"Snowed In" in Russia: A Historical Analysis of American and Russian Extradition and How the Snowden Saga Might Impact the Future

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With the Russian Federation's (Russia) decision to grant Edward Snowden[1] temporary asylum for one year,[2] a dark shadow has been cast over the future relationship between Russia and the United States.[3] In the wake of Russia's decision to give Snowden temporary asylum, relations between the two countries have deteriorated quickly.[4] In September 2013, shortly after Russia granted Snowden

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1. Edward Snowden is an American citizen "charged with theft, 'unauthorized communication of national defense information' and 'willful communication of classified communications intelligence information to an unauthorized person,' according to the [criminal] complaint" filed by federal prosecutors; the latter two charges were filed pursuant to the Espionage Act of 1917. Peter Finn & Sari Horwitz, *U.S. Charges Snowden with Espionage*, WASH. POST (June 21, 2013), http://www.washingtonpost.com/world/national-security/us-charges-snowden-with-espionage/2013/06/21/507497d8-dab1-11e2-a016-92547bf094cc_story.html.

2. Isabel Gorst, *Russia Gives Edward Snowden Asylum for Three More Years*, L.A. TIMES (Aug. 7, 2014, 10:37AM), http://www.latimes.com/world/europe/la-fg-russia-snowden-asylum-20140807-story.html.

3. The author wishes to clarify that, in this Note, he takes no stance on whether Edward Snowden's actions are criminal or heroic. For a discussion on whether Snowden's actions are heroic or traitorous, *compare* John Cassidy, *Why Edward Snowden is a Hero*, NEW YORKER (June 10, 2013), http://www.newyorker.com/online/blogs/johncassidy/2013/06/ why-edward-snowden-is-a-hero.html, *with* Jeffery Toobin, *Edward Snowden is No Hero*, NEW YORKER (June 10, 2013), http://www.newyorker.com/online/blogs/comment/2013/06/edward-snowden-nsa-leaker-is-no-hero.html.

4. This is not solely because of Russia's decision to grant Snowden asylum. Over the last few years, Russia and the United States have had differing opinions on Syria's government, as Russia continues to support the Bashar al-Assad regime that has been accused of using chemical weapons against its citizens. Hayes Brown, *4 Issues Chilling U.S.-Russian Relations As Winter Olympics Begin in Sochi*, THINK PROGRESS (Feb. 7, 2014, 2:02 PM), http://think

temporary asylum, President Obama cancelled a meeting that was to take place in Russia.[5] American politicians called for a boycott of the 2014 Winter Olympics in Sochi.[6] The chilling effect that the temporary asylum caused harkens back to the relationship between the United States and Russia during, and after, the Cold War.

Part I of this Note will begin by providing a broad survey of the history of extradition agreements. Part II will engage in a historical analysis of American-Russian extradition agreements, followed by Snowden's story in Part III. Part IV will offer an example of what a hypothetical American-Russian extradition treaty would look like and will discuss whether or not the proposed treaty, if enacted prior to Snowden seeking asylum, would have altered Russia's decision to grant him temporary asylum.

I. A BRIEF HISTORY OF EXTRADITION TREATIES

The concept of extradition—in which one country sends a wanted fugitive back to the country seeking the fugitive—is not a recent development.[7] The ancient Egyptians and Hittites entered into the first known extradition agreement in 1258 B.C.[8] Further, ancient

progress.org/world/2014/02/07/3263471/4-issues-chilling-russia-america/. Moreover, soon after President Obama announced his plans for American military action in Syria, Russian President "Vladimir Putin warned the United States against launching military action in Syria, stating that Russian has 'plans' on how it would react if such a scenario unfolded." Dan Roberts, Spencer Ackerman, Haroon Siddique, & Angelique Chrisafis, *'We Have Our Plans': Vladimir Putin Warns US Against Syria Military* Action, THE GUARDIAN (Sept. 4, 2013, 06:55 AM), http://www.theguardian.com/world/2013/sep/04/putin-warns-military-action-syria. Further, Russia recently adopted a law forbidding the promotion of gay rights, much to the disapproval of Americans and human rights activists internationally. *Id.*

5. Bruce Zagaris, *Russia Grants Snowden Temporary Asylum, Frustrating U.S. Extradition Efforts*, 29 NO. 10 INT'L ENFORCEMENT L. REP. 372 (2013) [hereinafter Zagaris, *Frustrating U.S. Extradition*].

6. Tanya Domi, *Send Athletes to the Sochi Olympics, but Boycott the Games*, N.Y. TIMES (Feb. 6, 2014, 6:27 PM), http://www.nytimes.com/roomfordebate/2014/02/06/when-should-countries-boycott-the-olympics/send-athletes-to-the-sochi-olympics-but-boycott-the-games ("[S]ome Western political leaders, including President Obama, came together in a so-called political boycott, choosing to support the participating athletes but to stay home and effectively snub President Vladimir V. Putin at the opening ceremonies, in effect undercutting Putin's pinnacle moment of nationalistic glory.").

7. William Magnuson, *The Domestic Politics of International Extradition*, 52 VA. J. INT'L L. 839, 846 (2013).

8. *Id.* An extradition agreement was embedded into a peace treaty between Rameses II, pharaoh of Egypt, and Hattusili III, prince of the Hittites. *Id.* The treaty stated that criminals

Greeks and Roman city states used extradition agreements, which relied on the concept of *noxae deditio*.[9] *Noxae deditio* held that "[a] state that harbored a foreign criminal was considered to be poisoned or tainted by the presence of that individual, and could be held liable for that criminal's actions."[10] However, "Greek and Roman values concerning hospitality and the protection of guests coincided with a strongly-held belief that the gods favored the granting of asylum."[11]

Despite an extensive history, modern forms of extradition agreements began taking form in the 1800s.[12] Whereas earlier extradition agreements focused primarily on crimes of a political nature,[13] extradition agreements, beginning around the early 1800s, focused primarily on common offenses, such as torts and regular crimes.[14] This shift can be attributed to the history of European democracies and the United States as "the product[s] of revolution and thus, [these new democracies] strongly opposed the extradition of political offenders and refugees."[15] Advocacy for the protection of political offenders and refugees influenced political essays of the

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fleeing from one empire to the other "would not be sheltered by the receiving king, but rather, would be delivered up to the proper authorities in the country from which they fled." *Id.* at n.31.

9. *Id.* at 846–47. The Roman law of *noxae deditio* held that a father or master would be responsible for the crimes of his child or slave if the father or master could not find the guilty individual. *Id.* at 847.

10. *Id.* at 847.

11. *Id.* at n.32; *see also* 1 COLEMAN PHILLIPSON, THE INTERNATIONAL LAW AND CUSTOM OF ANCIENT GREECE AND ROME 349 (1911) ("The right of asylum occupied a prominent place in the religious, in the political, and in the legal history of antiquity. Commanded by the gods who zealously punished all infractions of this obligation, it was in a sense above the common law . . .").

12. Christine E. Cervasio, Note, *Extradition and the International Criminal Court: The Future of the Political Offense Doctrine*, 11 PACE INT'L L. REV. 419, 422 (1999); *see also* Magnuson, *supra* note 7, at 848 ("By the nineteenth century, what we might consider the modern extradition began to take shape… This was a very different kind of treaty from previous ones, for it dealt with the problem of regular crimes and torts rather than political offenses.").

13. Cervasio, *supra* note 12, at 421.

14. Magnuson, *supra* note 7, at 848–49. It is noteworthy that the Industrial Revolution coincides with the changing philosophy on what offenses should be covered by an extradition treaty. *Id.* at 852. With the advancements in transportation, "[s]uddenly, national borders were hours, rather than days, distant. As a consequence of the new technologies, 'the conviction was forced upon the States of [civilized] humanity that it was in their common interest to surrender ordinary criminals regularly to each other.'" *Id.* (quoting 1 LASSA OPPENHEIM, INTERNATIONAL LAW 697 (8th ed. 1955)).

15. *See* Cervasio, *supra* note 12, at 422.

time[16] and even the Declaration of Independence.[17] Eventually, the notion of extraditing a fugitive for committing offenses of a political nature became less common in many countries;[18] this perspective was first explicitly stated in Belgium's statutory code.[19] Now, most modern extradition agreements contain a provision known as the "Political Offense" exception,[20] which specifically provides protections to individuals wanted for offenses of a political nature.[21]

16. *See generally* JOHN LOCKE, TWO TREATISES OF GOVERNMENT (London, Thomas Tegg, W. Sharpe & Son 1823); Alex Tuckness, *Locke's Political Philosophy*, STANFORD ENCYCLOPEDIA PHIL., (Edward N. Zalta ed., 2010) (last updated July 29, 2010), http://plato.stanford.edu/entries/locke-political/#SepPowDisGov ("[I]f the rule of law is ignored, if the representatives of the people are prevented from assembling, if the mechanisms of election are altered without popular consent, or if the people are handed over to a foreign power, then they can take back their original authority and overthrow the government. They can also rebel if the government attempts to take away their rights."); *see also* DECLARATION OF THE RIGHTS OF MAN AND CITIZEN art. II (Fr. 1789) ("The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression.").

17. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights . . . That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government . . .").

18. *See* Magnuson, *supra* note 7, at 851.

19. David M. Lieberman, Note, *Sorting the Revolutionary from the Terrorist: The Delicate Application of the "Political Offense" Exception in U.S. Extradition Cases*, STAN. L. REV. 181, 187 (2006). The Belgian statutory language stated, "It shall be expressly stipulated in [extradition] agreements that no foreigner may be prosecuted or punished for any political crime antecedent to the extradition, or for any act connected with such a crime. . . ." *Id.* (citing *Harvard Research in Int'l Law, Extradition*, 29 AM. J. INT'L L. 15, 362–63 (Supp. 1935) (quoting OFFICIAL BULLETIN (Belg.), No. 77 (1833) (unofficial translation)).

20. *See* Lieberman, *supra* note 19, at 187. Soon after Belgium codified their political offender exception, many other countries followed suit, including the United States in an extradition treaty with France in 1843. *Id.*

21. There are two classifications of political offenses. *See* Cervasio, *supra* note 12, at 426. Pure political offenses are acts "directed solely against the political order. . . ." *Id.* (quoting IVAN SHEARER, EXTRADITION IN INTERNATIONAL LAW 181–82 (1971))). "This category of offenses is limited to treason, espionage, and sedition. Pure political offenses are rarely extraditable crimes. Relative political offenses are common crimes, such as murder or theft, which are connected with a political act. These offenses may qualify for the political offense exception." Michael R. Littenberg, Note, *The Political Offense Exception: An Historical Analysis and Model for the Future*, 64 TUL. L. REV. 1195, 1198–99 (1990). "Relative political offenses can be broken into two sub-categories. Délit complexe are those acts 'directed at both the political order and private rights.' Délit connexe is 'in itself not an act directed against the political order, but which is closely connected with another act which is so directed.'" Cervasio, *supra* note 12, at 426.

The Political Offense exception exists as a result of the concern that an individual would be subjected to an unfair trial or inhumane treatment if extradited to the requesting State for committing a political offense.[22] "Despite such concerns, many countries have adopted a rule of non-inquiry, under which courts may not examine the requesting country's justice system or human rights record in determining whether to extradite an individual."[23] The rule of non-inquiry, thus, is implemented out of respect for and as a courtesy to the requesting nation.[24] The United States Supreme Court adopted a position of non-inquiry in *Neely v. Henkel*,[25] which held that "[w]hen an American citizen commits a crime in a foreign country, he cannot complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty stipulations between that country and the United States."[26]

Further, many nations will not extradite an individual if the alleged action fails the dual criminality requirement—that the alleged offense be criminal in both the requesting and receiving nation.[27]

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22. Cervasio, *supra* note 12, at 420.

23. Magnuson, *supra* note 7, at 886.

24. David B. Sullivan, Note, *Abandoning the Rule of Non-Inquiry in International Extradition*, 15 HASTINGS INT'L & COMP. L. REV. 111, 119 (1991) (stating that "[t]he rationale for the rule of non-inquiry is that it is not the courts' business to assume responsibility for supervising the integrity of the judicial system of another sovereign nation. Such a role would directly conflict with the principle of comity upon which extradition is based.").

25. Neely v. Henkel, 180 U.S. 109 (1901).

26. *Id.* at 123. This sentiment was reiterated in the 2008 Supreme Court case *Munaf v. Geren*, where the Court held that "it is for the political branches, not the Judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments. 553 U.S. 674, 700–01 (2008).

27. Jonathan Hafen, Note, *International Extradition: Issues Arising Under the Dual Criminality Requirement*, Jonathan Hafen, 1992 B.Y.U. L. REV. 191, 191 (1992).

II. AMERICAN-RUSSIAN EXTRADITION HISTORY LEADING UP TO THE SNOWDEN SAGA

A. The 1893 Extradition Treaty

In 1893, the United States and tsarist Russia entered into the first extradition treaty between the two sovereignties.[28] This treaty included a political offense clause,[29] but it created an exception to that clause for individuals that took "an attempt against the life of the head of either Government . . . ."[30] However, "[t]hat extradition treaty is now long forgotten and the United States and Russia have no formal agreement."[31]

The exact moment that the 1893 extradition treaty lost its validity has been debated.[32] There are compelling arguments on both sides of this argument. In 2007, an advisor to Russia's prosecutor general argued for the validity of the 1893 extradition treaty,[33] as the treaty specifically states that it "shall remain in force for six months after notice of its termination shall have been given by either of the contracting parties,"[34] and since no notice of termination has been given, the advisor argued that the 1893 extradition treaty was still valid. However, multiple changes in government have led others to conclude that the 1893 treaty lost its validity when the Bolshevik

28. Eyder Peralta, *3 Extradition Cases That Help Explain U.S.-Russia Relations*, NPR (Aug. 7, 2013, 2:34 PM), http://www.npr.org/blogs/thetwo-way/2013/08/07/209846990/3-extradition-cases-that-help-explain-u-s-russia-relations.

29. T.F. Bayard, C. Struve, & Rosen, *Text of the Russian Extradition Treaty*, 55 AMERICAN ADVOCATE OF PEACE 7, 148–49 (1893). The treaty stipulated that "[i]f it be made to appear that extradition is sought with a view to try or punish the person demanded for an offence of a political character, surrender shall not take place. . . ." *Id.*

30. *Id.*

31. Peralta, *supra* note 28.

32. *Id.* While US officials have long thought the 1893 treaty to be invalid, there appears to have been no formal cancellation. *See* Carl Schreck, *From Tsar to Snowden, US-Russian Extradition Deal Saw Quiet Demise*, RIA NOVOSTI (June 29, 2013, 1:29PM), http://en.ria.ru/world/20130629/181944016/Tsar-Alexander-to-Snowden-US-Russian-Extradition-Deal-Treaty-Saw-Demise.html. This question was taken up in 1947 when the United States was asked to extradite Kirill Alekseev, a Soviet diplomat who defected to the United States after leaving his post in Mexico. *Id.* "State Department officials were unsure whether the two countries had an extradition treaty under which [Alekseev] could be transferred to the Soviets." *Id.*

33. Schreck, *supra* note 32.

34. Bayard, *supra* note 29, at 149.

Revolution took place in 1917.[35] Further, the United States, as early as 1941, suggested that they did not view the 1893 extradition treaty as being binding.[36]

While there is no currently recognized extradition treaty between the two countries, the United States has actively deported Russian criminals back to Russia.[37] However, there have been a handful of high-profile Russian extradition requests that the United States has rejected.[38]

B. High-Profile Extradition Requests[39]

1. The Nazi War Criminals

After the Second World War, the United States enacted the Displaced Persons Act of 1948 (DPA)[40] to enable "European refugees driven from their homelands by World War II to emigrate to the United States without regard to traditional immigration quotas."[41] The DPA's "definition of 'displaced persons' eligible for immigration to [the United States] specifically excluded individuals

35. Schreck *supra* note 32. This argument is persuasive. The United States entered into the 1893 treaty with the tsarist Russian government, not the United Soviet States of Russia or the Russian Federation. Further, "the tsarist-era extradition treaty may have been scrapped by one or both of the sides in the wake of the Bolsheviks' overthrow of the Tsar in 1917 and the Soviet renunciation of his foreign commitments." *Id.*

36. *Id.* According to Schreck, a 1970 United Nations report indicates that the United States may have viewed the 1893 extradition treaty as obsolete in 1941 when they removed it from their books; a State Department report on America's extradition obligations suggests the same. *Id*. However, Christopher Blakesley, a former State Department extradition attorney, argues that "cancellation of the treaty 'clearly requires' that it be done 'through official channels, usually by diplomatic note.'" *Id.*

37. *Id*. From 2002 to 2011, the Department of Homeland Security deported 627 Russian criminals despite no obligation to follow an extradition treaty. *See* U.S. DEP'T OF HOMELAND SEC., 2011 YEARBOOK OF IMMIGRATION STATISTICS (Sept. 2012), Table 41, https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf. While deportation and extradition are not the same, the ideology behind sending criminals back to face trial in their home country is very similar to the aforementioned ideologies that led to the current development of extradition agreements.

38. *See* Peralta, *supra* note 28.

39. It should be noted that the author remains neutral on all of the following instances regarding extradition conflicts between the United States and Russia.

40. The Displaced Persons Act of 1948, Pub. L. No. 80–774, 62 Stat. 1009 (1948), *amended by* Pub. L. No. 81–555, 64 Stat. 219 (1950)).

41. Fedorenko v. U.S., 449 U.S. 490, 490 (1981).

who had assisted the enemy in persecuting civilians or had voluntarily assisted the enemy forces in their operations."[42] However, Nazi war criminals willfully made misrepresentations to meet the definition of a "displaced person" under the statute and gained entry to the United States.[43] Feodor Fedorenko and Karl Linnas are the only two men accused of war crimes that were deported from the United States to Soviet Russia.[44]

Feodor Fedorenko served in the Russian Army in 1941, but was captured by German soldiers.[45] While a prisoner-of-war, Fedorenko became an armed guard for the Nazis at their concentration camps.[46] In 1949, Fedorenko applied for entry to the United States claiming he was a 'displaced person,'[47] per the DPA, but he did not disclose that he worked as a concentration camp armed guard for the Nazis.[48] Fedorenko was subsequently granted a visa based on this misrepresentation.[49] Ultimately, Fedorenko received full citizenship in 1970.[50] The United States learned of Fedorenko's misrepresentations in 1977, and they filed an action to revoke Fedorenko's citizenship.[51] Upon final adjudication of his case, Fedorenko was extradited to Russia in 1984 to stand trial for his involvement in committing war crimes per the request of the Russian government.[52]

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42. *Id.* at 495 (internal quotations omitted).
43. *Id.*
44. Felicity Barringer, *Soviet Reports it Executed Nazi Guard U.S. Extradited*, N.Y. TIMES (July 28, 1987), http://www.nytimes.com/1987/07/28/world/soviet-reports-it-executed-nazi-guard-us-extradited.html.
45. *Fedorenko*, 449 U.S. at 494.
46. *Id.*
47. *Id.* at 496.
48. *Id.* at 496–97.
49. *Id.*
50. *Id.*
51. *Id.* at 497–98.
52. *Soviets Sentence Fedorenko to Die for Nazi War Crimes: Was Extradited From U.S. to Face Charges*, L.A. TIMES (June 19, 1986), http://articles.latimes.com/1986-06-19/news/mn-12363_1_nazi-war-crimes. Fedorenko was executed on July 28, 1987 after standing trial in Russia and receiving a death sentence. Barringer, *supra* note 44.

Like Fedorenko, Karl Linnas entered the United States in 1951 under false pretenses and obtained citizenship in 1960.[53] On three occasions, the Soviets had requested that Linnas be extradited to Russia to stand trial for alleged war crimes.[54] The US government initially rejected these extradition requests but, after learning of Linnas' false pretenses in obtaining citizenship, began the process to deport him in 1979.[55] Deporting Linnas proved to be problematic;[56] however, he was ultimately sent to Russia after much deliberation[57] and Supreme Court involvement.[58]

2. Kirill Alekseev/Alexeyev

In 1947, Kirill Alekseev was working in Mexico as a Soviet trade representative when he fled to the United States.[59] Upon entering the United States, Alekseev harshly criticized Russia by stating that Russia was a "hell of dictatorship."[60] Russian officials called for the

53. Linnas v. I.N.S., 790 F.2d 1024, 1026 (2d Cir. 1986). Linnas told American officials that he was a university student during the World War II, when he was actually the head of a Nazi concentration camp in Tartu, Estonia. *Id.*

54. Peralta, *supra* note 28. *See generally* GINSBURGS, RUBENSTEIN, & SMOLANSKY, RUSSIA AND AMERICA: FROM RIVALRY TO RECONCILIATION (1993), for further discussion. The Soviets asserted that Linnas was responsible for war crimes at the Tartu concentration camp. *Linnas*, 790 F.2d at 1026. They held a war crimes tribunal, tried Linnas in absentia, and found him guilty. *Id.*

55. Linnas, 790 F.2d at 1026.

56. *Id.* at 1027. Linnas had requested deportation to Estonia, his home country; however, since Estonia was incorporated into Soviet Russia at the end of the Second World War, Estonia technically became a part of Soviet Russia. *Id.* Because the United States had not recognized the Soviet Union's annexation of Estonia, the immigration judges handling Linnas' case needed a statutory basis for sending Linnas to Russia. *Id.* at 1027.

57. Immigration judges may deport to any country if the country falls within one of seven categories. *Id.* at 1027–28. The Second Circuit determined Soviet Russia fell within two of the seven categories: first, deportation to the country where the individual's birthplace is located at the time of deportation, and, second, if deportation under any of the other categories is impossible, deportation is valid to any country that will accept the individual. *See id.* Because that Russia was the only country willing to accept Linnas post-deportation, and Russia had annexed Estonia, Linnas' place of birth, the judges found a statutory basis for deporting Linnas to Russia.

58. On July 2, 1987, Linnas died in a Leningrad hospital prior to receiving his death sentence. *Deported Nazi Linnas Dies in Soviet Hospital*, L.A. TIMES (July 2, 1987), http://articles.latimes.com/1987-07-02/news/mn-1932_1_nazi-linnas.

59. Peralta, *supra* note 28.

60. *See Russia Seeks to Enlist U.S. Help to Return Citizen*, THE TIMES RECORD, Jan. 6, 1947, at 7, http://fultonhistory.com/Newspaper%2018/Troy%20NY%20Times%20Record/

United States to extradite Alekseev, alleging Alekseev was guilty of "embezzlement, treachery, treason, provocation, and slander. . . ."[61] In response to Russia's extradition request for Alekseev, "the State Department informed the Soviets that no extradition treaty exists between the two countries and that it is therefore unable to grant Moscow's request that [Alekseev] be turned over to Soviet authorities."[62]

3. Ilyas Akhmadov, the Chechen "Terrorist"

Ilyas Akhmadov is one of Russia's most wanted fugitives.[63] While acting as Chechnya's Foreign Minister, Akhmadov left Chechnya in 1999 to bring awareness to the Chechen push for independence from Russia.[64] Akhmadov sought asylum in the United States in 2002.[65] Upon learning of Akhmadov's application for asylum, Russia called for extradition of Akhmadov so he could stand trial for crimes

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Troy%20NY%20Times%20Record%201947/Troy%20NY%20Times%20Record%201947%20-%200067.pdf. The article states that Alekseev would not "return [to] [his] homeland and doom [his] family, which has become accustomed to breathe the fresh air of freedom, to a life under the hell of dictatorship." *Id.*

61. Peralta, *supra* note 28.

62. Schreck, *supra* note 32 (internal quotations omitted).

63. Aaron Klein, *U.S. Gave Asylum to Accused Chechen Terror Leader. Zbigniew Brzezinski Assisted Man on Russia's Most Wanted List*, KLEIN ONLINE (Apr. 30, 2013, 2:12AM), http://kleinonline.wnd.com/2013/04/30/u-s-gave-asylum-to-accused-chechen-terror-leader-zbigniew-brzezinski-assisted-man-on-russias-most-wanted-list/. When the Union of Soviet Socialist Republics disbanded, the Chechens declared independence in 1991, and, after years of military conflict, Russia left the region in 1996. *Chechnya Profile*, BBC NEWS (last updated on Nov. 12, 2013, 11:11AM), http://www.bbc.co.uk/news/world-europe-18188085. In 1999, Russian troops again entered Chechnya and claimed it succeeded in obtaining control of the independent sovereignty. *Id.*

64. Matthew Brzezinski, *How a Chechen Terror Suspect Wound up Living on Taxpayers' Dollar near the National Zoo*, WASH. POST (Mar. 20, 2005), http://www.washingtonpost.com/wp-dyn/articles/A38200-2005Mar15_4.html. Chechnya, located in the North Caucasus, has long had a tense and sometimes violent relationship with Russia, dating back to the mid-1800s when Russia conquered the Chechens. *Timeline: Chechnya*, BBC NEWS (Jan. 19, 2011), http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/2357267.stm. After the Soviet Union fell in 1991, Chechnya overthrew its communist government and proclaimed itself as an independent nation. *Id.* Ever since, Russia has fought to regain control of Chechnya, which has led to years of bloodshed. *Id.*

65. Brzenzinksi, *supra* note 64.

committed against the Kremlin.[66] The request was dismissed after the immigration judge handling Akhmadov's asylum application determined the evidence of Akhmadov's involvement in terrorist activity as insufficient.[67] In 2004, the United States granted Akhmadov's asylum application.[68] Russia has vehemently opposed the decision, stating that Akhmadov is a terrorist and "accused the U.S. of hypocrisy for granting Akhmadov asylum."[69] In fact, the Russians brought up Akhmadov's asylum during discussions of Edward Snowden's request for extradition.[70]

4. The Viktor Bout Bout

Viktor Bout is a Russian national and an alleged international arms dealer.[71] On March 6, 2008, he was arrested in Thailand pursuant to a sting operation conducted by the United States Drug Enforcement Administration (DEA).[72] The DEA targeted Bout because of his involvement in arms trafficking to the *Fuerzas Armadas Revolucionarias de Colombia* (FARC), a group dedicated to overthrowing the Colombian democratic government and a leading international supplier of cocaine.[73] The United States has an extradition treaty with Thailand[74] and requested that Bout be

66. *Id.* Russian prosecutors and the Russian branch of Interpol objected to Akhmadov's asylum application, claiming that Akhmadov had been "charged with organizing terrorist training camps, and leading 2,000 armed insurgents . . . ." in the 1999 Second Chechen War. *Id.*

67. *Id.*

68. *Id.* While Russian media describes Akhmadov as a terrorist, his actions in the West have shown him to be nothing more than an advocate for peaceful resolution between the warring Chechens and Russian Federation. *See* Editorial, *A Good Decision*, WASH. POST (Aug. 10, 2004), http://www.washingtonpost.com/wp-dyn/articles/A52978-2004Aug9.html ("More to the point, Mr. Akhmadov is well known for denouncing terrorism, for opposing the use of suicide bombs and for working, as he puts it, for a 'negotiated peace' in his country.").

69. Klein, *supra* note 63. Further, Putin stated, "We cannot have double standards while fighting terrorism, and it cannot be used as a geopolitical game." *Id.*

70. David M. Herszenhorn, *Russia Cites Extradition as Sore Point with U.S.*, N.Y. TIMES, (July 22, 2013), http://www.nytimes.com/2013/07/23/world/europe/russia-cites-extradition-as-sore-point-with-us.html?_r=0.

71. U.S. v. Bout, 731 F.3d 233, 236 (2d Cir. 2013).

72. *Id.* at 236–37.

73. *Id.*

74. Treaty of Extradition, U.S.-Thailand, Mar. 24, 1924, 43 Stat. 1749.

extradited to the United States to stand trial.[75] He was extradited to the United States on November 16, 2010 and stood for trial on October 11, 2011.[76]

At trial before the Southern District of New York, a jury found Bout guilty on all counts,[77] and he was sentenced to twenty-five years in prison.[78] Russian officials requested that Bout be transferred to Moscow to serve his sentence pursuant to the 1983 Convention on the Transfer of Sentenced Persons,[79] but this request was denied, much to Russia's dismay.[80] The United States, however, has proffered legitimate reasons for denying Russia's request.[81] At this time, Bout remains incarcerated in the United States.[82]

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75. *Bout*, 731 F.3d at 237. This request was originally rejected but was eventually granted. *Id.*

76. *Id.*

77. *Id.* Bout maintains his innocence and consistently denies the allegations brought against him. RAPSI, *Russia disappointed with US refusal to extradite Viktor Bout*, THE MOSCOW NEWS (Nov. 11, 2012, 10:32AM), http://themoscownews.com/international/20121112/190843165.html.

78. *Bout*, 731 F.3d at 237. The Magnuson article presents commentary on the interests of third party countries in bilateral extradition agreements, especially when the third party country has a citizen being extradited pursuant to a bilateral treaty in which it is not a member. Magnuson, *supra* note 7, at 874 ("Russia's response to Bout's extradition demonstrates that it perceived an interest in the extradition treaty between Thailand and the United States: It wanted to ensure that the treaty gave adequate protection to Russian citizens.").

79. The 1983 Convention on the Transfer of Sentenced Persons says, *inter alia*, that "[a] person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him." Convention on the Transfer of Sentenced Persons, art. 2, March 21, 1983, CETS 167, 21.III. 1983, *available at* http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm. Both the United States and Russia are members of the 1983 Convention on the Transfer of Sentenced Persons. Council of Europe, Signatures on the Transfer of Sentenced Persons, (last updated Feb. 2, 2014) http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=&DF=&CL=ENG.

80. RAPSI, *supra* note 77.

81. The 1983 Convention on the Transfer of Sentenced Persons dictates that transfer may occur only if the following conditions are met: (1) the person is a citizen of the State requesting transfer; (2) the judgment is final; (3) the sentenced person has at least six months left to serve; (4) the sentenced person must consent to the transfer; (5) the sentenced actions are criminal offenses in both States; and (6) the State currently incarcerating the sentenced person agrees to the transfer. Convention on the Transfer of Sentenced Persons, *supra* note 79, art. 3. The US Department of Justice released the following statement to explain why they denied Russia's request: "The United States denied the transfer application because the prisoner has a pending appeal, because of the seriousness of the offence, because of serious law enforcement concerns and because the prisoner is a poor candidate due to his criminal history." RAPSI, *supra* note 77.

82. Damir Sagolj, *US rejects Russia's extradition request for jailed businessman Bout*, REUTERS (Nov. 10, 2012, 2:50PM), http://rt.com/news/viktor-bout-extradition-rejected-392/.

III. THE EDWARD SNOWDEN SAGA

Edward Snowden is a former employee of Booz Allen Hamilton (Booz), a firm that gets most "of its revenue from government contracts."[83] While at Booz, Snowden did contract work for the National Security Agency[84] (NSA), which "granted [him] access to lists of machines all over the world the NSA hacked."[85] On May 20, 2013, Snowden[86] left the United States for Hong Kong,[87] taking secret documents with him containing information about certain NSA surveillance operations.[88] Soon thereafter, Snowden began leaking these documents to The Guardian and The Washington Post, who published a series of articles revealing some of these NSA operations.[89] One revelation uncovered by the reporting alleged that the NSA had been given the authority to spy on foreign governments.[90] Another revelation alleged that the NSA had been

83. Brett Logiurato, *REPORT: Edward Snowden Took a Job with Booz Allen to Gather Evidence on NSA Surveillance Programs*, BUSINESS INSIDER (June 24, 2013, 12:26 PM), http://www.businessinsider.com/edward-snowden-booz-allen-nsa-surveillance-evidence-job-2013-6.

84. Carol D. Leonnig, Jenna Johnson, & Marc Fisher, *Tracking Edward Snowden, from Classroom to a Hong Kong Hotel*, WASH. POST (June 15, 2013), http://www.washingtonpost.com/world/national-security/tracking-edward-snowden-from-a-maryland-classroom-to-a-hong-kong-hotel/2013/06/15/420aedd8-d44d-11e2-b05f-3ea3f0e7bb5a_story.html.

85. Logiurato, *supra* note 83.

86. Barton Gellman & Jerry Markon, *Edward Snowden says motive behind leaks was to expose 'surveillance state*,' WASH. POST (June 10, 2013), http://www.washingtonpost.com/politics/edward-snowden-says-motive-behind-leaks-was-to-expose-surveillance-state/2013/06/09/aa3f0804-d13b-11e2-a73e-826d299ff459_story.html. He was stationed in Hawaii prior to leaving for Hong Kong. *Id.*

87. Bruce Zagaris, *The Snowden Extradition Saga*, 29 INT'L ENFORCEMENT L. REP. 324 (2013) [hereinafter Zaragis, *Saga*].

88. *Id.*

89. *Id.*

90. Ellen Nakashima & Barton Gellman, *Court gave NSA Broad Leeway in Surveillance, Documents Show*, WASH. POST (June 30, 2014), http://www.washingtonpost.com/world/national-security/court-gave-nsa-broad-leeway-in-surveillance-documents-show/2014/06/30/32b872ec-fae4-11e3-8176-f2c941cf35f1_story.html; *see also* Debbie Sharnak, *U.S. Relations with South America Slow to Heal after NSA Spying*, IVN (Dec. 9, 2014) http://ivn.us/2014/ 12/09/u-s-relations-south-american-countries-slow-heal-nsa-spying/ (stating that documents leaked by Snowden prove that the NSA spied on Brazil's president); *see also* James Ball, *NSA Monitored Calls of 35 World Leaders after US Official Handed over Contacts*, THE GUARDIAN (Oct. 25, 2013, 2:50 PM) http://www.theguardian.com/world/2013/oct/24/nsa-surveillance-world-leaders-calls (stating that US-German relations have deteriorated in wake of the NSA surveillance scandal).

performing "warrantless searches on Americans' [telephone and email] communications."[91]

US authorities learned of Snowden's actions soon after,[92] and on, or around, June 21, 2013, the United States submitted an extradition request to Hong Kong and filed a criminal complaint against Snowden, alleging theft and espionage.[93] Hong Kong notified the United States that they found the submitted evidence insufficient and requested more information about the complaint and evidence.[94] However, by the time that US authorities received Hong Kong's request, Snowden had already departed Hong Kong for Russia.[95] He arrived at Sheremetyevo Airport in Moscow on June 23, 2013.[96] For the next five and a half weeks,[97] Snowden did not leave the international terminal's "transit zone."[98]

Snowden's decision to remain in the transit zone for that time can be explained by three reasons. First, at some point prior to his arrival in Moscow, the United States revoked his passport, so Snowden could not have cleared the passport control station at Sheremetyevo Airport.[99] Second, "transit zones" are considered to be limbo spaces "where the standard protections of domestic and international law do not apply."[100] "Third, it appeared as though Snowden's travel to

91. Spencer Ackerman & James Ball, *NSA Performed Warrantless Searches on Americans' Calls and Emails—Clapper*, THE GUARDIAN (Apr. 1, 2014, 4:17 PM), http://www.theguardian.com/world/2014/apr/01/nsa-surveillance-loophole-americans-data.

92. Zagaris, *Saga*, *supra* note 87.

93. *Id.* The criminal complaint alleged "theft of government property, unauthorized disclosure of national defense information and unauthorized disclosure of classified communication intelligence." *Id.*; *see also Edward Snowden: Timeline*, BBC NEWS (Aug. 20, 2013, 3:21 PM), http://www.bbc.co.uk/news/world-us-canada-23768248 [hereinafter *BBC Timeline*].

94. Zagaris, *Saga*, *supra* note 87.

95. *Id.*; *see also* Mirren Gidda, *Edward Snowden and the NSA Files—Timeline*, THE GUARDIAN (July 25, 2013), http://www.theguardian.com/world/2013/jun/23/edward-snowden-nsa-files-timeline [hereinafter *Guardian Timeline*].

96. Andrei Soldatov, *Russian Hospitality: Why Snowden Picked Moscow as His Transit Point*, TIME (June 24, 2013), http://world.time.com/2013/06/23/russian-hospitality-why-snowden-picked-moscow-as-his-transit-point/.

97. Russia gave Snowden temporary asylum on August 1, 2013. *See* Gorst, *supra* note 2.

98. Zagaris, *Frustrating U.S. Extradition*, *supra* note 5.

99. *Id.*

100. Ayelet Schacar, *The Shifting Border of Immigration Regulation*, 3 STAN. J. CIV. RTS. & CIV. LIBERTIES 165, 188. "This means that if a person is caught after disembarking a flight

Moscow was just a waypoint in his travels, with his ultimate destination likely being Ecuador.[101]

On July 1, 2013, Snowden applied for asylum in Russia but withdrew his application the next day.[102] He reapplied for asylum in Russia on July 12, 2013.[103] On August 1, 2013, Russia granted Snowden temporary asylum.[104] Russian officials changed their position about Snowden's asylum requests in part due to international events that occurred during the period between July 1st, when Russian officials discouraged Snowden from applying, and August 1st, when Russia accepted his application.

On July 1 and 2, 2013, Bolivian President Evo Morales attended a meeting in Russia regarding natural gas exportation.[105] While in Russia, Morales told reporters that Bolivia would grant Snowden asylum if he applied.[106] During Morales' flight back to Bolivia, on July 3, 2013, his plane was denied entry to multiple European countries' airspace, likely because these countries believed Snowden was a passenger on the flight.[107] Morales was forced to land in

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but before reaching the first official [] border control checkpoint, that person has not 'landed' for immigration regulation purposes." *Id*.

101. Soldatov, *supra* note 96. An interesting development in Snowden's story is that Julian Assange, the founder of WikiLeaks, has substantial connections with the Ecuadorean government. *Id*. The Ecuadorean government has housed Assange in their embassy in London since 2012. *BBC Timeline*, *supra* note 93. Further, it appears as though the Ecuadorean government assisted Snowden by providing him with an Ecuadorean travel document when his passport was revoked. Zagaris, *Saga*, *supra* note 87.

102. *BBC Timeline*, *supra* note 93. "The Russian government discouraged his first request for asylum . . . and has portrayed itself as neutral." Ellen Barry & Andrew Roth, *Snowden Renews Plea for Moscow to Grant Asylum*, N.Y. TIMES (July 13, 2013), http://www.nytimes.com/2013/07/13/world/europe/snowden-russia-asylum.html?pagewanted= all.

103. *BBC Timeline*, *supra* note 93.

104. Zagaris, *Frustrating U.S. Extradition*, *supra* note 5.

105. *Bolivia awaits Russia's Technology and Energy Investment—Morales to RT*, RT (July 3, 2013, 10:19 AM), http://rt.com/business/bolivia-morales-russia-energy-investments-599/.

106. Zagaris, *Saga*, *supra* note 87.

107. *Id*. Given that Snowden withdrew his asylum application with Russia on July 1, 2013 and that President Morales publically stated that Bolivia would grant Snowden asylum, it is likely that the United States believed Snowden withdrew his asylum application with Russia because he had been given asylum in Bolivia. *See 'Free from Imperial Persecution': Three Latin American Countries Offer Shelter to Edward Snowden*, RT (July 6, 2013, 1:15 PM), http://rt.com/news/maduro-snowden-asylum-venezuela-723/ (stating that "[w]hen the plane landed in Vienna to refuel, US Ambassador to Austria William Eacho phoned officials from the Austrian Foreign Ministry, the Austrian daily newspaper Die Presse reported. Eacho *"claimed*

Vienna, Austria and spend the night there before he returned to Bolivia on July 4, 2013.[108] By July 12, 2013, many other Latin American countries announced their support for Edward Snowden and offered him asylum.[109] On the same day, Snowden announced that he would reapply for asylum in Russia,[110] which was ultimately granted on August 1, 2013.[111]

Russia's decision to grant Snowden asylum quickly complicated relations between the United States and Russia. Just a month after Russia granted Snowden asylum, the United States and Russia were slated to have a summit in September of 2013;[112] however, after Russia granted Snowden's asylum request, US officials cancelled the summit.[113]

Also, for the first time since the 2000 Sydney Olympics, the United States did not send a President, First Lady, Vice President, or former President to represent the United States at the Olympic Opening Ceremonies.[114] Instead, the United States sent Billie Jean

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with great certainty that Edward Snowden was onboard" and referenced a *"diplomatic note requesting Snowden's extradition."*).

108. Zagaris, *Saga*, *supra* note 87.

109. On July 6, 2013, Venezuela and Nicaragua voiced their support for Snowden and offered him asylum. *Id*. Following "a meeting of Mercosur, whose members include Brazil, Argentina, Venezuela, Paraguay, and Uruguay," those countries "also called for 'solidarity with the governments of Bolivia, Nicaragua and Venezuela,' the three countries that have said they would offer Snowden asylum." Juan Forero, *Snowden Still Looks to Latin America for Asylum*, WASH. POST (July 12, 2013), http://www.washingtonpost.com/world/snowden-still-looks-to-latin-america/2013/07/12/44de909a-eb37-11e2-818e-aa29e855f3ab_story.html. One could see this as Russia trying to ally with the aforementioned Latin American countries, harkening a parallel to their alliance with the Eastern Bloc countries of the Post-Second World War era. This might explain why Russian officials had a change of heart regarding their position on Snowden's first and second asylum applications, after seeing South American countries offer Edward Snowden asylum.

110. Zagaris, *Saga*, *supra* note 87.

111. *BBC Timeline*, *supra* note 93; Zagaris, *Frustrating U.S. Extradition*, *supra* note 5.

112. Zagaris, *Frustrating U.S. Extradition*, *supra* note 5.

113. *Id.*

114. Kelly Whiteside, *Obama sends Message by Naming Sochi Olympics Delegation*, USA TODAY (Dec. 20, 2013), http://www.usatoday.com/story/sports/olympics/sochi/2013/12/17/white-house-sochi-olympics-delegation-to-include-gay-athlete/4051581/. "In London in 2012, Michelle Obama led a delegation that included Olympians Dominique Dawes, Brandi Chastain and others. In 2008, President Bush attended the Beijing Olympics. In 2002, President Bush also attended the opening ceremony for the Salt Lake City Winter Games, as is the custom for a head of state to attend a home Olympics. And former President George H.W. Bush was part of delegations to the 2008 and 2004 Games." *Id.*

King, an openly gay former tennis star, Brian Boitano, an openly gay former figure skater, and Caitlin Cahow, an openly gay former ice hockey player, to represent the United States at the opening ceremony.[115] Obama's decision to include the aforementioned athletes in the US delegation was likely made to publically respond to the passage of a 2013 Russian law "that stigmatizes gay people and bans giving children any information about homosexuality."[116]

The two countries also have a recent history of enacting legislation aimed at sanctioning the other for perceived human rights abuses.[117] In 2012, for example, the United States enacted the Magnitsky Act[118]—a law penalizing Moscow and listing specific Russians who are barred from entering the United States for alleged human rights abuses against Sergei Magnitsky, a Russian lawyer who fought against corruption in Russia and died, likely from torture, while imprisoned.[119] In response, Russia passed a series of law that banned eighteen Americans from entering the country, obstructed Americans from adopting Russian children, and also "banned U.S. funding for any non-governmental organization deemed to be engaging in politics."[120] These sanctions, however, occurred prior to Snowden being granted asylum in August of 2013. The United States, however, has placed other sanctions on Russia since Snowden received asylum there.

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115. *Id.*

116. *Russia Passes Anti-Gay-Law*, THE GUARDIAN (June 30, 2011), http://www.theguardian.com/world/2013/jun/30/russia-passes-anti-gay-law.

117. *See* Denis Dyomkin, *Magnitsky Act, U.S. List of Alleged Russian Human Rights Abusers, Could Have 'Very Negative Effect' On Relations, Says Putin*, THE HUFFINGTON POST, Apr. 12, 2013 (June 11, 2013), http://www.huffingtonpost.com/2013/04/12/ magnitsky-act-putin_n_3067004.html.

118. Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. 112–208, 126 Stat. 1496 (2012).

119. *Id.*

120. Jim Heintz, *Russia Responds to U.S. Magnitsky Act By Placing 18 Americans on Blacklist*, THE HUFFINGTON POST (Apr. 13, 2013, last updated June 13, 2013), http://www.huffingtonpost.com/2013/04/13/russia-responds-to-us-mag_n_3075795.html. Interestingly, included in Russia's list of banned Americans were John Yoo, David Addington, retired Major General Geoffrey Miller, and Admiral Jeffrey Harbeson. *Id.* Those four aforementioned individuals were all connected in various aspects with the Guantanamo Bay detention center. *Id.* The Russians focused their retaliation on allegations of human rights abuses by the United States at Guantanamo Bay. *Id.*

In early 2014, Ukraine went through a period of civil unrest that resulted in the Ukrainian president fleeing the country and Pro-Russian separatists take control of Simferopol, the capital city of the Crimea region of Ukraine.[121] Soon after the Pro-Russian separatists seized control of Simferopol, President Putin sent Russian troops into Crimea and eventually signed a bill annexing Crimea into the Russian Federation.[122] In response to Russia incorporating Crimea, the United States "imposed sanctions on more than two dozen Russian and Crimean officials . . . and have urged Russia to avoid escalating the crisis."[123] Russia officially kept its troops in Crimea until October 2014, but, in November 2014, there was evidence that Russia sent troops back into Ukraine.[124]

IV. ANALYSIS

Years of distrust and rivalry stemming from the Cold War have led to the current relationship between the two nations, and no one single gesture will completely change the course of time. Given the layers of tension that the Snowden saga has added to the relationship between the United States and Russia, there appears to be two potential paths that the two countries can take going forward.

On one hand, the handling of the Snowden situation could represent nothing more than additional proof that the two nations cannot work together, leading to deeper entrenchment between these two nations and more disdain and distrust for the opposition. On the other hand, it could represent an opportunity for the two nations to lift themselves out of their deeply entrenched positions and begin a dialogue that will create a better relationship moving forward.

The second option does not seem likely for the following reasons. First, the United States acted quickly to distance itself from Russia by cancelling the 2013 summit. Although US officials cited many other

121. *Ukraine Crisis: Timeline*, BBC NEWS (Nov. 13, 2014, 3:16 PM). http://www.bbc.com/news/world-middle-east-26248275.

122. *Id.*

123. Matt Smith & Alla Eshchenko, *Ukraine Cries 'Robbery' as Rjsska Annexes Crimea*, CNN (Mar. 18, 2014, 6:20 PM), http://www.cnn.com/2014/03/18/world/europe/ukraine-crisis/.

124. *Ukraine Crisis: Russian Troops Crossed Border, Nato Says*, BBC (Nov. 12, 2014, 5:23 PM), http://www.bbc.com/news/world-europe-30025138.

reasons for cancelling, it is not a coincidence that the Obama Administration decided to cancel the summit after Russia granted Snowden's request for temporary asylum.[125] Russian officials expressed disappointment with the decision to cancel the summit and suggested that the cancellation demonstrated that "the United States is still not ready to build relations on an equal basis."[126] These actions and remarks demonstrate that neither nation was ready to engage in conversation to mend their damaged relationship.

Second, although the inclusion of prominent gay athletes in the US Delegation at the Olympics was a bold political move to voice American opposition to Russia's strict anti-gay laws, President Obama may have missed an opportunity to engage in diplomacy with Russia to mend the damage caused by the Snowden saga by not personally attending or having a high ranking political figure attend the Sochi Winter Olympics.

Third, failed high profile extradition requests, such as the Snowden incident, overshadow the many more successful extradition requests between the two nations.[127] Further, even the successful extraditions of Karl Linnas and Feodor Fedorenko are not strong indicators that the two countries can work together in present day. Both the United States and Russia had an interest in seeing the two Nazi war criminals stand trial, so there was little controversy in handing over the aforementioned individuals to the Russians. However, in the Snowden extradition, the two nations had very different interests. The United States had a strong interest in receiving and prosecuting Snowden, whereas Russia likely had little to gain by agreeing to the extradition.

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125. *See* Zagaris, *Frustrating U.S. Extradition*, *supra* note 5. The Obama administration cited "[the] lack of progress on issues such as missile defense and arms control, trade and commercial relations, global security issues, and human rights and civil society in the last twelve months. . . ." as reasons for cancelling the summit. *Id.*

126. *Id.*

127. YEARBOOK OF IMMIGRATION STATISTICS, *supra* note 37, at 28. The United States has deported 627 individuals to Russia from 2002 to 2011, yet the rejected requests for Akhmadov, Bout, Alexyseev, and now Snowden overshadow the successful diplomacy between the two nations.

Fourth, corruption within Russia's police force[128] presents a major obstacle to implementing an effective extradition treaty. Russian police routinely accuse citizens of minor infractions in an attempt to receive bribes, pressure suspects into giving coerced confessions, and falsely arrest citizens just to close cases.[129] Even more alarming is the way that the Kremlin uses the police and legal system to target and minimize the efforts of political opponents.[130] "As Putin himself said, police corruption is 'obvious and well-known to everyone.'"[131] This widespread corruption within Russia's legal system likely will pose problems for the United States if it decides to enter into an extradition treaty with Russia because the United States would be faced with Russian extradition requests that were likely made pursuant to politically motivated arrests by Russian police.

Finally, the "maelstrom of events [from the Crimea annexation] has made 2014 the worst year for U.S.-Russia relations since the Cold War years."[132] The back-and-forth sanctions being levied by each nation stemming from the Russia's annexation of Crimea and from the Magnitsky Act demonstrate that the two nations are not currently focused on resolving or repairing their strained relationship.

Thus, the future seems bleak for positive foreign relations between the two nations. Even if the two countries reconsider their

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128. *See* Glenn Kates, *Russia: Police Captain Arrested in Crackdown on Corruption*, N.Y. TIMES (Apr. 24, 2012), http://www.nytimes.com/2012/04/24/world/europe/russia-police-captain-arrested-in-crackdown-on-corruption.html?_r=2&.

129. David M. Herszenhorn, *Brutality Jolts Russia Into Action on Police*, N.Y. TIMES (Mar. 28, 2012), http://www.nytimes.com/2012/03/29/world/europe/russia-jolted-into-action-on-police-brutality.html.

130. *See e.g.*, *Alexei Navalny placed under house arrest in Russia*, THE GUARDIAN (Feb. 28, 2014), http://www.theguardian.com/world/2014/feb/28/alexei-navalny-russia-opposition-leader-house-arrest for a recent example of what many people perceive as politically motivated arrests of Kremlin opponents. Alexei Navalny, who was "once touted as the most potent threat to . . . Vladimir Putin to emerge in Russia in recent years," was detained on house arrest for embezzlement charges. Shaun Walker, *'Putin is destroying Russia. Why base his regime on corruption?' asks Navalny*, THE GUARDIAN (Oct. 17, 2014), http://www.theguardian.com/world/2014/oct/17/putin-is-destroying-russia-why-base-his-regime-on-corruption-asks-navalny. Navalny denies the charges and has asserted that the evidence overwhelmingly indicates he is innocent. *Id.*

131. Sean Guillory, *Corruption, Not Migrants, Is Russia's Problem*, THE NATION (Aug. 30, 2013), http://www.thenation.com/article/175815/corruption-not-migrants-russias-problem#.

132. Marina Koren, *How 2014 Became the Worst Year in U.S.-Russia Relations Since the Cold War*, NATIONAL JOURNAL (Dec. 31, 2014), http://www.nationaljournal.com/politics/how-2014-became-the-worst-year-in-u-s-russia-relations-since-the-cold-war-20141231.

extradition policies, the overall impact that an extradition treaty would have on the current relationship is questionable. The United States already deports individuals to Russia despite having no binding formal treaty,[133] so it is unclear whether the frequency of extraditions or amount of diplomacy would change with the introduction of a binding extradition treaty. However, "extradition has been largely a foreign relations tool, intended to foster goodwill among neighboring nations."[134] "Because the requested and requesting participants are [s]tates it is clear that there is a nexus between the interests of those respective states and the granting or denial of extradition."[135] Thus, if an extradition treaty were established, the two countries would likely give greater thought to the potential consequences that denying an extradition request would have on their relationship and the shared interests the countries committed to when signing the extradition treaty in the first place.

In order to counter the path towards further entrenchment, this Note suggests that the two countries draft and implement an extradition treaty.[136] The following is a proposed extradition treaty, which is based on other American extradition treaties.

V. EXTRADITION TREATY PROPOSAL[137]

The United States of America and the Russian Federation (herein "the Signing Parties"), aspiring to engage in better cooperation between the two nations for the bilateral

133. *See* YEARBOOK OF IMMIGRATION STATISTICS, *supra* note 37, at 28.

134. Hafen, *supra* note 27, at 192.

135. *Id.* (quoting Professor Bassiouni).

136. *See* Larissa C. Earl, Note, *Loosening Organized Crime's Stranglehold On the Russian Economy: Current Efforts and Suggested Strategies*, 31 LAW & POL'Y INT'L BUS. 99, 115–17 (1999) (suggesting that an extradition treaty between the United States and Russia could help curb the spread of organized crime emanating from Russia).

137. The contents of this proposed treaty are based upon other American extradition treaties. It is, however, an incomplete example of how an American-Russian treaty would look, given that no Russian extradition treaties were considered out of language limitations. Further, the proposed extradition treaty will only discuss certain sections of typical extradition treaties. The author chose to discuss treaty sections that are especially relevant to the American-Russian relationship moving forward. There are many other sections common in other American extradition treaties that will not be discussed in this Note.

extradition of criminals or wanted fugitives, agree to the following:[138]

ARTICLE I. Agreement to be Bound

Each Signing Party agrees to extradite persons charged or convicted of any offenses enumerated in Article II of this Treaty by the other Signing Party found in its jurisdiction per the procedures found in Article III.[139]

ARTICLE II. Extraditable Offenses[140]

Extraditable offenses shall include any offense punishable as a felony, or any offense equal to a felony under United States federal law, under the laws of both Signing Parties. When the punishable offense is not a felony under one of the Signing Party's statutes, the Signing Party receiving the request is not bound to honor the extradition request.

The first sentence of Article II introduces the dual criminality requirement,[141] which is very important to this treaty given that American and Russian laws differ vastly on many issues, including gay rights. Further, the inclusion of the dual criminality requirement helps push American legal ideologies on Russia in a roundabout manner, as Russian extradition requests would be more successful if Russian law closely matched American law.

ARTICLE III. Exceptions to Extradition

The Signing Parties shall not be bound to extradite an individual if the charged offense represents a crime or offense of a political character.[142] *The Signing Party receiving the*

138. This language is based on language found in the American-Australian Extradition Treaty. Australia International Extradition Treaty with the United States, U.S.-Austl., May 14, 1974, 27 U.S.T. 957.

139. *See* the American-Canadian Extradition Treaty for language similar to this. Canada International Extradition Treaty with the United States, U.S.-Can, Dec. 3, 1971, 27 U.S.T. 983.

140. For examples of what American extradition treaties normally consider extraditable offenses, see the American-Cuban extradition treaty for an exhaustive list of offenses. Treaty Between the United States and Cuba for the Mutual Extradition of Fugitives from Justice, U.S.-Cuba, Apr. 6, 1904, 33 Stat 2265.

141. *See* Hafen, *supra* note 27 (discussing the dual criminality requirement).

142. This sentence is based off the language found in the American-Czechoslovakia

extradition request shall have the discretion to determine whether or not the crime or offense is of a political character.[143]

When the charged offense is punishable by death under the laws of the requesting Signing Party and is not punishable under the laws of the receiving Signing Party, the receiving Signing Party may recommend to the requesting State that any punishment imposed for any of those offenses by a less severe punishment.[144]

The first sentence of Article III embraces the political offender exception and is integral to the effectiveness of this proposed treaty. Given the widespread concerns surrounding Russia's police corruption and politically motivated arrests, any potential extradition treaty between the United States and Russia will contain a clause embodying the political offender exception, which states that crimes having an identifiable relationship to a political agenda would be excluded from the list of extraditable offenses.[145]

ARTICLE IV. Procedure and Necessary Documentation.

Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offense with which he is charged or its equivalent had been committed in that territory or to prove that he is the identical person convicted by the courts of the requesting State.[146]

Extradition Treaty. Treaty Between the U.S. of America and the Czechoslovak Republic of July Second 1925, Concerning the Mutual Extradition of Fugitive Criminals, U.S.-Czech, July 2, 1925, 44 Stat 2367; *see also supra* note 21 and accompanying texts regarding the political offender exception.

143. *See* American-Czechoslovakia Extradition Treaty, *supra* note 142. While this sentence gives much power to the Signing Party receiving the extradition request, it is common language found throughout American extradition treaties. *See* Brazil International Extradition Treaty with the United States, U.S.-Braz., June 18, 1962, TIAS 5691; the American-Canadian agreement, *supra* note 139.

144. American-Australian Extradition Agreement, *supra* note 138.

145. *See* Cervasio, *supra* note 12.

146. American-Australian Extradition Agreement, *supra* note 138. This article is an

Article IV's requirement that the requesting party provide sufficient evidence to substantiate its claims against the accused individual is related to Article III's inclusion of a political offender exception. Article IV seeks to curb fabricated charges against individuals that could be politically motivated, as appears to be the case with Alexei Navalny and Ilyas Akhmadov.

ARTICLE V. Extradition of Nationals

"Neither Contracting State shall be bound to deliver up its own nationals, but the executive authority of the requested State shall, if not prevented by the laws of that State, have the power to deliver them up if, in its discretion, it be deemed proper to do so."[147]

ARTICLE VI. Prior Extradition Requests Unaffected by this Treaty.

The effective date of this Treaty shall be the date upon which the Signing Parties are bound to follow the provisions of this Treaty and extradite individuals to the requesting State. Any extradition request sent prior to the effective date of this Treaty shall be unaffected by the ratification of this Treaty.[148]

Implications of this Treaty on Snowden Pre-Asylum

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important inclusion given Russia's history of bringing fabricated charges against individuals that they want extradited. See *supra* notes 66–69 and accompanying text regarding Russia's insufficient documentation on Ilyas Akhmadov in its extradition request.

147. Norway International Extradition Treaty with the United States, U.S.-Nor., June 9, 1977, 31 U.S.T. 5619. This is a common inclusion in modern American extradition treaties. *Compare* Treaty on extradition, U.S.-Arg. Article III, June 10, 1997, T.I.A.S. No. 12866 (stating that nationality cannot be cited as the lone reason to refuse an extradition request), *with* American-Australian Extradition Agreement, *supra* note 138 at Article V (stating that neither party to the treaty are bound to deliver up their citizens unless the head of state believes it to be the proper action); Treaty Between the United States and Estonia for Extradition of Fugitives from Justice, U.S.-Est., Article VIII, Nov. 8, 1924, 43 Stat 1849 ("Under the stipulations of this Treaty, neither of the High Contracting Parties shall be bound to deliver up its own citizens.").

148. Such a clause seems necessary to ensure both Signing Parties are aware of the temporal restraints of this Treaty. Ensuring that both Signing Parties do not engage in retroactive extradition requests seems necessary to keep the two nations from rehashing bitter episodes surrounding the extradition requests for Viktor Bout, Ilyas Akhmadov, or Edward Snowden.

Would this treaty have changed the outcome of the United States' extradition request had the treaty been enacted and in force prior to the Snowden saga unfolding? Probably not.

Snowden was charged pursuant to the 1917 Espionage Act.[149] There are two classifications of political offenses, pure and relative.[150] The list of pure political offenses "is limited to treason, espionage, and sedition. Pure political offenses are rarely extraditable crimes."[151] Given that one of Snowden's alleged crimes is espionage, it is unlikely that Russia would have honored the United States' request for Snowden had the proposed treaty been in force. Further, the complaint also charged Snowden with theft.[152] Theft is a common crime connected with a political act, and thus may qualify for the political offense exception."[153]

Given that both categories of offenses the United States charged Snowden with (theft and espionage) fall under the political offender exception, it is unlikely that Russia would extradite him upon Washington's request. Additionally, the many recent rejections of high profile extradition requests from Russia weigh against Russia extraditing Snowden. Thus, Snowden likely would have received asylum even if the proposed extradition treaty was in force. However, despite the likelihood that Snowden would have been granted asylum even if Russia were bound to follow the aforementioned treaty, the proposed treaty still could have been beneficial at the time for two reasons.

First, the proposed treaty establishes a set of rules and procedures that would have been followed when the two nations discussed Snowden's situation. These established rules may have diminished the impact that the years of animosity between the two nations might have had on the dialogue, as they would be bound to follow a set procedure instead of following history. Thus, the final decision to grant Snowden asylum would have been fueled not by animosity but by defined sections of the proposed treaty. Second, as the two nations

149. Finn, *supra* note 1.
150. Littenberg, *supra* note 21, at 1198.
151. *Id.* at 1198–99.
152. Finn, *supra* note 1.
153. Littenberg, *supra* note 21, at 1199.

would have already met and drafted the proposed treaty, they would have already opened lines of communication and established a meeting of the minds on this issue. Thus, the soured relationship could be improved via the drafting and implementation process of the proposed treaty. And, both of the aforementioned benefits would also apply prospectively for any extradition treaty that the two nations might eventually draft.

VI. CONCLUSION

The Snowden saga provides an optimal opportunity for the United States and Russia to reevaluate their position on a formal extradition agreement. "On several occasions in recent years senior Russian officials have called on Washington to revive a bilateral extradition treaty" in response to the United States imprisoning Russian citizens in America, notably Viktor Bout.[154] The United States, however, has let these proposals fall on deaf ears.[155] Perhaps the failed extradition request of Edward Snowden will cause the United States to engage in meaningful dialogue with Russia. However, as discussed, there are many obstacles standing in the way of reaching a friendly relationship with the Russian Federation. A formal extradition treaty between the two rivals could serve as the first step toward engaging in friendlier dialogue and serve to keep the two countries from becoming further entrenched and snowed in.

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154. Schreck, *supra* note 32. Russian Justice Minister Alexander Konovalov stated, "We raised these issues more than two years ago, during the first visit of a justice ministry's delegation to the United States. So far, frankly speaking, the United States side remains reluctant to accept our proposals." *Id.*

155. *See id.*