

# Legislative-Executive Balance of Power in U.S. Refugee Policy

A Solution for Only a Few: Comparing Soviet Refugees from 1988 to 1993 and Syrian Refugees from 2011 to 2016

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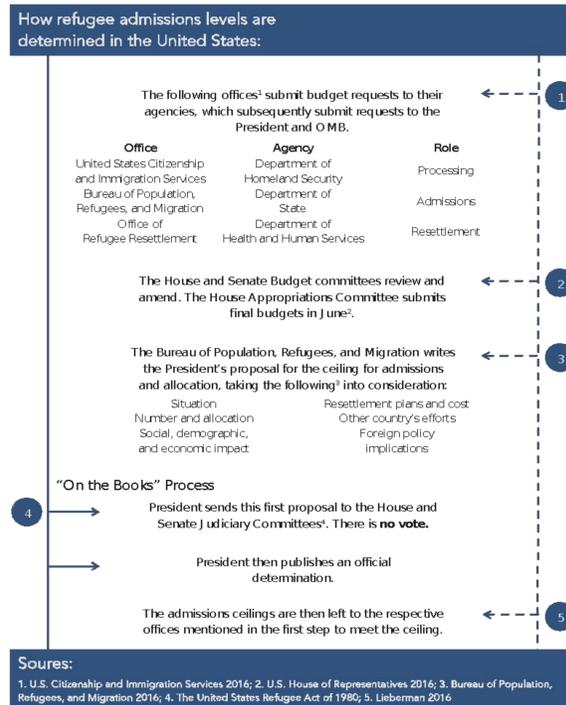
## Introduction and Background

Few papers discuss the legal divide between the legislative and executive branches over U.S. refugee policy. Those that do generally agree that while Congress has largely taken hold of immigration policy as a whole, refugee policy still overwhelmingly falls within the President's domain (Legomsky 1995; Zucker and Zucker 1987). This view of executive dominance is an observation of the historical development of U.S. refugee policy until this point. Early laws, such as the McCarran-Walter Act of 1952 and the Hart-Celler Act of 1965, granted the executive branch vast oversight over refugee admissions by way of the attorney general's parole power, which allowed the executive branch to grant refugee status at its full discretion (Anker and Posner 1981; Hamlin and Wolgin 2012). The Refugee Act of 1980 later attempted to remedy this issue by establishing the "On the Books" process illustrated in the infographic below but still failed to add meaningful congressional oversight over the official refugee policy setting process (Zucker and Zucker 1987).

Various scholars have argued that an important implication of this executive dominance has been the historical foreign policy bias to U.S. refugee admissions, in which the United States is more likely to admit refugees from countries it considers "hostile" to "embarrass or discredit adversary nations" (Teitelbaum 1984: 439). This bias is largely thought to have benefited refugees fleeing Communist states, such as the Soviet Union (Hamlin and Wolgin 2012; Yarnold 1990; Zucker and Zucker 1987). This study, however, takes place within a larger framework in which I argue that Syrian refugees are escaping an enemy that is viewed as the United States might have once viewed Communist nations. By this, I mean that the United States today is similarly preoccupied with countering the spread of terrorism as it once was with containing communism. Yet, Syrian refugees have been met with a vastly different reception than the earlier Soviet refugees, especially from within the Republican-dominated legislative branch. Overall, this study finds that domestic political factors are likely equally, if not more, important than foreign policy in determining U.S. refugee admissions. Additionally, it finds that the legislative branch has developed strategies outside of the traditional refugee policy setting process to influence refugee admissions numbers.

## Overall Policy Setting Process

The policy setting process outlined below has led both scholars and congress members to assume that the legislative body had little input and oversight over refugee admissions numbers. Reasons for this include the wide span of the policy setting space and the lack of a direct check (i.e., voting) on the President's proposal in Step 4. The general assumption was that only a congressional funding committee could affect admissions numbers, which was rather complicated and difficult already.



## Potential Models of Partisan Alignment

	A	B	C	D
Legislative	Dem	Dem	Rep	Rep
Executive	Dem	Rep	Dem	Rep

The figure above outlines my theory on the roles of partisan alignment and legislative branch dominance in setting U.S. refugee policy. Referencing Tichenor's (2002) historical findings that Democrats are almost always more likely to support policies sympathetic to immigrants while Republicans less so, I've outlined four possible scenarios of legislative-executive branch alignment. These scenarios are as follows:

- A: Democrats dominate both branches; resulting admissions numbers are highest of four scenarios
- B: Democrats dominate legislative branch only; resulting admissions numbers are high but lower than in A
- C: Republicans dominate legislative branch only; resulting admissions numbers are low but higher than in D
- D: Republicans dominate both branches; resulting admissions numbers are lowest of four scenarios

## Soviet and Syrian Case Studies

As neither period studied is characterized by fully unified government, my study was only able to test Scenarios B and C to determine the effect of partisan alignment and legislative branch dominance on refugee admissions numbers. As illustrated in the figure below, the period of Soviet refugee admissions from 1988 to 1993 models Scenario B. Two Republican presidents headed the executive branch throughout the duration this period: first with President Reagan and then President H. W. Bush. Although the Congressional session from 1987 to 1989 also features a divided legislative body, the Democratic Party generally dominates the legislative branch during the period as a whole.

Party Alignment in Legislative and Executive Branches, 1988 to 1993

	1987-1989	1989-1991	1991-1993
House	258 Dem 177 Rep	260 Dem 175 Rep	267 Dem 167 Rep
Senate	47 Dem 53 Rep	55 Dem 45 Rep	56 Dem 44 Rep
Presidency	President Reagan Rep		President Bush Rep

Throughout this period, the legislative branch demonstrated, on several occasions, intentions to influence Soviet refugee admissions numbers outside of the process depicted in the infographic to the right. Much of this activity took place in the form of bills or resolutions introduced as a means of "posturing," in that the bills and resolutions were not necessarily submitted with the expectation that they would pass. Rather, they were simply used as a means of presenting and garnering support for a position opposite the executive's. Some examples include:

- S. 476, 1990 - bill to increase the number of Soviet and East Asian refugees (Democrat-introduced)
- H.R. 1605, 1989 - bill to implement emergency increase to refugee quota (Democrat-introduced)
- H.R. 2202, 1989 - bill to implement relaxed requirements for Soviet refugees (Democrat-introduced)

As seen in the next figure illustrating the partisan alignment of the legislative-executive branches during the period relating to Syrian refugees (2011 to 2017), the Republican Party controlled the House of Representatives and eventually the Senate as well, while a Democrat, President Obama, headed the executive branch. In this sense, this period takes after the model in Scenario C.

Party Alignment in Legislative and Executive Branches, 2011 to 2016

	2011-2013	2013-2015	2015-2017
House	193 Dem 242 Rep	201 Dem 234 Rep	188 Dem 247 Rep
Senate	51 Dem 47 Rep	53 Dem 45 Rep	44 Dem 54 Rep
Presidency	President Obama Dem		

As in the period above but perhaps to an even greater extent, the legislative branch also introduced various bills and resolutions in an attempt to present and pressure the executive with a position opposite of his own. Similar examples:

- H.R. 4078, 2015 - a bill to indefinitely suspend admission of Syrian refugees (Republican-introduced)
- H.R. 4043, 2015 and H.R. 4078, 2015 - bills permitting governors to ban resettlement (Republican-introduced)
- H. Res. 533, 2015 - resolution expressing disapproval of President's plan to admit 10,000 Syrian refugees (Republican-introduced)

## Outcomes

In the case of the Soviet refugees, the high admissions numbers that were ultimately awarded to the group were implemented by the executive branch. However, it is important to note that this was not the original policy position of the Reagan nor Bush administrations. For example, in 1988, the U.S. Department of State temporarily defunded an entire processing site through which Soviet refugees were being processed. In another instance in 1989, the U.S. Department of State shifted refugee-processing centers from Rome and Vienna to Moscow, where Soviet refugees received significantly higher denial rates (Churgin 1996). When the Reagan administration ultimately changed its position by increasing the number of spaces for Soviet refugees (Pear 1989), the change represented a shift towards the legislative branch's policy preference.

A similar balance is reached between the legislative and executive branches in determining Syrian refugee admissions. It is difficult to say with certainty what the Obama administration's initial position might have been, but the fact that he was willing to significantly increase the quota for the fiscal year in which he would have left office suggests his administration was in favor of high admissions numbers. Thus, it is highly possible that the relatively low admissions numbers for Syrian refugees implemented under the Obama administration also represented an executive shift towards the legislative branch's policy preference.

## Conclusions and Moving Forward

This study brings forth two important findings: (1) that domestic politics contribute more to U.S. refugee policy than once thought, and (2) that the legislative branch has adapted to the refugee policy setting process by developing strategies to disrupt and influence the process from outside of it. These two observations can largely account for the differences in reception of the Soviet and Syrian refugees.

Moving forward, this research model can be implemented to identify how domestic politics have influenced admissions numbers for other refugee groups and to validate how partisan alignment in unified government might further contribute to these effects. Additionally, there is more to learn in terms of the role of the courts in influencing refugee admissions numbers, especially under the Trump Administration.



When I began this project, I also had not anticipated that the Trump administration would become immediately relevant to it, thanks to his "Muslim Bans." These developments are interesting for two reasons: (1) Trump's presidency represents another alignment, outlined above in Scenario D, but also (2) the involvement of the courts in striking down Trump's "bans" marks an end in an era in which the courts typically deferred to the "plenary power" doctrine (which gave the legislative and executive branches broad discretion over immigration and refugee policy by refusing to hear trials relating to it).

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