

A Fifth Wave? A Contemporary Comparative Study of Ukrainian Immigration to the United States, 1870–2019

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This Note presents an in-depth look into the immigration patterns of Ukrainians to the United States over the past 150 years. The underlying theory that I seek to explore and build upon in this Note is that Ukrainian-Americans represent a truly unique group in the broader tapestry of American immigration, as they have been landing on America's shores continuously through this entire period, which few nationalities can claim. Through extensive research into the historical patterns of this specific group, I was able to sketch the outlines of four established waves of immigration for Ukrainian-Americans. Each of these patterns correlate directly—as one might expect—to American foreign-policy concerns and Ukrainian domestic events, both of which create an interesting confluence of factors that push, pull, enable, and disable this particular immigration pattern at different points.

The fields of immigration and refugee law, and the patterns therein, are distinctive in that they often implicate the laws of the receiving country, but not that of the sending country, a phenomenon which I mostly found to hold true in this particular study. Ukraine's laws do little to restrict the movement of its people, and thus this comparative study focuses more on the impact of American regulations on Ukrainians who were attempting to land on America's shores. This study puts forth the idea that a fifth wave of this historical pattern is upon us right now. Conventional academic and historical wisdom holds that Ukrainians coming to the United States today are part of the fourth wave, which began with the fall of the Soviet Union in 1991, but this Note posits that that fourth wave actually terminated in the mid-2000s. Mention of a "fifth wave" has begun to appear in limited ways, but this Note seeks to provide a deeper look into the push and pull factors driving its inception. The Note employs contemporary refugee data and studies the current situations in both Ukraine and the United States to determine that this era—or "wave"—is truly unique from the ones before it, as well as exploring the interesting legal position occupied by Ukrainians seeking refuge in Trump's America.

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It is important to note that this piece does not seek to explain the entirety of contemporary Ukrainian-American immigration and population dynamics. Anecdotally, there is a sense among the Ukrainian-American community that the ability of Ukrainians to move to the United States is currently restricted. This Note expressly avoids making the claim that it is easy for Ukrainians to access America's borders, but rather it seeks to delve into and provide an explanation for the relative numerical success of Ukrainians as against other nationalities seeking to enter the United States today.

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Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants were American history.¹

1. OSCAR HANDLIN, *THE UPROOTED: THE EPIC STORY OF THE GREAT MIGRATIONS THAT MADE THE AMERICAN PEOPLE* 3 (1952).

Introduction

Thirteen years old is a time of immense uncertainty in one's life, as one is usually just starting to figure out who one is and what one wants to be. This feeling can be even more confounding when that thirteen-year-old is emerging from a ship on the docks of New York City's West Side, speaking not a word of English, and just a little German that was gleaned from seven years spent in Nazi labor and internment camps. My grandmother stepped onto America's shores as the country's newest resident at just this age, knowing nothing of what lay ahead. She could hardly have known that she was a member of Ukraine's third wave of immigrants to take up residence in the United States, representing a unique middle point in a complicated legacy of Ukrainians seeking refuge in North America. That day was officially her first in seven years as anything other than a displaced person, the product of a forcible removal from her childhood home in western Ukraine by Nazi forces in 1944 in the shadow of World War II. Her arrival was a milestone moment for my family, but it was just a small thread in a larger tapestry of Ukrainian-American immigration, which has seen four major waves of Ukrainians arrive at this country's doorstep seeking admission, safety, opportunity, and better lives.

This Note explores the four waves of Ukrainian immigration² to the United States through two lenses: (1) the precipitating events in the Ukrainian homeland and European continent that caused native Ukrainians to seek permanent residence elsewhere, and (2) the prevailing attitudes, pertinent events, and significant legislation, or lack thereof, that proliferated during these periods in the United States. These factors worked in tandem during these waves to either enable or hinder Ukrainian immigration to the United States. This analysis presents an informative view into the impact that contemporary American policies have on the ability of international citizens to join the world's largest melting pot in America. This Note will conclude by making an argument for a fifth wave—currently underway—that represents a unique moment in American policy making in which a particular piece of legislation, the Lautenberg Amendment, is enabling the arrival of Ukrainians attempting to escape internal displacement, but simultaneously keeping out other ethnicities fleeing similar types of internal strife. The Note will discuss the mechanics of this legislation and attempt to frame its historical impact on Ukrainian-American immigration patterns since its passage in 1990. The way in which Ukrainian-American immigration can be

2. See generally VIC SATZEWICH, *THE UKRAINIAN DIASPORA* (2002) (positing the four waves of Ukrainian migration to be “the economic migration at the end of the nineteenth century, the political migration of the inter-war period, the post-war migration of displaced persons, and the new wave of labour migration following Ukrainian independence in 1991”). Ukrainian scholars and historians generally agree on the temporal outlines of these four waves, though the years put forth by each differ slightly.

broken down into these five waves reveals the changing American attitudes toward immigration and refugees over the twentieth and twenty-first centuries. Accordingly, the Parts of this Note will address each wave in turn by exploring (A) the Ukrainian environment, (B) the prevailing American policy and attitudes toward immigrants and refugees at the time, and (C) the resulting numbers of immigrant and refugee admissions, insofar as those are available for analysis.

Part I will address the first wave of Ukrainian immigration, arising for mostly economic reasons, which is generally held to have begun in the final quarter of the nineteenth century, extending until the inception of World War I.³ This period is difficult to track, given that Ukraine was not at that time a sovereign state but was instead split between the Austro–Hungarian and Russian empires. However, it is known that Ukrainians of that era were plagued by “[r]ural overpopulation, poverty, malnutrition, a high mortality rate, and unemployment,” in addition to being enticed by the potential to participate in America’s industrial and agrarian revolution taking place at the time.⁴ Due to America’s notable open borders, so open that American employers were proactively recruiting Ukrainian laborers, it is no surprise that nearly 350,000 Ukrainians made the journey to the United States between the years of 1870 and 1914.⁵ This Part will also briefly explore the initial immigration-specific laws passed by the United States, which set the tone for the restrictive immigration-specific statutory law that was to come in the following century.

Part II will delve into the changing global dynamics that altered the motivation of Ukrainian-American immigration from economic reasons to political and social ones. This era, loosely defined as the period “between the two world wars” and spanning 1919–1939, saw only about 15,000 Ukrainians arrive in the United States.⁶ This group of Ukrainians was the first in the modern era that would meet the contemporary refugee definition, as it faced widespread political persecution at the hands of the Bolsheviks and the later Soviet regime, as well as one of history’s most disastrous artificial famines,

3. Ann Lencyk Pawliczko, *Ukrainian Immigration: A Study in Ethnic Survival*, in *THE IMMIGRATION EXPERIENCE IN THE UNITED STATES: POLICY IMPLICATIONS* 88, 90 (Mary G. Powers & John J. Macisco, Jr. eds., 1994).

4. *Id.*

5. *Id.* Reliable immigration numbers do not exist for Ukrainians prior to 1899 because “United States immigration records noted only the country of origin, and not the nationality of the immigrants,” but the general consensus is that the era started around 1870. George A. Miziuk, *Ukrainians in the U.S.*, EMBASSY OF UKR. IN THE U.S., <https://usa.mfa.gov.ua/en/ukraine-and-usa/ukrainians-us> [<https://perma.cc/XE6B-AHA2>].

6. Pawliczko, *supra* note 3, at 91 tbl.1; Marianne P. Fedunki, *Ukrainian Americans, COUNTRIES & THEIR CULTURES*, <https://www.everyculture.com/multi/Sr-Z/Ukrainian-Americans.html> [<https://perma.cc/YGZ6-4QQN>]; see also SATZEWICH, *supra* note 2, at 38 (estimating the number of second wavers to be about 12,000).

called the “Holodomor,” or Great Famine, in 1932–1933.⁷ Tragically, due to the passage of the first set of widespread anti-immigration laws passed by Congress—including the Immigration Act of 1917, the Emergency Quota Act of 1921, and the Immigration Act of 1924—Europeans, specifically Ukrainians, saw their lifeline to America almost entirely severed.⁸

Part III addresses perhaps the most distinctive and impactful wave of international migration in history. This third wave, taking place between 1945 and 1957,⁹ precipitated the 1951 UNHCR Refugee Convention, which memorialized the term “refugee,”¹⁰ partly in order to hasten the resettlement of the millions of displaced persons from the Second World War. The devastation of the War on Ukraine and its people was staggering: an estimated 2.2 million people were taken from Ukraine to Germany as slave laborers, 5 to 7 million Ukrainians—representing nearly one-sixth of the entire ethnic population—died during the conflict, 700 towns and 28,000 villages were destroyed, 10 million people were left homeless, and an estimated 40% of the nation’s prewar wealth was lost.¹¹ However, what brought on the Refugee Convention were the 2 to 3 million Ukrainians displaced by the War, with estimates reaching as high as 4.5 million.¹² The international system was ill-equipped to handle the sudden influx of homeless Eastern Europeans, especially with restrictive U.S. laws still operating to keep Eastern Europeans off American shores. The United States did, however, throw Ukrainians a lifeline with the passage of the Displaced Persons Act, the Immigration and Nationality Act of 1952, and the Refugee

7. *Ukraine in the Interwar Period*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/place/Ukraine/Ukraine-in-the-interwar-period> [https://perma.cc/T9JA-VNEP].

8. See PHILIP MARTIN & PETER DUGNAN, MAKING AND REMAKING AMERICA: IMMIGRATION INTO THE UNITED STATES 5–6 (2003) (describing the anti-immigration laws passed by the United States in 1917, 1921, and 1924).

9. There is some disagreement as to the exact length of the period. For example, Canadian-Ukrainian academic Lubomyr Luciuk considers it to be 1945–1951, Lubomyr Y. Luciuk, *Unintended Consequences in Refugee Resettlement: Post-War Ukrainian Refugee Immigration to Canada*, 20 INT’L MIGRATION REV. 467, 467 (1986); the aforementioned Pawliczko considers it to be 1947–1957, Pawliczko, *supra* note 3, at 92; and others state it as 1947–1955, e.g., *The History of Ukrainian Immigration to the US*, UAPOST (May 5, 2019, 12:41 PM), <http://www.uapost.us/en/blog/the-history-of-ukrainian-immigration-to-the-us/> [https://perma.cc/N5ZT-FQ7K].

10. *The 1951 Refugee Convention*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/1951-refugee-convention.html> [https://perma.cc/W7B4-DEDX].

11. *The Nazi Occupation of Soviet Ukraine*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/place/Ukraine/The-Nazi-occupation-of-Soviet-Ukraine> [https://perma.cc/698A-EAZM]; *Ukraine Reunited Under Soviet Rule*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/place/Ukraine/The-Nazi-occupation-of-Soviet-Ukraine#ref275917> [https://perma.cc/W3RN-7FPJ].

12. Luciuk, *supra* note 9, at 468.

Relief Act of 1953.¹³ Each of these contributed to the arrival of 80,000 Ukrainians to the United States during this period.¹⁴

Part IV will cover the most recently recognized wave in the academic world, in which Ukrainians journeyed to American shores for mostly socioeconomic reasons, including “escaping from misery” and “searching for [a] better life.”¹⁵ The Ukrainian post-Cold War economy endured a historic collapse during its transition away from the communist economic model of the Soviet era. Ukraine experienced an unprecedented 60% decline in the nation’s GDP—worse than the Great Depression in the United States—from the late 1980s to the mid-1990s,¹⁶ which caused many to seek a better life abroad. The radical transformation of the market from communism to the labor-based economy saw the country endure a recession until 1999¹⁷ and fluctuating economic results throughout the 2000s, before finally finding a stable run in the late 2000s. This wave is notable in that it coincided with rapidly changing dynamics in the U.S. immigration and refugee system, with the 2001 USA PATRIOT Act taking refugee admissions under 30,000 per year.¹⁸ It is also here that the Lautenberg Amendment became a primary driver of Ukrainian immigration to the United States, as Ukrainians came under the purview of the legislation’s lesser—group-based, as opposed to individualized—burden of proof to claim refugee status.¹⁹ In this Part, I will discuss the Amendment’s impact on the fourth wave and argue that this wave actually concluded in 2009, which is the first year that the number of Ukrainian refugees admitted to the United States dropped below 1,000, despite the refugee cap staying consistent at 80,000.²⁰ This sets the stage for the fifth wave.

13. Xiaojian Zhao, *Immigration to the United States After 1945*, OXFORD RES. ENCYCLOPEDIAS: AM. HIST. (July 2016), <https://oxfordre.com/americanhistory/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-72> [https://perma.cc/MK9W-YK5U].

14. Pawliczko, *supra* note 3, at 92 tbl.2.

15. YURIY BILAN, *MIGRATION OF THE UKRAINIAN POPULATION: ECONOMIC, INSTITUTIONAL, AND SOCIOCULTURAL FACTORS* 63 (2017).

16. *Id.* at 64.

17. *Id.* at 67.

18. Ruth Igielnik & Jens Manuel Krogstad, *Where Refugees to the U.S. Come From*, PEW RES. CTR.: FACT TANK (Feb. 3, 2017), <https://www.pewresearch.org/fact-tank/2017/02/03/where-refugees-to-the-u-s-come-from/> [https://perma.cc/SY9G-STTV].

19. See ANDORRA BRUNO, CONG. RESEARCH SERV., RL31269, *REFUGEE ADMISSIONS AND RESETTLEMENT POLICY 9–10* (2018), <https://fas.org/sgp/crs/misc/RL31269.pdf> [https://perma.cc/LG9H-U3UQ] (discussing the Lautenberg Amendment, its origins, and its annual impact on U.S. refugee admissions).

20. See U.S. DEP’T OF STATE ET AL., *PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2010*, at 5 tbl.I (2010), <https://www.wrapsnet.org/documents/Report+to+Congress+for+FY+2011+USRAP.pdf> [https://perma.cc/62NY-723U] (noting the ceiling of 80,000); U.S. DEP’T OF STATE, *SUMMARY OF REFUGEE ADMISSIONS AS OF 30-SEPTEMBER-2019* (2019) [hereinafter U.S. DEP’T OF STATE, *SUMMARY*], <https://www.wrapsnet.org/documents/Refugee%20Admissions%20Report>

Part V, the final Part of this Note, will propose a fifth wave that is having astounding numerical success due in large part to the Lautenberg Amendment. Ukrainians, for whom refugee admissions dipped as low as 227 in 2013 (a mere 0.003% of total admissions), have seen these numbers drastically increase in the fifth wave, highlighted by 2018 when 2,635 Ukrainian refugees gained admission to the United States—accounting for 11.7% of global refugee admissions to the United States that year.²¹ Native Ukrainians in the era of this fifth wave, which I propose to extend from 2014 to the present day, are faced with the daily hardships of a military conflict with Russia that has severely damaged the country, specifically its political and economic infrastructure. But it is the relative success of the fifth wave—heavily comprising internally displaced persons from the ongoing conflict—breaking through America’s tightening borders that is most noteworthy, which is happening against the backdrop of the Trump Administration’s expansion of Obama-era policies restricting the country’s refugee admissions.

Of particular note in this field of study is that legal scholarship is scant on the topic of Ukrainian immigration to the United States, with the issue being taken up mostly by historians and journalists. Accordingly, while the four waves of Ukrainian immigration are generally accepted in the Ukrainian-American community, this Note is one of few to demarcate a discernible fifth wave, for reasons that will be explored below. Additionally, this Note is meant to cover U.S. legislation that was directly pertinent to the efforts of Ukrainians seeking to immigrate to the United States. As a result, periods—and the associated congressional and presidential Acts—may be omitted if they do not directly pertain to those Ukrainian immigration efforts.

I. The First Wave: 1870–1914

The first wave of Ukrainian-American immigration is tough to pin down specifically, given that the United States deployed a “relatively laissez faire, state-based system”²² during this period, which individuals of almost every nationality flowed through. A further complicating factor is the fact that Ukraine at the time was not recognized as a sovereign state, but was instead divided between Austro–Hungarian and Russian Empires. Accurate origination-country tracking prior to 1899 is almost nonexistent, as U.S. officials only recorded the country of origin, rather than the nationality of the

%20FY2019_09_30.xls [https://perma.cc/3EFN-ZEKH] (collecting country-by-country data, 2001–2019).

21. U.S. DEP’T OF STATE, SUMMARY, *supra* note 20.

22. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 642 (2005).

arriving immigrant.²³ Additionally, many Ukrainians at the time did not consider themselves to be Ukrainian and “continued to give their nationality as Russian or Austrian since they had used Russian or Austrian passports.”²⁴ Despite these data flaws, this period was highly informative of the immigration waves to follow, and therefore warrants consideration for its transforming attitudes and immigration demographics in both Ukraine and the United States.

A. *Ukraine: A Territory with Little to Offer to Ukrainians*

Ukraine in the nineteenth century was unrecognizable from the modernized state that it has become today, as the territory—not yet a country—was entirely politically dependent on Russian, Polish, and Austro-Hungarian overlords, which left its occupants with minimal cultural and economic-development potential. Ukrainian society embodied the final vestiges of the Middle Ages, with “Ukrainian peasants . . . deprived of personal liberty, converted into serfs, and . . . the absolute property of the Polish nobility.”²⁵ The economy withered under this archaic system. With little industry to speak of and no upward social, economic, or political mobility, the decision for many of these ethnic Ukrainians to depart for the New World was an obvious one.²⁶ As if that was not enough to force emigration for the Ukrainian population, the final quarter of the nineteenth century saw the group as a whole subjected to mandatory military conscription and the severe religious persecution that is often the fate of subjugated parties.²⁷ These “push” factors, significant as they may have been, paled in comparison to the “pull” factors resulting from reports of a much better situation in the United States. Ukrainians, upon hearing these reports of “steady employment, high wages, an abundance of good land, and personal freedom” in the United States, took off in massive numbers.²⁸

B. *The United States: An Open Border Slowly Swinging Closed*

Prior to the inception of World War I, the United States made little effort to initiate the closing of its borders, which contributed heavily to the concept of the country as a melting pot for cultures of all kinds. As noted American-immigration expert Mae Ngai recounts, “[b]efore the 1920s immigration into [the] United States was numerically unrestricted, reflecting a tradition of

23. Wasyl Halich, *Ukrainian Farmers in the United States*, 10 AGRIC. HIST. 25, 27 (1936).

24. *Id.*

25. *Id.* at 26.

26. *See id.* at 26–27 (recounting the plight of working-class Ukrainians in the context of the causes for their immigration to the Americas during this period).

27. *Id.* at 27.

28. *Id.*

laissez-faire labor mobility that dated to the colonial period.”²⁹ Until the 1920s, immigration was encouraged under the purview of the states and treated as an issue of either local police or commerce powers, which were left to the mandate of each state individually.³⁰

Immigration policy in the United States assumed a decidedly national tone in the last three decades of the nineteenth century, with the passage of the Page Act of 1875 and the associated Chinese Exclusion Act of 1882, which combined to effect a ban on immigration of all Chinese citizens to the United States. These Acts are informative for the manner in which they set the tone for a more restrictive and exclusionary immigration stance from the United States in the century to come. Despite being largely lost to the annals of American history, the Page Act was significant for two reasons. First, this statute was America’s initial restrictive immigration statute at the *federal* level. This had the practical implication of taking immigration law out of the state domain and making it a federal issue at the discretion of Congress. Second, scholars have argued that the Page Act was a blatant “attempt to prevent Chinese women in general from immigrating to the United States.”³¹ Congress completed its exclusion of Chinese individuals in 1882 with the Chinese Exclusion Act, which took on further significance when the Supreme Court of the United States cemented immigration as within the arena of federal jurisdiction.³² The Supreme Court, in painting immigration as potentially “foreign aggression and encroachment,”³³ wrote into law—albeit in dicta—America’s antagonistic and newly federal attitude toward immigration, which would set the tone for the century that followed.

C. The Result: The Most Numerically Significant Wave of Ukrainian-American Immigration

The European immigrants’ experience differed greatly from that of their Chinese counterparts during this period. An almost complete lack of regulation of European immigration allowed Ukrainians to move in significant numbers during the first wave, with estimates stating that as many as 350,000 Ukrainians came to the United States throughout this era.³⁴ Between 1880 and the beginning of World War I, the United States Immigration Service “excluded only 1 percent of the 25 million immigrants

29. MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 17 (2004).

30. *See id.* at 17–18 (discussing the open-door policy of the United States prior to 1924).

31. *E.g.*, Abrams, *supra* note 22, at 641.

32. *See generally* Chae Chan Ping v. United States (The Chinese Exclusion Case), 130 U.S. 581 (1889) (rejecting a Chinese immigrant’s challenge to federal sovereignty over immigration decisions and upholding the authority of the U.S. federal government to set immigration policy).

33. *Id.* at 606.

34. Pawliczko, *supra* note 3, at 90.

from Europe who entered The[se] unskilled workers . . . from eastern and southern Europe provided the labor for the nation's industrialization and for building the infrastructure of cities."³⁵ Ukrainian-American immigration took off between 1905–1906, jumping from 19,435 the year prior to 30,730.³⁶ By 1913–1914, the year prior to World War I, the number of Ukrainians arriving on American shores was up to 67,115, marking a nearly 245% increase from that mark merely ten years prior.³⁷ Ukrainians became part of the industrial and agrarian backbone of American society, able to weave themselves easily into the fabric of the prewar United States. Of course, it helped that the Ukrainians as a whole were not yet considered as a particular form of “undesirable,” a classification that was then in its infancy but would soon grow into an exclusionary weapon that Congress would brandish in its efforts to codify a growing national unease with outsiders.

II. The Second Wave: 1919–1939

As it did for most countries, cultures, and individuals, World War I changed everything for Ukrainians. Nationalistic fervor was the prevailing global sentiment of the interwar years, as the Ukrainian people made their first move for independence since the Middle Ages, and congressional legislation severely curtailed the ability of outsiders to gain entry into the United States. In Ukraine, a declaration of independence from Soviet Russia in January 1918 was short-lived, as by February 1920 the anti-Bolshevik Ukrainian-patriot forces had been fully driven from the country.³⁸ These events and more contributed to a complicated political and socioeconomic situation, wherein Ukrainians found themselves under the ironfisted rule of Soviet Russia and Josef Stalin, in a situation worse off than they were prior to World War I. As Ukrainians looked for a way out of their home country, America was, for the first time in its history, seeking ways to keep these Europeans out of the United States, which produced an unfortunate confluence of events for Ukraine's first true refugees.

A. *Ukraine: Seeking Refuge from Lenin and Stalin*

Whereas the Ukrainians in the first wave of immigration to the United States were more rightfully characterized as economic migrants rather than refugees, the group in the second wave was most certainly fleeing severe political and social persecution. World War I emboldened many Ukrainians

35. NGAI, *supra* note 29, at 18.

36. WASYL HALICH, UKRAINIANS IN THE UNITED STATES, app. A at 150–53 (1937).

37. *Id.*

38. *World War I and the Struggle for Independence*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/place/Ukraine/World-War-I-and-the-struggle-for-independence> [https://perma.cc/UDT4-F4JH].

to seek independence, a move that would have substantial negative repercussions for those who attempted to dissociate from Soviet Russia. Ukrainian patriots united under the charismatic leaders Symon Petliura—under whose leadership my great-grandfather fought for Ukraine’s independence—and Hetman Skoropadskyi to form the Western Ukrainian People’s Republic, independent of Russian influence for the first time in centuries.³⁹ The Republic would ultimately fail, leaving all Ukrainians that backed the movement with one of two choices: to flee the country or to stay and face almost certain death at the hands of Soviet leaders Vladimir Lenin and Josef Stalin. Many Ukrainians, despite their love for their country, chose the former. Military leaders and civilians alike fled the country immediately, with estimates counting between 80,000 and 100,000 Ukrainians leaving in the aftermath of the failed independence bid.⁴⁰ These political émigrés and refugees settled mainly in the countries to the immediate west of Ukrainian territory, including Austria, Germany, Romania, and Yugoslavia.⁴¹ Some pushed further into the European continent, finding refuge in France, Belgium, or England, or fled to the Americas—though in severely reduced numbers.⁴² Those who chose this route found support in treaties signed in 1922, 1924, and 1928 recognizing refugee rights, as well as in the 1933 Convention on the International Status of Stateless Persons—of which only European countries were signatories—which “granted [stateless persons] many of the rights and responsibilities enjoyed by citizens”⁴³

For those who elected to remain in Ukraine, the situation merely became more dire. As a result of dual “collectivization” and “industrialization” policies pursued by the Soviet leadership, the inherently individualistic Ukrainian agrarian economy was forced to embrace large-scale collective farming.⁴⁴ Stalin’s imposition of harsh economic-retribution policies on those who did not participate in such collectives served to further deprive the Ukrainian people of their historical means of making a living. A lower-than-expected agricultural yield in 1932 combined with collectivization policies to contribute to a “man-made demographic catastrophe,” which directly caused the death by starvation of up to eight million Soviet citizens—most of whom were Ukrainians.⁴⁵ This event, not widely acknowledged on the

39. BILAN, *supra* note 15, at 56.

40. Pawliczko, *supra* note 3, at 90.

41. *Id.*

42. *Id.*

43. *Id.*

44. See *Collectivization*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/collectivization> [<https://perma.cc/Y37J-BED2>] (describing the Stalin-implemented policies that led to the Great Famine in Ukraine).

45. See *Ukraine in the Interwar Period: The Famine of 1932–33*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/place/Ukraine/The-famine-of-1932-33> [<https://perma>

international stage until seventy years later, became known as the Great Famine or the “Holodomor.” Revised mortality estimates find that up to 10 million Ukrainians perished as a result of these events, starved to death by their own governing body.⁴⁶ Each of these Ukrainians would almost certainly have qualified for the protections of the Refugee Convention. Unfortunately, absent the international legal protection that was to come, Ukrainians of this era were left with little recourse other than to remain in Ukraine and hope for the best.

B. The United States: Moving from Nationalism to Nativism

The United States, despite at that time being a population almost entirely comprising immigrants of the preceding century, began to move toward nativist policies, ideals, and rhetoric. The War awakened anti-immigrant sentiment in the country disguised under the still-popular ideal of American nationalism. This wartime nationalism “provided a popular basis of support for the restrictionist movement against eastern and southern Europeans”⁴⁷ that followed the conclusion of the War. The resulting Immigration Act of 1917, also known as the “Literacy Act,” superseded the Chinese Exclusion Act as the most restrictive piece of congressional legislation aimed at preventing the migration of immigrants to the United States. The Act had two major implications for Ukrainians and other Europeans seeking admission to the United States: it added a literacy requirement to enter the country, and it enlarged the now-expansive list of categories of “undesirables.”⁴⁸ The Act reflected public sentiment of the era that these immigration laws were “for the protection and well-being of the residents of the United States, both citizens and aliens.”⁴⁹ Accordingly, the Act laid out a plethora of exclusionary categories that an immigration officer of the time could wield to prevent entry, including “idiots, imbeciles, feeble-minded persons, epileptics, insane persons; . . . persons with chronic alcoholism; paupers; professional beggars; vagrants; . . . mentally and physically defective [persons], . . . polygamists; . . . anarchists . . .”⁵⁰ The list goes on. The Literacy Test, another damaging tool to prevent mass European immigration

.cc/ENK2-QQRE] (recounting events of the Great Famine).

46. Joint Statement by the Delegations of Twenty-Five Countries on the Seventieth Anniversary of the Great Famine of 1932–1933 in Ukraine (Holodomor), annex to the letter dated 7 November 2003 from the Permanent Rep. of Ukraine to the U.N. addressed to the Secretary-General, U.N. Doc. A/C.3/58/9.

47. NGAI, *supra* note 29, at 19.

48. *See id.* (discussing the motivations and practical implications of the Immigration Act of 1917).

49. Albert E. Reitzel, *The Immigration Laws of the United States—An Outline*, 32 VA. L. REV. 1099, 1101 (1946).

50. Immigration Act of 1917, ch. 29, 39 Stat. 875.

from southern and eastern Europe, codified a requirement passed four times prior by Congress but overridden each time by presidential veto.⁵¹ The Act, however, did not have the desired result, meaning that by the early 1920s the calls for real reform to immigration policy were louder than ever, fueled by “nativism, job scarcity, and anti-Bolshevism.”⁵² These led to the Emergency Quota Act of 1921, a temporary restriction aimed at limiting newer immigrants like Ukrainians, that was notable for setting the first true immigration quotas in U.S. history. The 1921 Act capped the totality of immigration at 355,000 per year and set a quota “for each European country at 3 percent of the number of foreign-born of that nationality residing in the United States in 1910.”⁵³

The true nature and intent of these Acts would become clear in 1924, when the United States took steps to permanently codify growing nationwide concerns surrounding the potential spread of the “Red Scare” of communism. Ukraine’s second wave of immigration coincided with the Johnson–Reed Act of 1924, which is best known for establishing the harshest quotas in U.S. history up to that time. The Act “restricted immigration to 155,000 a year, established temporary quotas based on 2 percent of the foreign-born population in 1890, and mandated the secretaries of labor, state, and commerce to determine quotas on the basis of national origins by 1927.”⁵⁴ The Act significantly favored western and northern European immigration, an idea that was practically memorialized by the 1929 presidential proclamation titled, “Limiting the Immigration of Aliens into the United States on the Basis of National Origin.” This proclamation, issued by President Herbert Hoover, set the National Origins Formula fully in motion. It contained a table of 53 countries and a hard quota of permitted immigrants per year from that day—July 1, 1929—forward, under the heading “National Origin Immigration Quotas.”⁵⁵ The table set forth significant allowances for ethnic British and Germans, 65,721 and 25,957 per year, respectively, but severely limited Slavic populations, such as Ukrainians.⁵⁶ Perhaps most tellingly, Ukrainians do not even appear on the proclamation as a separate nationality, rather falling into a category for “Russia, European and Asiatic,” of which 2,784 individuals were to be permitted per annum.⁵⁷ This proclamation, in conjunction with the restrictive Immigration Acts of 1917

51. See NGAI, *supra* note 29, at 19 (describing the principal motivations behind the Immigration Act of 1917 and anti-immigration sentiments in the United States during the era).

52. *Id.* at 20.

53. *Id.*

54. *Id.* at 23; see also Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153.

55. Proclamation 1872, Limiting the Immigration of Aliens into the United States on the Basis of National Origin, 1 PUB. PAPERS 36 (March 22, 1929).

56. *Id.* at 38–40.

57. *Id.* at 39.

and 1924, had the effect of shutting out Ukrainians from gaining entry to the United States almost entirely.

C. *The Result: Ukrainian-American Immigration Slows to a Trickle*

Much of the story of Ukrainian immigration to the Americas during this period was told not by Ukrainians, but instead by the countries where they sought to gain entry. After the failed revolution, Soviet leadership cracked down harshly on all ethnic Ukrainians who refused to assimilate into the new Ukrainian Socialist Soviet Republic. With their freedom restricted both at home by the oppressive Soviet regime and abroad by the United States' newfound iron borders, Ukrainians had little outlet for American immigration during this second wave in the interwar period. Estimates put Ukrainian immigration to the United States between the years of 1919 and 1939 at anywhere from 10,000 to 15,000,⁵⁸ but never any higher. The confluence of social, political, and economic factors make it quite obvious why this would have been, but it still bears stating that this wave was the first one where Ukrainian-American immigration was largely *illegal*.⁵⁹ This concept should not be minimized in the broader narrative of Ukrainian immigration because from this wave forward, any Ukrainian wishing to come to the United States would have to do so through ever-narrowing preset categories or by holding a winning immigration lottery ticket. Despite the aforementioned great need of Ukrainians for an outlet to leave their homeland, few did so successfully, which played a major part in so many ethnic Ukrainians dying at home during this wave.

III. The Third Wave: 1945–1957

The third wave for Ukrainians, despite taking place in the midst of the second—and most publicized—Red Scare, was a very successful one in which a stroke of President Harry Truman's pen almost singlehandedly enabled tens of thousands of Ukrainians to attain American citizenship. The Displaced Persons Act of 1948 was a direct response to the refugee crisis of post-World War II Europe, in which millions were left homeless, stateless, and without any discernible state in which to seek permanent refuge. The refugee crisis required developed countries like the United States to suspend their own domestic immigration policies in order to offer a humanitarian hand to those who had been forcibly uprooted and placed elsewhere in

58. See Pawliczko, *supra* note 3, at 91 tbl.1 (tabulating the “Number of Ukrainian Emigrants by Country of Destination: 1919 to 1939” and showing that 15,000 Ukrainians migrated to the United States during this time, out of a total 196,500 who moved altogether in that period).

59. See BILAN, *supra* note 15, at 196 (emphasizing the importance of and duration since the first wave of Ukrainian immigration, which is the only one that could be said to have been fully legal).

Europe, mostly Germany, by the Nazi regime. It was out of this unique human moment that the United Nations High Commissioner for Refugees (UNHCR) convened the 1951 Convention Relating to the Status of Refugees, which produced a transformative document in the field of refugee studies. These forces each contributed to a much more positive outcome for Ukrainians during the third wave, one which would see many families—like my own—plant their roots in the United States for good.

A. *Ukraine (and Europe): Refugees (and Solutions) Aplenty*

Ukrainians in this era assumed a primary identity other than their ethnicity, which—though partially dehumanizing—was instrumental to their ability to leave war-torn and politically polemicized Europe in search of greener pastures of opportunity. The vast majority, if not all, of the Ukrainians to migrate during the third wave were known as “Displaced Persons” (DPs), who resided in the German, French, and British zones of temporary occupation at the conclusion of the Second World War.⁶⁰ Estimates have placed the number of Ukrainians brought to Western Europe during the War as high as 3 million.⁶¹ These Ukrainians, those who survived the harsh crackdowns of Soviet rule in the 1930s, were taken from their homes and villages in Ukraine in the early 1940s for the purpose of providing the Nazi regime with slave laborers in their concentration and work camps. This group was so significant in number that the Nazis had a name for them—*ostarbeiters*—which translated literally to “Eastern workers,” indicating their origin and purpose within the German camps to which they had been brought.⁶² Among this DP group were also Ukrainian prisoners of war who had suited up for the Soviet Army; guerrillas who had fought *against* the Soviet Army but were deemed better resources of slave labor in Nazi Germany; Nazi-sympathizing Ukrainians that saw that regime as a lesser of two evils next to Stalinist Russia; and Ukrainian patriots who were the truest enemies of the Soviet state.⁶³ After the surrender of Nazi Germany in 1945, these individuals all, regardless of their actual reason for being there, became one central mass of political refugees, a classification that favored them greatly. As political refugees, these individuals were afforded a greater degree of protection and mobility than they would otherwise have had in Soviet Ukraine, and accordingly, “the vast majority of them clearly refused to return to Ukrainian lands.”⁶⁴ Although some of these DPs “returned home

60. See BILAN, *supra* note 15, at 59 (introducing the third wave of Ukrainian immigration).

61. Pawliczko, *supra* note 3, at 91.

62. BILAN, *supra* note 15, at 59.

63. See *id.* (describing the various Ukrainian parties comprising the all-encompassing DP term in postwar Europe).

64. *Id.*

voluntarily or were forcibly repatriated,”⁶⁵ many of them sought and obtained permanent refuge in other areas of the world. This unique global resettlement will be taken up in subpart C of this Part.

Another crucial development in the midst of the third Ukrainian wave, which had a discernible positive impact on Ukrainians’ ability to move, was the adoption by the states of the United Nations and entry into force of the 1951 Convention Relating to the Status of Refugees. The Convention, emerging out of the establishment of the United Nations in 1945, reflected a desire on the part of the participant states to address the topic of human rights more broadly. As Mae Ngai notes, “[i]n the postwar period, human rights emerged as a salient principle for international law and for refugee policy . . . as indicated in the Universal Declaration of Human Rights of 1948.”⁶⁶ The Convention and resulting international treatise reflected the international system’s growing concern for how to handle those most affected by “events occurring in Europe before 1 January 1951.”⁶⁷ The displacement of so many throughout the European continent was foremost on the minds of the Convention participants, who for the first time in history memorialized—and legally agreed on—a definition for “refugees.”⁶⁸ This Convention and the associated refugee definition, though lacking a true enforcement mechanism, did rouse many international powers to support these World War II DPs, from which ethnic groups like Ukrainians uniquely benefited. The refugee definition faces criticism today for its restrictive formulation, but Ukrainians of the third wave could not complain.

B. The United States: A Temporary Border Opening, Followed by a Crackdown

The United States elected to opt out of ratifying the 1951 UNHCR Convention, meaning that it did not become binding on the global superpower until its agreement to join the 1967 Protocol Relating to the Status of Refugees. Policy makers did not pass a long-term policy relating to refugees throughout this third wave and into the 1960s and 1970s. Instead, the country accepted refugees and “escapees” of Communist regimes on an “ad hoc basis” through the totality of this era.⁶⁹ Codification of the refugee

65. Pawliczko, *supra* note 3, at 91.

66. NGAI, *supra* note 29, at 236.

67. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

68. *See id.* (“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”).

69. NGAI, *supra* note 29, at 236.

definition in American law came finally in 1980, when Congress passed legislation defining this class of individuals as persons unable or unwilling to return to their native country because of persecution or a well-founded fear of persecution.⁷⁰

Despite being a conspicuous nonparty to the Convention, the United States did take action—thankfully for my own family—to support European DPs. Legislation was passed soon after the resettlement of wartime DPs began, with the 1948 Displaced Persons Act allowing for the admission of 202,000 European refugees over a two-year period.⁷¹ However, it was not all positive from the U.S. government, as the Act “stipulated that [the accepted refugees] all be charged, or ‘mortgaged,’ to future quotas of their countries of origin—a drastic reduction from the original bill, which called for 400,000 nonquota admissions.”⁷² The Act further defined as a “displaced person” anyone who “entered Germany, Austria, or Italy on or before December 22, 1945,”⁷³ a provision which was meant to encapsulate those residing in the majority of the European DP camps. The Act also expressed American economic preferences within its text, as it required that 30% of refugees be comprised of agricultural workers.⁷⁴ On the first of two personal notes, that explains why my grandmother’s sister—my great aunt—and her husband gained access to the United States from a DP camp only after agreeing to set down in Kansas as farmers, despite never having farmed a day in their collective lives. President Truman, recognizing the Act’s “flagrantly” discriminatory rhetoric and favoring admission on a nonquota basis,⁷⁵ nonetheless signed it into law in order to prop open the door for DPs to come through. Congress later extended the Act’s refugee cap to 414,744 in 1950—more than double the number of the original legislation—and extended its terms through the end of 1951.⁷⁶ On the second personal note, this extension permitted the immigration of my grandparents—and thousands of other individuals of Slavic backgrounds—from a DP camp in Ingolstadt, Germany in March of 1951.

But this was far from the end of U.S. policy making in the arena of immigration during the Ukrainian third wave. By the late 1940s, U.S.

70. Refugee Act of 1980, Pub. L. No. 96-212 § 201, 94 Stat. 102, 102.

71. *See* Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009 (outlining the parameters within which the United States would accept postwar DPs from Europe).

72. NGAI, *supra* note 29, at 236.

73. *See id.* (discussing the restrictive aspects of the Displaced Persons Act of 1948, which critics argued was artfully drafted to preclude Jewish individuals who entered the DP camps after 1945).

74. *Id.*

75. *Id.*

76. *See id.* (citing U.S. DISPLACED PERSONS COMM’N, MEMO TO AMERICA—THE DP STORY 248 (1952)) (recounting the effects of the extended Displaced Persons Act and recapping the results of the policy as a whole).

immigration policy had not been formally revisited in over two decades. Senator Pat McCarran, a “dedicated anti-Communist and Cold War warrior,”⁷⁷ was tasked with leading a subcommittee to review and—where deemed necessary—rewrite the country’s immigration policies. The result of the subcommittee was the Immigration and Nationality Act of 1952, which was notable primarily for two reasons: preserving the national-origins quota system and codifying the nation’s fears regarding Communism in the midst of the nation’s second Red Scare.⁷⁸ The finalized legislation read like a dramatic novel, deeming such a law a necessity to combat the Communist scourge, even going so far as to dub the United States the “last hope of Western civilization,” an “oasis of the world,” and “the last flickering light of humanity.”⁷⁹ The Act retained the 155,000 ceiling for immigrants per year, based on the original formula from the 1924 Act, and contained no specific stipulation for admission of refugees.⁸⁰ Also pertinent to eastern Europeans was the introduction of six additional “undesirable” classifications, bringing the total to thirty-one.⁸¹ The legislation did, however, codify certain due-process protections for immigrants in deportation hearings, affording them notice, representation by counsel, and the right of cross-examination, all of which still exist in large part today.⁸²

The complex tapestry of U.S. legislation permitting Ukrainians—and Eastern Europeans more broadly—to immigrate to America during the third wave came to an end after the Refugee Relief Act of 1953, which was known as the Emergency Migration Act. This emergency legislation led with the words, “[f]or the relief of certain refugees”⁸³ and directly enabled the admission of over 189,000 nonquota refugees originating from communist countries.⁸⁴ Similar to the Displaced Persons Act of 1948, the Refugee Relief bill opened a three-year window—expiring in 1956—for southern and eastern Europeans to gain admission to the United States, and strictly defined refugees as those lacking “the essentials of life.”⁸⁵ This pseudo-economic justification for the conferment of refugee status represented an anomaly in contemporary refugee definitions, highlighting the broad refugee definition in this unique historic moment. An estimated 45,000 individuals from

77. *Id.* at 237.

78. *See id.* (highlighting various quotations from McCarran in the subcommittee report and final 1952 Act that demonstrated his view of U.S. immigration policy as a tool of “internal security” to combat the “realities of Communist tactics”).

79. *See id.* (citing 99 CONG. REC. 1518 (1953) (statement of Sen. Pat McCarran)).

80. *Id.*

81. *Id.* at 239.

82. *Id.*

83. Refugee Relief Act of 1953, Pub. L. No. 83-203 title, 67 Stat. 400, 400.

84. NGAI, *supra* note 29, at 342 n.32.

85. National Affairs, *IMMIGRATION: New Chance in Life*, TIME, July 25, 1955.

communist-held countries, including Ukraine, made it to America's shores as a result, and the bill's expiration marked the end of the Ukrainian third wave.⁸⁶

C. *The Result: The Last Big Ukrainian-American Diaspora*

Ukrainians, like many other similar ethnic groups, seized their opportunity amidst the confusion of the post-World War II international system and moved to the United States as fast and as often as was reasonably practicable. Large numbers of Ukrainians refused removal from Western Europe and return to Ukrainian Soviet Socialist Republic out of a credible fear that they would be subjected to “national, religious, or political persecution in their homeland,”⁸⁷ as was codified by the 1951 Convention and specifically Article 33 stipulating *non-refoulement*. Permanent global resettlement of DP refugees began in earnest in 1947, with the inception of the International Relief Organization (IRO), which functioned as a “diplomatic provider of legal and political protection for the displaced.”⁸⁸ Therefore, the confluence of factors at the time strongly favored emigration out of continental Europe, especially given the region's recent destruction during World War II, and Ukrainians leapt at the opportunity. Ethnic Ukrainians headed for destinations as far-flung as the United States, Canada, Australia, Brazil, and Argentina, to the tune of 187,000 total immigrants who departed DP camps in Germany and Austria between 1947 and 1957.⁸⁹ Of these, 80,000 headed for the United States and an additional 30,000 for Canada,⁹⁰ undoubtedly supported by the raft of favorable legislation passed during this era to temporarily initiate immigration to the Americas of former citizens from communist countries. American civil organizations, including the United Ukrainian American Help Committee, provided significant support to Ukrainian DPs seeking the relative plethora of opportunity that the United States could provide.⁹¹ World War II had brought about unspeakable tragedy for many Ukrainians, but this small window of opportunity and the attendant legislative push in the United States to support those in taking that opportunity allowed for the last great Ukrainian-American migration.

After the third wave came the depths of the Cold War, which was in full swing by the time America closed its doors to communist émigrés in 1956. The next three decades would be mostly barren in terms of Ukrainians

86. Andrew Glass, *Eisenhower Signs Refugee Relief Act, Aug. 7, 1953*, POLITICO (Aug. 7, 2018), <https://www.politico.com/story/2018/08/07/this-day-in-politics-aug-7-1953-760670> [<https://perma.cc/95TB-X9RN>].

87. Pawliczko, *supra* note 3, at 92.

88. BILAN, *supra* note 15, at 61.

89. Pawliczko, *supra* note 3, at 92 tbl.2.

90. *Id.*

91. BILAN, *supra* note 15, at 61–62.

moving to the United States, as Ukrainians became seen as a settled adversary of the American way of life.

IV. The Fourth (and Final Established) Wave: 1991–Present

On December 26, 1991, the Soviet Union officially dissolved, thereby granting independence to each of its many associated republics. Ukraine, freed from the economic and political shackles of communist rule, almost immediately fell into economic ruin. This wave most resembles that of the first, given that Ukrainians electing to join this wave of migration did so for primarily economic purposes. The collapse of communism created an economic vacuum that every one of the former Soviet Republics was ill-equipped to handle. Studies show a multitude of damning economic metrics to display this phenomenon, with one particular report calling the post-Soviet Ukrainian economy a “sick man of Europe” and a “potentially failed state thanks to its geopolitical situation, historical burdens, and the mistakes made in institutional development and policy.”⁹² Plagued by widespread corruption and a forced reliance on Russia, the country’s dire economic situation has taken a toll on its citizens, which has brought about the largest wave of immigration in Ukrainian history—though only a minor portion destined for the United States—with an estimated 7 million Ukrainians leaving in the fourth wave as of 2017 (as compared to 1.5 million in the first wave; 300,000 in the second; and 300,000 in the third).⁹³

A. *Ukraine: Chaos & Corruption*

Ukrainians may have uniformly desired the end of Soviet rule, but that did not make them any better prepared for when it finally came in 1991. Ukraine’s GDP at the time of independence was \$1,307 per capita, putting it behind former Soviet republics such as Moldova and Turkmenistan.⁹⁴ The other harsh reality was that the Ukrainian population and economy had endured so much change over the prior century—two world wars, a civil war, Stalin-led collectivization of the agrarian economy, unnatural industrialization practices, German occupation, Holocaust-induced reduction of the previously prolific Jewish-Ukrainian population, and Stalinist purges—that it had no discernible characteristic upon finally attaining its independence from Soviet Russia.⁹⁵ Moreover, Ukraine had developed a

92. Pekka Sutela, *The Underachiever: Ukraine’s Economy Since 1991*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 9, 2012), <https://carnegieendowment.org/2012/03/09/underachiever-ukraine-s-economy-since-1991-pub-47451> [<https://perma.cc/STC2-BK84>].

93. BILAN, *supra* note 15, at 230–31.

94. Sutela, *supra* note 92.

95. *See id.* (describing the factors that led to Ukraine’s surprising levels of poverty in 1991, despite the fact that it used to be a mostly peaceful, thriving agrarian population and economy).

crippling dependency on natural-gas supply from its neighbor, Russia. This led to a big brother–little brother relationship, in which Ukraine has struggled to break free from Russia’s sphere of influence.

There were positives to take from the early days of independence—a strong sense of culture building and a competitive political arena—but they were largely overshadowed by the overwhelming negative economic reality. The Ukrainian economy contracted annually between 1991 and 1996, each time between 9.6% and 22.7%.⁹⁶ Hyperinflation, production declines, and the loss of almost half of the country’s GDP all took place from 1990 to 1994.⁹⁷ In place of a legitimate economy, the untaxed black market ran rampant, which led to political instability, the collapse of nearly all requisite social systems, and ultimately the proliferation of widespread corruption.⁹⁸ Owing principally to the wealth of a few oligarchs that recognized an opportunity in the post-Soviet vacuum, Ukraine began to turn its economy around and eventually became net positive by 2001. This trend would continue until 2008,⁹⁹ but it was too late to stem the flight of Ukrainian émigrés out of the country as the fourth wave was long underway by that point.

B. The United States: Doubling Its Immigrant Numbers and Recognizing Refugees

With immigration from Southern and Eastern European countries on the decline after the era of Ukraine’s third wave to the United States, the next frontier of American immigration policy focused on making its regulation more evenhanded across all nationalities. The Immigration Act of 1965 did just that, as it repealed the national-origins quotas, instituted a new global and evenly distributed—20,000 per country—quota system, raised the overall ceiling on admissions to 300,000 per annum, and created preferential status for families and certain occupations to immigrate to the United States.¹⁰⁰ The lasting legacy of this legislation was that it abolished the longstanding U.S. policy of racial hierarchy in immigration, moving the country closer to formal equality in its admissions. The practical result was an influx of non-European ethnicities, which helped make up for the decline from then-Communist countries.

Another significant piece of legislation, alluded to above, is the Refugee Act of 1980, which codified the internationally accepted refugee definition

96. *Id.*

97. *Id.*

98. *See id.* (recounting the “vicious, difficult-to-break circle” in which Ukraine found itself in the 1990s).

99. *Id.*

100. NGAI, *supra* note 29, at 227.

and increased quotas for refugees seeking to come to the United States.¹⁰¹ The law was the first to officially recognize refugee status in the United States and took concrete steps to accommodate this class of individuals, including establishing the Office of Refugee Resettlement and providing a legal outlet for dealing with special humanitarian needs in immigration.¹⁰² Since the Act took effect, refugee numbers have tended to fluctuate in accordance with global conflict, or the lack thereof. The immediate benefit of the Act was to ease the pressing humanitarian crises in Vietnam and Cambodia, which led to nearly 200,000 admissions under the program during the year the Act was signed.¹⁰³ More recently, this legislation has given the country the ability to absorb increasing numbers in times of crisis—Kosovo, post-Soviet republics, Somalia, Bhutan, Burma—and contract when the need arises, as with the immediate aftermath of September 11th, the USA PATRIOT Act, and the current Trump Administration.

But more germane to the fourth wave was the Immigration Act of 1990, which caused immigration to the United States to rise “sharply after 1990, when Congress raised the numerical ceiling on immigration by 35 percent in response to the 1980s boom in the U.S. economy and concomitant demands for labor”¹⁰⁴ The Act increased the overall immigration quota to 700,000 immigrants per year from 1992 to 1994, before settling at 675,000 per annum from 1995 onward.¹⁰⁵ Notably, the Act expanded the categories of immigrant visas into three principal areas: family-based immigration, employment-based immigration, and a diversity lottery.¹⁰⁶ Family-based immigration visas targeted immediate relatives of U.S. citizens.¹⁰⁷ The employment-based visa program correlates from two categories—from the 1965 Act—to five, which encompassed (1) “priority workers,” including distinguished researchers and those with “extraordinary” abilities in the arts, sciences, education, business, and sports; (2) professionals holding “advanced degrees” or having “exceptional ability”; (3) skilled workers, professionals with bachelor’s degrees, and “other workers,” that did not distinguish between high- and low-skilled workers; (4) “special immigrants” who are religiously focused, such as ministers; and (5) investors who pledge to invest \$1 million into the U.S. economy.¹⁰⁸ Under the Act, each group was allocated

101. Refugee Act of 1980, Pub. L. No. 96-212, § 201, 94 Stat. 102, 102.

102. Igielnik & Krogstad, *supra* note 18.

103. *Id.*

104. NGAI, *supra* note 29, at 265.

105. Warren R. Leiden & David L. Neal, *Highlights of the U.S. Immigration Act of 1990*, 14 *FORDHAM INT’L L.J.* 328, 329 (1990).

106. *See id.* at 329–32 (explaining the relevant characteristics of each of the three types of immigration visas established by the 1990 Act).

107. *Id.* at 329.

108. *Id.*

40,000 visas, with all unused visas spilling over into the category below.¹⁰⁹ The third and final classification, establishing a diversity lottery, allocated 55,000 diversity visas to individuals outside the United States who have either a high school education or two years of work experience in a field requiring specialized training.¹¹⁰ Notably, the Act stayed silent on the topic of refugee admissions into the United States.¹¹¹ This created a momentary vacuum in American immigration policy in which the Lautenberg Amendment found its niche, which is the same niche that it occupies today.

U.S. immigration law—due to the many nuances, caps, and quotas—contains certain provisions that persist due to historical reasons, allowing individuals a chance to immigrate who might otherwise not have that opportunity. The Lautenberg Amendment is one of these such nuances. The Amendment, enacted originally in 1989 and still valid today, “require[s] the Attorney General to designate categories of former Soviet . . . nationals for whom less evidence would be needed to prove refugee status.”¹¹² For these individuals, a lower evidentiary standard is required to successfully demonstrate refugee status, merely requiring Lautenberg applicants to prove that “they were members of a protected category with a credible, but not necessarily individual, fear of persecution.”¹¹³ This stands in stark contrast to the normal refugee standard that requires a case-by-case adjudication of each applicant’s well-founded fear of persecution.

The Amendment brought about immediate results, as demonstrated by a 1991 legislative meeting of the House Subcommittee on International Law, Immigration, and Refugees. The committee noted that:

[The] Lautenberg Amendment has resulted in very high Soviet refugee approval rates. In Moscow, the vast majority of applicants . . . fit into one of the identified categories—Soviet Jews, Evangelical Christians, Ukrainian Catholics, and Ukrainian Orthodox . . . [The committee] note[s] that this [special] legislation will expire at the end of [fiscal year] 1992, and we anticipate a return to the worldwide standard of refugee adjudication. We are hopeful that the sunset of the Lautenberg Amendment will be reflected in the dawn of democracy in the Soviet Union.¹¹⁴

109. *Id.*

110. *Id.* at 331–32.

111. *See generally* Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (containing no discussion of refugee admissions, though it is worth noting that the numerical cap on asylees was raised from 5,000 to 10,000).

112. BRUNO, *supra* note 19, at 9.

113. *Id.* at 10.

114. *Refugee Admissions: Hearing Before the Subcommittee on International Law, Immigration, and Refugees*, 102d Cong. 26 (1991) (statement of Gene McNary, Comm’r, U.S. Immigration and Naturalization Service).

The Lautenberg Amendment, clearly intended by Congress to be a temporary olive branch to persecuted minorities in the former Soviet republics, evaded the initial desires of its ratifying representatives to bring it to a close in 1992. Specifically for Ukrainians, many of whom are Ukrainian Catholic or Ukrainian Orthodox, the Amendment has provided a longstanding gateway to the United States that has served to create and sustain the fourth and fifth waves. For the sake of an effective comparative analysis, and to more plainly elucidate the break between the fourth and fifth waves, I undertake a more in-depth empirical dive into these numbers in Part V and the Conclusion.

C. *The Result: A Steady Flow of Fourth-Wave Ukrainians Enter the United States*

Ukrainian immigration to the United States during the fourth wave has been the perfect storm of “push” factors such as the grim economic outlook of post-Soviet Ukraine in the 1990s, and “pull” factors including the welcoming broader categories of workers through the 1990 Act and the availability of the refugee program to accept increased numbers of Ukrainians during this time through the Lautenberg Amendment. The numbers paint a picture of successful efforts by Ukrainians to enter the United States, as in 1991 more than 10,000 Ukrainians migrated to America, a number that steadily increased until a peak of 16,000 in the year 2000.¹¹⁵ From 2000 on, a notable downward trend took place, bottoming out at fewer than 3,000 admissions in 2010. Historians and immigration scholars have tended to portray the fourth wave as extending to the present day, despite the fact that the number of Ukrainians coming to this country was curtailed somewhat around 2009–2010. This is not to diminish the potency and numerical success of the fourth wave, however, as estimates place total fourth-wave admissions in the range of 225,000,¹¹⁶ which would put it on par with the three waves that preceded it. Whichever way it is viewed, Ukrainian immigration during the post-Soviet era fully took advantage of the United States’ broader border policy during the 1990s and 2000s, but is now unquestionably in decline. What is clear is that Ukrainian immigration to the United States and the American immigration policies that permit and undergird its success have been at a crossroads for nearly a decade now, which potentially warrants a revisiting of the Ukrainian-American immigration narrative.

115. Oleh Wolowyna, *Ukrainians in the United States Have Reached 1 Million*, UKRAINIAN WKLY. (May 11, 2018), <http://www.ukrweekly.com/uw/wp/ukrainians-in-the-united-states-have-reached-1-million/> [https://perma.cc/H5QP-P8NF].

116. *Id.*

V. A Fifth Wave? 2014–Present

As has been demonstrated in the four distinct and generally accepted waves of Ukrainian immigration to the United States, there is no single characteristic that definitively permits their designation as distinct waves. This comparative analysis is compelling because each wave is subject to a multitude of factors and ever-changing forces on both the Ukrainian and American sides of this complex equation. If only one side changes, but the other stays consistent over a long period of time, then it stands to reason that nothing will change in the immigration patterns of Ukrainians to the United States. However, both recent, contemporaneous events in Ukraine and radical changes to U.S. immigration policy have coalesced to create a unique moment for this specific immigration pattern. Ukraine finds itself embroiled in armed conflict with its neighbor, Russia, while the United States has begun to pursue perhaps its most restrictive immigration policy in its history under current President Donald Trump. Of late, those in the fields of immigration and refugee law have, rightfully, tended to focus much of their time and effort on understanding and resolving the issues raised through humanitarian crises in countries such as Syria, the Democratic Republic of Congo, and to the south of the United States' borders. This has allowed Ukrainian immigration, which comprises 12.7% of all refugees arriving in the United States as of March 31, 2019—third highest on the international stage—to sneak under the radar.¹¹⁷ Despite this, the facts and associated statistics from the current immigration pattern demonstrate that a fifth wave is upon us.

A. *Ukraine: Revolution, Unrest, and Uncertainty*

The trade agreement was ready to be signed, the President said he was ready to sign, and the Ukrainian people expected him to sign. This made it all the more surprising—and infuriating to the Ukrainian people—when President Viktor Yanukovich, a known lackey of Vladimir Putin's Russia, reneged on a promise to the Ukrainian people that he would sign the accord that was to be instrumental in bringing Ukraine into the European Union.¹¹⁸ Yanukovich's refusal immediately set off protests, called "Euromaidan," in Ukraine's capital city, Kiev.¹¹⁹ The protests, consisting of Ukrainian citizens camped within the bounds of Kiev's iconic Independence Square, lasted from November 2013 to February 2014.¹²⁰ The individuals protesting were doing

117. U.S. DEP'T OF STATE, SUMMARY, *supra* note 20.

118. See Tomasz Stepniewski, *Ukraine Crisis: Political Transformation vs. Security and Migration*, 19 Y.B. POLISH EUR. STUD. 237, 238 (2016) (recapping the events that led to Ukraine's 2014 revolution and eventually its current crisis as a result).

119. *Id.* at 239.

120. Steven Pifer, *Ukraine: Looking Forward, Five Years After the Maidan Revolution*, BROOKINGS INSTITUTION (Feb. 22, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/02/22/ukraine-looking-forward-five-years-after-the-maidan-revolution/>

so as a show of unity against the deprivation of their country's right to join the European Union.¹²¹ The EU was seen by many as a logical step to bring about a "qualitative change of life in Ukraine," and Ukraine's entry was to be "a symbol of democracy and [a] better life."¹²² Had Yanukovich signed, Ukrainians would have been on the path to EU citizenship, a definitive signal that the country was indeed headed in the right direction. However, he declined to do so. To compound the affront to the Ukrainian people, the government sent military forces, including multiple tanks, into Independence Square to extinguish the protests.¹²³ This chain of events would have a significant destabilizing effect on the fragile Ukrainian system, sending it spiraling back into the depths of instability from which the country and its people had been trying so hard to emerge. Ukraine was, once again, a country in crisis.

The events that followed devolved rapidly into armed conflict between Ukraine and Russia, taking place almost entirely within Ukrainian borders due to Russia's role as the aggressor. The Russian-backed Donbass region of Ukraine threatened secession, but instead opted to engage Ukraine in a military campaign, which saw Russia lend both troops and weapons support to the separatist effort. Merely one month after the tanks rolled into Independence Square in Kiev to quash the supposed dissidents, Russia had annexed Crimea and effectively threw the entire Ukrainian state into chaos.¹²⁴ The armed conflict rages on in eastern Ukraine to the present day without an end in sight. This fact, though in and of itself troubling, is noteworthy because it has, and continues to, "force[] tens of thousands to leave their homes and flee in search of safety and stability."¹²⁵ This has created a twofold problem for the Ukrainian population, wherein Ukrainians inadvertently embroiled in the conflict can either choose to cross the border and seek refuge in another country, or they can accept their fate as one of the ever-growing number of internally displaced persons (IDPs) in the country.

UNHCR metrics on IDPs in Ukraine demonstrate the gravity of the problem. According to the UN Agency, "Ukraine is the ninth largest country in the world in terms of the number of Internally Displaced Persons. Following the start of [the] conflict in eastern Ukraine and the annexation of Crimea in 2014, the Government of Ukraine reports some 1.5 million

[<https://perma.cc/D33Y-XLFM>].

121. See Stepniewski, *supra* note 118, at 239 (describing the initial Euromaidan objective as coercing the government to sign the Association Agreement).

122. *Id.*

123. Andrew Higgins & Andrew E. Kramer, *Kiev Protestors Set Square Ablaze to Thwart Police*, N.Y. TIMES (Feb. 18, 2014), <https://www.nytimes.com/2014/02/19/world/europe/ukraine.html> [<https://perma.cc/8TNE-SGFJ>].

124. Stepniewski, *supra* note 118, at 241.

125. *Id.* at 242.

IDPs.”¹²⁶ With Russia continuing to fund this conflict, one in which “[a] deeper aggravation of Ukraine’s dysfunction and dependency seems to be the Federation’s critical objective,”¹²⁷ this crisis may not end anytime soon.

B. The United States: Changing Refugee Dynamics, the Lautenberg Loophole, and Trump

Against this backdrop of exigency created by the Russo–Ukrainian conflict, it is important to consider the recent history of refugee admissions to the United States from Ukraine. These numbers, supported directly by the Lautenberg Amendment, generally describe a situation that stabilized for a few years—the end of the fourth wave—before the urgent need once again arose for countries to provide humanitarian aid to Ukrainians—the inception of the postulated fifth wave. The year 2004 was transformative for the American refugee system, as it was the first year that the United States removed the separate designation, and the associated 14,000-person quota, for countries from the “former Soviet Union.”¹²⁸ Due in large part to this separate quota, Ukraine sent 17,595 refugees to the United States between 2001 and 2003, second only to Bosnia and Herzegovina.¹²⁹ The 2004 integration of Ukraine into a broader “Europe” refugee quota began the rapid decline of admissions, with the number dipping below 1,000 in 2009 for the first time since the end of the Soviet Union.¹³⁰ This number reflected changes in the international system on both the United States and Ukrainian sides of the equation. Ukrainians, due to the uptick in the economy and quality of life in their home country, elected to stay in increasing numbers. But it was the changing focus of U.S. immigration policy, which was now pivoting to provide much-needed aid—and higher refugee quotas for Africa, East Asia, and the Middle East—that had the greatest impact on the decline. Therefore, from a refugee standpoint, it can be fairly said that the Ukrainian need to avail itself of the U.S. refugee system had all but vanished by 2013, when Yanukovich was set to sign Ukraine into the European Union. This year set a record low for Ukrainian refugee admissions, as only 227 individuals were admitted to the United States, signifying definitively the end of the economic migration of the fourth wave.¹³¹

A final consideration for the proposed fifth wave is the 2016 election of President Donald Trump, who was swept into office with strong rhetoric

126. *Internally Displaced Persons (IDP)*, U.N. HIGH COMM’R REFUGEES: UKR., <https://www.unhcr.org/ua/en/internally-displaced-persons> [https://perma.cc/7VF5-M68V].

127. Stepniewski, *supra* note 118, at 245.

128. U.S. DEP’T OF STATE, SUMMARY, *supra* note 20.

129. *Id.*

130. *Id.*

131. *See id.* (showing that in 2013 Ukraine was 14th in the world in terms of refugee admissions to the United States).

pledging to fix America's broken borders. While the Trump Administration's policies—inclusive of various executive actions—are beyond the scope of this Note, there are certain stances that demonstrate the Administration's overall negative view toward immigration. The President has embraced the controversial RAISE (Reforming American Immigration for a Strong Economy) Act, which would almost halve legal immigration to the United States by restricting green-card issuance, capping refugee admissions at an absolute high of 50,000 per year, and ending the diversity lottery.¹³² He has lobbied for nativist policies regarding border security and illegal immigration and pursued mass deportation of undocumented immigrants as a keystone of his immigration policy. He is strongly opposed to the acceptance of Syrian refugees, despite overwhelming evidence of a humanitarian crisis,¹³³ and famously enacted a brazen travel ban targeted at various Muslim-majority countries.¹³⁴ Of all of Trump's policies, the so-called "Travel Ban" was the most indicative of the United States' preferred direction regarding immigration, as it proposed a blanket ban on immigration from seven countries and provided for an outright suspension of the refugee program for four months, about which Trump stated a preference for admission of those facing religious persecution "provided that the religion of the individual is a minority religion."¹³⁵ The sum of these policies has been to severely restrict overall immigration to a level not seen since the interwar period.

C. *The Result: A Fifth Wave*

In spite of all of the negative rhetoric and damaging executive orders emerging from the Trump Administration, Ukrainians have still found an outlet to American entry through the Lautenberg Amendment and existing visa infrastructure. With the Russian armed conflict wreaking havoc on the Ukrainian economy, political system, and day-to-day lives of its citizens, Ukrainian refugee admissions to the United States jumped to 1,451 in 2015—a 539% increase from just two years prior—and peaked at 4,264 in 2017.¹³⁶ Through March 31st of 2019, 1,547 Ukrainian refugees have successfully migrated to the United States, a number that falls behind only the Democratic

132. *The RAISE Act: Effect on Economic Growth and Jobs*, PENN WHARTON BUDGET MODEL, (last updated Aug. 14, 2017), <http://budgetmodel.wharton.upenn.edu/issues/2017/8/8/the-raise-act-effect-on-economic-growth-and-jobs> [https://perma.cc/Z8UD-QRG5].

133. Jordyn Phelps, *Donald Trump Promises to Deport Syrian Migrants Who Settle in the US*, ABC NEWS (Nov. 16, 2015, 10:35 PM), <https://abcnews.go.com/Politics/donald-trump-promises-deport-syrian-migrants-settle-us/story?id=35244275> [https://perma.cc/X265-99LC].

134. Jeremy Diamond, *Trump's Latest Executive Order: Banning People from 7 Countries and More*, CNN (last updated Jan. 29, 2017, 4:38 PM), <https://www.cnn.com/2017/01/27/politics/donald-trump-refugees-executive-order/index.html> [https://perma.cc/HE5M-PSQ3].

135. *Id.*

136. U.S. DEP'T OF STATE, SUMMARY, *supra* note 20.

Republic of Congo and Burma and is significantly higher than the combined refugee-admission counts from the entirety of the Middle East and Central America.¹³⁷ Ukrainians in the fifth wave have had similar success in the visa arena, making up the highest portion of overall European admissions from 2009 to 2018 and showing a 44% increase in 2018 admissions (5,304) from 2009 (3,672).¹³⁸

All of this shows a marked increase in Ukrainian immigration to the United States—through both the current refugee scheme, despite the Trump Administration’s restrictions, and the immigrant visa process—since the beginning of the armed conflict with Russia in mid-2014. Ukrainians at home, while not facing the type of persecution usually associated with the refugee definition, have still found ways to move to the United States in increasing numbers in the face of the anti-immigration policies being pushed by the Trump Administration. This fifth wave may be unique in its use of the little-known Lautenberg Amendment to enter where so few others can, but that makes it no less prolific as the immigration numbers for the past five years demonstrate. With the 2019 refugee quota set at 30,000 and facing downward pressure, there is no guarantee as to how long the fifth wave will continue, but Americans and news outlets are beginning to take notice of the phenomenon.¹³⁹ Given all of the facts surrounding the ongoing crisis, as well as the surprisingly high statistics for Ukrainian immigration to the United States in the past five years, it is a bit of a surprise that there has been relatively little academic mention of a fifth wave beginning in or around 2014.¹⁴⁰ But the reality of Ukrainian-American immigration demonstrates

137. *Id.*

138. U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFFAIRS, REPORT OF THE VISA OFFICE 2018, at tbl.XIV (2018).

139. See Dara Lind, *Under Trump, Refugee Admissions Are Falling Way Short—Except for Europeans*, VOX (Sept. 17, 2018, 9:10 AM), <https://www.vox.com/2018/9/17/17832912/trump-refugee-news-statistics> [<https://perma.cc/QW6E-E84N>] (pointing out the inequity in the current refugee legislative scheme that is allowing specifically Ukrainian entry at heightened volumes); Miriam Jordan, *Soviet-Era Program Gives Even Unoppressed Immigrants an Edge*, N.Y. TIMES (Aug. 26, 2017), <https://www.nytimes.com/2017/08/26/us/ukrainian-christian-refugees.html> [<https://perma.cc/MEW6-R8WH>] (discussing the rise in Ukrainian immigration due to the Russian conflict despite draconian Trump immigration policies and its link to legal chain migration).

140. Mentions of a fifth wave of Ukrainian immigration to America do appear; however, none of these sources posit the inception of the fifth wave to be 2014, nor are the analyses conducted in light of the current American refugee construct. See generally BILAN, *supra* note 15 (employing statistical and economic modeling to explain what is believed to be Ukraine’s five waves of emigration, specifically addressing—very briefly—the potential for a new fifth wave); Svitlana Iarmolenko, *Bridging Tourism and Migration Mobilities: Diaspora Tourism as a Coping Strategy*, at 46 (Aug. 2014) (unpublished Ph.D. dissertation, Pennsylvania State University) (“At the time of this study Ukraine was thrown into a sharp political crisis with a possibility of civil war, resulting in what potentially may be a fifth wave of Ukrainians requesting immigration to the US.”); Olena Goncharova, *Unstable Economy, War Push Ukrainians to Leave for Canada*, KYIVPOST.COM (Nov. 4, 2019, 11:40 PM), <https://www.kyivpost.com/ukraine-politics/unstable-economy-war-push-ukrainians-to-leave-for-canada.html> [<https://perma.cc/F4S5-P4RX>] (“[Canada] has seen five

that nearly 7,000 new Ukrainians per year are accessing the American immigration system, specifically the refugee system, which puts this wave numerically on par with any of the four others, in spite of the Trump Administration's rollbacks on global immigration to the United States.

Conclusion

After analysis of nearly 150 years, it is apparent that Ukrainian-American immigration occupies a rare place in the refugee-law realm. Internal strife is by no means unique on the international stage at the moment, but the Ukrainian-American story provides the perfect subject for how the refugee system *should* work. Four established waves show us how contemporary events in one country can combine with legislative efforts in another a world away to create the perfect pathway for individuals from one country to another. I argue for the inception of a fifth Ukrainian-American immigration wave in large part because of what it can and does teach us about the complexities of refugee law more broadly. Refugee law inherently involves the cobbling together of many factors and forces, in the hope that the global system will meet the transforming needs of the human population at any given time. The Lautenberg Amendment, enacted as a “broad welcome for virtually all who could manage to leave”¹⁴¹ the former Soviet Union, functions as the ultimate “pull” factor along with all of the other trappings of the “American Dream.” To my dismay, hours of research yielded little indication of a similar law on the American books to Lautenberg. This fact, along with increasing negative media attention,¹⁴² informs us that despite the fact that the Amendment is enabling Ukrainian IDPs to immigrate in search of an objectively safer, more promising life, this situation is far from the norm. But that should not prevent us from analyzing its impact and asking what the fourth and fifth waves inform us about the global refugee system writ large. A brief glance at the refugee-admissions trend chart in the Appendix¹⁴³ shows that at a very basic level, the immigration and refugee systems require *both push and pull factors* to be in place in order for the system to be utilized to its fullest capacity. Ukrainians, despite having access

waves of Ukrainian immigrants over the past 125 years”); Maria Prus, *Educated, Purposeful, Cosmopolitan. Who Are the “Fifth Wave of Ukrainian Emigration”?*, FORUMDAILY.COM (Nov. 4, 2019, 11:36 PM), <https://www.forumdaily.com/en/obrazovannye-celeustremlennye-kosmopolity-kto-takie-pyataya-volna-ukrainskoj-emigracii/> [<https://perma.cc/Y7GS-42L6>] (exploring the social and cultural composition of the posited fifth wavers).

141. David A. Martin, *A New Era for U.S. Refugee Resettlement*, 36 COLUM. HUM. RTS. L. REV. 299, 308 (2005).

142. I take liberties here in qualifying as “negative media attention” certain news articles from reputable sources—the *New York Times* and *Vox*—that amount to little more than “look at these lucky Ukrainians jumping through the Lautenberg hoop.”

143. See *infra* Appendix (displaying a graph and associated underlying data for Ukrainian refugee admissions to the United States from 2001 to 2018).

to the same Lautenberg standard from 2001 to 2018, availed themselves of this opportunity much less so when conditions in the home country began to improve in the mid-2000s. That condition held steady, even declining further, until 2014, which coincides exactly with the Russian invasion of the Ukrainian homeland. This, coupled with the entire tapestry of the last 150 years of Ukrainian immigration to the United States, demonstrates that no study of immigration and refugee law is complete without looking at the factors pushing and pulling on both sides of the equation.

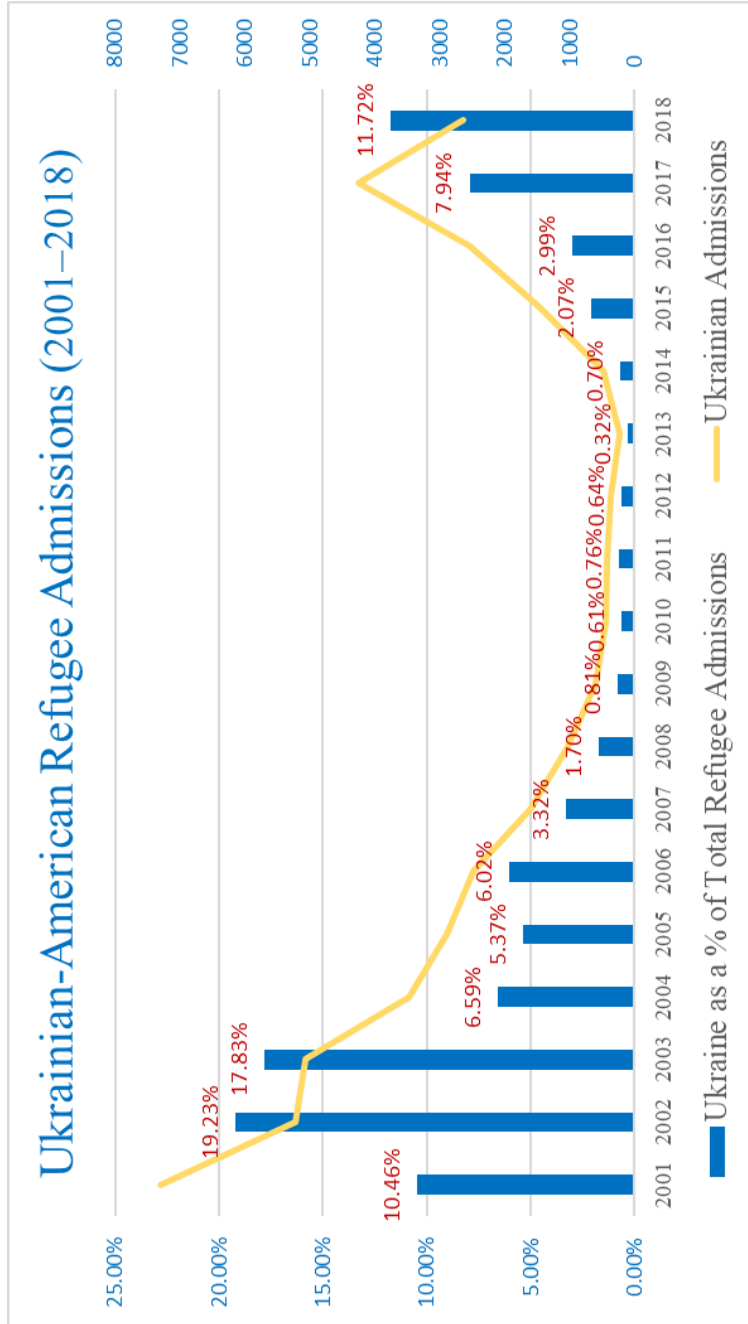
Admittedly, when I dug into this topic, I was unsure of how pertinent it would be to the study of contemporary refugee law. An in-depth look into this area, one that I believe has been entirely overlooked by even those most active in refugee-law scholarship, exhibits what truly does appear to be an anomaly, but one that is now doing a lot of humanitarian good in enabling internally displaced Ukrainians to escape the harsh realities of Ukraine's current situation. One additional topic that I have grappled with enough to write about is my own internal struggle with the use of the term "legislative loophole" to define the Lautenberg Amendment. After my extensive survey of this area of law, I conclude that this term is not technically misguided. I refrain from using it in this Note to avoid any appearance of disparaging the Amendment itself and the positive force it has become for Ukrainians, but I truly believe it is a loophole that represents a contemporary oddity in the American refugee landscape. The Amendment, along with the revamp of the American legal-immigration system under the Immigration Act of 1990, has permitted Ukrainians to continue landing on America's shores in strong numbers, relative to other foreign populations seeking to do the same. Most relevant to the study of refugee law, however, is how it has permitted Ukrainians across the fourth and fifth waves to successfully claim refugee status for economic and ethnic-persecution reasons, respectively. Given the struggles of certain global populations to gain entry to the United States, the implications behind this cannot be overlooked. Ultimately, it is the difference in the underlying "push" factor that I believe demarcates the fourth and fifth waves, as no longer can it be said that the primary reason that Ukrainians are seeking admission to the United States is for its economic benefits. The "fifth wavers" are those principally seeking refuge from Russia and its proliferation of a damaging armed conflict on Ukrainian soil, especially given that there appears to be no immediate end in sight.

But to focus too intently on the fourth and fifth waves would be to sell short the broader narrative of what Ukrainian-American immigration can teach us. Ukrainians served as the perfect test case to map the development of American immigration policy over time, especially because many of the policy changes undertaken by the United States over the past 150 years pertained directly to, or were aimed at, Ukrainians. Ukrainians also hold a unique distinction as one of the only non-Western European ethnicities to

immigrate to the United States continuously and in significant numbers from the late 1870s to the present day. As such, no other population's immigration experience can provide the breadth and depth of perspective that the Ukrainian story can. The experiences of the first four waves of Ukrainian-American immigration—those tied to tsarist Russian and Austro-Hungarian oppression, two World Wars, multiple communist Red Scares, manmade famines, a punitive Soviet regime, and a contemporary Russia that threatens Ukraine's freedom to this day—have informed the inception of a fifth one. If this analysis informs us of anything, it would be that immigration patterns are cyclical, never absolute, and prone to historical oddities such as the Lautenberg Amendment. All of which leads us to 2019, which is by all accounts a time of considerable turmoil in the immigration arena. The great triumph of humanity is the ability to trace a tale in which a thirteen-year-old girl's innocuous landing in New York City in 1951 can spark three generations of familial growth over the ensuing 65 years. Trump's policies, given their severity, may seem permanent today, but I would posit that a refresh of this analysis in a century's time will demonstrate not just that the fifth wave is an accepted fact, but also that it will serve as a precursor to a sixth, seventh, and beyond.

APPENDIX¹⁴⁴

144. U.S. DEP'T OF STATE, SUMMARY, *supra* note 20.



Year	Total U.S. Refugee Admissions	Ukrainian Admissions to the U.S.	% of Total
2001	69,886	7,313	10.46%
2002	27,131	5,217	19.23%
2003	28,403	5,065	17.83%
2004	52,873	3,482	6.59%
2005	53,813	2,889	5.37%
2006	41,223	2,483	6.02%
2007	48,282	1,605	3.32%
2008	60,191	1,022	1.70%
2009	74,654	601	0.81%
2010	73,311	449	0.61%
2011	56,424	428	0.76%
2012	58,238	372	0.64%
2013	69,926	227	0.32%
2014	69,987	490	0.70%
2015	69,933	1,451	2.07%
2016	84,994	2,543	2.99%
2017	53,716	4,264	7.94%
2018	22,491	2,635	11.72%