

The Administration Needs to Increase Visa Sanctions on Russia

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KEY TAKEAWAYS

The U.S. should use the policy tools at its disposal to impose heavy costs on Russia that hasten an end to Vladimir Putin's barbaric war in Ukraine.

Ultimately failing to cripple Putin's war machine, the Biden Administration's sanctions against Russia have not gone nearly far enough.

U.S. sanctions locking Russian citizens out of the United States will increase pressure on Putin's regime to end the war in Ukraine.

At the end of August, European Union (EU) foreign ministers discussed a ban on tourist travel for Russian citizens. Supporters of a blanket ban included the Czech Republic (which holds the rotating EU presidency until December) and countries bordering Russia—Estonia, Finland, Latvia, Lithuania, and Poland. Germany and France did not support a ban out of concern, among other reasons, that it would punish all Russians including Putin's critics.

On August 31, the EU announced a compromise measure that will suspend a visa facilitation agreement that has been in place since 2007. The effect will be to lower the total number of visas issued by EU countries, raise costs for individual Russian applicants, and increase processing times. The agreement also allows individual EU countries to carry out their own bilateral restrictions, which

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several countries on Russia's frontier said they intend to do.¹ On September 22, Finland was reportedly considering closing its frontier to Russians after President Putin announced a draft for up to 300,000 soldiers into his stalled invasion of Ukraine.²

On August 22, the State Department said that the United States does not support a blanket visa ban for Russian citizens. "The US wouldn't want to close off pathways to refuge and safety for Russia's dissidents or others who are vulnerable to human rights abuses," according to a department spokesman. "We've also been clear that it is important to draw a line between the actions of the Russian government and its policies in Ukraine, and the people of Russia."³

Unfortunately, all available data point to the Russian people strongly supporting the war, at least in part because, outside military personnel, they have not suffered from its consequences as the people of Ukraine have. Increasing visa sanctions is a valuable non-military means to increase the consequences of the war for Russia with the ultimate goal of creating internal pressure on Putin to withdraw from Ukraine. In addition, the spokesman's justification for not increasing visa sanctions is incorrect. Under the Immigration and Nationality Act, foreign dissidents or others who are vulnerable to human rights abuses do not need a U.S. visa to apply for U.S. refugee protection.⁴

Current Limited U.S. Visa Issuance to Russians

Before Russia invaded Ukraine, the U.S. issued approximately 1,200 diplomatic, 3,700 tourist, and 3,700 student/exchange visas to Russian nationals in fiscal year 2021.⁵ At present, "due to the Russian government's April 23 notification prohibiting the U.S. Embassy Russia from employing foreign nationals in any capacity," the U.S. Embassy in Moscow is not issuing any visas in Russia except for diplomats. Consulates in Yekaterinburg and Vladivostok "remain in suspended status."⁶

Russian national expatriates or those temporarily overseas may still apply for non-immigrant (temporary) visas at any U.S. embassy or consulate where they can obtain an appointment. However, due to COVID-related staffing shortages and backlogs, most embassies worldwide have waiting lists of months or even years for non-immigrant visas.

U.S. embassies can make exceptions for student visas, medical emergencies, and other categories of travel deemed urgent or priority either by the State Department's Bureau of Consular Affairs or by individual post management. Consular officers can also accept referrals from U.S. diplomats for

cases where an expedited interview or issuance would be in the U.S. national interest. These cases should be subject to strict controls and accountability. President Biden's April 2021 Executive Order (EO) 14024, the basis for most current sanctions against Russia, also leaves room for parole or visas with ineligibility waivers in special cases.

Biden Administration Sanctions on Russia After Ukraine Invasion

Since the Russian invasion of February 2022, the Biden Administration has used EO 14024 to sanction Russians by freezing their assets and banning travel to the U.S. Section 1 of the EO froze the assets of Russians implicated in "harmful foreign activities of the Government of the Russian Federation" including trying to "undermine security in countries and regions important to United States national security."⁷ Section 3 suspended the issuance of non-immigrant visas to implicated Russians, but allowed waivers by the Secretaries of Homeland Security and State for cases in the national interest.

As of August 2022, State has imposed visa sanctions on 5,000 Russian individuals so far. The latest round, on August 2, put visa restrictions on 893 Russian Federation officials, 31 (other) foreign government officials, three oligarch "Putin enablers," five officials in occupied Ukraine, and a long list of companies, state entities, and other institutions.⁸ The sanctions froze "all property and interests in property of the individuals above that are in the United States or in the possession or control of U.S. persons" and prohibited "all transactions by U.S. persons or within (or transiting) the United States that involve any property or interests in property of designated or blocked persons...unless authorized by a general or specific license issued by OFAC [the U.S. Department of the Treasury's Office of Foreign Assets Control], or exempt."⁹

So far, as *The Washington Post* reported on August 23, "Western sanctions are wounding but not yet crushing Russia's economy." Reviewing the effects of all of the international sanctions imposed so far, the *Post* concluded that "[a]irlines have slashed international flights to near zero" and "thousands of highly educated people have fled the country."¹⁰ Russian industry is suffering from the removal of foreign investment, parts, and cooperation. Unless or until the Biden Administration is willing to impose the truly crushing economic sanctions that would change Putin's calculus, visa sanctions present another opportunity to pressure Moscow.

In addition to stronger economic sanctions, increased pressure must be felt at all levels of society with the United States using every tool at our

disposal to hasten the end of this barbaric war. This includes visa sanctions on all Russian citizens that intend to travel to America.

The Effect of U.S. Visa Restrictions

The U.S. is solely responsible for issuing visas to visit the United States, but in practice, it works closely with the law enforcement and border control agencies in other nations to solicit information about individuals seeking visas so that it can reject those who have criminal records, who pose a threat of terrorism, or who present a risk to national security. The U.S. also usually works with other nations to ensure that foreign nationals who break the law in the United States are returned to their country of origin and are accepted back by that country.

Russia has a poor record of cooperating with the U.S. to accept back Russian nationals who committed crimes in the U.S. and whom the U.S. seeks to deport. On the other hand, Russia seeks to harass dissidents and regime opponents inside the U.S. by demanding that the U.S. turn them over to Russia. Refusing to issue visas for Russians to visit the U.S. would reflect the fact that the U.S. does not have confidence in the Russian government's willingness either to provide accurate information about Russians seeking U.S. visas or to work with the U.S. to prevent and punish violations of U.S. law. It is a justified response to Russia's refusal to abide by the most fundamental rule of international relations: reciprocity. If Russia is going to misuse the U.S. immigration and visa system, the U.S. should refuse to allow Russia to access that system.

It is unlikely that a refusal to issue visas to Russian citizens will backfire by affecting many pro-Western Russians. Moreover, in practice, Russians who come to the U.S. to study or travel are likely to come from the elite, to be well-off, and not to be known opponents of Vladimir Putin: If they were opponents of the regime, they would have found it difficult either to accumulate the funds necessary to travel or to feel safe in applying for or using a passport to leave Russia. The U.S. should bear in mind that pro-Western Russians know better than anyone else that it is Putin and his cronies who are responsible for Russia's ostracism by the West. The U.S. will neither win nor retain their affection by being soft on Putin's regime. The U.S. will of course retain—and should use—the power to give asylum to Russians who have a bona fide fear of persecution by the Putin regime.

A complete U.S. visa ban on Russia will not compel Russia to end its war of aggression in Ukraine, but this is the wrong framework to apply to the

visa ban or to any other U.S. policy response to that war. There is no single measure the U.S. can take that will force Russia to end its war. What the U.S. should do is to take measures that raise the costs Russia faces as a result of its war. Preferably, these measures will have a lower cost for the U.S. than for Russia. Refusing to issue visas to Russians will have low costs for the U.S. but will impose higher costs that will be focused on the Russian elite on whom Putin relies for support.

The fact that the U.S. currently issues relatively few visas to Russians would not make U.S. leadership in this realm irrelevant. Given the number of Russians who visit Europe, a European ban on visas for Russian visitors would indeed have a greater impact on Putin's regime and its supporters than a U.S. ban would have. The Russian elite loves to summer in Cyprus, Turkey, and Greece. Closing those getaways to rich and connected Russians would be a serious blow to Putin's circle. But the U.S. cannot credibly urge European nations to refuse to give visas to Russians if it continues to issue these visas itself. Refusing to issue visas to Russians must be part of a much wider diplomatic strategy of making the Russian elite live with the consequences of the war of aggression they have supported.

Possible Visa Sanction Increases

The simplest and quickest option would be immediate presidential action. Under the Immigration and Nationality Act (INA), the President has the authority to suspend the entry "for such period as he shall deem necessary" of "any aliens or any class of aliens" where he finds that it would be "detrimental to the interests of the United States."¹¹ This requires a presidential proclamation and could be applied to visitor, student, exchange visitor, crew visas, etc., either all at once or in stages to bring increased pressure on Russia and greater public attention to the ratcheting of sanctions.

Under the INA, the U.S. in theory could also ban visas for Russian diplomats to their bilateral mission, consulates, or even the United Nations (G visas) attending U.N. meetings. Russia and the U.S. have engaged in tit-for-tat expulsions of bilateral diplomats and shrinking of allowed numbers on several occasions. In February 2022, the U.S. expelled 12 Russian diplomats posted to their U.N. mission on the grounds that they were engaging in espionage.¹² In 2020, it was alleged that the U.S. failed to issue a visa to Iranian Foreign Minister Javid Zarif to attend U.N. meetings.¹³

Denying visas to Russian U.N. delegates would be difficult. Only certain INA visa ineligibilities (in brief, espionage, terrorism, or "adverse foreign policy consequences") apply to U.N. visa applicants.¹⁴ Under the

U.N. Headquarters Agreement with the United States, foreign government officials, even those from hostile countries or to whom ineligibilities apply, are generally able to get visas to attend U.N. meetings, first and foremost the U.N. General Assembly in September.¹⁵ Any delay or refusal of visa issuance to Russian officials intending to travel for U.N. purposes would likely result in conflicts with the U.N., leading to possible arbitration. The U.N. Headquarters Agreement of 1947 mandates “unimpeded transit” for foreign officials to U.N. headquarters in New York, but the U.S. reserves its sovereign right to ban travelers. Under the Headquarters Agreement, conflicts are supposed to be resolved by arbitration.¹⁶

Another way to appropriately sanction Russian officials is in response to their recalcitrance in accepting the return of their nationals who have been convicted of crimes in the U.S. The INA authorizes the Secretary of Homeland Security to instruct the Secretary of State to “discontinue granting immigrant visas or nonimmigrant visas, or both” to citizens of countries “denying or delaying accepting an alien.” These sanctions have been used to persuade countries to accept their citizens who have been criminally convicted in the U.S., are eligible for release, but have no legal status to remain in the U.S. State generally has started by discontinuing the issuance of official visas and has increased sanctioned categories as necessary to gain cooperation.

In 2020, Immigration and Customs Enforcement listed Russia as a country “At Risk of Non-Compliance” in accepting their nationals to be deported by the U.S. This program seems to have been sidelined in the Biden Administration, as the list has not been updated since January 2020.¹⁷ A declaration by the Secretary of Homeland Security that Russia was “denying or delaying accepting an alien” (even one) would appear to be sufficient to allow the use of these sanctions at his discretion in consultation with the Secretary of State. Such sanctions have been very effective against several recalcitrant countries (The Gambia, Sierra Leone) but less so with others (China).¹⁸ It is unlikely that they would have much effect on Russia in the present circumstances, as few Russians travel to the U.S. and many other sanctions are in place.

What the President Should Do

The President should:

- **Issue** an Executive Order or Proclamation to ban visa issuance under 8 U.S. Code §1182(f) to cover all Russians for any visa class except certain diplomats and official travelers.

- **Freeze** all efforts to return Russians wanted by the Russian government on charges that either cannot be independently verified or are politically motivated.

Conclusion

To date, economic sanctions on Putin, his officials, and influential Russians have neither reversed Russia's invasion of Ukraine nor mitigated its prosecution of the war. Especially if implemented in conjunction with European Union visa sanctions, comprehensive U.S. sanctions locking Russian visitors, students, and workers out of the United States will increase pressure on Putin's regime to end the war in Ukraine on the most favorable terms possible for both Washington and Kiev.

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