
AILA

Law Journal

A Publication of the American Immigration Lawyers Association

Cyrus D. Mehta
Editor-in-Chief

Volume 6, Number 2, October 2024

Letter from the Editor-in-Chief

Cyrus D. Mehta

How to Challenge an INTERPOL Red Notice

Five Years Later: What Immigration Attorneys Need to Know About INTERPOL

Ted R. Bromund and Sandra A. Grossman

From a Skeleton Key to a Deadbolt

Why the American Passport Is No Longer the Most Powerful in the World, and
Why the Door Needs to Open

Kristin Hommel

Understanding EU Immigration Law

The Schengen Visa Scheme and the Latest EU Immigration Updates

Yuu Shibata

Same Time Next Year

How History Repeats Itself in Joy and Pain

Nicole C. Dillard

This Makes No Sense

Craig Shagin and Maria Vejarano

AILA

Law Journal

Volume 6, Number 2, October 2024

- 201 **Letter from the Editor-in-Chief**
Cyrus D. Mehta
- 205 **How to Challenge an INTERPOL Red Notice**
Five Years Later: What Immigration Attorneys Need to Know About
INTERPOL
Ted R. Bromund and Sandra A. Grossman
- 227 **From a Skeleton Key to a Deadbolt**
Why the American Passport Is No Longer the Most Powerful in the World,
and Why the Door Needs to Open
Kristin Hommel
- 253 **Understanding EU Immigration Law**
The Schengen Visa Scheme and the Latest EU Immigration Updates
Yuu Shibata
- 271 **Same Time Next Year**
How History Repeats Itself in Joy and Pain
Nicole C. Dillard
- 293 **This Makes No Sense**
Craig Shagin and Maria Vejarano

EDITOR-IN-CHIEF

Cyrus D. Mehta

Founder & Managing Partner, Cyrus D. Mehta & Partners PLLC

MANAGING EDITOR

Danielle M. Polen

Editorial Director, AILA

EDITOR

Richard Link

Legal Editor, AILA

BOARD OF EDITORS

Dan H. Berger

Partner, Curran Berger & Kludt, and Immigration Fellow, Cornell Law School

Kaitlyn A. Box

Senior Associate, Cyrus D. Mehta & Partners PLLC

Dagmar Butte

Shareholder, Parker Butte & Lane, Portland, Oregon

Mahsa Khanbabai

Owner, Khanbabai Immigration Law

Olivia Serene Lee

Partner, Minami Tamaki LLP

Angelo A. Paparelli

Partner, Seyfarth Shaw LLP

Thomas K. Ragland

Member, Clark Hill PLC

Diane Rish

Senior Manager, Immigration, Salesforce Inc.

Craig R. Shagin

*Member, The Shagin Law Group LLC,
Adjunct Professor of Law, Widener Commonwealth Law School*

Rebecca Sharpless

Professor, University of Miami School of Law

William A. Stock

*Founding Member & Partner, Klasko Immigration Law Partners LLP,
AILA Past President*

Margaret Kuehne Taylor

*Adjunct Professor of Law, University of Maryland Carey School of Law,
Ret. Senior Litigation Counsel, Office of Immigration Litigation,
U.S. Department of Justice*

AILA LAW JOURNAL (ISSN 2642-8598 (print)/ISSN 2642-8601 (online)) is published two times per year by Full Court Press, a Fastcase, Inc., imprint. Individual issues may be purchased for \$60.00, or subscriptions for \$99.00 a year. Discounts are available for AILA members and Fastcase legal research users. Copyright 2024 American Immigration Lawyers Association. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner: American Immigration Lawyers Association, Suite 300, 1331 G Street, NW, Washington, DC 20005-3142, Phone: 202-507-7600, Fax: 202-783-7853.

Publishing Staff

Publisher: Leanne Battle

Production Editor: Sharon D. Ray

Cover Design: Morgan Morrisette Wright and Sharon D. Ray

The cover of this journal features a painting known as *The Sea* by French artist Jean Désiré Gustave Courbet. A leader of the Realist movement, Courbet is also remembered for his political content and activism. The image is provided courtesy of the Metropolitan Museum of Art under a CC0 1.0 Universal (CC0 1.0) Public Domain Dedication.

Cite this publication as:

AILA Law Journal (Full Court Press, Fastcase, Inc.)

Copyright © 2024 American Immigration Lawyers Association

All Rights Reserved

A Full Court Press, Fastcase, Inc., Publication

Editorial Office

729 15th Street, NW, Suite 500, Washington, DC 20005

<https://www.fastcase.com>

POSTMASTER: Send address changes to AILA LAW JOURNAL, 729 15th Street, NW, Suite 500, Washington, DC 20005

Disclaimer

The articles featured in the AILA Law Journal do not necessarily represent the views of AILA or the publisher, nor should they be regarded as legal advice from the association or authors. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional.

Likewise, the articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors, or their firms or organizations.

Submissions

Direct editorial inquiries and send material for publication to:

ailalawjournal@aila.org

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys, law firms, and organizations working in immigration law.

Questions About This Publication?

For questions about the Editorial Content appearing in these volumes or reprint, please contact:

Leanne Battle, Publisher, Full Court Press, at leanne.battle@vlex.com or at 866.773.2782

For questions about Sales, or to reach Customer Service:

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

Customer Service
Available 8am–8pm Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

ISSN 2642-8598 (print)
ISSN 2642-8601 (online)

How to Challenge an INTERPOL Red Notice

Five Years Later: What Immigration Attorneys Need to Know About INTERPOL

Ted R. Bromund and Sandra A. Grossman*

Abstract: The purpose of an INTERPOL Red Notice is to request law enforcement worldwide to seek the location and arrest of an individual wanted for prosecution or to serve a sentence. A Red Notice is not conclusive evidence of criminality. Unfortunately, U.S. immigration authorities have utilized these Notices to target noncitizens in the United States, including asylum seekers, leading to a denial of immigration benefits, prolonged detention, and other significant human rights concerns. How can immigration attorneys best advocate for their clients with Red Notices and what should they know about INTERPOL and its role in global law enforcement?

Five years have passed since the *AILA Law Journal* published our initial article on the intersection between INTERPOL and U.S. immigration law, and how attorneys could most effectively challenge persecutory and illegitimate Red Notices. Since then, critical changes have altered the landscape for attorneys handling Red Notice cases. These changes have included new national legislation aiming to curb INTERPOL abuse, significant developments in national case law involving INTERPOL communications, and new U.S. Immigration and Customs Enforcement guidance on how Red Notices should be handled by the agency, as well as reforms within INTERPOL itself. All these changes are taking place amid rising concern about the broader problem of transnational repression, and how this phenomenon is impacting immigrants in the United States. This article will provide AILA members with essential updates and information in all these areas, laying the groundwork for effective advocacy for noncitizens who may be the target of a persecutory or otherwise illegitimate Red Notice.

Introduction

The International Criminal Police Organization—officially ICPO-INTERPOL, commonly known simply as INTERPOL—plays an important role in international law enforcement, and its publications are often used in U.S. immigration and asylum cases. But neither INTERPOL nor its publications, such as its famous “Red Notice,” are well understood. This can lead attorneys to fail to appropriately challenge Department of Homeland Security

(DHS) or immigration judge (IJ) assertions about INTERPOL communications that are often incorrect. IJs too often defer uncritically to INTERPOL publications in their decisions, resulting in extended denials of bonds and other requests for immigration benefits, and in particular asylum.

The existence of an INTERPOL issue in a case thus provides immigration attorneys with opportunities for advocacy before an IJ, the DHS, and, at an international level, before the Commission for the Control of INTERPOL's Files (CCF).¹ This article will educate attorneys on the meaning of INTERPOL Red Notices and other INTERPOL communications, provide background on INTERPOL as an organization, and give attorneys the tools and knowledge they need to effectively advocate for their clients when an INTERPOL issue arises.

What INTERPOL Is and What It Isn't

To understand INTERPOL's communications and how its actions might intersect with U.S. immigration law, attorneys must first understand INTERPOL itself. Contrary to the image fostered by Hollywood, INTERPOL is not an international law enforcement agency. No one who works for INTERPOL has the power to make an arrest because of their position in INTERPOL.

Rather, INTERPOL is the world's largest international police organization that has the primary aim of advancing international police cooperation. It is based on the sovereignty of its member nations, and therefore respects the independence of their separate judicial and law enforcement systems. It works by holding databases of nation-provided information, by maintaining a communications system for messages between law enforcement agencies in different nations (called I-24/7), and by publishing notices and other communications—including Red Notices.

INTERPOL currently has 196 member nations. North Korea is one of the few well-known nations that is not a member of INTERPOL. Since 2019, INTERPOL has added Palau and the Federated States of Micronesia as member states. INTERPOL's supreme body is its one-nation, one-vote general assembly. Below the assembly, INTERPOL has a president, a 13-member executive committee (including the president) that is chosen on a geographically representative basis, a Secretary General who has operational control of INTERPOL, and, finally, INTERPOL's staff in its General Secretariat.

All INTERPOL member nations are required to establish a National Central Bureau (NCB) to manage all liaison with INTERPOL. In the United States, the NCB is co-managed by the DHS and the Department of Justice (DOJ). Many U.S. state and local law enforcement agencies have "read access" to databases held by INTERPOL, but only the U.S. NCB can request a Red

Notice or other INTERPOL communication, or transmit messages on behalf of the United States.

All INTERPOL activity, including all communications over its network, must respect its Constitution and subsidiary rules adopted by its General Assembly, including INTERPOL's Rules on the Processing of Data (RPD).² All of INTERPOL's foundational texts and other relevant legal documents can be found on INTERPOL's website at <https://www.interpol.int/Resources/Documents>.

The purpose of the Constitution and the subsidiary rules is to ensure that INTERPOL is used only against "ordinary-law crime,"³ and is not involved in politics, or for purposes of political, and therefore illegitimate, persecution.⁴ In this way, INTERPOL is supposed to be beholden to a general principle also contained in U.S. asylum law, which establishes that while any country has the right to prosecute its own citizens, it must do so for legitimate purposes.⁵

The Constitution's most-cited portions are its Article 2, which requires that international police cooperation be conducted within the "spirit of the Universal Declaration of Human Rights,"⁶ and its Article 3, sometimes referred to as the neutrality clause, which states that it is "strictly forbidden for the Organization [INTERPOL] to undertake any intervention or activities of a political, military, religious, or racial character."⁷

INTERPOL cannot stop its sovereign member nations from creating and prosecuting political offenses. All it can and is required to do by its Constitution is ensure that it is used only in connection with genuinely criminal, ordinary-law offenses. Unfortunately, as discussed below, INTERPOL's communications are subject to abuse by its member nations.

INTERPOL Publications: Introduction to the Red Notice

The value of INTERPOL rests largely in the structured communications system it provides. This system facilitates three kinds of messages. First, there are simple messages between one or more NCBs. A message is analogous to an everyday email and is only seen by the INTERPOL headquarters in Lyon, France, if the sending nation includes it in the recipient list.

Second, there are "diffusions," a more structured email that can be sent to one or more NCBs, and can concern a wide variety of subjects, up to and including (in the case of a Wanted Person Diffusion (WPD), sometimes called a "Red Diffusion") identifying an individual as a suspect and requesting his or her arrest.⁸ A diffusion is copied automatically to INTERPOL, but can be reviewed by INTERPOL for compliance with its rules only after it has been sent.

Finally, there is INTERPOL's system of colored notices, including Red Notices. Any NCB can request the publication of a notice. By rule, all notices must be published to all INTERPOL member nations.⁹

Yellow Notices (to alert police to a missing person), Blue Notices (to collect additional information about a person in relation to a crime), and Green Notices (to provide warnings about persons who have committed criminal offenses and are likely to repeat those offenses in other countries) are all relatively common, but by far the most-used type of notice is the Red Notice, of which 12,260 were published in 2023.¹⁰ The number of Red Notices published annually has remained roughly steady in recent years: in 2017, Interpol published 13,048 Red Notices.¹¹

The purpose of a Red Notice, according to INTERPOL, is to “seek the location and arrest of wanted persons wanted for prosecution or to serve a sentence.”¹² The requesting NCB can choose to make public a highly redacted version of the Red Notice on the INTERPOL website (<https://www.interpol.int/How-we-work/Notices/Red-Notices/View-Red-Notices>) but by default, Red Notices are visible only to law enforcement agencies, such as DHS.

This means that an individual who is the subject of a Red Notice may not be aware of it until they are confronted by U.S. law enforcement—for example, when crossing an international border into the United States or when appearing for a visa interview before a U.S. Consular Officer, or before U.S. Citizenship and Immigration Services (USCIS), such as for an asylum or adjustment of status hearing. Other individuals may become aware of a Red Notice, or suspect that one exists, if they have a particularly high-profile case or if their home country publicizes its request for or use of a Red Notice in local media.

A Red Notice is sometimes described as an “international arrest warrant.” This is incorrect. As INTERPOL itself states, a Red Notice “is not an international arrest warrant.”¹³ Rather, a Red Notice is intended “to simultaneously alert police in all our member countries about internationally wanted fugitives.”¹⁴

Red Notices must comply with specific conditions set out in RPD Articles 82-87: Red Notices must concern serious ordinary-law crimes not related to behavioral or cultural norms, family or private matters, or private disputes that are not serious or are not connected with organized crime, and must meet a penalty threshold.¹⁵

The requesting NCB must also adequately identify the individual sought; must provide judicial data on the facts of the case, the charge, the laws covering the offense, and the maximum penalty possible; and must refer to a valid arrest warrant or comparable judicial decision.¹⁶ While the requesting NCB is asked to provide a copy of the warrant or decision, and it is best practice for the NCB to supply this documentation, the NCB is not required to do so.

All communications over the INTERPOL system are subject to review for compliance with INTERPOL's Constitution.¹⁷ But only requests for Red Notices are reviewed prior to publication; WPDs are reviewed after transmission, and other diffusions and other colored notices are not reviewed either before or after publication unless doubt arises about their compliance

with Article 2 or Article 3 of INTERPOL's Constitution or other applicable requirements.¹⁸

How INTERPOL Reviews Red Notice and Wanted Person Diffusion Requests

In conducting its review of Red Notice requests, INTERPOL operates, as it is required to do, on the assumption that, as all its member states are sovereign, they are all equal, and that therefore all of their requests must be presumed to have equal validity. This assumption is written into the RPD. As Article 128(1) of the RPD states, "Data are, a priori, considered to be accurate and relevant when entered by a National Central Bureau . . . into the INTERPOL Information System and recorded in a police database . . . of the Organization."¹⁹

The importance of this presumption cannot be over-emphasized. It means that, in the INTERPOL system, the state—not the individual—gets the benefit of the doubt. This, in turn, means that while INTERPOL is required by RPD Article 86 to review Red Notices for compliance with specific requirements, and while all INTERPOL communications are subject to Articles 2 and 3 of INTERPOL's Constitution, INTERPOL begins with the assumption that a request for a Red Notice is compliant. INTERPOL's review therefore focuses on the administrative task of ensuring that the requested Red Notice meets the conditions set out in the RPD.

If INTERPOL becomes aware—either during or after its review—that a request for a Red Notice might be invalid because it violates the RPD's requirements, and/or Article 2 or Article 3, it will subject that request to additional scrutiny. But this additional scrutiny is not automatically applied to all requests, and even when it is applied, it has considerable and inherent limits, not least the fact that INTERPOL has no power to conduct its own investigations. Absent the intervention of an attorney, INTERPOL is reliant on information contributed by its member nations (primarily the nation that requested the Red Notice in the first place) or on public source information. It is not an investigative agency.²⁰

In 2018, INTERPOL publicly acknowledged this fact. When then-INTERPOL President Meng Hongwei of the People's Republic of China was arrested in China in October 2018, INTERPOL's Secretary-General Jürgen Stock of Germany was asked if INTERPOL would investigate Meng's forced resignation. Stock replied that INTERPOL could not do so, as it is "not an investigative body."²¹ If INTERPOL could not investigate the circumstances surrounding the disappearance of its own president, it cannot and does not investigate other purported offenses. Individuals who are fleeing persecution, including illegitimate and politically motivated persecutions in their home countries, must rely on their attorneys to make this fact, and its implications, clear to an IJ, and to challenge a Red Notice before the IJ and through the CCF.

The Notices and Diffusions Task Force

In 2016, INTERPOL created the Notices and Diffusions Task Force (NDTF) to conduct its internal review of Red Notices and WPDs. According to INTERPOL's website, the Task Force is comprised of lawyers, police officers, and operations specialists with a wide range of experience and skills.²² In 2018, the NDTF became responsible for reviewing existing Red Notices and WPDs, including those published before 2016.²³ INTERPOL—and others—will often cite the existence of the NDTF as evidence that the problems of INTERPOL abuse have been solved, or at least significantly reduced.²⁴

This is incorrect. While NDTF has systematized and formalized the review procedures that existed before it was created and has improved the operation of INTERPOL's systems through systematic review, it is subject to many of the same constraints as INTERPOL as a whole. The NDTF too is required to begin with the assumption that national submissions are “accurate and relevant,” and it has access to the same limited sources of information as the rest of INTERPOL.²⁵

The NDTF has the enormous job of examining over 12,000 Red Notices annually (as well as a similar number of WPDs), so it operates under severe time as well as informational constraints.²⁶ As INTERPOL acknowledges, the NDTF only reviews WPDs after they have been sent, and it only reviews other colored notices (in particular, Blue Notices) well after the fact, if at all.²⁷ Finally, the fact that the NDTF is still reviewing Red Notices and WPDs from before 2016 demonstrates that it has a substantial backlog.²⁸

INTERPOL has published partial statistics on the operation of the NDTF.²⁹ For example, in 2022, the NDTF refused to issue, or cancelled, 105 notices and diffusions because the requests were not in line with the spirit of the Universal Declaration of Human Rights.³⁰ There were 199 notice and diffusion requests cancelled because they were of a political, military, or racial character.³¹ While somewhat helpful, these statistics run years together, and do not include the results of the more thorough reviews conducted by the CCF, so they cannot be used to derive a percentage of INTERPOL Red Notices that are abusive.

Transnational Repression and INTERPOL Abuse

INTERPOL abuse, which is the misuse by an INTERPOL member nation of INTERPOL's otherwise legitimate data-sharing technology to illegitimately or unlawfully persecute an individual, is on the rise.³² This type of abuse regularly affects innocent clients who are processing a visa, a green card, a naturalization case, or an asylum case, among other applications for immigration benefits. In the case of asylum, the allegations in the Red Notice itself may be evidence of an illegitimate persecution, rather than a valid prosecution.

INTERPOL abuse also is part of a wider, increasingly more recognized phenomenon known as transnational repression (TNR), which many immigration attorneys may just refer to as “persecution.”³³ TNR encompasses a broad array of practices—ranging from threatening text messages to the imprisonment of family members to murder—carried out by a government against its nationals living in other countries with the intention of silencing them, intimidating them, or forcing them to return to face trial or imprisonment.³⁴ In this wider context, INTERPOL abuse can serve three primary purposes. It can secure the return of a victim, harass or persecute a victim, or prevent a victim from traveling and thus increase the victim’s vulnerability to other measures.

Much of the reporting and legislation on INTERPOL abuse since 2016 has been framed as a response to TNR. The early leader in assessing INTERPOL’s systems and abuse was the nongovernmental organization Fair Trials, yet while its work remains valuable as a reference, especially as objective evidence in prosecution versus persecution-based asylum claims, Fair Trials has moved on to other issues.³⁵ The most useful analysis of TNR, including but not limited to INTERPOL abuse, now comes from Freedom House, which has produced a series of valuable reports on the subject. These reports may be helpful evidence in an asylum case, for example.³⁶

The U.S. response to TNR has been particularly robust. The Senate Foreign Relations Committee held a hearing on the subject in December 2023.³⁷ The DOJ has begun to bring criminal charges in cases of TNR,³⁸ and the State Department now includes information on TNR, including INTERPOL abuse, in its annual Country Reports on Human Rights Practices, which are also often referred to in asylum cases.³⁹ But the U.S. response has shortcomings, and even pitfalls. The State Department reports are incomplete: just because the reports do not condemn a nation for committing INTERPOL abuse does not mean that no abuse occurred.

Even more regrettable has been the United States’s handling of the provisions on INTERPOL abuse included in the 2022 National Defense Authorization Act (NDAA). On December 15, 2021, the U.S. Congress signed into law the Transnational Repression Accountability and Prevention (TRAP) provision of the NDAA.⁴⁰ This fairly recent and hard-fought legislation is based on congressional findings uncovering the reality of INTERPOL abuse.⁴¹ TRAP requires the publication of regular reports identifying the abusive nations.⁴² The legislation also makes fighting abuse of INTERPOL a key goal of the United States, and mandates that the United States name the worst abusers of INTERPOL and protect the U.S. judicial system from authoritarian abuse, among other important monitoring mechanisms.⁴³

Nevertheless, the Departments of Justice and State have stonewalled by refusing to publicly identify any abusers in their jointly produced 2022, April 2023, and December 2023 reports.⁴⁴ Attorneys representing clients before USCIS and Department of State should be ready to rebut assertions that these disappointing NDAA reports prove that INTERPOL abuse has waned or disappeared.⁴⁵

Transnational repression is a large and growing phenomenon. Attorneys should be aware of TNR's existence as it may help strengthen persecution arguments and allows for a new reference point and language in advocacy efforts. For example, in cases with an INTERPOL dimension, attorneys can set INTERPOL abuse in a broader context by demonstrating to the IJ that TNR is yet another way in which regimes seek to control and persecute expatriates, dissidents, or diaspora opponents.

The Evolution of ICE Policy on Red Notices

Introduction: The Legal Significance of Red Notices in the United States

The United States does not consider a Red Notice alone to be a sufficient basis for the arrest of a subject because it does not meet the requirements for arrest under the Fourth Amendment to the Constitution. Instead, the United States treats a foreign-issued Red Notice only as a formalized request by the issuing law enforcement authority to "be on the lookout" for the fugitive in question, and to advise if they are located.⁴⁶

The U.S. DOJ's *Justice Manual* states that:

In the United States, national law prohibits the arrest of the subject of a Red Notice issued by another INTERPOL member country, based upon the notice alone. If the subject for a Red Notice is found within the United States, the Criminal Division will make a determination if a valid extradition treaty exists between the United States and the requesting country for the specified crime or crimes. If the subject can be extradited, and after a diplomatic request for provisional arrest is received from the requesting country, the facts are communicated to the U.S. Attorney's Office with jurisdiction which will file a complaint and obtain an arrest warrant requesting extradition.⁴⁷

The National Defense Authorization Act for Fiscal Year 2022 states:

No United States Government department or agency may extradite an individual based solely on an INTERPOL Red Notice or Diffusion issued by another INTERPOL member country for such individual.⁴⁸

While a Red Notice cannot be the sole basis for arresting or extraditing an individual, and while there is no removability ground specific to Red Notices in the Immigration and Nationality Act (INA), U.S. Immigration and Customs Enforcement (ICE) officers have broad discretion to arrest noncitizens found in the United States.⁴⁹ Most of the relevant cases discussing the immigration

consequences of a Red Notice involve a noncitizen respondent who has been arrested, and who was likely targeted by ICE due to the Red Notice. Upon arrest, especially if there is no foreign conviction linking the target of the Red Notice to a more specific criminal inadmissibility or deportability ground, the individual is commonly charged with an immigration violation such as under INA § 212 and INA § 237.⁵⁰

The New ICE Directive on INTERPOL Communications

On August 15, 2023, with an effective date of September 30, 2023, ICE issued Directive 15006.1 on “INTERPOL Red Notices and Wanted Person Diffusions.” Notably, the Directive is framed as an effort to support “the U.S. Department of Homeland Security’s (DHS) broader efforts to combat transnational repression by helping ensure Red Notices and Wanted Person Diffusions are issued for legitimate law enforcement purposes and comply with governing rules,” a statement that highlights the importance of placing abusive Red Notices within the wider context of transnational repression.⁵¹

The Directive sets out a policy that is worth quoting in full:

A Red Notice or Wanted Person Diffusion is not an international arrest warrant and conveys no legal authority to arrest, detain, or remove a person. Therefore, ICE personnel will not rely exclusively on Red Notices or Wanted Person Diffusions to justify enforcement actions or during immigration proceedings. If ICE personnel intend to rely on a Red Notice or a Wanted Person Diffusion to help inform whether an enforcement action should be taken or during immigration proceedings, they should do so sparingly, and only if the threshold criteria have been met, as outlined in this Directive.⁵²

There is much to appreciate in the Directive. It requires ICE personnel to verify that a Red Notice (or WPD) is still active, to conduct a preliminary review of the Red Notice to check for potential abuse, to obtain supervisory approval before using a Red Notice in legal proceedings, and to request any documentation underlying the Red Notice (such as an arrest warrant) from the nation that originated the Red Notice. Finally, before using the Red Notice in legal proceedings, ICE personnel are required (to comply with INTERPOL’s rules) to request use authorization from INTERPOL or the requesting nation.

After an arrest is made, ICE personnel are then required to provide the detained individual with any underlying documentation previously obtained and to “give the person a meaningful opportunity to respond or contest its contents.”⁵³ ICE personnel are not allowed to “represent or imply that a Red Notice or Wanted Person Diffusion is a U.S. arrest warrant, conveys independent legal authority, or represents an independent judgment by

INTERPOL concerning probable cause or the validity of the underlying criminal proceedings.”⁵⁴ This reflects a more nuanced understanding of Red Notices in general.

The Directive also includes training requirements for ICE personnel, contains a sensible summary of types of non-compliant Red Notices as prohibited by RPD Article 83(1), sets out a procedure for reviewing Red Notices suspected to be abusive, and is even alive to the danger of asking a requesting nation to supply underlying documentation if the Red Notice is potentially abusive, as “doing so could alert the member country to the person’s location and possibly facilitate an illegitimate and impermissible use of Red Notices and Wanted Person Diffusions.”⁵⁵

But for all its sensible precautions, there are indications that the ICE Directive will pose new challenges as well as opportunities for attorneys. The Directive does not cover INTERPOL Blue Notices, a type of INTERPOL publication that is now more commonly abused than it was in the past.⁵⁶ More subtly, and damagingly, while the Directive requires ICE personnel to provide arrested individuals with any underlying documentation, it does not require them to provide the Red Notice or WPD itself. Although an individual can file a “Request for Access”⁵⁷ for a Red Notice or WPD with Commission for the CCF, discussed below, and learn the allegations against them, this process may take many months, and the nation that requested the Red Notice or WPD has the power to deny the request.

Worse, the Directive makes it clear that ICE personnel should attempt to conceal any indications that they targeted an individual for arrest as the result of a Red Notice. To quote the Directive, ICE personnel are required to:

“[properly document] a person’s arrest and articulat[e] the associated immigration violations to make clear ICE personnel did not engage in an enforcement action based solely on the existence of a Red Notice or Wanted Person Diffusion. For example, notation on Form I-213, Record of Deportable/Inadmissible Alien, should indicate the person is a foreign fugitive and not explicitly reference the Red Notice or Wanted Person Diffusion.”

ICE has stated in the past that it uses Red Notices to guide its removal operations.⁵⁸ This implied that even individuals who are seeking asylum could be arrested should they be named in a Red Notice.

Regrettably, there is ample evidence from past cases—in which one or both of the authors of this article were involved—that this was indeed ICE’s practice. None of the safeguards the new Directive introduces into ICE procedures prevent ICE from using Red Notices to decide who to target for removal. Indeed, the new ICE Directive clearly implies that this practice will continue but will now be concealed from attorneys. This process risks turning ICE, and any IJ who participates in the process, into agents of the abusive nation, a point that attorneys should bring up if it is relevant.

It is too soon to conclude that the ICE Directive is either a net positive or a net negative for immigration attorneys and their clients. But the Directive could be a step forward for ICE, as it is an important recognition by ICE that INTERPOL abuse can and does happen, and that it has a role and responsibility in curbing and monitoring this abuse. For practitioners, the Directive creates new opportunities for advocacy, as well as potentially making old pitfalls in the process even more dangerous.⁵⁹

Challenging INTERPOL Red Notices Before the Immigration Courts

Red Notices and the Serious Nonpolitical Crime Bar to Asylum and Withholding of Removal

The development of law in INTERPOL-related cases over the past half-decade has substantially centered around the application of the serious, nonpolitical crime (SNPC) bar to asylum and withholding. The INA bars an applicant from obtaining these forms of relief when “there are serious reasons” to believe that they “committed a serious nonpolitical crime” before arriving in the United States.⁶⁰

Most Circuits have interpreted the INA’s “serious reason for believing” standard to be equivalent to probable cause.⁶¹ Under this standard, a court need not find proof that the alien actually committed the alleged crime, only that there is probable cause “for believing that the alien has committed a serious nonpolitical crime,” thereby shifting the burden of proof to the noncitizen to prove beyond a reasonable doubt that they did not commit the crime in question.⁶²

For example, in *Villalobos Sura v. Garland*, the Ninth Circuit upheld a Board of Immigration Appeals decision, finding probable cause where the evidence against the noncitizen consisted of a Red Notice, an arrest warrant, and the noncitizen’s own testimony, which “taken together, identified the petitioner and described the crime of which he was accused, including the specifics of the event and the names of the victims.”⁶³ The court substantially relied on the IJ’s finding that the respondent’s testimony had been “self-serving” and “unpersuasive,” when compared to the evidence presented by the government.⁶⁴

Conversely, in general, most circuits have found that a Red Notice alone may not establish the requisite probable cause to meet DHS’s burden under the serious nonpolitical crime bar.⁶⁵ For example, in *Gonzalez Castillo v. Garland*, a 2022 Ninth Circuit case, the DHS presented a Red Notice as the sole evidence that a noncitizen had committed a serious nonpolitical crime in El Salvador, barring him from asylum.⁶⁶ Critically, to the court at least, there was no underlying arrest warrant in the evidentiary record.⁶⁷ While the court declined to adopt a per se rule that Red Notices alone are never sufficient to

warrant application of the SNPC bar, it did find that the particular Red Notice at issue in the case before it failed to establish probable cause “both because of the contents of the particular Red Notice and because of the features of Red Notices generally.”⁶⁸ The case contains helpful dicta for practitioners who are calling into question the veracity and reliability of the factual summary contained in a Red Notice.

Despite some more favorable circuit court decisions, the DHS may continue to argue, pursuant to the Board’s decision in *Matter of W-E-R-B*, that all the government needs to show that it has met its burden under the bar is “some evidence” that the bar might apply.⁶⁹ Again, numerous courts have squarely rejected the Board’s reasoning based on a reading of the burden-shifting statute itself, which clearly requires the government to present more than just the Red Notice alone to meet the applicable evidentiary standard.⁷⁰ Practitioners should also carefully distinguish their clients’ cases from the facts in *W-E-R-B*. For example, the petitioner in *W-E-R-B* failed to submit court documents providing the criminal charges against him had been dismissed, and petitioner’s counsel also conceded there was no political persecution.⁷¹ For attorneys representing clients in asylum proceedings, the Red Notice, and any underlying arrest record, is often the evidence of pretextual prosecution forming the basis of the protection claim.

Red Notices and Bond Cases

Attorneys must continue to challenge any claim that a Red Notice demonstrates or increases flight risk. Since the purpose of a Red Notice is to prevent the named individual from fleeing across national borders, a Red Notice actually acts to reduce international flight risk, not to increase it. As INTERPOL states, a Red Notice is important in part because “[c]riminals and suspects are flagged to border officials, making travel difficult.”⁷² As officials routinely consult INTERPOL-maintained databases when controlling a national border, a Red Notice—as it is designed to do—decreases flight risk.

The position of courts on flight risk evolved, with *Kharis v. Sessions*⁷³ allowing reliance on a Red Notice but finding for respondent because of ICE’s failure to “grapple with a substantial, well-supported argument that Kharis’s Red Notice was at most minimally probative as to whether he was a flight risk,” to *Torres Murillo v. Barr*,⁷⁴ which also found that Red Notices deserve at least some weight in determining flight risk, to *Malam v. Adducci*,⁷⁵ where the court concluded that a Red Notice diminished respondent’s flight risk. Attorneys advocating for bond in Red Notice cases may acknowledge the truly “minimal” probative value of a Red Notice in the sense that the only fact established by the existence of the notice is that the person is wanted for prosecution or to serve a sentence. Nevertheless, the fact that Red Notices themselves are inherently correct or reliable should be a notion that is challenged before an IJ.

Red Notices are the result of an administrative process, not a judicial procedure. They are not based on any INTERPOL investigation. They are not an arrest warrant. In part because they are based on the presumption that the purported facts presented by the accusing state are (in the words of Article 128(1) of the RPD) “accurate and relevant,” they do not meet the probable cause standard.⁷⁶

If they concern an individual accused of a crime, they do not denote any assumption of guilt. They are not based on any evidence other than the unsupported allegation of the NCB that made the request. They have no independent probative value. They can be published without a valid arrest warrant from the requesting nation, and if even if that nation provides an arrest warrant, a Red Notice offers no proof that the arrest warrant is valid, that the purported crime has been committed, or that the crime has not been concocted by the authorities for political purposes.

The only facts a Red Notice proves are that the requesting nation is a member of INTERPOL, that it has completed the online form requesting the Notice, that any administrative flaws in its request were not so egregious as to result in its rejection, and that the case did not on its face raise concern about political or other improper motives in the INTERPOL vetting process. All of these arguments may be made to an IJ in the context of a removal proceeding.

Other Arguments and Strategies to Impeach the Veracity of a Red Notice

If it is available, attorneys should begin by carefully examining the full, original Red Notice. Reviewing the full Red Notice—visible preliminarily only to law enforcement agencies, even if a redacted version has been made public—is essential. If a Red Notice is not available, attorneys may file a Request for Access before the CCF, as described below, and receive a copy of the Notice.

Attorneys should verify that the Notice has been correctly translated into English; ensure it meets all the conditions and contains all the judicial data required by INTERPOL as set out in the RPD and INTERPOL’s *Repository of Practice on Article 3*;⁷⁷ and check if the Notice contains data or assertions that indicate carelessness, abuse, or bias on the part of the requesting authorities or that violate INTERPOL’s rules.

An attorney must consider the charge underlying the Red Notice, and the (very limited) information contained in a Red Notice that purportedly justifies the charge. Any seemingly legitimate criminal charge may be pretextual, and may constitute evidence of persecution, and not lawful prosecution.⁷⁸

INTERPOL is not allowed to publish a Red Notice that violates its Constitution or one on certain categories of offenses set out in the RPD, such as those that might raise “controversial issues relating to behavioral or cultural norms,” and for those “relating to family/private matters,” among other categories.⁷⁹

But, in practice, Red Notices that do not meet these conditions are sometimes published nonetheless. By making a strong argument, informed by references to INTERPOL's rules, that a Red Notice does not meet INTERPOL's own requirements, an attorney can substantially reduce any credibility the Red Notice may possess in the eyes of an IJ.

The end goal of effective advocacy in a case with an INTERPOL dimension is to demonstrate that the fact that INTERPOL has published a Red Notice on an individual should not mystify anyone, including an IJ, into accepting that the named individual is guilty, or that the named individual is the subject of charges that are supported with evidence that is on its face credible and sufficient. A Red Notice is not by itself a sufficient basis for arresting anyone in the United States, much less detaining or removing anyone, or denying them asylum.

Challenging a Red Notice Directly Through the Commission for the Control of INTERPOL's Files

It is also possible, and often necessary, to challenge or delete a Red Notice through the Commission for the Control of INTERPOL's Files.⁸⁰ The CCF is an independent body made up of attorneys with data protection and international human rights experience, whose mandate is to “ensure[] that all personal data processed through INTERPOL's channels conform[] to the rules of the Organization.”⁸¹ In 2021, the last year for which data is available, the CCF deleted 296 Red Notices or other INTERPOL communications.⁸²

The process of challenging a Red Notice through the CCF is in some respects similar to presenting an asylum case—it is rooted in international human rights law, as well as INTERPOL's foundational documents and the CCF's published case excerpts. On the other hand, the CCF bears little resemblance to an actual court of law: there is no discovery process, the accused has no right to testify before the CCF, there is no body higher than the CCF to which an attorney can appeal, and the requesting state gets the benefit of the doubt. Critically, the CCF will also not decide on the merits of any criminal accusation; only whether the request for police cooperation is anathema to its Rules and Constitution.

It will normally take at least nine months after a request is found admissible for the CCF to reach a decision and for the INTERPOL General Secretariat to implement it.⁸³ But the CCF meets only a minimum of three times a year, and it is not required to adhere to this nine-month timeline if it decides that an extension of the deadline is warranted (though it is required to notify applicants if it extended the deadline).⁸⁴ As a result, it is relatively common for applicants to wait a year to receive the CCF's reply, and delays of two years or even more can occur. Troublingly, nations are increasingly taking a

non-cooperative approach in answering inquiries from the CCF, which can impose further delays.

It is advisable to begin the CCF process as soon as possible, and to ensure that it includes a request for provisional measures, which can be taken within less than three months.⁸⁵ In the asylum or removal process, providing documentary evidence to the IJ or to the DHS that the INTERPOL Red Notice is being challenged as illegitimate may provide critical support to a request for a continuance, or requests for other immigration benefits or a bond.

The Statute of the Commission for the Control of INTERPOL's Files⁸⁶ is essential background reading, and an application form to begin the process is available on the CCF's website.⁸⁷ Nevertheless, because the CCF has, to date, published only 56 decision excerpts, the publicly available case law is limited, and heavily redacted. Attorneys should strongly consider engaging the services of a colleague with experience in this specialized area.⁸⁸

Broadly, the process of submitting such a request through the CCF's Requests Chamber has three stages. The applicant—or the applicant's attorney—must submit an “application form for access and/or correction/deletion” to the CCF, including a power of attorney.⁸⁹ First, within a month or so of receipt, the CCF will check the admissibility of the request and inform the applicant of its decision, deeming the request admissible or not.⁹⁰ Second, presuming the application is admissible, the CCF will render a decision on deletion within nine months unless it determines that exceptional circumstances warrant an extension of that time limit.⁹¹ Finally, the INTERPOL General Secretariat will implement the CCF's decision within no more than two months.⁹²

In submitting a request to the CCF, attorneys will often have to walk a narrow line of casting doubt on the legal processes (if any) that resulted in the request for the Red Notice, while at the same time not seeking to put the police, legal, and judicial systems of the requesting country on trial. The CCF does not respond well to applications that consist only of generalized assertions of corruption, bias, or wrongdoing on the part of the requesting country, no matter how well-founded these assertions may be. Successful applications focus on the specifics of the case and cite copiously to INTERPOL's rules.

Even successfully requesting the deletion of a Red Notice may not on its own end legal proceedings that make use of the Red Notice in the United States, as any proceedings should be based on more than a Red Notice.⁹³ But applying to the CCF testifies to a belief on the part of a client and attorney that the charges that led to the Red Notice are political (or racial, religious, or military) in nature, or a violation of INTERPOL's technical rules on the processing of data. If the CCF deletes the Red Notice as the result of a successful application, and the CCF includes sufficient explanatory language in its decision, the CCF's action may provide powerful evidence that this belief was correct.

Paradoxically, therefore, while the publication of a Red Notice is not proof of an individual's guilt, the cancellation of a Red Notice may offer considerable evidence that the purported underlying offense was not a crime in ordinary law.⁹⁴ This is particularly true if the CCF accompanies its decision with a letter that states that the applicant's information was removed from INTERPOL-maintained databases because the request by the member country violated Article 3 of INTERPOL's Constitution. This kind of letter is extremely valuable evidence in the context of an asylum case.⁹⁵

The CCF restricts the length of submissions and only allows appeals if the existence of new facts can be demonstrated. Attorneys must work in the context of limited and poorly developed case law and complex facts that must be explained with some brevity, while understanding that the role of the CCF is to assess compliance with INTERPOL's rules, not to assess the requesting nation's legal or judicial system or determine guilt or innocence. Attorneys will only be successful if they understand and navigate these challenges.

Conclusion

The past several years have shown an evolution among U.S. immigration agencies and adjudicators, reflecting, in some cases, a more nuanced understanding of INTERPOL Red Notices and diffusions and how INTERPOL functions as an organization, as well as of the broader issue of transnational repression. But despite this evolution, INTERPOL communications are too often taken as conclusive proof of criminality by the DHS and by IJs. Inclusion in an INTERPOL-maintained database continues to have tremendous negative consequences on an individual's application for U.S. immigration benefits and on their life in general. In cases where INTERPOL abuse is perpetrated by authoritarian governments, it is up to immigration attorneys to educate IJs and the DHS to safeguard their client rights and ensure that the U.S. government does not become complicit in these tactics.

Notes

* Ted R. Bromund (theodore.bromund@gmail.com) is the Founder and Proprietor of Bromund Expert Witness Services LLC, which provides advice and expert witness statements on INTERPOL and INTERPOL abuse. Sandra A. Grossman (sgrossman@grossmanyong.com) is a founding partner at Grossman Young & Hammond LLC, a full-service immigration law firm operating in Bethesda, Maryland. She is the recipient of AILA's Edith Lowenstein Memorial Award for excellence in advancing the practice of immigration law. A special thanks to Ariel Rawls, Associate Attorney at Grossman Young & Hammond LLC, who provided critical assistance and support to this publication.

1. For a guide on how to advocate for Clients with INTERPOL notices before the U.S. Consulates, see Sandra A. Grossman, *The Impact of Interpol Red Notices on pending*

U.S. Visa petitions; What Every Attorney Needs to Know to Best Advocate for Their Clients, in *THE CONSULAR PRACTICE HANDBOOK* 299-313 (5th ed. 2023).

2. INTERPOL's Rules on the Processing of Data, III/IRPD/GA/2011, art. 5, www.interpol.int/en/content/download/5694/file/INTERPOL%20Rules%20on%20the%20Processing%20of%20Data-EN.pdf (last updated 2023) [hereinafter RPD].

3. *Id.* art. 1 (“‘Ordinary-law crime’ means any criminal offenses, with the exception of those that fall within the scope of Application of Article 3 of the Constitution and those for which specific rules have been defined by the General Assembly.”).

4. INTERPOL, *Repository of Practice: Application of Article 3 of INTERPOL's Constitution in the Context of the Processing of Information via INTERPOL's Channels*, § 2.2 (2d ed. 2013), <https://www.interpol.int/content/download/12626/file/article-3-ENG-february-2013.pdf> (stating that a primary objective of INTERPOL's Constitution is “[t]o protect individuals from persecution”) [hereinafter *Repository of Practice*].

5. Prosecution under laws that are not in conformity with accepted human rights standards or those that are applied in a discriminatory manner may constitute persecution. *See, e.g., Chanco v. I.N.S.*, 82 F.3d 298, 302 (9th Cir. 1996); *Li v. Holder*, 559 F.3d 1096, 1108-1113 (9th Cir. 2009); *Cruz-Samayoa v. Holder*, 607 F.3d 1145, 1151 (6th Cir. 2010).

6. Constitution of the ICPO-INTERPOL, I/CONS/GA/1956, art. 2, www.interpol.int/en/content/download/590/file/Constitution%20of%20the%20ICPO-INTERPOL-EN.pdf (last updated 2023).

7. *Id.* art. 3.

8. RPD, *supra* note 2, art. 97.

9. RPD, *supra* note 2, art. 79.

10. *About Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/About-Notices>.

11. *2017 Annual Report*, INTERPOL, 2018, p. 23, <https://www.interpol.int/en/content/download/5258/file/Annual%20Report%202017-EN.pdf?inLanguage=eng-GB>.

12. *Notices*, INTERPOL, <https://www.interpol.int/How-we-work/Notices>.

13. *Red Notices*, INTERPOL, www.interpol.int/INTERPOL-expertise/Notices/Red-Notices.

14. *Id.*

15. RPD, *supra* note 2, art. 83(1)(a)(ii) (noting that if the subject of the Red Notice is sought for prosecution, “the conduct constituting an offense [must be] punishable by a maximum deprivation of liberty of at least two years or a more serious penalty; if the person is sought to serve a sentence, he/she [must be] sentenced to at least six months of imprisonment and/or there is at least six months of the sentence remaining to be served”).

16. *Id.* art. 83(2).

17. *Id.*, arts. 10-12, 51, 77 (outlining several mechanisms for assessing compliance with INTERPOL's Constitution and Rules).

18. *Compliance and Review*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Compliance-and-review>.

19. *Id.* art. 128(1).

20. *See, e.g., Commission on the Control of INTERPOL's Files*, Decision No. 2023-02, ¶ 16 (“[I]t is recalled that the Commission's function is not to conduct an investigation, to weigh evidence, or to make a determination on the merits of a case. Only the competent national authorities may do so.”); *Commission on the Control of INTERPOL's Files*, Decision No. 2023-03, ¶ 30 (“The Commission is not empowered

to conduct an investigation, to weigh evidence, nor to make a determination on the facts or merits of a case; such is the function of the competent national authorities.”).

21. Elaine Ganley, *Interpol: Rules Forbid Probe of Ex-President's Fate in China*, AP NEWS (Nov. 8, 2018), <https://apnews.com/general-news-870d378bf47c4777a9599877f25418a6>.

22. *Compliance and Review*, *supra* note 18.

23. *Id.*

24. For a significant example of such a claim, see *Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices, Diffusions, and Other INTERPOL Communications for Political Motives and Other Unlawful Purposes*, U.S. DEP'T OF JUST. & U.S. DEP'T OF STATE (Sept. 2022), <https://www.state.gov/wp-content/uploads/2022/09/2022-Transnational-Repression-Accountability-and-Prevention-Act-Report.pdf>. For a rebuttal, see Sandra Grossman, *Conflicting Accounts on Interpol Abuse: Comparing US Government reports*, RED NOTICE MONITOR (Sept. 29, 2023), <https://www.rednoticemonitor.com/post/conflicting-accounts-on-interpol-abuse-comparing-us-government-reports>.

25. According to INTERPOL, the NDTF will also review “other information from INTERPOL databases, exchanges with member countries or external sources that indicate non-compliance.” *Compliance and Review*, *supra* note 18. According to a recent conversation between one of the authors and an INTERPOL official, this could also include reports and letters by human rights organizations and non-governmental organizations monitoring INTERPOL abuse.

26. *Id.*; see also *INTERPOL: New Data Reveals 1,000 Red Notices and Wanted Person Diffusions Rejected or Deleted Each Year*, FAIR TRIALS (Nov. 7, 2022), <https://www.fairtrials.org/articles/news/interpol-new-data/>.

27. *Compliance and Review*, *supra* note 18.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. See Jane Bradley, *Strongmen Find New Ways to Abuse Interpol, Despite Years of Fixes*, N.Y. TIMES (Feb. 20, 2024), <https://www.nytimes.com/2024/02/20/world/europe/interpol-strongmen-abuse.html>; Ben Keith & Rhys Davies, *Russia and China's Abuse of Red Notices Could Break Interpol Beyond Repair*, EURO NEWS (Apr. 6, 2023), <https://www.euronews.com/2023/04/06/russia-and-chinas-abuse-of-red-notices-could-break-interpol-beyond-repair>.

33. The U.S. Department of State's Office of Foreign Missions has called the attention of all foreign missions to its heightened concern and condemnation of transnational repression activities occurring in the United States and elsewhere. *Notice: Transnational Repression*, U.S. DEP'T OF STATE (July 8, 2022), <https://www.state.gov/wp-content/uploads/2022/07/2022-07-08-Notice-Counter-Transnational-Repression.pdf>.

34. See generally “We Will Find You”: A Global Look at How Governments Repress Nationals Abroad, HUMAN RIGHTS WATCH (Feb. 22, 2024), <https://www.hrw.org/report/2024/02/22/we-will-find-you/global-look-how-governments-repress-nationals-abroad>.

35. *INTERPOL*, FAIR TRIALS, <https://www.fairtrials.org/campaigns/>.

36. While all of Freedom House's reports are valuable, its 2022 report, *Unsafe in America: Transnational Repression in the United States*, at <https://freedomhouse.org/report/transnational-repression/united-states>, is a useful place to begin; see, e.g., *PACE Sets Out Steps to Curb “Transnational Repression”*, PARLIAMENTARY

ASSEMBLY OF THE COUNCIL OF EUR. (June 23, 2024), <https://pace.coe.int/en/news/9165/pace-sets-out-steps-to-curb-transnational-repression->.

37. *Transnational Repression: Authoritarians Targeting Dissenters Abroad*, SENATE FOREIGN RELS. COMM. (Dec. 6, 2023), <https://www.foreign.senate.gov/hearings/transnational-repression-authoritarians-targeting-dissenters-abroad>.

38. *40 Officers of China's National Police Charged in Transnational Repression Scheme Targeting U.S. Residents*, U.S. DEP'T OF JUST. (Apr. 17, 2023), <https://www.justice.gov/opa/pr/40-officers-china-s-national-police-charged-transnational-repression-schemes-targeting-us>.

39. *Country Reports on Human Rights Practices*, U.S. DEP'T OF STATE, <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>.

40. National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81. § 6503(c).

41. *Id.* § 6503(a) (“It is the sense of Congress that some INTERPOL member countries have repeatedly misused INTERPOL’s databases and processes, including Notice and Diffusion mechanisms, to conduct activities of an overtly political or other unlawful character and in violation of international human rights standards, including by making requests to harass or persecute political opponents, human rights defenders, or journalists.”).

42. The NDAA reports can be found at *Transnational Repression Accountability and Prevention (TRAP) Act Reports*, U.S. DEP'T OF STATE, <https://www.state.gov/transnational-repression-accountability-and-prevention-trap-act-reports/> (last updated December 2023).

43. National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81. § 6503(b)(3).

44. See, e.g., *Biannual Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices, Diffusions, and Other INTERPOL Communications for Political Motives and Other Unlawful Purposes*, U.S. DEP'T OF JUST. & DEP'T OF STATE (Dec. 2023), <https://www.state.gov/wp-content/uploads/2024/03/20231204-Third-TRAP-Act-Report-Accessible-3.21.2024.pdf>; *Biannual Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices, Diffusions, and Other INTERPOL Communications for Political Motives and Other Unlawful Purposes*, U.S. DEP'T OF JUST. & DEP'T OF STATE (Apr. 2023), <https://www.state.gov/wp-content/uploads/2023/06/April-2023-Transnational-Repression-Accountability-and-Prevention-Act-Report.pdf>; *Biannual Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices, Diffusions, and Other INTERPOL Communications for Political Motives and Other Unlawful Purposes*, U.S. DEP'T OF JUST. & DEP'T OF STATE (Aug. 2022), <https://www.state.gov/wp-content/uploads/2022/09/2022-Transnational-Repression-Accountability-and-Prevention-Act-Report.pdf>.

45. Grossman, *supra* note 1. For an assessment of the reports deriving from the NDAA, see Grossman, *supra* note 24.

46. *Frequently Asked Questions*, INTERPOL WASH., U.S. DEP'T OF JUST., www.justice.gov/interpol-washington/frequently-asked-questions.

47. *Justice Manual, Organization and Functions Manual*, U.S. DEP'T OF JUST., § 3, ¶ A, <https://www.justice.gov/jm/organization-and-functions-manual-3-provisional-arrests-and-international-extradition-requests>. Numerous courts acknowledge that while a Red Notice is not a formal international arrest warrant, “it is reliable when offered ‘for what it purports to be—namely a request by a member country . . . to provisionally

arrest a specifically identified person . . . pending extradition based on a valid national arrest warrant for a crime that is not political in nature.” See, e.g., *Liv. v. Garland*, 859 F. App’x 584, 586-97 (2d Cir. 2021) (citing *Matter of W-E-R-B-*, 27 I&N Dec. 795, 798-99 (BIA 2020) (declining to find that the Board violated the Respondent’s due process rights in relying on a Red Notice to deny adjustment of status as a matter of discretion, where the Agency did not rely solely on the Notice and where the Agency made an adverse credibility finding)); *Radiowala v. Att’y Gen.*, 930 F.3d 577, 580 n.1 (3d Cir. 2019) (“Congress has not seen fit to prescribe that an INTERPOL Red Notice alone is an independent basis for removal . . .”); *Hernandez Lara v. Barr*, 962 F.3d 45, 48 n.3 (1st Cir. 2020) (concluding that “a Red Notice alone is not sufficient basis to arrest the subject of the notice”).

48. National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81. § 6503(d).

49. See Alejandro N. Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law*, U.S. DEP’T OF HOMELAND SEC., 2 (Sept. 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf> (“It is well established in the law that federal government officials have broad discretion to decide who should be subject to arrest, detainers, removal proceedings, and the execution of removal orders. The exercise of prosecutorial discretion in the immigration arena is a deep-rooted tradition.”); Kerry E. Doyle, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*, U.S. DEP’T OF HOMELAND SEC. (Apr. 3, 2022), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf (“Prosecutorial discretion is an indispensable feature of any functioning legal system.”).

50. INA § 212(a)(6)(A)(i) (finding noncitizens who were not admitted or paroled into the United States inadmissible); INA § 237(a) (listing grounds for deportation); see e.g., *Barahona v. Garland*, 993 F.3d 1024, 1026 (8th Cir. 2021) (describing how respondent was taken into custody after DHS discovered the Red Notice for him, charging him under INA § 212); *Matter of W-E-R-B-*, 27 I&N Dec. 795, 796 (BIA 2020) (noting respondent was charged under INA § 208 and INA § 212).

51. *ICE Updates Guidance for use of INTERPOL Red Notices During Law Enforcement Actions*, U.S. IMM. & CUSTOMS. ENF’T (Sept. 29, 2023), <https://www.ice.gov/news/releases/ice-updates-guidance-use-interpol-red-notices-during-law-enforcement-actions>.

52. *ICE Directive 15006.1: INTERPOL Red Notices and Wanted Persons Diffusions*, U.S. IMM. & CUSTOMS. ENF’T (Aug. 15 2023), https://www.ice.gov/doclib/foia/dro_policy_memos/15006.1_InterpolRedNoticesWpDiffusions.pdf.

53. *Id.* § 5.1(6).

54. *Id.* § 5.1(7).

55. *Id.* §§ 5.2-5.3.

56. Bradley, *supra* note 32.

57. See *How to Submit a Request*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/How-to-submit-a-request>.

58. Ted R. Bromund, *ICE Wrongly Continues to Use Interpol Red Notices for Targeting*, FORBES (Dec. 19, 2018), www.forbes.com/sites/tedbromund/2018/12/19/ice-wrongly-continues-to-use-interpol-red-notices-for-targeting/#19a5d3ff175e.

59. For a fuller assessment of the Directive, see Meg Hobbins & Ted R. Bromund, *ICE Issues Updated Guidance on Use of INTERPOL Red Notices*, INT’L ENF’T L.

REP., Vol. 39 (Nov. 30, 2023). A full copy of the article can be found at <https://www.grossmanyong.com/wp-content/uploads/sites/577/2020/06/IELR-Vol-39-Iss-11-MH-and-Bromund.pdf>.

60. INA § 208(b)(2)(A)(ii) (asylum); INA § 241(b)(3)(B)(iii) (withholding).

61. See, e.g., *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 977 (9th Cir. 2022); *Barahona*, 993 F.3d at 1027; *Guo Qi Wang v. Holder*, 583, F.3d 86, 90 (2d Cir. 2009); *Whyte v. Garland*, 2023 WL 3092977, *3 (4th Cir. 2023); 8 C.F.R. 1240.8(d) (explaining that the burden shifts to the respondent if record evidence triggers a mandatory bar to relief, including the serious nonpolitical crime bar in asylum and withholding proceedings).

62. 8 U.S.C. § 1158(b)(2)(A)(iii).

63. See 8 F.4th 1161, 1186 (9th Cir. 2021).

64. *Id.* at 1168.

65. See *id.* at 1167; *Whyte*, 2023 WL 3092977, *4; *Barahona*, 993 F.3d at 1028.

66. *Gonzalez Castillo*, 47 F.4th at 975.

67. *Id.* at 978.

68. *Id.* at 976.

69. For a fuller analysis of *Matter of W-E-R-B-*, see Sandra Grossman & Meg Hobbins, *Matter of W-E-R-B- and the Reliability of Red Notices: How to Successfully Advocate for Victims of Persecution*, BENDER'S IMMIGR. BULL. (June 15, 2020). A full copy of the article can be found at https://www.grossmanyong.com/wp-content/uploads/sites/577/2020/06/Grossman-and-Hobbins-Matter-of-WERB-25-BIB-875_june-15_2020.pdf.

70. See, e.g., *Villalobos Sura*, 8 F.4th at 1167; *Whyte*, 2023 WL 3092977, *4; *Barahona*, 993 F.3d at 1028.

71. Grossman Young & Hammond tracks evolving case law regarding treatment of INTERPOL Red Notices in the United States on its website, and attorneys should consult this page for the latest cases. *INTERPOL Resources*, GROSSMAN YOUNG & HAMMOND, <https://www.grossmanyong.com/interpol-resources/>. A 2022 report from the Congressional Research Service also contains a useful summary. *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)*, CONG. RSCH. SERV. (Sept. 7, 2022), <https://crsreports.congress.gov/product/pdf/LSB/LSB10816>.

72. *Red Notices*, *supra* note 13; see also *Malam v. Adducci*, 2020 WL 5891394, *2 (S.D. Mich. 2020) (slip copy) (granting a bail application for a habeas litigation applicant, even where an IJ denied bond due in large part to the existence of a Red Notice, holding that same notice “diminishes any right of flight by al-Araj, and he will not be a flight risk” nor a danger to the community).

73. *Kharis v Sessions*, 2018 WL 5809432, *8, 10 (N.D. Cal. 2018).

74. *Torres Murillo v Barr*, 2019 WL 8723753, *3 (N.D. Cal. 2019).

75. *Malam v. Adducci*, 2020 WL 5891394, *2 (S.D. Mich. 2020) (slip copy).

76. RPD, *supra* note 2, art. 128(1).

77. Repository of Practice, *supra* note 4.

78. See, e.g., Dree K. Collopy, AILA'S ASYLUM PRIMER: A PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE, 94 (9th ed. 2023) (“Whether the harm inflicted or feared is prosecution for an unlawful act, rather than persecution on account of one of the protected grounds in [sic] a common issue in asylum claims. This is because individuals fleeing legitimate criminal prosecution are generally not able to meet the definition of “refugee” as defined in domestic and international law.”); *supra* note 3.

79. RPD, *supra* note 2, art. 83(1)(a)(i).

80. *Commission for the Control of INTERPOL's Files (CCF)*, INTERPOL, <https://www.interpol.int/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF>.

81. *Id.*

82. Activity Report of the Commission for the Control of INTERPOL's Files for 2021, INTERPOL, Appendix ¶ 16, <https://www.interpol.int/en/content/download/18398/file/CCF%20Annual%20Report%20for%202021-ENG.pdf?inLanguage=eng-GB>.

83. See Statute of the Commission for the Control of INTERPOL's Files, II.E/RCIA/GA/2016, art. 40(2).

84. *CCF Sessions and Decisions*, INTERPOL, <https://www.interpol.int/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/CCF-sessions-and-decisions>. For the flexibility of the CCF's deadline, see Statute of the Commission for the Control of INTERPOL's Files, INTERPOL, II.E/RCIA/GA/2016, art. 40(3), <https://www.interpol.int/content/download/5695/file/Statute%20of%20the%20CCF-EN.pdf?inLanguage=eng-GB>.

85. *Procedural Guidelines for Applicants to the Commission*, THE COMM'N FOR THE CONTROL OF INTERPOL'S FILES, § 2.1.5, <https://www.interpol.int/content/download/13876/file/Guidelines%20for%20Applicants%20on%20procedure%20-%20update%202023%20-%20EN.pdf> (last updated Apr. 28, 2023).

86. Statute of the Commission for the Control of INTERPOL's Files, *supra* note 80.

87. *How to Submit a Request*, *supra* note 57.

88. Decision excerpts are available at *CCF Sessions and Decisions*, *supra* note 81.

89. *How to Submit a Request*, *supra* note 57.

90. *Procedural Guidelines for Applicants to the Commission*, *supra* note 82, § 2.1.3(a).

91. *Id.* § 2.1.6; Statute of the Commission for the Control of INTERPOL's Files, *supra* note 80, art. 40(3).

92. *Procedural Guidelines for Applicants to the Commission*, *supra* note 82, § 2.1.6.

93. See, e.g., *Gonzales v. Garland*, 29 F.4th 993-94, 989 (2022) (denying Petitioner's motion to remand based on deletion of Red Notice where INTERPOL deleted Red Notice due to violations of INTERPOL's RPD versus because the case was "of a predominantly political character"). But see *Jessica Barahona-Martinez*, A209 217 604, 2-3 (BIA Apr. 12, 2024) (unpub.) (reopening Respondent's removal proceedings because of INTERPOL's deletion of the Red Notice for her and finding Respondent to have demonstrated by a preponderance of the evidence that she did not commit a serious nonpolitical crime).

94. See CCF Dec. No. 2019-07, ¶ 43 (finding the offense listed in the Red Notice to constitute a mere "petty crime"); CCF Dec. No. 2018-04, ¶ 42 ("[T]here is no indication that the alleged criminal activity was aimed at facilitating a serious crime or is suspecting of being connected to organized crime . . ."); CCF Dec. No. 2017-14, ¶ 34 ("[I]t also appears to the Commission that the key element concerning the Applicants possible intent and influence to issue the fictitious grants was not provided in this case, and could amount to a private contractual dispute.").

95. See Nicole Acevedo, *A Mother Got Ensnared by an Interpol List. She Ended Up in Immigration Detention*, NBC NEWS (Feb. 22, 2024), <https://www.nbcnews.com/news/latino/interpol-mothers-immigration-case-detention-edited-rcna137904>; *Jessica Barahona-Martinez*, A209 217 604, 2-3 (BIA Apr. 12, 2024) (unpub.) (reopening removal proceedings based on INTERPOL's deletion of the Red Notice).