

Life in limbo: temporary protection for Ukrainians in the US

Daniel J Beers

Temporary protection mechanisms have offered Ukrainians safe harbour in the US but leave them in a precarious state of legal limbo.

Following the Russian invasion of Ukraine, policymakers in the US proclaimed solidarity with the Ukrainian people and pledged to support refugees fleeing the war. More than a year later, the US government has granted protection to more than 250,000 Ukrainians. However, conventional refugee resettlement has accounted for only a minuscule share of recent arrivals.¹ The vast majority of Ukrainians have been admitted through a patchwork of temporary protection mechanisms that confer lawful entry and some assistance but leave the participants in a precarious state of legal limbo.

This article discusses the evolution of these temporary protection programmes, highlighting the complex and unpredictable nature of the policy environment and its impact on refugees and refugee-serving agencies. The analysis draws on several months of first-hand interactions with Ukrainian refugees and refugee-serving organisations in the Shenandoah Valley region of Virginia, as well as semi-structured interviews with refugee families, community advocates and legal experts.

Parole at the US border

Within days of the invasion on 24th February 2022, a small but steady stream of Ukrainians began making their way to the US border. In response, US Customs and Border Protection (CBP) agents began admitting Ukrainians at ports of entry with a 12-month ‘humanitarian parole’² designation, ultimately ‘paroling’ an estimated 25,000 Ukrainians in the first two months of the war.³

Similar parole mechanisms have been used by the US government in past crises to allow expedited processing for specially designated groups – most notably following US military withdrawals from Vietnam, Iraq and Afghanistan. However, humanitarian parole has never before been used to admit asylum seekers en masse at the US border. In part, that is because humanitarian parole is not actually a legally recognised immigration status. When parole is issued, the individual in question is not officially inspected and admitted for entry, as required by US law; rather, parole simply means that a decision about their legal status has been delayed until a future date. In other

words, parole is best understood as a ‘non-status’.⁴ Consequently, its widespread use at the US border brought with it a great deal of confusion and uncertainty for both parolees and refugee-serving agencies.

As parolees, Ukrainians admitted in the early days of the war were granted legal entry without any guarantee of further assistance. Lacking official immigration status, they were unable to access public benefits such as cash assistance or food stamps. Moreover, because they were admitted by CBP agents at the border rather than as refugees resettled through the Office of Refugee Resettlement (ORR), parolees were initially ineligible to receive ORR-funded assistance from refugee-serving agencies. While parolees were eligible to apply for temporary work authorisation, long waiting times and confusion about their legal status meant that many waited for months without the means to support themselves financially.

Most importantly, the uncertainty surrounding the process left parolees in a precarious state of legal limbo. Lacking formal legal status, parolees have no pathway to permanent residency in the US – unless and until Congress passes an act to alter their status, which it has so far failed to do. Furthermore, parole comes with no clear process for extending one’s stay. As the end of their initial 12-month parole period approached, this confusion caused many parolees tremendous stress and anxiety. Some attempted to return to the border crossing where they first entered the country in order to ask for an extension; others waited and hoped for an executive order extending their stay; still others made plans to leave the US and seek protection elsewhere. No one knew for certain what would happen when their parole expired.

Temporary Protected Status (TPS)

Two weeks after the start of the war, the Biden administration announced the first formal protection mechanism for Ukrainians in the US, extending eligibility for Temporary Protected Status (TPS) to Ukrainian nationals. The TPS programme, which dates back to 1990, was designed to protect foreign nationals residing in the US from forced expulsion when conditions in their country of origin were

deemed unsafe for return, typically because of war, natural disaster or political instability. Currently, TPS covers approximately 610,000 participants from 16 countries. As its name suggests, TPS provides temporary protection – for up to 18 months at a time – to citizens from TPS-designated countries. Like humanitarian parole, it is not a legally recognised immigration status, and it comes with no pathway to permanent residency. However, TPS eligibility may be renewed indefinitely when dangerous conditions persist.⁵

The TPS designation for Ukraine was originally set to include only Ukrainian nationals residing in the US on or before 1st March 2022, effectively limiting eligibility to those who were already in-country when the war broke out. However, the policy was later amended to include Ukrainians who established residency in the US on or before 11th April 2022 – that is, those who arrived in the first six weeks following the Russian invasion. According to government officials, there are approximately 26,000 approved TPS holders from Ukraine currently residing in the United States.

Like humanitarian parole, TPS offers temporary legal residence and the ability to apply for a work visa. However, participants are not eligible for public assistance, and there is no direct pathway to permanent residency. Moreover, there is no guarantee how long TPS holders will be eligible to remain in the US. Though the Department of Homeland Security recently renewed TPS eligibility for Ukrainians for an additional 18 months, extending the programme through April 19, 2025, it is unclear what will happen to TPS holders thereafter.⁶ In short, TPS holders have found themselves in a similarly precarious position to those paroled at the US border.

Uniting for Ukraine (U4U)

Two months after the Russian invasion began, the Biden administration announced a more expansive temporary protection programme for Ukrainians: Uniting for Ukraine (U4U). This programme would grant 24 months of humanitarian parole to at least 100,000 Ukrainians seeking protection in the US, with the support of private US sponsors. Billed as an efficient way to minimise costs, increase

capacity and leverage community involvement, the U4U programme has proven a fast and efficient mechanism for allowing Ukrainians to legally enter the US. By early January 2023, nearly 200,000 Americans had applied to serve as private sponsors, and approximately 140,000 Ukrainians had either entered or been authorised to enter the US through the programme.⁷

U4U has also proven an effective tool for controlling the flow of Ukrainians seeking to enter the US. The programme, designed to discourage spontaneous arrivals, requires that applicants remain outside the US until they are approved for entry as parolees. As of 25th April 2022, Ukrainians who crossed the US border without prior authorisation would be forcibly expelled and would forfeit their eligibility for future humanitarian parole. Judging by the 98% decline in spontaneous Ukrainian border-crossings between April and May of 2022, the programme appears to have succeeded by offering a more predictable and organised channel of entry.⁸

However, because the U4U programme utilizes the humanitarian parole mechanism, participants have no formal immigration status in the US and no clear path to permanent residency, and they were initially restricted from receiving public benefits and ORR-funded refugee assistance services. More broadly, critics have argued that U4U's reliance on humanitarian parole violates the spirit of the parole mechanism, which is meant to be used only in exceptional circumstances as a "tool of last resort",⁹ while others take issue with U4U's sponsorship model, cautioning against the neoliberal 'privatisation' of refugee assistance.¹⁰

Moving targets and dashed hopes

One of the greatest challenges for both programme participants and refugee-serving agencies has been the opaque and profoundly uncertain nature of the policy environment. This is most clearly visible in the unresolved question facing nearly every holder of temporary protection: "How long will I be able to stay?" But it is also exemplified by the last-minute nature of critical policy announcements, the shifting rules and parameters of programme eligibility, and the fundamental

mismatch between refugees' expectations and the reality of their experiences.

All the programmes discussed here are predicated on the basic assumption that Ukrainians driven from their homes by war will require only temporary protection. This approach has merits, both political and practical, but it also has costs – costs which are mostly borne by the very people these programmes are meant to protect. Time and again in my conversations with Ukrainian parolees and refugee advocates, I heard about the stress and anxiety caused by not knowing when, or if, their legal right to remain would expire. Lives were put on hold. Decisions about work, schooling and housing were delayed. And capable and motivated individuals chose not to invest in their lives in the US, fearing that whatever they built could be lost at a moment's notice.

For some groups, the uncertainty has been particularly acute. An unlucky cohort of parolees who arrived after 11th April (the cutoff for TPS) and before 25th April (the start date of U4U) endured a period of acute anxiety as the one-year anniversary of the war came and went, and there was still no word about whether their 12-month parole would be extended. When, on 13th March 2023, the Biden administration finally announced an additional 12-month extension, it was welcome news but far too late to alleviate the fear and uncertainty of not knowing what would come next.

Confusion and uncertainty have also resulted from major policy shifts regarding eligibility for benefits and assistance programmes. Most notably, after denying Ukrainian parolees access to federal government benefits and ORR-funded support services for three months, policymakers reversed course with the Ukraine Supplemental Appropriations Act of May 2022, which earmarked funding for federal benefits and ORR services. This policy change was an undeniably positive development for parolees in need of support. However, after months of telling Ukrainian newcomers they were ineligible for benefits, refugee-serving agencies were sent scrambling to communicate the changes to potential recipients, hire new case workers, and set up new support systems.

Most fundamentally, nearly all of the Ukrainian refugees and community advocates I have encountered in my work have noted the deep disconnect between the rights and opportunities that Ukrainians expected to find in the United States, and the reality of their circumstances upon arrival. While more recent arrivals have benefitted from increasingly robust support systems and the wisdom of those who preceded them, they are still faced with a broken immigration system and the painful uncertainty of short-term solutions to long-term problems.

Policy implications

One of the most obvious conclusions from this analysis is that lawmakers should make it a priority to provide more advanced notice of anticipated parole extensions and changes in programme eligibility, in order to reduce the uncertainty and confusion experienced by programme participants. Clearer official messaging in relation to the limited legal protections available to Ukrainians in the US may also help to better inform and prepare asylum seekers. However, the clearest way to improve policy outcomes for refugees and host communities alike is for Congress to create a legal pathway to permanent residency for Ukrainians currently subject to temporary protection. It is not only the best way to preserve the dignity and well-being of those displaced

by the war, but it would also encourage countless talented and hardworking Ukrainians to invest in their communities in the US, paying dividends to all involved.

Daniel J Beers beersdj@jmu.edu

Associate Professor, Department of Justice Studies, James Madison University

1. In Fiscal Year 2022, the United States resettled only 1,610 Ukrainians through the U.S. Refugee Admissions Program.
2. National Immigration Forum (2022) *Explainer: Humanitarian Parole* [bit.ly/explainer-humanitarian-parole](https://www.nif.org/explainer-humanitarian-parole)
3. Sullivan E (2023) 'Biden Extends Stay for Thousands of Ukrainians', *The New York Times*, 13 March 2023 [bit.ly/ukraine-war-refugees](https://www.nytimes.com/2023/03/13/us/politics/biden-ukraine-war-refugees.html)
4. Refugees International (2022) *Supplementary Protection Pathways to the United States: Lessons from the Past for Today's Humanitarian Parole Policies* [bit.ly/supplementary-protection-pathways-united-states](https://www.refugeesinternational.org/publications/supplementary-protection-pathways-united-states)
5. Congressional Research Service (2023) *Temporary Protected Status and Deferred Enforced Departure*. <https://sgp.fas.org/crs/homesec/RS20844.pdf>
6. US Citizen and Immigration Services (2023) *Secretary Mayorkas Extends and Redesignates Temporary Protected Status for Ukraine* [bit.ly/extend-temp-protection-us](https://www.dhs.gov/extend-temp-protection-us)
7. Murray A (2023) 'Ukrainians by the thousands arrive in states, but with a time limit' *New Jersey Monitor*, 20 January 2023 [bit.ly/ukrainians-thousands-arrive-states](https://www.njmonitor.com/2023/01/20/ukrainians-thousands-arrive-states/)
8. Veuger S, Nowrasteh A and Watson T (2023) 'Biden Can Use a First Fix for a Broken Immigration System', *Foreign Policy*, 30 January 2023 [bit.ly/biden-immigration-system-humanitarian-parole](https://www.foreignpolicy.com/story/2023/01/30/biden-immigration-system-humanitarian-parole/)
9. See endnote 1.
10. Volk S (2023) 'Welcoming refugees is great, but privatizing resettlement is not the best answer', *Cleveland.com*, 29 January 2023 [bit.ly/welcoming-refugees](https://www.cleveland.com/news/2023/01/welcoming-refugees/)