (such as funding public schools for their children that operated entirely in Dari or Pashto—not English), as Kymlicka argues it should, Afghan parolees would still have no choice but to accept U.S. institutions and major facets of American culture. For example, their children would attend English-speaking public schools, they would be held to the same standards of law as all other U.S. residents, and they would have to satisfy U.S. government requirements to receive federal benefits. They would also have to comply with American workplace expectations if they wished to secure employment and earn a living. Parolees would not be able to function in American society without adjusting their culture to meet the most basic expectations of American laws and institutions. Even if Afghan parolees would not have assimilated with the same success as voluntary Muslim immigrants, the extensive efforts of the U.S. government and Afghan American community to support the assimilation of the 76,000 Afghans who were evacuated to the United States suggests that paroling more Afghans into the country would not have compromised the national identity.¹⁷⁸

174. *See id.*

175. *See* Charles Hirschman, *The Contributions of Immigrants to American Culture*, NAT'L INST. HEALTH 11, 14 (July 8, 2013), <https://perma.cc/W65E-TE93> (arguing that immigration has produced an effect on American society and culture but only after tens of millions of immigrants have arrived in the U.S. over “a long period of time”).

176. *Id.* at 98, n.22.

177. Jeanne Batalova, *Afghan Immigrants in the United States*, MIGRATION POL. INST. (Sept. 9, 2021), <https://perma.cc/AY4X-FXYZ>.

178. *See, e.g.*, Haya Panjwani, *One year after U.S. evacuation, Afghan interpreter still feels 'heart-broken'*, HOUSTON PUB. MEDIA (Aug. 17, 2022, 2:17 PM), <https://perma.cc/F5TP-22KQ>. (“[Khalil Arab] [has] been working with Afghan immigrant communities...to help them assimilate into the American lifestyle, while also teaching them Western ideals and values.”); Frances Kai-Hwa Wang & Cresencio Rodriguez-Delgado & Adam Kemp, *Tens of thousands of Afghans have resettled across the U.S. Now, the challenge is making a home*, PBS NEWS HOUR (Feb. 3, 2022, 5:24 PM), <https://perma.cc/2SL7-J822>. *See generally* WELCOME.US, <https://perma.cc/S2MX-7NLL> (providing extensive resources for Afghan refugees to begin the assimilation process and for Americans interested in supporting their assimilation).

If they would not have threatened U.S. nationalism, then the only remaining explanation that fully accounts for the government's discrimination against Afghans in granting them parole in 2021 is its racial and religious prejudice against them. This prejudice has been expressed explicitly in media across the globe—including on U.S. national television when a senior CBS News correspondent compared the refugee crises of Afghanistan and Ukraine. He called Ukraine “relatively civilized, relatively European,” unlike Afghanistan.¹⁷⁹ This prejudice shows a greater American sentiment of unwillingness to solidarize with immigrants who do not resemble the identity of most Americans, which is informed by whiteness and Christianity. This prejudice falls in line with the United States' history of racist and Islamophobic immigration laws and policies, such as the 1790 Naturalization Act which reserved naturalization for white immigrants only,¹⁸⁰ the 1882 Chinese Exclusion Act which prohibited all immigration of Chinese laborers,¹⁸¹ the 2017 Muslim Ban,¹⁸² the exemption of Ukrainian but not Mexican and Central American refugees from Title 42,¹⁸³ and more.

CONCLUSION

The blatant denial of humanitarian parole to Afghans contrasted with the unprecedented fast and efficient U4U program for Ukrainians adds to this extensive list of prejudicial U.S. immigration laws and policies. While several counterarguments can be advanced against labeling this unequal access to parole “prejudicial,” none of them fully account for the absurdity of granting parole to an unlimited number of Ukrainians in just weeks and at no cost to them but denying the same type of parole to nearly all Afghan applicants—after refusing to simplify the prohibitive application process and collecting \$20 million in fees. Logistical challenges partially explain why USCIS employed parole so differently for the two groups. But neither different senses of responsibility for the two countries' humanitarian crises nor different national security concerns complete this explanation. The need to protect U.S. nationalism from the potential hostility to assimilation of Afghan parolees is also an incorrect explanation for Afghans' unequal access to parole in 2021 compared to Ukrainians' in 2022. Instead, this inequality derives from racism

179. See, e.g., Moustafa Bayoumi, *They are 'civilised' and 'look like us': the racist coverage of Ukraine*, GUARDIAN (Mar. 2, 2022, 10:35 AM), <https://perma.cc/YSN4-KG9B>; WION, *Gravitas: Western media's racist reportage on Ukrainian refugees*, YOUTUBE (Feb. 28, 2022), <https://perma.cc/H299-6MDS>; Harper Lambert, *CBS Reporter Calls Ukraine 'Relatively Civilized' as Opposed to Iraq and Afghanistan, Outrage Ensues (Video)*, YAHOO! (Feb. 26, 2022), <https://perma.cc/U6BT-QG54>.

180. *Nationality Act of 1790*, IMMIGR. AND ETHNIC HIST. SOC'Y (2019), <https://perma.cc/A7HD-RN3D>.

181. *Chinese Exclusion Act AKA "An Act to Execute Certain Treaty Stipulations Relating to Chinese"*, IMMIGR. AND ETHNIC HIST. SOC'Y (2019), <https://perma.cc/V7A4-GGUH>.

182. Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan 27, 2017).

183. See Dan Friedman, *The Plight of Ukrainian Refugees Highlights the Problem of Title 42*, HIAS (Mar. 24, 2022), <https://perma.cc/7RZJ-QEVP>.

and Islamophobia that has been rooted in U.S. immigration law and policy for centuries.

Recognition of these prejudices should not be used to pit immigrant groups against each other or render some as more deserving of humanitarian protection in the United States than others. Afghanistan and Ukraine faced equally horrendous conflicts in 2021 and 2022 respectively, displacing scores of refugees who are equally deserving of protection in the United States. Recognizing these prejudices in U.S. immigration law and policy is critical to preventing the United States from ever again deliberately leaving refugees who do not identify with whiteness and Christianity at serious risk of persecution—especially because of a conflict to which the United States contributed.