

# Disguised Extradition: How INTERPOL Red Notices in U.S. Immigration Removal Proceedings Violate Due Process and Non-Refoulement Obligations

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## ABSTRACT

*INTERPOL Red Notices—akin to international wanted posters—are meant to serve as precursors to extradition, surrender, or other legal proceedings. Countries with differing criminal legal systems and corruption levels request Red Notices, and INTERPOL reviews such requests through a basic and limited administrative process. As a result, abusive and corrupt regimes wishing to target political dissidents, journalists, activists, and even ordinary citizens who have fled seeking safety abuse INTERPOL’s notice system. While the United States Department of Justice considers Red Notices to be an insufficient basis for probable cause or arrest, Immigration and Customs Enforcement conducts enforcement actions against noncitizens with Red Notices, targeting them for detention and deportation, generally without any meaningful verification of the contents of the Red Notice. This undue reliance on Red Notices can lead to the initiation of removal proceedings, prolonged and unjustified detention, denial of life-saving fear-based protections from removal, and deportation. Ultimately, through Red Notices, abusive regimes can instrumentalize the U.S. immigration system to achieve the same result—return of their wanted national—through a faster, easier, and less protective mechanism than extradition: deportation. This form of “disguised extradition” has turned the United States into a weapon for these governments, causing it to violate its non-refoulement obligations and noncitizens’ due process rights.*

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## INTRODUCTION

In 2019, United States Immigration and Customs Enforcement (ICE) arrested and detained Jon,<sup>2</sup> a Salvadoran man who had been living in the United States for several years. Jon, like many other teenagers in El Salvador in the 1990s, joined the MS-13 gang but then left the gang as a teenager. Leaving the gang—which punishes “desertion with a death sentence”<sup>3</sup>—put his life in danger, so he fled to the United States. He had no criminal history in the United States, apart from minor traffic citations, but he had a Red Notice issued by the International Criminal Police Organization (INTERPOL). This Red Notice accused him of gang membership and commission of a homicide in El Salvador years ago, a factual impossibility as he was already living in the United States at the time.

Based on this Red Notice, ICE arrested Jon and placed him in removal proceedings: civil, administrative proceedings initiated with the goal of deporting noncitizens from the United States. When arrested, Jon was torn from his family and community and locked up in an ICE detention center. Jon only learned of the existence of the Red Notice when ICE filed it at his bond hearing, and the immigration judge denied his release, finding that the Red Notice meant he was a danger to the community. Having been deported from the United States once before, but still fearing persecution and torture in El Salvador, Jon applied for withholding of removal and deferral under the Convention Against Torture (CAT), two forms of fear-based protection or relief from removal.<sup>4</sup> The ICE prosecutor argued that Jon was ineligible for withholding of removal due to the serious nonpolitical crime bar, which applies when there is probable cause that a person committed a serious nonpolitical crime outside of the United States. The prosecutor also challenged Jon’s credibility, arguing that, contrary to Jon’s testimony, he was still an MS-13 gang member. Jon filed evidence showing that he was in the United States at the time of the alleged homicide and that the Red Notice was the result of corruption. This included evidence that El Salvador routinely uses Red Notices to target even ordinary citizens it considers opponents.

Ultimately, Jon won deferral of removal to El Salvador under the CAT. This meant that the immigration judge determined that he faced a

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<sup>2</sup> The individual’s name was changed to protect his identity. The author has documentation in redacted form, available upon request.

<sup>3</sup> *MS13*, INsIGHT CRIME (Apr. 3, 2025), <https://insightcrime.org/el-salvador-organized-crime-news/mara-salvatrucha-ms-13-profile/> [<https://perma.cc/S2G4-2DX8>].

<sup>4</sup> The term “fear-based relief” is used to encompass the three primary forms of relief or protection from removal premised on an applicant fearing return to his home country: asylum, withholding of removal, and protection under the Convention Against Torture. Withholding of removal protects the noncitizen from being deported to a specific country where it is more likely than not that he will face persecution on account of a protected ground. 8 C.F.R. § 208.16. Protection under the Convention Against Torture similarly prevents a noncitizen from being deported to a specific country where it is more likely than not that he will be tortured either by the government or with government acquiescence. 8 C.F.R. § 1208.17.

greater than 50 percent chance of torture in El Salvador and thus could not be deported there. But ICE appears to have a practice of appealing Red Notice cases, and so the ICE prosecutor appealed Jon's grant. During the appeal, Jon petitioned for deletion of the Red Notice. After many months, INTERPOL permanently deleted it. Despite the Red Notice deletion and his grant of protection, ICE continued Jon's detention because the underlying Salvadoran arrest warrant remained. Now, as a result of his initial arrest by ICE—initiated by the allegations in the Red Notice—Jon remains detained and separated from his family years later, despite winning CAT deferral multiple times.

This long and complicated history demonstrates an underdeveloped aspect of crimmigration<sup>5</sup> and international laws: how corrupt regimes and government officials use INTERPOL to target dissidents, opponents, and even ordinary citizens, not through the more protective extradition system, but through the U.S. immigration deportation machine. This distinction is critical. Red Notices, which are issued through a limited administrative process, are meant to seek the provisional arrest of a person in another country with an eye towards extradition or other legal proceedings. In the United States, extradition proceedings involve intense scrutiny and approval by different government agencies and courts. Extradition proceedings are also governed by bilateral, multilateral, or ad hoc treaties which also outline required human rights protections for extraditees. On the other hand, U.S. removal proceedings are civil administrative proceedings with limited constitutional protections and legal representation only for those who can find their own attorneys. When false or corrupt allegations underlie Red Notices, they are much more likely to withstand scrutiny in removal proceedings than in extradition proceedings. Removal proceedings involving Red Notices have therefore turned into de facto extradition proceedings, but without the more stringent human rights protections inherent in the latter.

Hollywood movies portray INTERPOL as a global police force with armed agents fighting crime and arresting criminals around the world. In reality, however, INTERPOL is a network that facilitates law enforcement communication across its 196 member states. As part of this communication network, INTERPOL publishes a series of color-coded notices and diffusions<sup>6</sup> at the behest of member states to alert the international community of

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<sup>5</sup> Crimmigration, or the convergence of criminal and immigration laws, addresses the profound increase in immigration consequences of criminal law violations and criminal consequences of immigration law violations, as well as the general criminalization of the civil immigration space. See, e.g., Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006); César Cuauhtémoc García Hernández, *Deconstructing Crimmigration*, 52 U.C. DAVIS L. REV. 197 (2018).

<sup>6</sup> Notices and diffusions are both issued according to the same color-coded system. The key difference between them is that notices are published by INTERPOL's General Secretariat after an administrative review, whereas diffusions are requests for rapid assistance circulated by an individual country's National Central Bureau to all or some other member countries. See *About Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/About-Notices> [https://perma.cc/ZQ5H-FNZY] (last visited Oct. 4, 2025).

crime-related information. One of these color-coded notices, the Red Notice, is akin to an international “wanted” poster, an advertisement to member states that the subject of the notice has an active arrest warrant or court order. Per INTERPOL’s rules, Red Notices are meant to be a first step to the initiation of “extradition, surrender, or similar legal action.”<sup>7</sup> Every INTERPOL member state is permitted to request publication of a Red Notice. These member states have differing criminal legal systems and levels of corruption and persecution. This means that requests for Red Notices also have different levels of legal grounding. In fact, many published Red Notices are bare-boned and insufficient even under INTERPOL’s basic requirements for publication. Notices with these types of errors would most likely fail to meet the rigorous standards for extradition from the United States.

Despite these concerns, over the last several years, ICE has continued enforcement against and detention of noncitizens in the United States, including asylum seekers, on the basis of Red Notices.<sup>8</sup> Once detained, these individuals are placed in immigration removal proceedings, where government prosecutors argue for their deportation from the United States. In these proceedings, immigration courts place undue reliance on and conduct insufficient scrutiny of Red Notices, violating noncitizens’ due process rights. Use of Red Notices in this way can also result in prolonged detention, denial of fear-based relief (asylum, withholding of removal, and CAT protection), and deportations to the very countries where people face persecution and torture. Deportation, therefore, has become a significantly easier, faster, and more reliable mechanism than extradition for achieving the exact same result: return of a national to the country where they are wanted, whether that be for prosecution or persecution. When deportation from the United States is based on an illegitimate or abusive<sup>9</sup> Red Notice, such as to target political dissidents, journalists, refugees, and even ordinary citizens, the result is weaponization of the U.S. government as a tool of transnational repression.<sup>10</sup>

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<sup>7</sup> *View Red Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Red-Notices/View-Red-Notices> [<https://perma.cc/MFM8-D8GN>] (last visited Oct. 4, 2025).

<sup>8</sup> As ICE does not publish data on the number of apprehensions initiated on the basis of Red Notices, it is impossible to identify trends in enforcement actions based on notices.

<sup>9</sup> Here, “illegitimate” or “abusive” is used to describe Red Notices that are requested with the intention of seeking the return of a national for reasons other than extradition for legitimate prosecution for an ordinary-law crime.

<sup>10</sup> The term “transnational repression” was first coined in 2016 by Dana Moss and has been expanded over the last several years. While there is no universally accepted definition, transnational repression occurs when a government attempts to silence the “rights, liberties, and ‘voice’” of individuals outside state borders and includes actions such as murder or attempted murder, harassment, threats, stalking, and “misuse of international legal instruments.” See Dana M. Moss, *Transnational Repression, Diaspora Mobilization, and the Case of the Arab Spring*, 63 *SOCIAL PROBLEMS* 480, 481 (2016) (quoting Albert Hirschman, *Exit, Voice, and the State*, *World Politics* 31:90-107); TED R. BROMUND, *HOW THE ABUSE OF INTERPOL CONTRIBUTES TO TRANSNATIONAL REPRESSION*, *NEW LINES INSTITUTE FOR STRATEGY AND POLICY* 3 (2025); see generally THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *TRANSNATIONAL REPRESSION* (2025).

The issues raised in this Article lie at the intersection of international, immigration, and criminal laws. The Article questions how both INTERPOL and the U.S. immigration system and laws foster transnational repression through Red Notices, and how both might be reformed to remedy this abuse. Part I provides background on INTERPOL and Red Notices, including an overview of INTERPOL's structure, primary functions, and coordination with individual member states. It also explains how notices are issued through a purely administrative process that has dual and conflicting goals: respect for state autonomy and for individuals' human rights. Part II argues that the administrative mechanism through which Red Notices are reviewed and the prioritization of neutrality allow member states to use Red Notices as a tool for transnational repression. While INTERPOL has instituted measures and reforms to try to limit this abuse, these measures have been insufficient to curb abuse of the notice system. This section reviews INTERPOL's data on deleted notices to demonstrate the ongoing abuse of the notice system. Part III explores case examples to discuss how ICE and immigration courts use Red Notices to initiate immigration enforcement actions, keep people in prolonged detention, and deny fear-based relief from removal. This Part argues that Red Notices are often improperly admitted as evidence into immigration courts even if fundamentally unfair and prejudicial, the standard for admission in these courts. When such evidence fails to meet this standard, it violates noncitizens' due process rights guaranteed under the Fifth Amendment. Part III also considers the legal framework currently used to analyze police reports in immigration courts, as Red Notices bear many of the same hallmarks of unreliability, if not more. Part IV explores how ICE's use of Red Notices in the U.S. immigration system enables foreign governments to circumvent slower and more robust extradition procedures to achieve the same result through deportation. This "disguised extradition" allows corrupt regimes to weaponize the U.S. immigration system to achieve their own ends and causes the United States to violate noncitizens' due process rights and its own non-refoulement obligations.<sup>11</sup> It concludes by offering recommendations to INTERPOL and the United States to ensure greater compliance with international human rights law and due process.

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<sup>11</sup> Non-refoulement is the international legal principle that prohibits states from removing a person "when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations." U.N. HUM. RTS. OFFICE OF THE HIGH COMM'R, *THE PRINCIPLE OF NONREFOULEMENT UNDER INT'L HUM. RTS. LAW* (2018), <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> [<https://perma.cc/52DD-D6WB>].

I. INTERPOL RED NOTICES ARE INTERNATIONAL  
“WANTED POSTERS” ISSUED THROUGH A PURELY ADMINISTRATIVE PROCESS

INTERPOL is an intergovernmental organization with 196 member states.<sup>12</sup> Its dual aims are to promote “mutual assistance between all criminal police authorities” and “to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.”<sup>13</sup> The INTERPOL constitution establishes its four foundational principles: respect for member state sovereignty, respect for human rights as established in the Universal Declaration of Human Rights (UDHR), neutrality, and constant and active cooperation.<sup>14</sup> Essentially, INTERPOL is an information-sharing network among the national police forces of its member states. It maintains 19 databases on matters ranging from forensics to stolen artwork to organized crime intelligence.<sup>15</sup> It offers investigative support and training to national law enforcement entities and is developing analytic capacities to assist national police forces.<sup>16</sup> INTERPOL is not, however, a police agency. It has no mandate to investigate, arrest, try, or convict.

While INTERPOL cannot, on its own, arrest any individual, it maintains a database of individuals sought by member states for various reasons. This database includes a series of color-coded notices and diffusions that are alerts or requests from individual member states for international police cooperation.<sup>17</sup> For example, Red Notices seek the location and arrest of persons wanted for prosecution or for the execution of a sentence; Yellow Notices alert for missing persons; Blue Notices aim to collect information about individuals in relation to a criminal investigation; and Black Notices

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<sup>12</sup> INTERPOL’s structure includes the General Assembly, comprised of all member states. Each member state has an equal and single vote. Below the General Assembly sits the Executive Committee, a 13-member body “supervising the execution of the General Assembly’s decisions and administration and work of the General Secretariat.” *Governance*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Governance> [<https://perma.cc/C8EB-YN8S>] (last visited Oct. 4, 2025). The Secretary General leads the General Secretariat, administers the budget, and ensures General Assembly decisions are implemented. *Secretary General*, INTERPOL, <https://www.interpol.int/en/Who-we-are/General-Secretariat/Secretary-General> [<https://perma.cc/3G-GV-AYYP>] (last visited Oct. 29, 2025).

<sup>13</sup> ICPO-INTERPOL CONST. art. II.

<sup>14</sup> *See id.* (outlining INTERPOL’s fundamental rules and principles); *Legal Documents*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Legal-framework/Legal-documents> [<https://perma.cc/AVV8-J7SN>] (last visited Oct. 4, 2025).

<sup>15</sup> *Our 19 Databases*, INTERPOL, <https://www.interpol.int/en/How-we-work/Databases/Our-19-databases> [<https://perma.cc/T2UE-BQTG>] (last visited Oct. 4, 2025).

<sup>16</sup> *What is INTERPOL*, INTERPOL, <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL2> [<https://perma.cc/24VE-Z58L>] (last visited Oct. 4, 2025); *Capacity Building*, INTERPOL, <https://www.interpol.int/en/How-we-work/Capacity-building> [<https://perma.cc/E5ZT-A5S6>] (last visited Oct. 4, 2025).

<sup>17</sup> *See About Notices*, *supra* note 6.

seek information on unidentified bodies.<sup>18</sup> Most recently, INTERPOL introduced a Silver Notice to target those accused of financial crimes.<sup>19</sup> Diffusions operate under the same color-coded system (i.e., a Red Diffusion can be used to request arrest of a wanted person), but they are circulated by an individual member state through INTERPOL's secure network to some or all member states and do not require INTERPOL's prior approval.<sup>20</sup> Diffusions are often utilized when INTERPOL's minimum requirements for a notice are unmet.<sup>21</sup>

Each INTERPOL member state has a National Central Bureau (NCB) that coordinates with INTERPOL and other member states.<sup>22</sup> NCBs have access to INTERPOL's databases through its global police communications system, I-24/7.<sup>23</sup> In practice, however, NCBs can authorize other agencies to access I-24/7, including domestic criminal law enforcement entities and even those who enforce civil laws, like immigration and border officials.<sup>24</sup>

Red Notices—the primary focus of this Article—are “a request to law enforcement worldwide to locate and provisionally arrest a person pending

<sup>18</sup> *Id.* Additionally, Green Notices provide warning about an individual's criminal activities; Orange Notices warn of an event, object, or person representing a “serious and imminent threat to public safety”; Purple Notices provide information on methods used by criminals; and United Nations Security Council Special Notices are for targets of the Security Council's Sanctions Committees.

<sup>19</sup> *INTERPOL Publishes First Silver Notice Targeting Criminal Assets*, INTERPOL (Jan. 10, 2025), <https://www.interpol.int/en/News-and-Events/News/2025/INTERPOL-publishes-first-Silver-Notice-targeting-criminal-assets> [<https://perma.cc/F5QW-WAXP>]. INTERPOL scholars have expressed concern about the creation of this new notice because “[a]busive regimes commonly rely on accusations of financial crime (including fraud and tax evasion).” Ted R. Bromund, Sandra Grossman & Ilan Greenberg, *As Interpol Gets New Secretary General, What are the Risks of Abuses Over Reforms?*, JUST SECURITY (Nov. 1, 2024), <https://www.justsecurity.org/104398/new-interpol-chief-abuses-reforms/> [<https://perma.cc/6XSH-YW4N>].

<sup>20</sup> *See About Notices*, *supra* note 6.

<sup>21</sup> *Dismantling the Tools of Oppression: Ending the Misuse of INTERPOL*, FAIR TRIALS INT'L 56-57 (2018), <https://www.fairtrials.org/app/uploads/2022/01/Dismantling-the-tools-of-oppression.pdf> [<https://perma.cc/2DSZ-6CHR>].

<sup>22</sup> NCBs may be a division of a national police force or a judicial department. The U.S. NCB, for example, is co-managed by the U.S. Departments of Justice and Homeland Security. *See INTERPOL - United States National Central Bureau*, U.S. DEP'T OF JUST., <https://www.justice.gov/doj/interpol-united-states-national-central-bureau> [<https://perma.cc/U85M-74H4>] (last visited Oct. 4, 2025). The United Kingdom's NCB is part of the National Crime Agency, which aims to address national security threats. *United Kingdom*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Member-countries/Europe/UNITED-KINGDOM> [<https://perma.cc/EB6A-DUA2>] (last visited Oct. 4, 2025).

<sup>23</sup> *National Central Bureaus (NCBs)*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Member-countries/National-Central-Bureaus-NCBs> [<https://perma.cc/6S64-TPH5>] (last visited Oct. 4, 2025).

<sup>24</sup> FAIR TRIALS INT'L, *STRENGTHENING RESPECT FOR HUMAN RIGHTS, STRENGTHENING INTERPOL 12* (2013), <https://www.fairtrials.org/app/uploads/2022/01/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf> [<https://perma.cc/HD5M-ZJUV>]. In 2005, INTERPOL also introduced a new set of databases called MIND/FIND that allowed for the screening of people and documents at border crossings by local law enforcement agents themselves, rather than those agents having to request access through their national NCB. *See Key Dates*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Our-history/Key-dates> [<https://perma.cc/2VPH-HETF>] (last visited Oct. 4, 2025).

extradition, surrender, or similar legal action.”<sup>25</sup> They are essentially international “wanted posters,” rather than international arrest warrants. This is because they are issued through a limited administrative, as opposed to a judicial, process that does not consider the underlying evidence against the subject of the notice.<sup>26</sup> This distinction is critical due to the credence generally given to arrest warrants. The requirements for publication of a Red Notice are detailed in INTERPOL’s Rules on the Processing of Data (RPD). Unlike the requirements for a judicial warrant in the United States, the requirements for publication of a Red Notice detailed in the RPD are minimal. A member state’s NCB submits an online request form. In the form, it must certify that the offense allegedly committed is “a serious ordinary-law crime,” like burglary, murder, or rape, as opposed to one related to cultural norms, family matters, or political issues.<sup>27</sup> The alleged offense must also carry a maximum possible sentence of at least two years.<sup>28</sup> The NCB must provide minimal information about the wanted person, the criminal law allegedly violated, and a summary of the facts.<sup>29</sup> It has to establish “coherence” between the charges alleged and the judicial data supporting them.<sup>30</sup> Lastly, a member state must indicate that a valid arrest warrant or court order exists, but it does not need to provide a copy of that document.<sup>31</sup> The NCB itself is responsible for ensuring “the quality and lawfulness of the data” and certifying that the request is made “for the purposes of international police cooperation.”<sup>32</sup>

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<sup>25</sup> View *Red Notices*, *supra* note 7.

<sup>26</sup> See generally *Red Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Red-Notices> [<https://perma.cc/HCE7-XJVS>] (last visited Oct. 4, 2025).

<sup>27</sup> *INTERPOL’s Rules on the Processing of Data*, INTERPOL, Art. 83(1)(a)(i), III/IRPD/GA/2011 (2024), [https://www.interpol.int/en/content/download/5694/file/27%20E%20RulesProcessingData\\_RPD\\_2024.pdf](https://www.interpol.int/en/content/download/5694/file/27%20E%20RulesProcessingData_RPD_2024.pdf) [<https://perma.cc/2TZE-GGQC>] (last visited Oct. 4, 2025) [hereinafter *INTERPOL Rules on the Processing of Data*]; *List of Specific Offences for Which Red Notices May Not Be Issued*, INTERPOL, <https://www.interpol.int/content/download/17285/file/Specific%20offences%20for%20which%20Red%20notices%20may%20not%20be%20issued.pdf> [<https://perma.cc/8LWG-Y4LE>] (last visited Oct. 4, 2025) (listing prostitution, gestational surrogacy, and possession of pornography or drugs for personal use, among others, as examples of acts related to behavioral and cultural norms, and listing adultery, polygamy, and abortion, among others, as offenses relating to family or private matters); INTERPOL, *Repository of Practice: Application of Articles 2 and 3 of INTERPOL’s Constitution In the Context of the Processing of Data via INTERPOL’s Information System* (3d ed. 2024), at 38-40. [<https://perma.cc/PXD9-YMJ8>] (last visited Oct. 4, 2025) [hereinafter *Repository of Practice on Articles 2 and 3*] (providing case examples that are compliant and noncompliant with INTERPOL’s prohibition on political offenses).

<sup>28</sup> See *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 83(1)(a)(ii).

<sup>29</sup> See *id.* at art. 83(2)(a).

<sup>30</sup> *Repository of Practice on Articles 2 and 3*, *supra* note 27, at § 3.13.

<sup>31</sup> See *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 83(2)(b)(v).

<sup>32</sup> *Id.* at art. 76(2)(a), (c).

When INTERPOL receives the Red Notice publication request, its Notices and Diffusions Task Force (NDTF)<sup>33</sup> reviews it for compliance with INTERPOL's Constitution and its rules on the processing of data.<sup>34</sup> It also checks whether the subject of the requested Red Notice has submitted a "preemptive request" to INTERPOL asking that the organization not publish any notices against them in the future.<sup>35</sup> Pursuant to INTERPOL's foundational principle of respect for national sovereignty of its member states, it "begins with the assumption that all requests from all its members are legitimate."<sup>36</sup> INTERPOL has no authority to demand confirmation as to whether the underlying arrest warrant or court order exists, is credible, was obtained through lawful means, or is supported by evidence.<sup>37</sup> It similarly cannot inquire into potential political motivations for issuing a Red Notice, the strength and quality of the evidence against the accused individual, or minimum safeguards or processes used in issuing the arrest warrant or court order.<sup>38</sup> Corrupt states are therefore able to exploit the neutrality principle to carry out their individual political, and sometimes repressive, purposes.<sup>39</sup>

If the publication request passes these minimal administrative requirements, INTERPOL formally publishes the notice, and it is viewable by all member states, unless otherwise restricted.<sup>40</sup> Even if a request for publication fails to meet the limited criteria addressed above, INTERPOL retains broad

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<sup>33</sup> INTERPOL created the NDTF in 2016 to ensure compliance of notices and diffusions with INTERPOL's rules. It is a multidisciplinary task force comprised of lawyers, criminal law enforcement, and operations specialists. *See Compliance and Review*, INTERPOL, <https://www.interpol.int/How-we-work/Notices/Compliance-and-review> [<https://perma.cc/Z2LF-K8TP>] (last visited Oct. 4, 2025).

<sup>34</sup> INTERPOL, *Red Notices*, *supra* note 26.

<sup>35</sup> Preemptive requests are filed when an individual suspects they may become subject to an INTERPOL notice or diffusion in the future. INTERPOL then considers this submission when a request for publication is received, but it is not determinative of whether publication will occur. *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> [<https://perma.cc/86NB-AM6U>] (last visited Oct. 4, 2025).

<sup>36</sup> ICPO-INTERPOL CONST. art. II. (establishing respect for national sovereignty as one of the four main principles enshrined in the Constitution); *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 128(1) ("Data are, a priori, considered to be accurate and relevant when entered by a National Central Bureau, a national entity or an international entity . . ."); *see also* Ted. R. Bromund & Sandra Grossman, *The TRAP Act's Contribution to Preventing Transnational Repression Through Interpol*, 21 FEDERALIST SOC'Y REV. 4, 5 (2020) [hereinafter Bromund & Grossman].

<sup>37</sup> *See id.* The NDTF can contact a requesting state's NCB for additional information, but the state is not obligated to provide any information beyond what is listed as required. *See INTERPOL, Compliance and Review*, *supra* note 33.

<sup>38</sup> *See* Bromund & Grossman, *supra* note 36.

<sup>39</sup> *See id.*

<sup>40</sup> Red Notices are only visible to member states once the NDTF completes its compliance review. *See INTERPOL, Compliance and Review*, *supra* note 33. Other types of notices and diffusions, however, become immediately visible to member states upon submission with a warning that the NDTF has not completed its review. *Id.*

discretion to still issue the alert.<sup>41</sup> The review and approval process typically takes under 24 hours<sup>42</sup> and results in approval of around 93-94 percent of all requests.<sup>43</sup>

The use of Red Notices has increased over recent years. As of December 2023, there were 74,224 active Red Notices,<sup>44</sup> a marked increase from 2017 when there were 52,103 active Red Notices,<sup>45</sup> and 2008 when there were only 3,126.<sup>46</sup> This increase is, in large part, due to technological advances in INTERPOL's databases.<sup>47</sup>

As a law enforcement tool, the vast majority of Red Notices are visible only to state law enforcement authorities, not the general public.<sup>48</sup> As of May 2025, only 6,569 of the 74,224 active Red Notices are publicly viewable.<sup>49</sup> In fact, many individuals subject to Red Notices are unaware of their existence, only to learn of them if and when they are arrested due to the Red Notice, whether by police or immigration authorities. The subject of a Red Notice can then submit a request for access to the notice issued against them.<sup>50</sup> INTERPOL is meant to respond to these requests within four

<sup>41</sup> *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 83(1)(b).

<sup>42</sup> *Strengthening Respect for Human Rights, Strengthening INTERPOL*, *supra* note 24, at 14.

<sup>43</sup> JOINT COMMITTEE ON HUMAN RIGHTS, TRANSNATIONAL REPRESSION IN THE UK (2025), <https://committees.parliament.uk/publications/49059/documents/257980/default/>; Ted R. Bromund, *What Not to Believe About Interpol—Exploding Five Myths*, HERITAGE FOUND. (Nov. 28, 2018), <https://www.heritage.org/global-politics/commentary/what-not-believe-about-interpol-exploding-five-myths> [<https://perma.cc/A8T8-QDA6>].

<sup>44</sup> *About Notices*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/About-Notices> [<https://perma.cc/ZQ5H-FNZY>].

<sup>45</sup> INTERPOL, *Annual Report 2017*, at 23, <https://www.interpol.int/en/content/download/5258/file/Annual%20Report%202017-EN.pdf> [<https://perma.cc/CS4P-26R7>].

<sup>46</sup> INTERPOL, *Annual Report 2008*, at 13, <https://www.interpol.int/content/download/5253/file/Annual%20Report%202008-EN.pdf> [<https://perma.cc/C652-JKQN>].

<sup>47</sup> These technological advances include the I-Link program and I-24/7 secure global police communications system, both of which allow for faster dissemination of notices. *See, e.g.*, CATHERINE HEARD & ALEX TINSLEY, FAIR TRIALS INT'L, *THE POWER OF THE INTERPOL RED NOTICE*, <https://www.fairtrials.org/app/uploads/2022/01/IELRinterpolfinal.pdf> [<https://perma.cc/6D4M-CZDF>]; Sam Meacham, *Weaponizing the Police: Interpol as a Tool of Authoritarianism*, HARV. INT'L REV. (Apr. 11, 2022), <https://hir.harvard.edu/weaponizing-the-police-authoritarian-abuse-of-interpol/> [<https://perma.cc/GS5E-RKBG>]; Edward Lemon, *Weaponizing Interpol*, 30 J. DEMOCRACY 15 (2019), <https://www.journalofdemocracy.org/articles/weaponizing-interpol/> [<https://perma.cc/7VQC-DVFX>].

<sup>48</sup> *View Red Notices*, *supra* note 7.

<sup>49</sup> *Id.* Member states can choose whether to make Red Notice extracts publicly viewable. They may choose to make them public “where the public’s help may be needed to locate an individual or if the individual may pose a threat to public safety.” States may also choose to make a notice publicly viewable to damage the subject’s status in the foreign state. For example, U.S. banks often close the bank accounts of Red Notice subjects to avoid facing U.S. Treasury penalties. *See* BROMUND, *HOW THE ABUSE OF INTERPOL CONTRIBUTES TO TRANSNATIONAL REPRESSION*, *supra* note 10.

<sup>50</sup> *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> [<https://perma.cc/86NB-AM6U>] (last visited Oct. 11, 2025).

months of the date of the request but, realistically, it takes around six months to respond to a request for access.<sup>51</sup>

When an INTERPOL member state becomes aware of the presence of the subject of a Red Notice within its borders, it must inform the requesting state and INTERPOL's General Secretariat.<sup>52</sup> It then can "take all other measures permitted under national law and applicable international treaties, such as provisionally arresting the wanted person or monitoring or restricting his/her movement."<sup>53</sup> Ultimately, however, each individual member state retains autonomy to decide how to respond to the Red Notice. In the United States, for example, the Department of Justice does not consider a Red Notice to meet the requirements for probable cause and arrest.<sup>54</sup> Additional information would be needed to rise to the level of probable cause.<sup>55</sup> Once the requesting state is notified that the subject of a Red Notice has been located, it is expected to submit an extradition request.<sup>56</sup> As addressed below, however, given the greater evidentiary demands and human rights protections in the U.S. extradition process, deportation has proven to be a significantly faster and less protective process for achieving the same result: return of an individual to the requesting country.

## II. CURRENT INTERPOL PROCESSES ALLOW FOR ABUSE OF THE NOTICES AND DIFFUSIONS SYSTEM

The United States and the broader international community have repeatedly recognized the potential for abuse of INTERPOL's notices and diffusions system.<sup>57</sup> INTERPOL's former Secretary General Jürgen Stock estimated that around five percent of issued Red Notices are abusive, meaning that each year, hundreds of Red Notices are published in contravention of INTERPOL's rules and human rights.<sup>58</sup> Human rights groups,

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<sup>51</sup> *Id.*; see *CCF Sessions and Decisions*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/CCF-sessions-and-decisions> [<https://perma.cc/PQS7-9HFN>] (last visited Oct. 11, 2025) (discussing CCF's delays in meeting deadlines).

<sup>52</sup> *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 87.

<sup>53</sup> *Id.*

<sup>54</sup> U.S. Dep't of Just., Org. and Functions Manual § 3 (1988), <https://www.justice.gov/jm/organization-and-functions-manual-3-provisional-arrests-and-international-extradition-requests> [<https://perma.cc/Y6CF-PBSM>].

<sup>55</sup> *See id.*

<sup>56</sup> *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 84 (requiring the requesting state to provide "assurances" that "extradition will be sought upon arrest of the person"); *View Red Notices*, *supra* note 7.

<sup>57</sup> *See, e.g.*, JOINT COMMITTEE ON HUMAN RIGHTS, *supra* note 43 ("[D]espite INTERPOL's constitutional prohibition on politically motivated Notices, these mechanisms are being systematically exploited by authoritarian states as TNR tools.").

<sup>58</sup> Josh Jacobs, *Has Interpol become the long arm of oppressive regimes?*, THE GUARDIAN (Oct. 17, 2021), <https://www.theguardian.com/global-development/2021/oct/17/has-interpol-become-the-long-arm-of-oppressive-regimes> [<https://perma.cc/H37Z-GT7A>].

international organizations, and the media have labeled several INTERPOL member states, including Russia, Kazakhstan, China, Türkiye, the United Arab Emirates, and El Salvador,<sup>59</sup> as notorious abusers of the notice system. Türkiye has requested hundreds of Red Notices against members of the Gülen movement,<sup>60</sup> and China has increasingly used Red Notices to target Uyghur activists.<sup>61</sup> Russia is responsible for 48 percent of all publicly available Red Notices,<sup>62</sup> and El Salvador for about 13 percent.<sup>63</sup>

One of the most famous examples of an abusive Red Notice was that against British financier Bill Browder, who, along with his lawyer Sergei Magnitsky,<sup>64</sup> exposed the Russian government's theft and corruption. Browder was wrongfully convicted *in absentia* in Russia for tax evasion and deliberate bankruptcy and sentenced to nine years in prison.<sup>65</sup> Since he was in the United Kingdom at the time of these charges, Russia attempted to issue a Red Notice against him several times.<sup>66</sup> Spanish authorities even temporarily arrested Browder based on Russia's allegations.<sup>67</sup>

But Red Notices—and other notices and diffusions—are not just used to target high-profile victims, like political dissidents and journalists. They are

<sup>59</sup> See National Immigrant Justice Center, Cristosal, Access Now, International Human Rights & Conflict Resolution Clinic, Stanford Law School, *Request for an Investigation Into the Department of Homeland Security's Reliance on Noncredible Information Provided by Human Rights Abusing Authorities in El Salvador*, STANFORD LAW SCHOOL (June 6, 2023), <https://law.stanford.edu/publications/request-for-an-investigation-into-the-department-of-homeland-securitys-reliance-on-noncredible-information-provided-by-human-rights-abusing-authorities-in-el-salvador/> [<https://perma.cc/Y32Y-C9T5774H-XVRZJ>].

<sup>60</sup> See, e.g., U.K. Home Office, *Country policy and information note: Gülenist movement, Turkey, October 2023* (Aug. 9, 2023), <https://www.gov.uk/government/publications/turkey-country-policy-and-information-notes/475f9b93-76c5-4312-b918-68756604f8ed> [<https://perma.cc/N2UY-C7NTJ>]; Kim Willsher, *Turkey accused of using Interpol summit to crack down on critics*, THE GUARDIAN (Nov. 25, 2021), <https://www.theguardian.com/global-development/2021/nov/25/turkey-accused-of-using-interpol-summit-to-crack-down-on-critics> [<https://perma.cc/P8B5-6BMKJ>].

<sup>61</sup> See, e.g., Nyrola Elimä & Ben Mauk, *He Made a Daring Escape From China. Then His Real Troubles Began.*, N.Y. TIMES MAGAZINE (Nov. 10, 2024), <https://www.nytimes.com/2024/11/10/magazine/uyghur-china-escape.html> [<https://perma.cc/W7NE-5TYGJ>].

<sup>62</sup> *View Red Notices*, *supra* note 7 (listing Russia as the requesting country for 3,192 of the 6,639 publicly available and active Red Notices).

<sup>63</sup> *Id.* (showing that El Salvador has requested 861 of the 6639 publicly available and active Red Notices).

<sup>64</sup> Sergei Magnitsky was similarly convicted in Russia, spent a year in prison under horrific conditions, including repeated denials of medical care, and then died in prison on November 16, 2009. See *Magnitsky wins Russian rights battle 10 years after his death*, BBC (Aug. 27, 2019), <https://www.bbc.com/news/world-europe-49481471> [<https://perma.cc/Z7YJ-CPPCJ>]; *Putin critic Bill Browder freed after brief arrest in Spain*, BBC (May 30, 2018), <https://www.bbc.com/news/world-europe-44301072> [<https://perma.cc/RQD6-HUMRJ>].

<sup>65</sup> *Bill Browder: Russia jails investor in absentia*, BBC (Dec. 29, 2017), <https://www.bbc.com/news/world-europe-42513616> [<https://perma.cc/5XSR-L5JEJ>].

<sup>66</sup> Bill Whitaker & Aliza Chasan, *Interpol – the international police organization – accused of doing the “dirty work” of authoritarian members*, CBS NEWS (Jan. 28, 2024), <https://www.cbsnews.com/news/interpol-policing-success-failures-60-minutes/> [<https://perma.cc/7NDW-SPX9J>].

<sup>67</sup> *Id.*

also weaponized to target ordinary citizens who may have challenged their government or police forces, or those who have simply become enemies of corrupt government officials, police officers, or powerful non-state actors.<sup>68</sup> These powerful non-state actors—such as criminal enterprises, gangs, or commercial businesses—can command issuance of arrest warrants and subsequent Red Notice publication requests for their enemies through their influence on or infiltration into corrupt governments.<sup>69</sup>

These abuses illustrate that the current use of INTERPOL's notice system, and Red Notices in particular, leads to direct conflict between INTERPOL's foundational principles of respect for individual member states' autonomy and its commitment to human rights.<sup>70</sup> INTERPOL's neutrality principle means that it gives states the benefit of the doubt even when there are patterns of wrongdoing. As former Secretary General Stock said, "Our decision is not to police a member country in terms of their human rights agenda. That's not our role as a technical police organization."<sup>71</sup>

#### A. *INTERPOL's reforms have not significantly reduced Red Notice abuse*

INTERPOL has implemented rules and procedures attempting to limit the potential for abuse of its notices and diffusions systems. Unfortunately, the continued abuse demonstrates that these reforms are still insufficient.

##### 1. *INTERPOL's Constitution aims to restrict publication of abusive Red Notices*

Article 2 of INTERPOL's Constitution requires INTERPOL to act "in the spirit of the 'Universal Declaration of Human Rights.'"<sup>72</sup> Article 3

<sup>68</sup> See Commission on Security and Cooperation in Europe, Prepared Statement of Sandra A. Grossman, *How U.S. Agencies Are Treating Abusive Red Notices and Steps That Can Be Taken to Protect Victims*, Countering Authoritarian Abuse of INTERPOL 29 (Oct. 29, 2024), <https://www.csce.gov/wp-content/uploads/2024/10/57-135.pdf> [<https://perma.cc/5UP5-EXKD>]; Testimony of Rhys Davies, *Transnational Repression in the UK*, HOUSES OF PARLIAMENT JOINT COMMITTEE ON HUMAN RIGHTS (Mar. 12, 2025), <https://committees.parliament.uk/oral-evidence/15739/html/> [<https://perma.cc/D5YH-TMAS>].

<sup>69</sup> See, e.g., Stephen Frank & William Burck, *How Not to Become the World's Most Wanted: The Misuse of INTERPOL in Commercial Disputes and How Companies and Individuals Can Protect Themselves*, QUINN EMANUEL TRIAL LAWYERS, [https://www.quinnemanuel.com/media/wxwfk4x/client-alert\\_-\\_how-not-to-become-the-worlds-most-wanted.pdf](https://www.quinnemanuel.com/media/wxwfk4x/client-alert_-_how-not-to-become-the-worlds-most-wanted.pdf) [<https://perma.cc/K3Z7-JVTW>] (last visited Oct. 13, 2025).

<sup>70</sup> See Const. of the ICPO-INTERPOL art. 2(1), 3, I/CONS/GA/1956 (2023) [hereinafter Const. of the ICPO-INTERPOL]; G.A. Res. 217 A (III), Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>71</sup> Bill Whitaker, *Interpol navigates tricky role of assisting police cooperation among 196 member countries*, CBS NEWS (June 30, 2024), <https://www.cbsnews.com/news/interpol-navigates-tricky-role-assisting-worldwide-police-cooperation-60-minutes-transcript/#:~:text=We%20want%20to%20provide%20a,as%20a%20technical%20police%20organization> [<https://perma.cc/DE9F-3DPE>].

<sup>72</sup> Const. of the ICPO-INTERPOL, *supra* note 70, at art. 2(1).

prohibits “the Organization to undertake any intervention or activities of a political, military, religious or racial character.”<sup>73</sup>

INTERPOL’s Repository of Practice on Articles 2 and 3 details how these requirements are enforced.<sup>74</sup> The Repository of Practice on Article 2 explains how the “spirit” of the UDHR has evolved with the evolution of human rights law generally.<sup>75</sup> Article 2 therefore considers not only the UDHR but also other international treaties, acts, and resolutions of other United Nations human rights and authoritative bodies.<sup>76</sup> The Repository also notes that the “1951 Convention Relating to the Status of Refugees is particularly relevant to the General Secretariat’s compliance review.”<sup>77</sup>

When considering individual requests for publication, however, the NDTF will not conduct an independent evaluation of the human rights landscape in member states, as it is not a competent body or empowered under INTERPOL’s rules to conduct such an investigation.<sup>78</sup> The NDTF is instead meant to consider several factors that might indicate a human rights violation. These factors include whether the nature of the offense seeks to curtail the target’s human rights, such as by limiting protest rights, as well as reports by international human rights bodies of the general human rights situation of the requesting country.<sup>79</sup> But ultimately, “[g]eneral information regarding a country’s overall human rights situation may not in itself lead the General Secretariat to deny a request” for publication.<sup>80</sup> For example, a requested person’s membership in a minority group that is “systematically subjected to persecution” is, on its own, insufficient to reject publication.<sup>81</sup> Instead, the Repository instructs that the NDTF should consider the relevance of the subject’s minority group membership and whether the request is part of a documented “persecution campaign.”<sup>82</sup> Article 2 does not require the NDTF to consider whether the target of the notice would be tortured or subject to other human rights violations if extradited or otherwise returned to the requesting country.<sup>83</sup>

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<sup>73</sup> *Id.* at art. 3.

<sup>74</sup> In 2024, INTERPOL updated its Repository of Practice to include a guide to the application of Article 2. *See Repository of Practice on Articles 2 and 3, supra* note 27.

<sup>75</sup> *Id.* at 8.

<sup>76</sup> For example, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment. *Id.* at 8-9.

<sup>77</sup> *Id.* at 9.

<sup>78</sup> *Id.* at 11.

<sup>79</sup> *See id.* at 12-13.

<sup>80</sup> *See id.* at 13.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *See generally id.; Dismantling the Tools of Oppression, supra* note 21.

Regarding Article 3, Red Notices are restricted to allegations of “ordinary-law crimes,” such as assault, rape, murder, financial crimes, gang membership, and drug-related charges.<sup>84</sup> This restriction aims to prevent accusations of a political nature.<sup>85</sup> When there are concerns of a political element to the accusation, INTERPOL further distinguishes between pure political offenses (e.g., treason or sedition) and relative political offenses (e.g., an ordinary crime offense committed in a political context such as rebellion). In cases of relative political offenses, INTERPOL applies the predominance test, questioning on a case-by-case basis whether the context of the allegation demonstrates that it is *predominantly* of a political, military, religious, or racial character.<sup>86</sup> INTERPOL claims to be largely compliant with this restriction. Former Secretary General Stock said in an interview, “We have a small percentage, maybe 2%, 3% of tricky notices. The overwhelming majority concerns murderers, rapists, drug smugglers and what have you.”<sup>87</sup>

Despite INTERPOL’s claims to be largely compliant with its prohibition on political Red Notices, its treatment of all “ordinary-law crimes” as the same creates a huge gap for those states that wish to exploit INTERPOL to reach across borders and seek their opponents.<sup>88</sup> This is where its Repository falls short. The Repository provides helpful guidance on explicitly political matters (e.g., offenses concerning freedom of assembly or association, election crimes, or offenses against political officials), but it fails to consider or provide guidance on those cases that, while not explicitly political, are still abusive. Member states can falsely accuse their enemies of purely

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<sup>84</sup> INTERPOL defines “ordinary-law crimes” as “any criminal offences, with the exception of those that fall within the scope of application of Article 3 of the Constitution[.]” See *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 1. In effect, “ordinary-law crimes” exclude those that are explicitly political, such as limiting protest, assembly, or speech rights, or those that involve behavioral or cultural norms, or family or private matters. See Const. of the ICPO-INTERPOL, *supra* note 70, at art. 3. But often, the divide between these can be blurred.

<sup>85</sup> See *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 1.; Const. of the ICPO-INTERPOL, *supra* note 70, at art. 3.; see also M. CHERIF BASSIOUNI, *INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICES* (6th Ed. 2014) (discussing the history of extradition treaties and exclusion of political offenses).

<sup>86</sup> Factors considered include the nature of the offense, the status of individuals involved, the source of the data, any positions expressed by other NCBs or international entities, obligations under international law, possible impact on INTERPOL’s neutrality, and general context. See *INTERPOL Rules on the Processing of Data*, *supra* note 27, at art. 34(3); *Repository of Practice on Articles 2 and 3*, *supra* note 27, at 102.

<sup>87</sup> Francois Murphy, *Interpol Can’t Do Much More To Stop Abuse of ‘Red Notices,’ Chief Says*, REUTERS (Nov. 28, 2023), <https://www.reuters.com/world/interpol-cant-do-much-more-stop-abuse-red-notices-chief-says-2023-11-28/> [https://perma.cc/96VY-7B7P].

<sup>88</sup> More recent investigation shows how, as scrutiny over Red Notices increases, governments that still seek to abuse INTERPOL are turning to the organization’s other notices and diffusions, like Blue Notices and the stolen passport database, which do not require review by INTERPOL before publication to other member states. 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> [https://perma.cc/2HWY-5A5B].

ordinary law crimes—murder, rape, drug smuggling, financial crimes, or gang membership—without indicating any obvious political context. But ultimately, those ordinary law accusations themselves may still be corrupt or politically motivated.<sup>89</sup> In some cases, countries request Red Notices even when there is insufficient legal grounding to ultimately seek extradition, whether it is because the criminal charges are falsified, stale, mistaken, or insufficiently serious. This is because once a Red Notice is requested and published, the accusations—even where illegitimate—gain credibility.<sup>90</sup> And since, as addressed further below, many member states seek deportation over extradition, the lesser protections inherent in removal proceedings fail to provide the same checks present in extradition proceedings to ensure the validity of the allegation.

2. *INTERPOL has implemented additional reforms beyond its Constitution and core rules that remain insufficient to significantly curb abuse*

As the use of the notices and diffusions systems grew in the 2010s, former Secretary General Stock paved the way for significant reforms. Yet, much remains to be done. In 2017, INTERPOL announced its Refugee Resolution, prohibiting the publication of any notice or diffusion for refugees requested by the countries from which they fear persecution or torture.<sup>91</sup> This limitation, however, only applies once a person has been formally recognized as a refugee.<sup>92</sup> This grant of protection, though, does not need to be final at the time of request for deletion and could still be in

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<sup>89</sup> See BASSIOUNI, *supra* note 85, at 221 (discussing situations of intentional misrepresentation of facts by a state to secure deportation of an individual from another state); Melissa Hooper, *Human Rights First*, SPOTLIGHT ON A CRITICAL THREAT: THE ABUSE AND EXPLOITATION OF RED NOTICES, INTERPOL AND THE U.S. JUDICIAL PROCESS BY RUSSIA AND OTHER AUTHORITARIAN STATES 13-15 (2018), <https://tracc.gmu.edu/wp-content/uploads/2020/09/Final-Red-Notices-Conference-Report-Bright-Red.pdf> [<https://perma.cc/NRX8-BXF6>] (“I saw very clearly how their governments use fabricated criminal court cases and fraud cases against their opponents, critics and dissidents.”).

<sup>90</sup> See Lemon, *supra* note 47, at 15.

<sup>91</sup> See INTERPOL, *INTERPOL Policy on Refugees (“Refugee Resolution”)*, GA-2017-86-RES-09, <https://www.interpol.int/en/Who-we-are/Legal-framework/INTERPOL-Refugee-Resolution> [<https://perma.cc/KNE3-G734>] (last visited Oct. 13, 2025).

<sup>92</sup> See European Parliament’s SUBCOMMITTEE ON HUMAN RTS., MISUSE OF INTERPOL’S RED NOTICES AND IMPACT ON HUMAN RIGHTS – RECENT DEVELOPMENTS 20 (2019), <https://www.statewatch.org/media/documents/news/2019/feb/ep-study-interpol-red-notices.pdf> [<https://perma.cc/YCS7-8YFD>]; Andriy Osavoliuk, *The Report: The Reform of Interpol: Don’t Let It Be Stopped Halfway*, OPEN DIALOGUE FOUND. (June 9, 2017), <https://en.odfoundation.eu/a/8201,the-report-the-reform-of-interpol-dont-let-it-be-stopped-halfway/> [<https://perma.cc/4KUG-PFPD>]; *Dismantling the Tools of Oppression*, *supra* note 21. INTERPOL has requested that member states proactively share grants of refugee protection with it, but many states decline to do so. See *INTERPOL Refugee Resolution*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Legal-framework/INTERPOL-Refugee-Resolution#:~:text=Refugee%20protection%20regime&text=In%20light%20of%20this%2C%20the,of%20an%20individual%27s%20criminal%20background> [<https://perma.cc/D6G4-7W3R>] (last visited Oct. 13, 2025).

an appellate process.<sup>93</sup> In the specific context of U.S. removal proceedings then, the Refugee Resolution would generally come into play retroactively, once an asylum seeker has already been detained, placed into removal proceedings, and is seeking relief from removal. Even for a person in detention, reaching the point of an established refugee designation can take months, if not years.<sup>94</sup> By that point, however, the existence of a Red Notice may have irreparably damaged a person's livelihood and freedom. Thus, while this precautionary measure of the Refugee Resolution is a positive step, it fails to account for the extensive human impact that Red Notices have on individuals before they can achieve, or even apply for, refugee status, and the impact that Red Notices can have on accessing refugee status or fear-based relief.<sup>95</sup>

In 2015, INTERPOL settled an abusive Red Notice case filed at the Permanent Court of Arbitration by Indonesian national subjects that led to further reform.<sup>96</sup> Seeking to avoid further litigation and monetary settlements,<sup>97</sup> INTERPOL instituted structural and substantive changes to the

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<sup>93</sup> For example, ICE detained Jessica Barahona on the basis of a Red Notice. INTERPOL deleted the Red Notice against her after a deletion petition, which showed she had been granted asylum by an immigration court, but the Board of Immigration Appeals later overturned the grant. See Heidi Pett, *'Bogus' Interpol Red Notice Kept Mum from El Salvador in US Immigration Detention for Six Years*, SKY NEWS (Feb. 26, 2024), <https://news.sky.com/story/bogus-interpol-red-notice-kept-mum-from-el-salvador-in-us-immigration-detention-for-six-years-13078442> [<https://perma.cc/3T7C-CE8U>].

<sup>94</sup> The median processing time for detained cases over the past ten fiscal years has "ranged from a low of 58 days (FY2021) to a high of 216 days (FY2020)." HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., R47077, U.S. IMMIGRATION COURTS AND THE PENDING CASES BACKLOG 12 (2022), <https://www.congress.gov/crs-product/R47077> [<https://perma.cc/VQ7C-6DKK>]. For cases where the noncitizen was not detained and had applied for relief, however, the average processing time in FY 2023 was 1,016 days, or about 2.8 years. See Ariana Figueroa, *Biden Administration Seeks to Speed Some Asylum Cases with New Immigration Docket*, IOWA CAP. DISPATCH (May 16, 2024), <https://iowacapitaldispatch.com/2024/05/16/biden-administration-seeks-to-speed-some-asylum-cases-with-new-immigration-docket/> [<https://perma.cc/95MB-2QPC>].

<sup>95</sup> See, e.g., Damanvir Kaur, *Paramjeet Singh Saini: Facing Extradition by Indian Authorities*, HUFFPOST (Feb. 3, 2016, at 14:55 ET), [https://www.huffpost.com/entry/paramjeet-singh-saini-fac\\_b\\_9144486](https://www.huffpost.com/entry/paramjeet-singh-saini-fac_b_9144486) [<https://perma.cc/KGJ7-8L8Y>] (discussing Paramjeet Singh Saini's arrest in Portugal as a result of a Red Notice even though he had won asylum in the United Kingdom); Michelle Estlund, *Turkey Continues to Challenge INTERPOL by Abusing its Red Notice System*, RED NOTICE L. J. (Oct. 23, 2017), <https://www.rednoticelawjournal.com/2017/10/turkey-continues-to-challenge-interpol-by-abusing-its-red-notice-system/> [<https://perma.cc/DH5T-E4E8>] (detailing the case of Turkish journalist Hamza Yalçın who was arrested in Spain due to a Red Notice despite a grant of asylum from Sweden).

<sup>96</sup> See Ted R. Bromund, *Interpol Needs Improved Financial Transparency to Restore Its Integrity and Block Autocratic Manipulation*, HERITAGE FOUND. (Aug. 1, 2022), <https://www.heritage.org/global-politics/report/interpol-needs-improved-financial-transparency-restore-its-integrity-and> [<https://perma.cc/FD7K-7NKZ>]. INTERPOL has divulged little information about the case but did reveal that it paid a settlement of net €1.511 million to prevent the case from proceeding. See *id.*; see also INTERNATIONAL CRIMINAL POLICE ORGANIZATION, ANNUAL FINANCIAL REPORT AND FINANCIAL STATEMENTS FOR 2017 23 (2017), <https://www.interpol.int/content/download/7209/file/INTERPOL%20Financial%20Statements%202017.pdf> [<https://perma.cc/8CBM-SBAQ>].

<sup>97</sup> In 2016, INTERPOL also drafted a new agreement with France—where it is headquartered—that aimed to immunize the organization from further lawsuits. See Agreement

Commission for the Control of INTERPOL's Files (CCF) and its review of notices and diffusions.<sup>98</sup> In 2016, INTERPOL created the Notices and Diffusions Task Force to provide more comprehensive review of requests for publication.<sup>99</sup> The following year, INTERPOL also implemented a new Statute of the Commission for the Control of INTERPOL's Files. The Statute restructured the CCF and altered the makeup of the Requests Chamber—the body handling all requests for access to, correction, and deletion of data.<sup>100</sup> For example, it required all members to be lawyers with varying forms of expertise.<sup>101</sup> It also increased the CCF's independence and influence by granting it authority to issue decisions that are binding on INTERPOL.<sup>102</sup> Additionally, it mandated timeframes for CCF decisions and required the body to give “reasoned” decisions.<sup>103</sup> These developments do allow for more thorough and transparent legal analyses of diffusion and notice requests. They fail, however, to include a right to appeal the CCF's decisions, implement stricter and shorter deadlines for responses to Red Notice subjects, or resolve continued abuse concerns.

INTERPOL also has the capacity to implement targeted “corrective action” against specific member states for continued or large-scale abuse of the notice system. INTERPOL rarely and cautiously does so. Per the RPD, if a member state “does not fulfil its obligations under the [RPD],” the General Secretariat may implement a period of supervision of the processing operations, suspend access rights to information, or recommend reforms or training.<sup>104</sup> If these mechanisms are unsuccessful, the Executive Committee may implement a long-term suspension of a member state's processing rights. This restricts that state's ability to record, consult, connect with, or download information from one or several of INTERPOL's

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Between the International Criminal Police Organization – INTERPOL and the Government of the French Republic Regarding INTERPOL's Headquarters in France, INTERPOL-FR., 2016, <https://www.interpol.int/content/download/6815/file/Agreement%20between%20ICPO-INTERPOL%20and%20France.pdf> [https://perma.cc/G68B-BFGL].

<sup>98</sup> *See id.*

<sup>99</sup> *Compliance and Review*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Compliance-and-review> [https://perma.cc/Z2LF-K8TP] (last visited Oct. 4, 2025).

<sup>100</sup> *Commission for the Control of INTERPOL's Files (CCF)*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF> [https://perma.cc/X9GE-JM2M] (last visited Oct. 4, 2025); International Criminal Police Organization [INTERPOL], *Statute of the Commission for the Control of INTERPOL's Files*, II.E/RCIA/GA/2016, 5 (2016), <https://www.interpol.int/content/download/5695/file/Statute%20of%20the%20CCF-EN.pdf> [https://perma.cc/8XSN-VUAQ].

<sup>101</sup> *About the CCF*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/About-the-CCF> [https://perma.cc/C8Q4-QRA5] (last visited Oct. 4, 2025); *Statute of the Commission for the Control of INTERPOL's Files*, *supra* note 100, at 5.

<sup>102</sup> *Id.* at 4.

<sup>103</sup> *Id.* at 9.

<sup>104</sup> *INTERPOL Rules on the Processing of Data*, *supra* note 27, at 50.

databases.<sup>105</sup> According to Yaron Gottlieb, Executive Directorate at INTERPOL's Office of Legal Affairs, while each notice is assessed on a case-by-case basis, the organization also conducts general assessments of cases originating from different countries to identify trends or patterns of abuse.<sup>106</sup> These reviews could be used to consider implementation of corrective measures.<sup>107</sup> Currently, approximately six countries are subject to "corrective measures."<sup>108</sup>

Beyond these corrective measures, there have been calls to wholesale expel or suspend certain member states from INTERPOL.<sup>109</sup> Several member states have, for example, advocated to suspend Russia from INTERPOL.<sup>110</sup> In response, INTERPOL placed Russia under "heightened supervision" and imposed "monitoring measures," which prohibit the country's NCB from directly sending diffusions to other countries without INTERPOL's prior approval.<sup>111</sup> Similarly, Belarus and Türkiye committed regular abuse of INTERPOL's Stolen/Lost Travel Document (SLTD) database to "harass dissidents or strand them abroad." In response, INTERPOL temporarily blocked Türkiye from adding to the database, and it subjected Belarus to special monitoring.<sup>112</sup> INTERPOL's hesitance in implementing more severe or permanent corrective measures is largely twofold. First, it defends its inaction through its neutrality and apolitical cooperation principles.<sup>113</sup> Second, INTERPOL's thirteen-member Executive Committee must vote to approve certain long-term corrective measures.<sup>114</sup> Historically

<sup>105</sup> *Id.* at 51.

<sup>106</sup> AMERICAN BAR ASSOCIATION, *Latest Developments in INTERPOL's Redress Mechanism*, at 1:09 (ABA, July 30, 2025), [https://www.americanbar.org/groups/international\\_law/resources/on-demand/latest-developments-interpols-redress-mechanism/](https://www.americanbar.org/groups/international_law/resources/on-demand/latest-developments-interpols-redress-mechanism/).

<sup>107</sup> *Id.* at 1:10.

<sup>108</sup> Bradley, *supra* note 88.

<sup>109</sup> INTERPOL's rules do not provide an express mechanism for expulsion of a member state, though some scholars believe that expulsion could be accomplished by a vote of the General Assembly. See Ted R. Bromund, *Russia Wrongly Escapes Suspension From Interpol*, HERITAGE FOUND. (Mar. 17, 2022), <https://www.heritage.org/global-politics/commentary/russia-wrongly-escapes-suspension-interpol> [<https://perma.cc/R7YP-QZJM>] (last visited Oct. 4, 2025); Courtney Grafton & Stephen Bailey, *Does INTERPOL have a role to play in the conflict in Ukraine?*, EUR. J. INT'L L.: BLOG (Mar. 4, 2022), <https://www.ejiltalk.org/does-interpol-have-a-role-to-play-in-the-conflict-in-ukraine/> [<https://perma.cc/YXQ6-K4DM>] (last visited Oct. 4, 2025).

<sup>110</sup> See, e.g., Darryl Coote, *Intel alliance asks Interpol to suspend Russia as Kyiv wants Moscow isolated*, UPI (Mar. 7, 2022), [https://www.upi.com/Top\\_News/World-News/2022/03/07/ukraine-Five-Eyes-Interpol-Russia-membership/2571646640660/](https://www.upi.com/Top_News/World-News/2022/03/07/ukraine-Five-Eyes-Interpol-Russia-membership/2571646640660/) [<https://perma.cc/M7MG-BNDA>] (last visited Oct. 4, 2025).

<sup>111</sup> *Ukraine: INTERPOL General Secretariat statement*, INTERPOL (Mar. 10, 2022), <https://www.interpol.int/News-and-Events/News/2022/Ukraine-INTERPOL-General-Secretariat-statement> [<https://perma.cc/879X-CZSQ>] [hereinafter *General Secretariat Statement*].

<sup>112</sup> Bradley, *supra* note 88.

<sup>113</sup> See Const. of the ICPO-INTERPOL, *supra* note 70, at art. 3 (2023) ("It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.").

<sup>114</sup> *Compliance and Review*, *supra* note 33.

and currently, this body has included members from countries known for abuse of the notice system, and it has blocked more permanent corrective action.<sup>115</sup> Despite the limited application of corrective measures, INTERPOL recognizes that they can be effective. INTERPOL stated that “corrective measures indeed contribute to improvements in the compliance rates of countries.”<sup>116</sup>

Thus, while INTERPOL has taken measures to reduce the potential for states’ abuse of notices, any impact from these reforms is ultimately constrained by the organization’s goals of neutrality and respect for national sovereignty.<sup>117</sup> As INTERPOL wrote after its vote on a long-term suspension of Russia: “As long as the INTERPOL network can assist in the rescue of one child abuse victim, the prevention of one terrorist attack or the identification of one missing person, it is its duty to ensure that lines of communication remain open.”<sup>118</sup> While INTERPOL certainly does play an important role in combating crime, it also recognizes that its systems can be—and are being—abused by corrupt regimes. INTERPOL should consider what further reforms are needed to reduce abuse while still achieving its goals.

### *B. The high rates of Red Notice deletions reveal continued abuse*

The subject of a Red Notice (or other INTERPOL notice or diffusion) can request to correct or delete the notice through INTERPOL’s CCF. The CCF deletes a Red Notice when the subject can demonstrate the notice’s noncompliance with INTERPOL’s Constitution, the RPD, or international human rights treaties or declarations, or if the notice has a demonstrated political, military, religious, or racial character, among other reasons.<sup>119</sup> The process for requesting deletion or correction is lengthy, arduous, and expensive, oftentimes necessitating the services of a lawyer specialized in international human rights law. The subject must complete an application, explain why the Red Notice violates INTERPOL’s rules or Constitution, and

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<sup>115</sup> See *Executive Committee*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Governance/Executive-Committee> [<https://perma.cc/E7VH-J4LH>] (last visited Oct. 18, 2025) (listing the UAE, Türkiye, Egypt, and China, among others, as members of the Executive Committee); Bromund, *Russia Wrongly Escapes Suspension From Interpol*, *supra* note 109 (listing the UAE, Türkiye, Egypt, and China, among others, as members of the Executive Committee).

<sup>116</sup> International Criminal Police Organization [INTERPOL], *Written Evidence Submitted by INTERPOL (TRUK0178)*, at 9, U.K. PARLIAMENT (Mar. 12, 2025), <https://committees.parliament.uk/writtenevidence/140732/pdf/#:~:text=13.,WPD%20authorized%20prior%20to%202016> [<https://perma.cc/MDS7-VS6X>]; see AMERICAN BAR ASSOCIATION, *supra* note 106, at 12:05.

<sup>117</sup> See *General Secretariat Statement*, *supra* note 111.

<sup>118</sup> *Id.*

<sup>119</sup> See *Compliance and Review*, *supra* note 33.

submit supporting documentation.<sup>120</sup> The application must also be written in one of INTERPOL's four working languages: Arabic, English, French, or Spanish.<sup>121</sup> The CCF rejects at least some of these requests for deletion as inadmissible for failing to conform to its rules and standards for such requests.<sup>122</sup>

Even when a request is admissible, the CCF's capacity is limited: "It is not empowered to lead an investigation, to weigh evidence, or to make a determination on the merits of a case."<sup>123</sup> Thus, if a subject only asserts their innocence or provides evidence contesting their guilt, the CCF cannot delete the Red Notice as this would be a determination on the merits of the case. Instead, to stand a chance of success, the subject must argue, for example, that the Red Notice has a political character, violates the UDHR, or that the subject has refugee status.

The CCF also has limited time to review each request for access, revision, and deletion. These requests are considered during one of the CCF's four annual sessions. With the growing number of requests, however, the CCF has not increased the number of sessions or periods for review. Using the 2021 data on the number of requests, an average of approximately five minutes was allotted for each request despite the weighty consequences that each notice bears.<sup>124</sup> Most recently, however, in an apparent effort to improve the efficiency and efficacy of the CCF, INTERPOL's General Assembly approved a 60 percent budget increase for the CCF, raising its new annual budget to four million euros.<sup>125</sup> While it is currently unknown how this will impact the CCF's ability to curb abuse, these changes will, at a minimum,

<sup>120</sup> *How to Submit a Request*, *supra* note 35.

<sup>121</sup> *Admissibility of a Request to The Commission for the Control of INTERPOL's Files*, INTERPOL (2025), <https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/How-to-submit-a-request> [<https://perma.cc/QZ3Z-EUZ8>].

<sup>122</sup> *Id.*; *How to Submit a Request*, *supra* note 35; *see also* International Criminal Police Organization [INTERPOL], *Activity Report of the Commission for the Control of INTERPOL's Files for 2021* (2021), <https://www.interpol.int/en/content/download/18398/file/CCF%20Annual%20Report%20for%202021-ENG.pdf> [<https://perma.cc/SGS6-YQ9G>] [hereinafter 2021 Activity Report] (reporting that, in 2021, INTERPOL received 651 requests for correction or deletion of notices and found only 478 to be admissible).

<sup>123</sup> *How to Submit a Request*, *supra* note 35.

<sup>124</sup> *See* 2021 Activity Report, *supra* note 122; Michelle Estlund, *Lyon France: INTERPOL's CCF- Next Steps for INTERPOL (Part 3 of 3)* (May 7, 2024), <https://www.rednoticelawjournal.com/2024/05/lyon-france-interpols-ccf-next-steps-for-interpol-part-3-of-3/> [<https://perma.cc/29W5-LXRX>].

<sup>125</sup> *See* INTERPOL Resolution No. 15, GA-2024-92-RES-15, INTERPOL (2024), <https://www.interpol.int/en/content/download/22265/file/GA-2024-92-RES-15%20E%20Budget2025.pdf> [<https://perma.cc/M4G2-HZ38>]; *see also* *Unpacking the CCF's Processing Delays and Their Implications*, RED NOTICE MONITOR (Aug. 27, 2025), <https://rednoticemonitor.com/stalled-in-the-system-unpacking-the-ccfs-processing-delays-and-their-implications/> [<https://perma.cc/DX6M-U42S>].

allow the CCF to hire additional staff and hopefully keep better pace with the growing number of notices and diffusions.<sup>126</sup>

In recent years, the CCF has begun to publish data on complaints and outcomes in its annual activity reports.<sup>127</sup> This data reveals both the growing number of requests for access, deletion, and correction, and the high success rates of requests for deletion and/or correction. There are limits to what this data can show, however. First, while it is likely that the majority of these complaints were regarding either Red Notices or Wanted Person Diffusions, the CCF does not confirm this in its reporting. Second, the complaints almost certainly relate to notices published in prior years and were only made when the subjects learned of them, which could be years later. Third, only a small percentage of notice subjects submit complaints to the CCF, in large part because they are unaware of the existence of the notices. This discrepancy means that the majority of notices do not receive the kind of enhanced compliance screening that complaints receive at the CCF. Therefore, it is impossible to quantify how many notices or alerts published each year are actually abusive.<sup>128</sup> The data, however, is still instructive in showing that when a notice receives enhanced screening from the CCF, more than half are noncompliant with INTERPOL's requirements.

In 2021, the CCF received 659 complaints, defined as "requests for correction and/or deletion of data,"<sup>129</sup> in 2022, it received 884 complaints,<sup>130</sup> and, in 2023, it received 1,021 complaints.<sup>131</sup> Sometimes, these requests do not meet the requirements for admissibility as outlined in INTERPOL's

<sup>126</sup> See Teresa McHenry, *Latest Developments in INTERPOL's Redress Mechanism*, ABA International, (YouTube, July 22, 2025), [https://www.americanbar.org/groups/international\\_law/resources/on-demand/latest-developments-interpols-redress-mechanism/](https://www.americanbar.org/groups/international_law/resources/on-demand/latest-developments-interpols-redress-mechanism/); *CCF Sessions and Decisions*, INTERPOL (2025), <https://www.interpol.int/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/CCF-sessions-and-decisions> [https://perma.cc/C9CT-AJN3].

<sup>127</sup> INTERPOL also publishes data on the number of Red Notices and Wanted Persons Diffusions (WPDs) that are refused for publication or subsequently cancelled due to noncompliance. In 2023, for example, 23,969 Red Notices and WPDs were requested. 125 were refused or cancelled for noncompliance with the Universal Declaration of Human Rights; 179 for having a political, military, religious or racial character; and 1,299 for other reasons, including failure to meet the serious ordinary law crime requirement. *Compliance and Review*, INTERPOL, <https://www.interpol.int/en/How-we-work/Notices/Compliance-and-review> [https://perma.cc/6H2E-JV6Q] (last visited Oct. 4, 2025); see also *INTERPOL: New Data Reveals 1,000 Red Notices and Wanted Person Diffusions Rejected or Deleted Each Year*, FAIR TRIALS INT'L (Nov. 7, 2022), <https://www.fairtrials.org/articles/news/interpol-new-data/> [https://perma.cc/46J4-CBTQ].

<sup>128</sup> See BROMUND, *HOW THE ABUSE OF INTERPOL CONTRIBUTES TO TRANSNATIONAL REPRESSION*, *supra* note 10.

<sup>129</sup> 2021 Activity Report, *supra* note 122, at 7.

<sup>130</sup> *Activity Report of the Commission for the Control of INTERPOL's Files for 2022*, at 11, INTERPOL, [https://www.interpol.int/en/content/download/20967/file/GA-2023-91-REP-22%20E%20AnnualActivityReportCCF\\_2022%20%2823Y2486%29%20%28REV%29%282%29.pdf](https://www.interpol.int/en/content/download/20967/file/GA-2023-91-REP-22%20E%20AnnualActivityReportCCF_2022%20%2823Y2486%29%20%28REV%29%282%29.pdf) [https://perma.cc/F6CA-3LJ9] [hereinafter 2022 Activity Report].

<sup>131</sup> *Activity Report of the Commission for the Control of INTERPOL's Files for 2023*, at 10, INTERPOL, [https://www.interpol.int/en/content/download/22421/file/AnnualActivityReportCCF\\_2023\\_English.pdf](https://www.interpol.int/en/content/download/22421/file/AnnualActivityReportCCF_2023_English.pdf) [https://perma.cc/48DB-PHRF] [hereinafter 2023 Activity Report].

rules, and the CCF deems them inadmissible.<sup>132</sup> When a request is deemed inadmissible, the CCF does not consider the substance of the request.

INTERPOL's data on complaints shows that each year, a majority of admissible complaints for deletion are successful due to legal issues that should have prevented the notices' publication in the first place. These legal errors include violations of Articles 2 and 3 of INTERPOL's Constitution, the Refugee Resolution, or other conditions in the RPD.<sup>133</sup> In 2021, the CCF closed 651 complaints—finding 478 admissible—and ultimately concluded that 296—or 62 percent of admissible complaints—failed to meet the minimum legal requirements for publication.<sup>134</sup> These 296 notices were therefore permanently deleted from INTERPOL's files. In 2022, the CCF closed 847 complaints.<sup>135</sup> Of the 470 admissible complaints, the CCF found 271—or 57.6 percent—noncompliant with INTERPOL's rules, and they were permanently deleted.<sup>136</sup> The CCF also closed 75 complaints as noncompliant due to lack of cooperation from the requesting NCB.<sup>137</sup> In 2023, the CCF closed 876 complaints.<sup>138</sup> Of the 500 admissible complaints, the CCF found 269 cases—or 54 percent—non-complaint with INTERPOL's rules. The CCF also closed 73 cases as noncompliant because the requesting NCB failed to cooperate.<sup>139</sup>

The high success rate of complaints for deletion from 2021 onwards demonstrates that the 2016 and 2017 reforms have not substantially curbed Red Notice abuse. At a minimum, hundreds of abusive Red Notices are still being published each year, and this is likely a significant undercount given that only a small fraction of Red Notices receive enhanced scrutiny from the CCF following a complaint for deletion. Acknowledging how and with what frequency Red Notices are abused is essential to understanding why greater scrutiny is needed when assessing Red Notices in removal proceedings. As discussed further below, without this enhanced review, due process and non-refoulement violations will continue.

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<sup>132</sup> See INTERPOL, *Commission for the Control of INTERPOL's Files: Operating Rules*, Rule 30, (2017), <https://www.interpol.int/content/download/6807/file/E%20Update%20CCF%20OperatingRules%202024.pdf> [<https://perma.cc/FKT5-KU96>]. This could be for several reasons, including failure to provide an identity document or arguments supporting deletion and/or correction. The activity reports from 2021-2023 show that the percentage of inadmissible complaints for these years were 8.3%, 9.3%, and 8.2%, respectively. See *supra* notes 122, 130, 131.

<sup>133</sup> See, e.g., 2023 Activity Report, *supra* note 131, at 14.

<sup>134</sup> 2021 Activity Report, *supra* note 122, at 9.

<sup>135</sup> 2022 Activity Report, *supra* note 130, at 14.

<sup>136</sup> *Id.* at 15.

<sup>137</sup> *Id.*

<sup>138</sup> 2023 Activity Report, *supra* note 131, at 13.

<sup>139</sup> *Id.* at 14.

### III. THE U.S. GOVERNMENT USES INTERPOL RED NOTICES TO TARGET NONCITIZENS WITHOUT ADEQUATE REVIEW FOR RELIABILITY OR POLITICAL MOTIVE CONCERNS

Even though the U.S. Department of Justice (DOJ) does not consider a Red Notice alone to be sufficient for arrest,<sup>140</sup> ICE can and does take civil enforcement actions, including initiating removal proceedings and detaining noncitizens, based on Red Notices.<sup>141</sup> Compared to extradition proceedings, removal proceedings represent a significantly faster, cheaper, and more certain way to secure a person's return to their home country. Extradition proceedings are a multi-agency judicial process subject to treaty requirements through which one state surrenders an individual to another state where the individual is accused or convicted of committing a crime.<sup>142</sup> In comparison, removal proceedings are civil administrative proceedings seeking deportation of an individual who either does not have lawful status in the United States or who is accused of violating a requirement of their lawful status.<sup>143</sup> Removal proceedings have far fewer individual protections than extradition proceedings. The differences between the two proceedings are so stark that, in certain cases, foreign states have been known to directly contact ICE—rather than following the appropriate extradition channels—regarding the presence of the subject of a Red Notice.<sup>144</sup> Thus, when Red Notices are involved, removal proceedings have become de facto extradition proceedings, but without the enhanced rights and protections.

ICE is permitted to arrest a noncitizen based on a Red Notice alone—even though the DOJ prohibits such arrests—because ICE has broad discretion to enforce civil immigration laws.<sup>145</sup> Once ICE learns that a

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<sup>140</sup> *Provisional Arrests and International Extradition Requests—Red, Blue, Or Green Notices*, U.S. DEP'T OF JUST., <https://www.justice.gov/jm/organization-and-functions-manual-3-provisional-arrests-and-international-extradition-requests> [<https://perma.cc/Q2GL-E8KG>].

<sup>141</sup> The U.S. government can and does take other punitive actions against subjects of Red Notices, including revoking or denying visas. See Ted R. Bromund & Sandra Grossman, *The TRAP Act's Contribution to Preventing Transnational Repression Through Interpol*, THE HERITAGE FOUND. (Jan. 15, 2020), <https://www.heritage.org/global-politics/commentary/the-trap-acts-contribution-preventing-transnational-repression-through#:~:text=Department%20of%20Homeland%20Security%20officials,simply%20publishing%20the%20Red%20Notice.&text=Subjects%20of%20Red%20Notices%20may,lawful%20permanent%20residence%2C%20or%20citizenship.&text=Interpol%20abuse%20has%20far%20reaching,or%20face%20challenges%20seeking%20employment> [<https://perma.cc/F5W9-X5WZ>].

<sup>142</sup> See Jonathan Masters, *What is Extradition?*, COUNCIL ON FOREIGN RELS. (Jan. 8, 2020), <https://www.cfr.org/background/what-extradition> [<https://perma.cc/75V6-B8F3>].

<sup>143</sup> See *The Removal System of the United States: An Overview*, AM. IMMIGR. COUNCIL (Aug. 9, 2022), <https://www.americanimmigrationcouncil.org/fact-sheet/removal-system-united-states-overview/> [<https://perma.cc/VN8V-ND5A>].

<sup>144</sup> See, e.g., Ashley Shook, *Colombian Man Convicted of 2014 Homicide Found Hiding in Pittsfield*, WWLP (May 14, 2024), <https://www.wwlp.com/news/crime/colombian-man-convicted-of-2014-homicide-found-hiding-in-pittsfield/> [<https://perma.cc/S6NP-EYGW>].

<sup>145</sup> See, e.g., *Arizona v. United States*, 567 U.S. 387, 396 (2012) (“A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.”).

noncitizen has an INTERPOL notice or diffusion, ICE is meant to contact the U.S. NCB to verify the notice and obtain any underlying documentation for it.<sup>146</sup> Through ICE's former "Project Red," the agency collaborated with INTERPOL to facilitate immigration arrests of individuals with Red Notices.<sup>147</sup> In 2021, ICE publicized that it had deported nearly 1,800 individuals wanted in their home countries.<sup>148</sup>

In August 2023, recognizing that Red Notices are not international arrest warrants and can be misused "due to corruption, deficiencies or limitations of foreign law enforcement agencies," ICE issued guidance to purportedly limit the use of Red Notices alone as the basis for ICE enforcement actions.<sup>149</sup> Under this guidance, ICE is meant to obtain some supporting documentation from the originating country apart from the Red Notice and review the package as a whole for compliance with INTERPOL's rules before acting on it.<sup>150</sup> Supporting evidence may include the foreign arrest warrant, indictment, charging documents, police reports, or evidence of a conviction.<sup>151</sup> Unfortunately, however, if a Red Notice is issued for abusive purposes, this supporting evidence may also fail to verify the veracity or nonpolitical nature of the allegations. While a positive step, this guidance leaves many unanswered questions and still allows for the use of abusive notices in removal proceedings. For example, while the guidance instructs ICE officers to review a Red Notice package for compliance with INTERPOL's rules,<sup>152</sup> they are not competent experts in INTERPOL's rules, human rights conditions of other countries, or international human rights.<sup>153</sup> Their review will therefore be limited. Additionally, this guidance is an internal Department of Homeland Security (DHS) document, which may be modified or rescinded at any time without notice if the political will of the federal government changes.

Once a noncitizen is targeted for ICE enforcement based on a Red Notice (and potentially supporting documentation), there are serious and

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<sup>146</sup> *ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions 5* (2023), U.S. Immigr. & Customs Enf't (ICE), [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/15006.1\\_InterpolRedNoticesWpDiffusions.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/15006.1_InterpolRedNoticesWpDiffusions.pdf) [<https://perma.cc/2C29-4G2Q>].

<sup>147</sup> *Project Red: ICE Fugitive Operations Strengthens Partnership with Interpol*, ICE (Nov. 3, 2021), <https://www.ice.gov/features/project-red> [<https://perma.cc/T7VX-UWWZ>]; *US Marshals Arrest 45 International Fugitives with Interpol Notices*, ICE (June 24, 2016), <https://www.ice.gov/news/releases/ice-us-marshals-arrest-45-international-fugitives-interpol-notices> [<https://perma.cc/7M87-8PGV>].

<sup>148</sup> ICE, *Project Red: ICE Fugitive Operations Strengthens Partnership with Interpol*, *supra* note 147.

<sup>149</sup> ICE, *ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions*, *supra* note 146.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> See Meg Hobbins & Ted R. Bromund, *ICE Issues Updated Guidance on Use of INTERPOL Red Notices*, 39 INT'L ENF'T L. REP. 415 (2023).

permanent consequences. ICE may use these allegations to find the individual to be a “danger to the community” and keep them in prolonged immigration detention. Immigration courts may then use the notices to deny fear-based relief from removal, finding the individual to have committed a serious nonpolitical crime or concluding that the individual’s testimony is non-credible.

This latter consequence is particularly concerning as returning a noncitizen to a country where they fear persecution or torture violates the United States’ non-refoulement obligations. The United States is bound to interpret its immigration laws in accordance with these non-refoulement obligations because it acceded to the 1967 Protocol Relating to the Status of Refugees.<sup>154</sup> The United States then enacted the Refugee Act of 1980. This Act amended the Immigration and Nationality Act to “bring United States refugee law into conformance with the [1967 Protocol].”<sup>155</sup> At the core of these international protocols is the obligation of signatory states to not return a refugee to any country where they face persecution. This principle is so entrenched and universal, appearing in numerous other international treaties,<sup>156</sup> that many argue it has become a principle of customary international law.<sup>157</sup>

A. *Despite their unreliability and demonstrated potential for abuse, INTERPOL Red Notices are used in United States enforcement actions and removal proceedings*

Once targeted for ICE enforcement, noncitizens are either placed into expedited removal, standard removal proceedings, or reinstatement of removal proceedings. Expedited removal is a process in which immigration officers summarily remove a noncitizen from the United States without a hearing before an immigration judge.<sup>158</sup> In removal proceedings

<sup>154</sup> See *State Parties, Including Reservations and Declarations, to the 1967 Protocol Relating to the Status of Refugees*, UNHCR, <https://www.unhcr.org/us/sites/en-us/files/legacy-pdf/5d9ed66a4.pdf> [<https://perma.cc/DQ72-84TP>]. The 1967 Protocol also binds signatories to the refugee protection regime included in the 1951 Convention Relating to the Status of Refugees.

<sup>155</sup> *I.N.S v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987).

<sup>156</sup> See, e.g., Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3(1), Dec. 10, 1984, 1465 U.N.T.S. 85 (prohibiting a state party from returning “a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”); International Convention for the Protection of All Persons from Enforced Disappearance art. 16[1], Dec. 20, 2006 G.A. res. A/61/177 (2006) (providing that a state shall not return “a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.”).

<sup>157</sup> The United Nations High Commissioner for Refugees (UNHCR) also sets forth the understanding that the principle of non-refoulement is so universal that it has become a principle of customary international law. See Sir Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion, in Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* 143-44 (Erika Feller et al. eds., 2003).

<sup>158</sup> 8 U.S.C. § 1225(b)(1)(A).

or reinstatement of removal proceedings, noncitizens appear before an immigration judge. Depending on their individual circumstances, noncitizens may challenge their removability, request release from immigration detention, and apply for relief from removal. ICE's Office of the Principal Legal Advisor (OPLA)—made up of ICE prosecutors who represent DHS in removal proceedings—responds to requests for release on bond or relief from removal with evidence of any negative factors, such as the individual's criminal history in the United States or in any other country. This includes Red Notices. Immigration judges are meant to ensure the reliability of all evidence, including Red Notices, as well as foreign arrest warrants, indictments, or police reports (collectively referred to as "foreign reports"). Without such review, admission of the evidence is improper and violates noncitizens' due process rights. This evidence then plays a significant role in removal cases before the immigration court. Because of the imprimatur of credibility given to Red Notices,<sup>159</sup> it becomes remarkably difficult for a noncitizen to disprove Red Notice allegations in immigration court.<sup>160</sup> This difficulty is made more extreme by the fact that about 70 percent of noncitizens in immigration court are without legal representation.<sup>161</sup>

There are at least four stages of a removal case in which an immigration judge may rely on Red Notices: (1) whether to grant a detained noncitizen release from detention on bond; (2) whether a noncitizen is eligible for relief from removal; (3) whether to grant discretionary relief; and (4) whether to find a noncitizen's testimony credible.

### *1. Red Notices in immigration court custody and bond determinations*

The first possible use of Red Notices and foreign reports in immigration court is in custody and bond determinations. If a person is statutorily eligible for bond,<sup>162</sup> they typically bear the burden of proving that they are not a danger to the community or a flight risk.<sup>163</sup> Proving a negative in these hearings, i.e., that the noncitizen is *not* a danger or a flight risk, is an often

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<sup>159</sup> See Lemon, *supra* note 47, at 15.

<sup>160</sup> See generally *Elkins v. United States*, 364 U.S. 206, 218 (1960) ("[A]s a practical matter it is never easy to prove a negative.").

<sup>161</sup> See *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% to 30%*, TRAC Immigration (Jan. 24, 2024), <https://tracreports.org/reports/736/> [<https://perma.cc/JXX5-HZRH>]; see also 8 U.S.C. § 1362 (providing that noncitizens in removal proceedings have the right to counsel, but only at their own expense).

<sup>162</sup> Immigration and Nationality Act § 236(a), (c), 8 U.S.C. § 1226 (discussing discretionary and mandatory detention requirements).

<sup>163</sup> The burden for demonstrating lack of flight risk and danger falls solely on the noncitizen in all circuits except for the First and Second. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021) (placing the burden on the government at the initial bond hearing to establish that the noncitizen is either a danger to the community by clear and convincing evidence or a flight risk by a preponderance of the evidence); *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020) (shifting the burden to the government only once detention had become prolonged).

insurmountable task. It is made even more tremendous by the fact that individuals are typically unrepresented and are locked away from family members, friends, and the documents and evidence that would support their arguments.<sup>164</sup> Bond is a highly discretionary determination, and immigration adjudicators are given broad reign in the types of documents and factors they can consider in evaluating flight risk and danger.<sup>165</sup> As a result, immigration judges regularly consider documents with questionable reliability, including Red Notices and foreign reports, police reports, criminal charges and convictions, and immigration history to make conclusions about a non-citizen's dangerousness or flight risk.<sup>166</sup>

In *Hernandez-Lara v. Lyons*, for example, the First Circuit considered a noncitizen's habeas petition following an immigration judge's earlier denial of bond.<sup>167</sup> At her bond hearing, Ms. Hernandez-Lara submitted evidence of her lack of criminal record, as well as extensive positive discretionary factors.<sup>168</sup> The immigration judge still denied bond solely because the government filed a Red Notice.<sup>169</sup> This Red Notice, however, failed to provide any information about the allegations against Ms. Hernandez-Lara, apart from that she was subject to arrest under a specific Salvadoran law.<sup>170</sup> As a result, Ms. Hernandez-Lara spent over ten months in ICE detention.<sup>171</sup> In these bond determinations, many immigration judges fail to consider the potentially abusive nature of Red Notices and the fact that the Red Notice actually decreases flight risk because the subject of the notice is unable to travel internationally, at least via plane, without being flagged.<sup>172</sup>

## 2. Red Notices in determining eligibility for relief from removal

The second potential use of Red Notices and foreign warrants is to determine a noncitizen's eligibility for relief from removal. One of the

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<sup>164</sup> See *Elkins*, 364 U.S. at 218 (“[A]s a practical matter it is never easy to prove a negative.”); *Hernandez-Lara*, 10 F.4th at 30 (discussing the fact that most detained noncitizens do not obtain counsel and that gathering evidence while detained is burdensome).

<sup>165</sup> *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006).

<sup>166</sup> See *id.* at 40; Mary Holper, *Confronting Cops in Immigration Court*, 23 WILLIAM & MARY BILL OF RIGHTS J. 675 (2015).

<sup>167</sup> 10 F.4th at 24-25.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 25.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 26.

<sup>172</sup> See *Malam v. Adducci*, No. 20-10829, 2020 WL 5891394, at \*2 (E.D. Mich. Oct. 2, 2020) (holding that a “Red Notice diminishes any risk of flight”); Ted R. Bromund & Sandra A. Grossman, *How to Challenge an INTERPOL Red Notice*, 6 AILA L. J. 205, 216 (2024); BROMUND, HOW THE ABUSE OF INTERPOL CONTRIBUTES TO TRANSNATIONAL REPRESSION, *supra* note 10, at 8 (“[V]irtually all member nations will check Interpol databases against passports at international crossings: If an individual has a Red Notice or other Interpol alert (even if, in some cases, this alert has been cancelled), they will at the very least be detained for secondary interrogation, if not refused entry or arrested.”).

most common applications for relief is the Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture. In the adjudication of relief applications, Red Notices and foreign reports can impact whether the applicant meets the statutory relief definition and whether a person is barred from relief. Bars to asylum and withholding of removal include the serious nonpolitical crime (SNPC) bar<sup>173</sup> as well as security<sup>174</sup> and terrorism bars.<sup>175</sup> If any of these bars apply, the applicant's claims for asylum or withholding of removal would be denied.

As the SNPC bar arises frequently in Red Notice cases, it is the focus here. While the noncitizen bears the overall burden of establishing eligibility for relief,<sup>176</sup> DHS must raise the SNPC bar. DHS then bears the burden of establishing the bar by demonstrating that there are "serious reasons for believing" that a noncitizen engaged in a serious nonpolitical crime in a country other than the United States.<sup>177</sup> There is disagreement between the Board of Immigration Appeals (BIA or Board) and several circuits on the meaning of the "serious reasons for believing" standard. The Board in *Matter of W-E-R-B* weakened the "serious reasons to believe" standard to only require DHS to provide "some evidence" that the SNPC bar applies.<sup>178</sup> Then the burden shifts to the respondent to establish by a preponderance of the evidence that the bar should not apply.<sup>179</sup> The Board continued that a Red Notice may satisfy this "some evidence" standard because "a Red Notice 'is the closest instrument to an international arrest warrant in use today.'"<sup>180</sup> In reaching this decision, the BIA inaptly relied on *Matter of M-B-C-*, a case in which it discussed a separate genocide inadmissibility bar, which carries a separate standard.<sup>181</sup> The Board also disregarded its prior conclusion in

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<sup>173</sup> 8 U.S.C. § 1158(b)(2)(A)(iii); *see also* Convention Relating to the Status of Refugees art. 1(F)(b), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 (barring from refugee protection any person for whom there are serious reasons to believe that they have committed a serious nonpolitical crime).

<sup>174</sup> 8 U.S.C. § 1158(b)(2)(A)(iv).

<sup>175</sup> 8 U.S.C. § 1158(b)(2)(A)(v).

<sup>176</sup> *See* 8 U.S.C. § 1229a(c)(2).

<sup>177</sup> *See, e.g., Matter of W-E-R-B-*, 27 I. & N. Dec. 795, 797 (B.I.A. 2020) ("[T]he DHS need not meet an 'onerous standard' to shift the burden of proof to the respondent under 8 C.F.R. § 1240.8(d)."); *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 976-77 (9th Cir. 2022); *Barahona v. Garland*, 993 F.3d 1024, 1027 (8th Cir. 2021); *Guo Qi Wang v. Holder*, 583 F.3d 86, 90 (2d Cir. 2009); *Matter of E-A-*, 26 I. & N. Dec. 1, 3 (B.I.A. 2012). DHS has argued in immigration court proceedings that it carries no initial burden to prove that the SNPC bar applies, citing to *Matter of Negusie*, 28 I. & N. Dec. 120 (A.G. 2020) and 8 C.F.R. § 1240.8(d), but, as addressed in the above cases, the Board has applied a burden-shifting framework where the burden shifts to the respondent after initial evidence is submitted.

<sup>178</sup> *See W-E-R-B-*, 27 I. & N. Dec. at 797-99 (citing *Matter of M-B-C-*, 27 I. & N. Dec. 31, 36-37 (B.I.A. 2017)).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 799 (citing U.S. Dep't of Just., *Criminal Resource Manual § 611 Interpol Red Notices*).

<sup>181</sup> *See id.*; *M-B-C-*, 27 I. & N. Dec. at 36-37; *Barahona v. Garland*, 993 F.3d 1024 (8th Cir. 2021).

*Matter of E-A-* that only probable cause can meet the “serious reasons for believing” standard.<sup>182</sup> The BIA also incomprehensibly rejected the respondent’s argument that if a Red Notice alone cannot meet DOJ’s probable cause standard for arrest, it also cannot meet the probable cause standard for the SNPC bar, thereby implicitly concluding that burdens of proof have different meanings under criminal versus immigration law.<sup>183</sup>

In contrast, at least four circuit courts have held that a Red Notice alone is likely insufficient to support a finding of probable cause and thus the “serious reasons for believing” standard as well.<sup>184</sup> Probable cause is further defined as “a reasonable ground for belief of guilt, and that belief must be particularized with respect to the person to be searched or seized.”<sup>185</sup> Therefore, “[s]ufficient information must be presented . . . to determine probable cause; [the probable cause determination] cannot be a mere ratification of the bare conclusions of others.”<sup>186</sup> The Eighth and Ninth Circuits have taken specific issue with *W-E-R-B-*’s “some evidence” definition. In *Barahona v. Garland*, the direct petition for review of *W-E-R-B-*, the Eighth Circuit held that “some evidence” is too minimal a requirement to meet the “serious reasons for believing” standard.<sup>187</sup> The Ninth Circuit continued that the burden-shifting framework outlined in 8 C.F.R. § 1240.8(d)—which the BIA used to support its finding—“cannot override the statutory requirement that there be ‘serious reasons’ to believe that the bar applies.”<sup>188</sup>

Beyond this, in *Gonzalez-Castillo v. Garland*, the Ninth Circuit expressed concern that “[s]ince a Red Notice is not independently vetted for factual and legal justification, its reliability corresponds with that of the foreign nation’s arrest warrant.”<sup>189</sup> Several circuits, including the First, Third, and Ninth Circuits, also conducted thorough reviews of the contents of the Red Notices involved. They noted several deficiencies in data that should have ultimately prevented the notices’ initial publication and impacted their admissibility in immigration court. These deficiencies include that the

<sup>182</sup> See *W-E-R-B-*, 27 I. & N. Dec. at 796; *Matter of E-A-*, 26 I. & N. Dec. 1, 3 (B.I.A. 2012).

<sup>183</sup> See *W-E-R-B-*, 27 I. & N. Dec. at 798-99.

<sup>184</sup> See *Barahona*, 993 F.3d at 1028; *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 979 (9th Cir. 2022); *Tatintyan v. Barr*, 799 F. App’x 965, 966-67 (9th Cir. 2020); see also *Radiowala v. Att’y Gen.*, 930 F.3d 577, 580 n.1 (3d Cir. 2019) (noting that, because the Department of Justice does not consider a Red Notice to be a sufficient basis for making an arrest, the court gives no weight to the existence of the Red Notice); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 24-25 (1st Cir. 2021) (acknowledging and proceeding under the Department of Justice’s view that a Red Notice is insufficient to make a review).

<sup>185</sup> *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949) and *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).

<sup>186</sup> *Gates*, 462 U.S. at 239; see also *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1182 (9th Cir. 2016) (finding a Guatemalan indictment accusing the applicant of several murders to be reliable evidence because “it alleges specific facts” about the applicant’s criminal activities).

<sup>187</sup> 993 F.3d at 1028.

<sup>188</sup> *Gonzalez-Castillo*, 47 F.4th at 979 (citing 8 U.S.C. §§ 1158(b)(2)(A)(iii), 1231(b)(3)(B)(iii)).

<sup>189</sup> See *id.* at 978 (citing *Villalobos Sura v. Garland*, 8 F.4th 1161, 1168 (9th Cir. 2021)).

notices did not allege any specific conduct or crime, but rather general gang activity; that the incidents alleged took place after the petitioners were in the United States; and that the Red Notices were requested years after the alleged facts took place.<sup>190</sup> This kind of fact-specific analysis is critical in any removal proceedings, but the immigration courts' failure to adequately conduct them may not actually be called out until a case reaches the circuit court.

The First, Third, and Ninth circuits also diminished the weight given to Red Notices in immigration proceedings to align with DOJ's position that a Red Notice is insufficient to meet the probable cause standard for arrest.<sup>191</sup> The Fourth and Ninth Circuits, however, have limited their holdings on the reliability of Red Notices to when additional evidence is present. This essentially takes the same position as the recent ICE guidance, which advises that the presence of foreign reports can establish the Red Notice's reliability. In *Villalobos Sura v. Garland*, for example, the Ninth Circuit held that a Red Notice, together with a foreign arrest warrant, was sufficient to meet the probable cause standard, and thus the SNPC bar threshold, despite Mr. Villalobos Sura's testimony and country conditions supporting a contrary conclusion.<sup>192</sup> But, given that INTERPOL's neutrality principle requires the organization to consider all data to be legitimate,<sup>193</sup> additional evidence from that same government would do little, if anything, to bolster the Red Notice's reliability. Thus, in these circuits or circuits where such holdings are nonexistent, ICE's practices and the BIA's decision in *W-E-R-B* drastically increase the risk of removal for someone at risk of persecution or torture because of an abusive Red Notice.

Once the government establishes that the SNPC bar may apply, the burden shifts to the noncitizen to prove by a preponderance of the evidence that the bar does not apply.<sup>194</sup> This may require litigating the foreign criminal case, i.e., proving they are not guilty of the alleged crime, in a U.S. immigration court. And, while immigration attorneys can, and should, submit deletion requests to INTERPOL when there are doubts that a Red Notice complies with INTERPOL's rules, such requests can take up to nine months to adjudicate *if* decided upon within INTERPOL's timeframes.<sup>195</sup> This is

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<sup>190</sup> See *id.*; *Tatintyan v. Barr*, 799 F. App'x 965, 966-67 (9th Cir. 2020); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 25 (1st Cir. 2021).

<sup>191</sup> See *Hernandez-Lara*, 10 F.4th at 24-25; *Gonzalez-Castillo*, 47 F.4th at 975; *Radiowala v. Att'y Gen.*, 930 F.3d 577, 580 n.1 (3d Cir. 2019).

<sup>192</sup> See *Villalobos Sura*, 8 F.4th at 1170; see also *Whyte v. Garland*, No. 22-1032, 2023 WL 3092977, at \*2 (4th Cir. Apr. 26, 2023).

<sup>193</sup> See CONST. OF THE ICPO-INTERPOL art. 2 (establishing respect for national sovereignty as one of the four main principles enshrined in the Constitution).

<sup>194</sup> 8 C.F.R. § 1240.8(d).

<sup>195</sup> See INTERPOL, Commission for the Control of Interpol's Files, *Procedural Guidelines for Applicants to the Commission*, § 26 (Feb. 29, 2024) 2.1.6, <https://www.interpol.int/en/content/download/13876/file/CCF%20Procedural%20guidelines%20for%20applicants%20EN.pdf> [<https://perma.cc/JWU2-T38K>].

longer than the average timeframe for a detained removal proceeding.<sup>196</sup> In fact, the CCF recently stated that it “has been experiencing delays in meetings its deadlines,” with some cases taking up to 18 months—double the time listed in the guidelines—and recognized the “challenges” this creates for those requesting relief from the body.<sup>197</sup>

When the SNPC bar forecloses eligibility for asylum and withholding of removal, a noncitizen can only pursue a third form of protection: deferral under the Convention Against Torture (DCAT).<sup>198</sup> In granting DCAT, the immigration adjudicator orders the noncitizen removed but *defers* removal to the specific country where they face a greater than fifty percent likelihood of torture.<sup>199</sup> Essentially, the noncitizen cannot be removed to that specific country while the conditions that would lead to torture continue to exist. DCAT has no eligibility bars.<sup>200</sup> This broader eligibility, however, comes alongside a higher burden of proof. Applicants must show that there is a greater than 50 percent likelihood of torture either by the government or with government acquiescence in the designated country of removal.<sup>201</sup> As a result of the higher burden, less than one percent of DCAT applicants receive protection.<sup>202</sup>

Additionally, Red Notices and foreign arrest warrants can still impact the likelihood of success in a DCAT case. Immigration adjudicators may doubt an applicant’s credibility or believe that an applicant fears legitimate *prosecution* for criminal activity, rather than persecution or torture.<sup>203</sup> In fact, ICE recognizes this possibility in its 2023 guidance: “In some cases, [a prohibited or non-compliant] Red Notice or Wanted Person Diffusion may support a person’s claim for protection from removal.”<sup>204</sup> Beyond this, CAT applicants face challenging case law when attempting to demonstrate that prison conditions constitute torture, which require the noncitizen to prove that the harmful prison conditions arise from a specific intent to

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<sup>196</sup> See EXEC. OFF. FOR IMMIGR. REV., EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ADJUDICATION STATISTICS: MEDIAN COMPLETION TIMES FOR DETAINED CASES (2023), <https://www.justice.gov/eoir/page/file/1163621/download> [<https://perma.cc/4WM6-WBNM>].

<sup>197</sup> See *CCF Sessions and Decisions*, INTERPOL, <https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/CCF-sessions-and-decisions> [<https://perma.cc/HJ6Q-CBWJ>] (last visited Oct. 4, 2025).

<sup>198</sup> 8 C.F.R. § 1208.17.

<sup>199</sup> 8 C.F.R. § 1208.16(c)(3); 8 C.F.R. § 1208.17.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., FY2023 IMMIGRATION COURT DATA: CASE OUTCOMES 2 (2024) [<https://perma.cc/8AND-8UWL>].

<sup>203</sup> See 8 C.F.R. § 208.18(a)(3) (“Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions . . . but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.”).

<sup>204</sup> ICE, *ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions*, *supra* note 146 at § 5.2.

torture as opposed to negligence or insufficient resources.<sup>205</sup> By denying fear-based relief in such cases, immigration adjudicators are literally sending noncitizens back to persecution and torture under the guise of legitimate prosecution.

### 3. *Red Notices in discretionary determinations*

The third situation in which Red Notices and foreign reports may arise in immigration court is in discretionary determinations. Asylum, for example, is a discretionary form of relief, meaning that an individual can be denied asylum as a matter of discretion even if they otherwise meet the refugee definition.<sup>206</sup> This discretionary determination asks whether an individual deserves the protection sought and involves a balancing of positive and negative discretionary factors. The BIA has explicitly permitted the use of often unreliable evidence in these discretionary determinations. Such evidence includes police reports related to criminal charges and convictions, pending and dismissed criminal charges, and Red Notices.<sup>207</sup> The BIA and some federal circuit courts, however, have attempted to limit the credence given to these documents.<sup>208</sup>

### 4. *Red Notices in credibility determinations*

Fourth, Red Notices and foreign reports can be used in immigration court to tarnish a noncitizen's credibility, which ultimately renders securing relief from removal significantly more difficult, if not impossible. Noncitizens in removal proceedings bear the burden of establishing eligibility for the

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<sup>205</sup> See, e.g., *Oygene v. Lynch*, 813 F.3d 541, 547 (4th Cir. 2016) (recognizing prison conditions as torture when government authorities are "intentionally and deliberately creating and maintaining such prison conditions in order to inflict torture."); *Ridore v. Holder*, 696 F.3d 907, 918-19 (9th Cir. 2012); *J-E-*, 23 I. & N. Dec. 291, 301 (B.I.A. 2002) ("Although Haitian authorities are intentionally detaining criminal deportees knowing that the detention facilities are substandard, there is no evidence that they are intentionally and deliberately creating and maintaining such prison conditions in order to inflict torture.").

<sup>206</sup> See 8 U.S.C. § 1158(b)(1). Other forms of discretionary relief that are commonly considered in immigration court include cancellation of removal, adjustment of status, and voluntary departure. See 8 U.S.C. § 12291229(b) (LPR and non-LPR cancellation of removal); § 1255 (adjustment of status); § 12291229(c) (voluntary departure).

<sup>207</sup> See *Rosa v. Garland*, 114 F.4th 1, 14-22 (1st Cir. 2024); *In re Thomas*, 21 I. & N. Dec. 20, 23 (B.I.A. 1995) (permitting immigration adjudicators to "consider evidence of unfavorable conduct, including criminal conduct which has not culminated in a final conviction"); *Matter of Arreguin*, 21 I. & N. Dec. 38, 42 (B.I.A. 1995).

<sup>208</sup> See *Prudencio v. Holder*, 669 F.3d 472, 483-84 (4th Cir. 2012); *Diaz Ortiz v. Garland*, 23 F.4th 1 (1st Cir. 2022) (en banc); *Arreguin*, 21 I. & N. Dec. at 42 ("Just as we will not go behind a record of conviction to determine the guilt or innocence of [a noncitizen], so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.").

immigration relief they seek.<sup>209</sup> In assessing eligibility, immigration adjudicators first consider whether a noncitizen testified credibly.<sup>210</sup> Frequently, the only way someone who fled their home country—particularly if indigent, unrepresented, and detained—can establish their eligibility is through their own testimony or the testimony of other lay witnesses, like family, friends, and neighbors. Several courts have therefore held that “[a]n adverse credibility determination supported by substantial evidence generally dooms an asylum claim unless the application can prove actual past [persecution] through independent objective evidence.”<sup>211</sup> When a Red Notice and foreign reports are filed, however, any attempt by the noncitizen to deny the allegations contained therein can be viewed as “self-serving” and therefore not credible. Immigration adjudicators weigh up the credibility of foreign law enforcement officers against the noncitizen, who is likely detained and appearing in court via video in a prison jumpsuit. As a result, judges typically find the latter to be comparatively lacking.<sup>212</sup> This was the case in *Villalobos Sura* where DHS filed a Red Notice and a foreign arrest warrant as evidence against Mr. Villalobos Sura. He was only able to counter the allegations against him with limited country conditions evidence and testimony that the agency deemed to be “self-serving” and “unpersuasive” when compared with the government reports.<sup>213</sup> In light of a resulting adverse credibility finding, the immigration judge may then also view any testimony provided by an applicant, their family members, and their friends about past persecution or torture and fear of future persecution or torture as not credible.<sup>214</sup> With an adverse credibility finding, an applicant must generally rely

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<sup>209</sup> 8 U.S.C. § 1229a(c)(4)(A).

<sup>210</sup> Under the Immigration and Nationality Act, immigration judges are required to assess a respondent’s and other witnesses’ credibility when adjudicating an application for relief from removal. 8 U.S.C. § 1229a(c)(4)(B), (C) (listing factors impacting credibility determinations as “demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements, . . . the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements . . .”); 8 U.S.C. § 1158(b)(1)(B)(ii), (iii) (same).

<sup>211</sup> *Herrera-Alcala v. Garland*, 39 F.4th 233, 245 (4th Cir. 2022); *see also* *Rusu v. I.N.S.*, 296 F.3d 316, 323 (4th Cir. 2002) (describing an adverse credibility determination as “almost insurmountable”); *Rodrigues v. Garland*, 112 F.4th 12, 25 (1st Cir. 2024) (“[A] noncitizen’s credible testimony can make their asylum claim, while an adverse credibility finding can break it.”); *Camara v. Ashcroft*, 378 F.3d 361, 369 (4th Cir. 2004) (holding that an adverse credibility determination is likely fatal to an asylum claim because an “applicant must establish a ‘well-founded fear’ of persecution, which contains both subjective and objective components, and the subjective element cannot generally be proved other than through the applicant’s testimony.”).

<sup>212</sup> *See Villalobos Sura v. Garland*, 8 F.4th 1161, 1169 (9th Cir. 2021); *see also* *Jon’s case*, *supra* note 2 at 71.

<sup>213</sup> *Id.*

<sup>214</sup> *See Herrera-Martinez v. Garland*, 22 F.4th 173, 187 (4th Cir. 2022) (“‘[A]ffidavits from friends and family . . . [are] hardly the independent evidence’ that can corroborate the testimony of a petitioner which has already been deemed incredible.”) (citing *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 358-59 (4th Cir. 2006)).

only on purely objective evidence, such as country conditions, to establish eligibility for CAT protection.<sup>215</sup>

When Red Notices and foreign reports undermine a noncitizen's immigration court case, the only remedy may be to provide concrete evidence that the noncitizen did not, or could not have, committed the alleged crime. Essentially, the noncitizen must prove their innocence of a criminal charge from another country—often countries which the United States also accuses of human rights abuses—to preserve their credibility and access to fear-based relief. Thus, Red Notices play a significant role in both initial enforcement and subsequent removal proceedings. As addressed below, however, Red Notices and the underlying arrest warrants are often fundamentally unfair and unreliable and therefore constitute an improper basis for denial of release and relief from removal.

### B. INTERPOL Red Notices and foreign reports are often unreliable

Red Notices and foreign reports share many of the hallmarks of unreliability identified by federal circuit courts when excluding or limiting the weight of police reports and other documentary evidence in immigration court.<sup>216</sup> Despite this, Red Notices are routinely admitted in removal proceedings. This is particularly concerning as Red Notices—just like police reports—are meant to be mere precursors to more robust extradition proceedings, rather than an outright judgment of guilt.<sup>217</sup> As a result of these concerns, most federal circuit courts that have addressed the use of police reports in criminal courts have identified their inherent unreliability and limited purpose for documenting anything beyond the fact of the arrest.<sup>218</sup> The

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<sup>215</sup> See *Camara*, 378 F.3d at 371 (“Because there is no subjective component for granting relief under the CAT, the adverse credibility determination . . . would not necessarily defeat [a] CAT claim.”).

<sup>216</sup> For a thorough review of the unreliability concerns of police reports that can be compared to the concerns expressed here, see Mary Holper, *Confronting Cops in Immigration Court*, 23 WILLIAM & MARY BILL OF RIGHTS J. 675 (2015); *Prejudicial and Unreliable: The Role of Police Reports in U.S. Immigration Detention & Deportation Decisions*, National Immigrant Justice Center (July 2022), [https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-FINAL\\_July-2022.pdf](https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-FINAL_July-2022.pdf) [<https://perma.cc/P777-ULNF>]. The Advisory Committee on Evidence Rules makes similar recommendations related to police reports. See FED. R. EVID. 803 (advisory committee's note).

<sup>217</sup> See *View Red Notices*, *supra* note 7 (“A Red Notice is a request to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action.”); U.S. DEP'T OF JUST., *Provisional Arrests and International Extradition Requests—Red, Blue, Or Green Notices*, <https://www.justice.gov/jm/organization-and-functions-manual-3-provisional-arrests-and-international-extradition-requests> [<https://perma.cc/P42P-5NTV>] (prohibiting arrest of the subject of a Red Notice based on the notice alone).

<sup>218</sup> See, e.g., *United States v. Padilla*, 793 F. App'x 749, 757 (10th Cir. 2019) (emphasizing in the federal sentencing context that “police reports—as a category of evidence—are not inherently reliable.”); *United States v. Quezada*, 754 F.2d 1190, 1193 (5th Cir. 1985) (“The law enforcement exception in Rule 803(8)(B) is based in part on the presumed unreliability of observations made by law enforcement officials at the scene of a crime, or in the course of investigating a crime.”); *United States v. Bell*, 785 F.2d 640, 644 (8th Cir. 1986) (“While police

BIA and some circuit courts have also addressed the reliability of police reports in the immigration court context. These courts have similarly narrowed the weight given to police reports in immigration courts.<sup>219</sup> Courts acknowledge that police reports are only inherently reliable for the fact that an arrest occurred, but not for the allegations contained therein, unless independently corroborated.<sup>220</sup> This is true for several reasons. Police officers usually arrive at the scene of the crime after the alleged incident took place, basing the report largely on interviews with lay witnesses who may or may not have witnessed the actual crime. Police reports are also written early in an investigation and in anticipation of trial, which is an adversarial process. This is why the Federal Rules of Evidence specifically prohibit the use of a police report against a defendant in a criminal trial.<sup>221</sup> Despite these recognitions, police reports are still regularly given the imprimatur of fact.<sup>222</sup>

Red Notices may carry even greater indicia of unreliability than police reports, yet they are still routinely admitted and accorded substantial weight

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reports may be demonstrably reliable evidence of the fact that an arrest was made, they are significantly less reliable evidence of whether the allegations of criminal conduct they contain are true.”); *United States v. Jordan*, 742 F.3d 276, 280 (7th Cir. 2014) (“Police reports are not presumed to be categorically reliable.”); *Crawford v. Jackson*, 323 F.3d 123, 129 (D.C. Cir. 2003) (expressing concern “about the reliance in parole revocation hearings on hearsay in police reports, particularly as many revocation hearings likely will involve pro se prisoners with limited resources to obtain independent witnesses.”); *United States v. Brown*, 9 F.3d 907, 911 (11th Cir. 1993) (“Congress was aware of the inherent bias that might exist in reports prepared by law enforcement officials in anticipation of trial.”); *United States v. Crockton*, 224 F.App’x 227, 231 (4th Cir. 2007) (“Police investigative reports are inadmissible because they are generally crafted with an eye toward prosecution.”).

<sup>219</sup> *See, e.g.*, *Prudencio v. Holder*, 669 F.3d 472, 483-84 (4th Cir. 2012) (holding that police reports “often contain little more than unsworn witness statements and initial impressions” and “[t]o confer upon such materials the imprimatur of fact . . . accords [police reports] unwarranted validity”); *Rosa v. Garland*, 114 F.4th 1, 19 (1st Cir. 2024) (holding that “the agency may not give ‘substantial weight’ to a police report in the absence of ‘a conviction or corroborating evidence of the allegations contained in the report.’”) (internal citations omitted); *Padmore v. Holder*, 609 F.3d 62, 69 (2d Cir. 2010) (expressing concern about “reliance on the particular circumstances of a petitioner’s arrest” and holding that “[w]hile the BIA may *consider* such affidavits and arrest reports, it may not base its decision denying relief upon the assumption that the facts contained in such documents are true.”); *Olivas-Motta v. Holder*, 746 F.3d 907, 918 (9th Cir. 2013) (Kleinfeld, J. concurring) (“It has long been clear that police reports are not generally ‘reasonable, substantial, and probative evidence’ of what someone did.”); *Matter of Arreguin*, 21 I. & N. Dec. 38, 42 (B.I.A. 1995) (“We are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein”).

<sup>220</sup> *See id.*

<sup>221</sup> *See* FED. R. EVID. 803(8)(A)(ii); *see also* FED. R. EVID. 803 (advisory committee’s note). The Advisory Committee on Evidence Rules also provides four factors that are helpful in assessing admissibility of documents such as police reports: “(1) the timeliness of the investigation; (2) the special skill and experience of the official; (3) whether a hearing was held and at what level it was conducted; and (4) possible motivation concerns.” *See id.* (citations omitted).

<sup>222</sup> *See* NATIONAL IMMIGRANT JUSTICE CENTER, PREJUDICIAL AND UNRELIABLE: THE ROLE OF POLICE REPORTS IN U.S. IMMIGRATION DETENTION & DEPORTATION DECISIONS 9 (2022), [https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-FINAL\\_July-2022.pdf](https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2022-07/Prejudicial-and-Unreliable-policy-brief-FINAL_July-2022.pdf) [<https://perma.cc/P777-ULNF>].

in immigration court. The demonstrated use of Red Notices and foreign arrest warrants as means of transnational repression<sup>223</sup> calls for inherent skepticism due to their potential to serve as a means of persecution, rather than legitimate prosecution. This documented abuse, combined with INTERPOL's obligation to view notice requests as legitimate and its subsequent minimal administrative review, means that the duty is on the state acting on the Red Notice to ensure its reliability if it wishes to ensure respect for human rights and non-refoulement. If ICE and immigration courts fail to complete a thorough analysis and then deny an applicant fear-based relief, the United States then violates both noncitizens' due process rights and its own commitment to non-refoulement. Non-refoulement prohibits the United States from removing someone "when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment or other serious human rights violations."<sup>224</sup>

Unlike criminal proceedings, immigration removal proceedings are administrative civil cases.<sup>225</sup> Deportation is a "civil" penalty, rather than a "criminal" punishment.<sup>226</sup> As a result, the constitutional protections provided to defendants in criminal proceedings do not apply in removal proceedings.<sup>227</sup> One such difference is that the Federal Rules of Evidence do not apply.<sup>228</sup> In removal proceedings, admission of evidence is only limited

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<sup>223</sup> The U.S. government defines "transnational repression" as "actions undertaken by repressive governments to silence and/or exact reprisals against individuals outside of their sovereign territory, including human rights defenders, civil society activists, critics, journalists, and political opponents." This includes misuse of INTERPOL Red Notices. See U.S. DEP'T OF JUST. & U.S. DEP'T OF STATE, ASSESSMENT OF INTERPOL MEMBER COUNTRY ABUSE OF INTERPOL RED NOTICES, DIFFUSIONS, AND OTHER INTERPOL COMMUNICATIONS FOR POLITICAL MOTIVES AND OTHER UNLAWFUL PURPOSES 1 (Aug. 2022), <https://www.state.gov/wp-content/uploads/2022/09/2022-Transnational-Repression-Accountability-and-Prevention-Act-Report.pdf> [<https://perma.cc/52GH-WEK6>].

<sup>224</sup> See U.N. Hum. Rts. Office of the High Comm'r., *The Principle of Non-Refoulement Under Int'l Hum. Rts. Law* 1 (2018), <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> [<https://perma.cc/8QKB-JXKM>]. While INTERPOL's Refugee Resolution guarantees the deletion of any Notice or Diffusion issued against a confirmed refugee from the country where she fears persecution, this only applies once a person has already been granted fear-based relief, including asylum, withholding of removal, or protection under the Convention Against Torture. See INTERPOL, *Refugee Resolution*, GA-2017-86-RES-09, <https://www.interpol.int/en/Who-we-are/Legal-framework/INTERPOL-Refugee-Resolution> [<https://perma.cc/VSG3-B2YW>].

<sup>225</sup> This remains the case even though federal courts have long recognized the severity of deportation as a punishment. See *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) ("We have long recognized that deportation is a particularly severe 'penalty.'") (citing *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893)).

<sup>226</sup> See *Ting*, 149 U.S. at 730.

<sup>227</sup> These include reading a noncitizen their rights, providing an attorney if a noncitizen cannot afford one, a discovery process, the right to confront a witness, and the right to a speedy trial. See, e.g., National Immigrant Justice Center, *supra* note 216 at 7.

<sup>228</sup> See *Matter of Y-S-L-C-*, 26 I. & N. Dec. 688, 690 (B.I.A. 2015) ("It is well established that the Federal Rules of Evidence are not binding in immigration proceedings) (citing *Matter of D-R-*, 25 I. & N. Dec. 445, 458 (B.I.A. 2011)).

if it would violate a noncitizen's due process rights.<sup>229</sup> This stems from the constitutional due process guarantee of fundamental fairness, which applies to noncitizens in removal proceedings through the Fifth Amendment's Due Process Clause.<sup>230</sup> The due process standard for admission of evidence in removal proceedings requires that the evidence admitted is fundamentally fair and probative.<sup>231</sup> Fundamentally fair has been further defined as "reliab[le] and trustworth[y]."<sup>232</sup>

Because the only limiting factor for admission of evidence is a noncitizen's due process rights, immigration adjudicators tend to favor admissibility of evidence in removal proceedings.<sup>233</sup> Once evidence is admitted, the pertinent question becomes what weight the adjudicator should accord it. Procedural due process challenges are generally raised in federal circuit courts on petition for review of agency decisions. To succeed, a noncitizen must prove: 1) that a procedural defect rendered the proceeding fundamentally unfair; and 2) that that defect prejudiced the outcome.<sup>234</sup>

As addressed below, Red Notices and their underlying foreign reports frequently fail to meet the fundamentally fair and probative evidentiary standard in immigration court. This is particularly so when issued by certain countries with long records of Red Notice abuse.<sup>235</sup> Admission of such evidence despite these standards can ultimately lead to violations of noncitizens' due process rights and improper denials of release from immigration detention on bond and grants of life-saving fear-based relief.

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<sup>229</sup> Thorough consideration of evidence is critical at the immigration court level as subsequent appellate review only finds a due process violation and overturns admission of evidence when the noncitizen demonstrates both 1) that a defect in the proceeding rendered it fundamentally unfair; and 2) that that defect prejudiced the removal proceedings. *See, e.g., Rusu*, 296 F.3d at 320-22 (4th Cir. 2002).

<sup>230</sup> *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (holding that the Fifth Amendment's due process clause "applies to all 'persons' within the United States."); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings."); *Vasquez-Galdamez v. Barr*, 830 F. App'x 97, 99 (4th Cir. 2020) (holding that removal proceedings are subject to the Fifth Amendment's due process clause); *Anim v. Mukasey*, 535 F.3d 243, 256 (4th Cir. 2008) (quoting *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 405 (3d Cir. 2003)).

<sup>231</sup> 8 C.F.R. § 1240.1(c) (authorizing immigration judges to "receive and consider material and relevant evidence."); EXEC. OFF. FOR IMMIGR. REV. (EOIR), IMMIGRATION JUDGE BENCHMARK, EVIDENCE GUIDE, [<sup>232</sup> \*See\* EOIR, EVIDENCE GUIDE; \*supra\* note 231; \*Anim\*, 535 F.3d at 256.](https://www.justice.gov/eoir/page/file/988046/dl#:~:text=The%20general%20rule%20with%20respect,of%20due%20process%20of%20law; see, e.g., Matter of Ponce-Hernandez, 22 I. & N. Dec. 784, 785 (B.I.A. 1999); Matter of Y-S-L-C-, 26 I. & N. at 690; Ezeagwuna, 325 F.3d at 405.</a></p>
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<sup>233</sup> *See* 8 C.F.R. § 1240.7(a) ("The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.").

<sup>234</sup> *See Rusu*, 296 F.3d at 320-22.

<sup>235</sup> *See, e.g.*, National Immigrant Justice Center, Cristosal, Access Now, International Human Rights & Conflict Resolution Clinic, Stanford Law School, *supra* note 59.

1. *Insufficient investigative information and errors can render Red Notices unreliable*

While it is impossible to quantify the extent of this problem, many Red Notices have been issued with critical defects, missing information, and minimal context. This may be due to INTERPOL's rushed approval process and its neutrality principle, which renders it unable to inquire into the details of crimes alleged in notice requests. Some Red Notices and foreign reports fail to provide any information about how the alleged charges were investigated, or even what the specific criminal allegations are. In *Gonzalez-Castillo v. Garland*, for example, the Ninth Circuit examined a Red Notice that generally described the petitioner's involvement in the MS-13 gang but noted that the only allegation about Gonzalez-Castillo's involvement in the gang's activities was that, according to an anonymous witness, he was "responsible for strikes within the criminal organization."<sup>236</sup> The Notice did not contain information about what a "strike" is, the facts of the "strikes," the identity of any victims or witnesses, or what the elements of the crime Mr. Gonzalez-Castillo allegedly committed were.<sup>237</sup> INTERPOL should not have published this Red Notice in the first place.<sup>238</sup> Even if one considers MS-13 to be a "terrorist organization," INTERPOL's rules state that a Red Notice alleging the sole crime of membership in the group is only compliant if the request includes "specific information . . . on concrete acts that were taken or crimes that were committed by the individual on behalf of the terrorist organization."<sup>239</sup> Similarly, in *Gonzales v. Garland*, the Eighth Circuit addressed a Red Notice that INTERPOL deleted upon the applicant's request.<sup>240</sup> INTERPOL deleted the notice "because the case involved several individuals but the information provided by the Bolivian government did not describe the specific role played by [the noncitizens] in the crime alleged."<sup>241</sup> In other cases, like Jon's case discussed in the introduction, Red Notices and foreign reports allege crimes that took place in a person's home country after that respondent had arrived in the United States.<sup>242</sup>

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<sup>236</sup> 47 F.4th 971, 977-78 (9th Cir. 2022).

<sup>237</sup> *See id.*

<sup>238</sup> This Red Notice appears to be in violation of INTERPOL's "coherence" requirement, which necessitates a coherence between the underlying facts and the charges, as well as the presence of facts that "link the individual concerned to the charges." *See Repository of Practice on Articles 2 and 3, supra* note 27, at § 3.13.

<sup>239</sup> *Id.* at § 3.6.

<sup>240</sup> 29 F.4th 989, 993-94 (8th Cir. 2022).

<sup>241</sup> *Id.* at 993-94.

<sup>242</sup> *See also* *Gonzalez-Castillo*, 47 F.4th 971, 978 (9th Cir. 2022) ("Moreover, the date of the incident is identified in the Red Notice as January 1, 2015, which is after Gonzalez-Castillo had entered the U.S.").

In another case, Marcos<sup>243</sup> fled El Salvador to the United States. After living peacefully in the United States for several years, ICE detained him based on a Red Notice and Salvadoran arrest warrants accusing him of gang membership and various murders. ICE prosecutors filed these documents in immigration court to raise the SNPC bar. Marcos's immigration attorney conducted a thorough investigation into the underlying accusations and found that the Salvadoran registry office had no death certificates for several of the victims named in the arrest warrants and that a different individual had been charged and convicted with the murder of one person named in the warrant. Additionally, one warrant accused Marcos generally of gang membership, without including any specifics such as dates of membership or any actual crimes committed as a gang member. Another warrant accused Marcos of murder without any date, location, witnesses, or accusers. Two other warrants were dated from years after Marcos arrived in the United States. Despite these extensive issues, the immigration judge issued an adverse credibility finding and applied the SNPC bar to find that Marcos was ineligible for asylum and withholding of removal.<sup>244</sup>

In another case, Jorge<sup>245</sup> fled from Guatemala to the United States to seek asylum. He was detained by ICE based on a Red Notice accusing him of femicide against his long-term partner. DHS filed the Red Notice and arrest warrant issued by the Guatemalan government in his removal proceedings. In response, Jorge argued that the Red Notice and underlying charges were politically motivated: A local politician in their town had forcibly coerced his partner into a sexual relationship, threatening her job and livelihood if she refused. The politician then orchestrated her murder and pinned it on Jorge. In addition to substantive challenges against the charges (addressed further below), Jorge's attorney highlighted glaring deficiencies with the documents themselves: The arrest warrant contained minimal identifying information and named no victim. The warrant was issued one year after the murder and contained a different national identification number for Jorge than that included in the Red Notice. The Red Notice was also issued nearly six years after the arrest warrant, randomly omitted words relevant to the factual description of the crime alleged, and only contained the most basic biographical information about Jorge, including that he was "single" and "Guatemalan."

The gaps and errors present in these three examples are demonstrative of several issues with Red Notices and foreign reports. These issues include the complete absence of details indicating criminal activity or guilt,

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<sup>243</sup> The individual's name was changed to protect his identity. The author has documentation in redacted form, available upon request.

<sup>244</sup> The immigration judge further found that, while there is evidence of corruption in El Salvador, "there is insufficient evidence to conclude that the Red Notice, arrest warrant, or police investigation reports in *this case* are the result of corruption."

<sup>245</sup> The individual's name was changed to protect his identity. The author has documentation in redacted form, available upon request.

allegations indicative of persecution rather than prosecution, and inadequate investigations. The use of documents with these issues in immigration court can violate a noncitizen's due process rights.<sup>246</sup>

Circuit courts have held that the admission of foreign government investigative documents in removal proceedings is a due process violation when critical information is absent. To comport with due process requirements, such documents must contain sufficient detail to allow an immigration adjudicator to determine whether the investigation was reliable and trustworthy "without surrendering that function to the author of the report."<sup>247</sup> This is because "particularly damning" documentary evidence "should be sufficiently clear and complete to give the applicant an opportunity to meaningfully rebut its allegations."<sup>248</sup>

For example, foreign documents with limited information about how an investigation was conducted can be unreliable. Admission of these documents therefore violates due process.<sup>249</sup> In *Ezeagwuna v. Ashcroft*, the Third Circuit considered the admission of a letter from a U.S. Department of State official summarizing a foreign investigation into certain foreign documents.<sup>250</sup> The court concluded that admitting this letter violated Ezeagwuna's due process rights in part because there was "absolutely no information about what the 'investigation' consisted of."<sup>251</sup> As a result, the letter was "not only untrustworthy, but also unhelpful."<sup>252</sup> In considering a letter from a similar foreign investigation, the Fourth Circuit held that, without investigative details, "it is impossible for an immigration judge, the BIA, or a court to evaluate the reliability of the letter's conclusions."<sup>253</sup> "The manner of eliciting [] information is crucial to their probative value."<sup>254</sup> Without such information, applicants face an often insurmountable battle to disprove

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<sup>246</sup> See EOIR, EVIDENCE GUIDE, *supra* note 231; see also *Anim v. Mukasey*, 535 F.3d 243, 256 (4th Cir. 2008); *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 405 (3d Cir. 2003); *Felczerek v. INS*, 75 F.3d 112, 115 (2d Cir. 1996).

<sup>247</sup> *Banat v. Holder*, 557 F.3d 886, 890 (8th Cir. 2009).

<sup>248</sup> *Anim*, 535 F.3d at 257.

<sup>249</sup> See *Ezeagwuna*, 325 F.3d at 405 (holding unreliable a U.S. State Department letter discussing a foreign investigation in large part because it failed to address how the investigation was conducted); *Anim*, 535 F.3d at 257 (same); *Alexandrov v. Gonzales*, 442 F.3d 395, 407 (6th Cir. 2006) (concluding that U.S. embassy memoranda were unreliable and their admission violated due process because the court had minimal information "aside from the apparent conclusions of the mysterious investigation."); *Banat*, 557 F.3d at 889-90 (holding that admission of a State Department report on its investigation into the authenticity of a document was fundamentally unfair because the report did not contain information about how the investigation was conducted); see also Memorandum from Bo Cooper, INS General Counsel, to Jeffrey Weiss, INS Director of International Affairs (June 21, 2001) (on file with American Immigration Lawyers Association) (identifying the minimum factors that must be present in an investigative report to provide proper foundation).

<sup>250</sup> *Ezeagwuna*, 325 F.3d at 401-02.

<sup>251</sup> *Id.* at 408.

<sup>252</sup> *Id.*

<sup>253</sup> *Anim*, 535 F.3d at 257.

<sup>254</sup> *Ezeagwuna*, 325 F.3d at 408.

the allegations against them. Such details are similarly absent in the Red Notices addressed above. Despite this, Red Notices and foreign reports are routinely admitted and impact a noncitizen's eligibility for release from detention and fear-based relief.

2. *Red Notices requested by the country from which the noncitizen is fleeing may indicate persecution rather than legitimate prosecution*

Motive concerns present a particularly serious and unique problem in assessing Red Notices and foreign reports. Essentially, Red Notices and the indication of legitimate prosecution may just be a pretext for persecution and torture. When abusive Red Notices are present, the underlying court orders or arrest warrants are often merely “rubber-stamped.”<sup>255</sup> While this might lead to exclusion in criminal courts,<sup>256</sup> immigration judges commonly view these documents as presumptively reliable because they are drafted by governments and law enforcement agencies.<sup>257</sup> Several circuit courts, however, have cautioned against allowing the “prestige” of government letterhead to equate with reliability and trustworthiness.<sup>258</sup> Unfortunately, due to the legitimacy afforded Red Notices and foreign reports, oftentimes the only way of overcoming these documents' damage in immigration courts is by litigating the merits of a foreign criminal charge in a U.S. immigration court.<sup>259</sup>

Even though Red Notices are routinely admitted as evidence, several circuit courts have, in other contexts, limited the reliability of foreign government evidence. In limiting admission, the courts have held that admission violates a noncitizen's due process rights when there are motive concerns. Several circuit courts have cautioned against wholly relying on reports

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<sup>255</sup> See generally Section II for a discussion of abuse in the INTERPOL system; NAT'L IMMIGRANT JUST. CTR., *CAUGHT IN THE WEB: THE ROLE OF TRANSNATIONAL DATA SHARING IN THE U.S. IMMIGRATION SYSTEM* (2022); Lemon, *supra* note 47; Meacham, *supra* note 47.

<sup>256</sup> See, e.g., *United States v. Wilhelm*, 80 F.3d 116, 121 (4th Cir. 1996) (excluding from the good-faith exception to the exclusionary rule cases where the magistrate judge acted as “a ‘rubber stamp’ in approving . . . an affidavit”).

<sup>257</sup> See, e.g., *Matter of W-E-R-B-*, 27 I. & N. Dec. 795, 799 (B.I.A. 2020); see also NAT'L IMMIGRANT JUST. CTR., *supra* note 255, at 7.

<sup>258</sup> See *Ezeagwuna*, 325 F.3d at 407 (“[W]e are concerned that the INS is attempting to use the prestige of the State Department letterhead to make its case and give credibility to the letter's contents.”); *Anim*, 535 F.3d at 258 (“[T]he IJ appeared to rely upon the general prestige and competence of the Department of State in determining that the [State Department] letter was sufficiently reliable”).

<sup>259</sup> The First Circuit thoroughly addresses in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), that noncitizens, particularly those in detention, face often insurmountable challenges to providing such evidence. This pattern exists for several reasons, including that the majority of noncitizens are unrepresented, “detained individuals will likely experience difficulty in gathering evidence on their own behalf;” detained noncitizens often lack English proficiency or assistance from those with such proficiency, noncitizens are generally unaware of relevant laws and procedures, and proving a negative is very challenging. *Id.* at 30-31.

prepared by the same governments from which applicants are fleeing.<sup>260</sup> The Fourth Circuit, for example, held that “[b]ecause officials of certain foreign governments ‘have powerful incentives to be less candid on the subject of their government’s persecution of political dissidents,’ . . . concerns about a report’s reliability are amplified when the ‘report was prepared with the assistance of someone from the government from which [the applicant] is fleeing.’”<sup>261</sup>

Jorge,<sup>262</sup> for example, was one of the rare few individuals who was able to rebut the presumption of guilt laid upon him by the Red Notice and foreign arrest warrant DHS filed. In addition to the errors and discrepancies in the documents addressed above, Jorge provided significant evidence showing he was innocent of the accused femicide. He filed evidence that the local politician had forcibly coerced his partner into a sexual relationship and that the politician was deeply corrupt. He showed that he had complied with a government investigation for the murder and had voluntarily submitted for a blood test. Other local leaders had also decried the local politician as his partner’s murderer, and the judge who signed Jorge’s arrest warrant was even arrested for money laundering. The immigration judge ultimately found that Jorge overcame the SNPC bar and granted him asylum. Despite this, DHS appealed, and Jorge was not released from detention until the BIA dismissed the appeal nearly one year after his initial detention. While Jorge was able to get his Red Notice permanently deleted through the Refugee Resolution, ICE’s use of the Red Notice in the first place caused him and his family significant harm. He was incarcerated in ICE detention for around a year, lost his job, and was separated from his family.

Motive concerns also arise on a country-specific basis. For example, a report by the National Immigrant Justice Center detailed the case of Alfred, a gay asylum seeker from Jamaica, who was detained and ultimately denied asylum and deported due to a Red Notice. The notice included charges related to Jamaica’s discriminatory same-sex conduct laws, along with other ordinary law crimes.<sup>263</sup> Alfred fled Jamaica for the United States out of fear of harm due to his sexual orientation.<sup>264</sup> ICE detained him, placed him in solitary confinement, and then argued that he was barred from asylum and withholding of removal due to the SNPC bar.<sup>265</sup>

As another example, the government of El Salvador has been using Red Notices to target individuals perceived, however threadbare the evidence,

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<sup>260</sup> See *Anim*, 535 F.3d at 257; *Lin v. U.S. Dep’t of Just.*, 459 F.3d 255, 269-70 (2d Cir. 2006); *Alexandrov v. Gonzales*, 442 F.3d 395, 405 n.7 (6th Cir. 2006) (expressing concern about a report “prepared with the assistance of someone from the government from which [the applicant] is fleeing”).

<sup>261</sup> *Anim*, 535 F.3d at 257 (citations omitted).

<sup>262</sup> See Jorge’s case, *supra* p. 109-10.

<sup>263</sup> NAT’L IMMIGRANT JUST. CTR., *supra* note 255, at 6.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

as gang members. The Salvadoran government declared a state of exception in March 2022 that has led to the arrests of over 88,000 people.<sup>266</sup> The government has arbitrarily detained tens of thousands of people in torturous prison conditions.<sup>267</sup> These arrests have resulted largely from mass roundups of anyone who fits the government's description of a suspected gang member: young, male, tattooed, and living in areas of poverty or communities with higher rates of gang violence.<sup>268</sup> Police officers have also had to meet arrest quotas to keep their positions, incentivizing arbitrary and widespread arrests.<sup>269</sup> The data-sharing agreements between the United States and El Salvador that facilitate the sharing of names, biometrics, criminal history, and suspected gang affiliation make it easier for ICE attorneys to identify such evidence for use in immigration court.<sup>270</sup> And, as relevant here, the Salvadoran National Police are including Salvadorans "identified" as criminals or gang members in transnational databases without any specific and reliable evidence of criminal activity.<sup>271</sup> El Salvador is responsible for about 13 percent of all publicly listed Red Notices, despite its relatively small population.<sup>272</sup>

Red Notices and foreign reports from countries such as El Salvador, with a documented history of transnational repression, must therefore be cautiously reviewed before submission and admission. First, per ICE's directive on Red Notices, ICE personnel are meant to review Red Notices for possible noncompliance *before* using them in enforcement actions. This is especially so if the notice is issued by a country "known or suspected of misusing INTERPOL's Notice and Diffusion system to target dissidents or political opposition figures."<sup>273</sup> Second, immigration judges should consider country conditions reports documenting patterns of abuse of Red Notices in admissibility and evidentiary weight determinations, even if the noncitizen

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<sup>266</sup> See Euan Wallace, *The Human Cost of El Salvador's Gang Crackdown*, NEW LINES MAGAZINE (Nov. 24, 2025), <https://newlinesmag.com/reportage/the-human-cost-of-el-salvadors-gang-crackdown/> [https://perma.cc/36YC-6GY7].

<sup>267</sup> See, e.g., *Silence is Not an Option*, CRISTOSAL (July 24, 2024), <https://cristosal.org/EN/2024/07/24/silence-is-not-an-option/> [https://perma.cc/Y8S8-86EH].

<sup>268</sup> *Id.*; see also SARAH C. BISHOP, THOMAS J. BOERMAN & TOMMIE SUE MONTGOMERY, BEHIND THE GLOWING HEADLINES: SOCIAL SCIENCE ANALYSIS OF THE STATE OF EXCEPTION IN EL SALVADOR (2023), [https://ilas.columbia.edu/sites/default/files/content/CeMeCA\\_Paper9\\_Bishop,Boerman,Montgomery\\_English\\_0.pdf](https://ilas.columbia.edu/sites/default/files/content/CeMeCA_Paper9_Bishop,Boerman,Montgomery_English_0.pdf) [https://perma.cc/H4ZF-CGEV].

<sup>269</sup> See, e.g., "We Can Arrest Anyone We Want", HUMAN RIGHTS WATCH (Dec. 7, 2022), <https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el> [https://perma.cc/X9TA-QG33].

<sup>270</sup> See National Immigrant Justice Center, Cristosal, Access Now & International Human Rights & Conflict Resolution Clinic, Stanford Law School, *supra* note 59.

<sup>271</sup> *Id.*

<sup>272</sup> See *View Red Notices*, *supra* note 7.

<sup>273</sup> ICE, *ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions*, *supra* note 146.

is unable to demonstrate that the specific notice in their case is abusive.<sup>274</sup> Particularly where country conditions express concern about possible abuse, judges should then critically assess the specifics of the Red Notice and foreign documents for reliability and trustworthiness.<sup>275</sup> Failure to do so risks jeopardizing noncitizens' due process rights and erroneously deporting them to persecution and torture.

3. *Red Notices and foreign reports rely on multiple levels of unreliable hearsay*

Apart from questionable motive, the underlying allegations in Red Notices and foreign reports, similar to police reports, are often dependent on hearsay, an out-of-court statement introduced to prove the truth of the matter asserted.<sup>276</sup> While requesting states do need to affirm that a court order or arrest warrant exists for the subject of the notice, the specific facts alleged may be supported only by hearsay. In the criminal legal system, courts have generally disfavored hearsay as unreliable. The Federal Rules of Evidence prohibit the use of hearsay,<sup>277</sup> but include an exception for public records.<sup>278</sup> This exception exists because police reports are presumptively reliable as "public officials are presumed to perform their duties properly and generally lack a motive to falsify information."<sup>279</sup> While police reports are permitted in some limited circumstances, the exception does not permit the use of police reports against a defendant in a criminal trial because of the inherent unreliability concerns.<sup>280</sup> This limitation exists in part<sup>281</sup> because of the numerous reliability issues with police reports: They contain unsworn witness statements and first impressions, are one-sided and largely based on hearsay, are generated early in an investigation, and are prepared in anticipation of adversarial litigation.<sup>282</sup> Hearsay is only limited in immigration

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<sup>274</sup> *But see* *Duralev v. Garland*, No. 19-71703, 2021 WL 374899, at \*18-19 (9th Cir. 2021) (holding that *Duralev's* evidence that Russia abuses the Red Notice system was insufficient to defeat the SNPC bar because he could not show that the specific Red Notice in his case was abusive).

<sup>275</sup> See Sections 1 and 3 addressing errors, insufficient information, and hearsay in Red Notices and foreign reports.

<sup>276</sup> FED R. EVID. 801.

<sup>277</sup> *Id.*

<sup>278</sup> FED R. EVID. 803(d).

<sup>279</sup> See *Felzcerek v. INS*, 75 F.3d 112, 116 (2d Cir. 1996); Fed R. Evid. 803 advisory committee's note ("Justification for the [public records] exception is the assumption that a public official will perform his duty properly and the unlikelihood that he will remember details independently of the record.").

<sup>280</sup> See FED R. EVID. 803(8)(A)(ii).

<sup>281</sup> The limitation also exists in order to avoid conflict between the hearsay exceptions and the Confrontation Clause.

<sup>282</sup> See FED R. EVID. 803 advisory committee's note (discussing "motivation problems"); see also S. REP. NO. 93-1277, at 7064 (1974) ("The reason for this exclusion is that observations by police officers at the scene of the crime or the apprehension of the defendant are not as

court if it fails the ultimate test for admission: that it be fundamentally fair and probative.<sup>283</sup> Circuit courts have held that admission of such unsworn or uncorroborated hearsay documents can be unreliable and raise due process concerns, including in immigration court.<sup>284</sup>

These reliability concerns are similarly present in Red Notices and foreign reports. In fact, Red Notices and foreign reports often contain even less information than police reports. As addressed above, Red Notices and their underlying documents may rely entirely on nondescript accusations either with no source for the allegation or an anonymous one. For example, in *Gonzalez-Castillo v. Garland*, the Red Notice accusing the petitioner of MS-13 gang involvement was based solely on an anonymous witness.<sup>285</sup> Additionally, when introduced in removal proceedings by ICE attorneys to argue against eligibility for fear-based relief, the Red Notices and foreign documents are authored by the countries from which noncitizens are fleeing and fear persecution. This alone warrants a healthy dose of skepticism. These concerns show that there are numerous ways in which information included in a Red Notice could have been transmitted incorrectly, whether intentionally or not.<sup>286</sup> Given that neither the law enforcement officers nor the unnamed accusers appear in court, immigration judges and noncitizens are unable to accurately assess reliability, veracity, or motive. These examples demonstrate that when Red Notices and foreign reports are accepted as presumptively reliable in immigration court, violations of due process can occur. Without ensuring sufficient protections to the Red Notice subject as are present in extradition proceedings, the United States risks continued violations of its non-refoulement obligations.

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reliable as observations by public officials in other cases because of the adversarial nature of the confrontation between the police and the defendant in criminal cases.”).

<sup>283</sup> See, e.g., *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 823-24 (9th Cir. 2003); *Guerrero-Perez v. INS*, 242 F.3d 727, 729 n.2 (7th Cir. 2001); *Bustos-Torres v. INS*, 898 F.2d 1053, 1056 (5th Cir. 1990).

<sup>284</sup> See, e.g., *Lin v. U.S. Dep’t of Just.*, 459 F.3d 255, 272 (2d Cir. 2006) (holding that a U.S. consular report concluding that a certificate of release from prison was a forgery was unreliable in part due to its “multiple hearsay statements”); *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 406-08 (3d Cir. 2003) (finding unreliable a Department of State letter addressing the conclusions of an investigation in Cameroon because, among other reasons, it contained “multiple hearsay of the most troubling kind”); *Anim v. Mukasey*, 535 F.3d 243, 257 (4th Cir. 2008) (finding unreliable a report authorized by a U.S. Department of State official); *Alexandrov v. Gonzales*, 442 F.3d 395, 405 (6th Cir. 2006); *Banat v. Holder*, 557 F.3d 886, 892 (8th Cir. 2009).

<sup>285</sup> See 47 F.4th 971, 977-78 (9th Cir. 2022).

<sup>286</sup> For example, a foreign arrest warrant would have a communication chain such as: (1) anonymous or unnamed source to (2) law enforcement officer to (3) magistrate or other issuing judge to (4) foreign database to (5) U.S. database to (6) ICE attorney to (7) immigration court.

IV. UNCHECKED USE OF INTERPOL RED NOTICES IN UNITED STATES  
REMOVAL PROCEEDINGS ALLOWS ILLIBERAL REGIMES TO  
CIRCUMVENT EXTRADITION PROCEDURES

When ICE and immigration courts trust Red Notices to serve as sufficient evidence to deny fear-based relief from removal, the U.S. government becomes the unintentional enforcer for corrupt or illiberal regimes. This is especially concerning when the countries in question are those the U.S. government has also condemned for human rights violations.<sup>287</sup> INTERPOL defines the purpose of a Red Notice as to “locate and provisionally arrest a person pending extradition, surrender, or similar legal action.”<sup>288</sup> But because removal proceedings have fewer due process guarantees and lower evidentiary standards than exist in extradition proceedings, foreign governments “can exploit the gap between these two processes and the differences between their norms and evidentiary standards to their benefit and achieve with one what they cannot achieve with the other.”<sup>289</sup> This section will address the differences between extradition and removal proceedings and propose solutions to reduce incidents of transnational repression through INTERPOL and the U.S. immigration system.

A. *The extradition process requires multi-agency and court involvement and increased evidentiary burdens and requirements*

A Red Notice alone cannot lead to initiation of extradition from the United States. Extradition from the United States is governed by U.S. law, extradition treaties between the United States and the requesting state, and foreign policy considerations.<sup>290</sup> The extradition process involves multiple steps and intense scrutiny by different U.S. government agencies and courts.<sup>291</sup> The United States is also party to various international treaties that aim to guarantee human rights, including for extraditees.<sup>292</sup> At the time of writing, the United States was engaged in extradition treaties with 110

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<sup>287</sup> See, e.g., U.S. DEP’T OF STATE, *Country Reports on Human Rights Practices* (2023), <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices> [<https://perma.cc/ZBZA-J5VN>] (addressing specifically INTERPOL abuses and misuse of international law enforcement tools in the country reports for China, Russia, Türkiye, Bangladesh, and Rwanda); U.S. Gov’t Accountability Off., GAO-24-106183, *Agency Actions Needed to Address Harassment of Dissidents and Other Tactics of Transnational Repression in the U.S.* (2023), <https://www.gao.gov/assets/gao-24-106183.pdf> [<https://perma.cc/EH63-97VA>].

<sup>288</sup> See *View Red Notices*, *supra* note 7.

<sup>289</sup> See BASSIOUNI, *supra* note 85, at 216.

<sup>290</sup> See U.S. DEP’T OF JUST., Just. Manual § 9-15.100 (2018).

<sup>291</sup> See *id.*

<sup>292</sup> See, e.g., Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Apr. 18, 1988, S. Treaty Doc. No. 100-20; International Covenant on Civil and Political Rights, Apr. 2, 1992, S. Exec. Doc. No. 95-20.

other countries.<sup>293</sup> These extradition treaties rely on mutual trust between signatories and generally build in limitations to attempt to curb potential abuse. Most treaties, for example, take a “dual criminality” approach, allowing for extradition only for crimes punishable in both jurisdictions.<sup>294</sup> Some extradition treaties only allow for extradition of certain enumerated crimes, and many others only allow for extradition of crimes that carry a certain minimum sentence.<sup>295</sup> A Red Notice is not required to initiate extradition, though one is often present.

To request extradition from the United States, a foreign government must submit a formal extradition package to the U.S. Department of State’s Office of the Legal Advisor’s Law Enforcement and Intelligence Office (L/LEI), in compliance with existing treaties.<sup>296</sup> Required information typically includes biographical information on the wanted person, details on the alleged offenses, and documentary evidence underlying the criminal charges, such as arrest warrants.<sup>297</sup> Once received, L/LEI certifies that a binding extradition treaty exists.<sup>298</sup> If in compliance, the package is then forwarded to the Department of Justice’s Office of International Affairs (OIA). OIA confirms that sufficient documentation is included and reviews it for legal sufficiency, ensuring that probable cause exists to believe that the subject committed the crime and that the request satisfies treaty requirements.<sup>299</sup> In the probable cause analysis, the OIA attorney considers the offense charged, docketing information (such as the certifying court), the current status of the case, and details and evidence underlying the charges.<sup>300</sup> Once probable cause is confirmed, OIA sends the extradition request to the U.S. Attorney’s Office’s (USAO) International/National Security Coordinators in the jurisdiction where the wanted person is believed to be located.<sup>301</sup> The USAO obtains a federal arrest warrant for the individual from a federal district or magistrate judge, and the U.S. Marshals Service arrests the wanted individual.<sup>302</sup> Once arrested, a federal court in the relevant jurisdiction holds

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<sup>293</sup> See 18 U.S.C. § 3181.

<sup>294</sup> See U.S. DEP’T OF STATE, *The Consular Role in International Extradition: Introduction* (Apr. 4, 2025), <https://fam.state.gov/FAM/07FAM/07FAM1610.html> [<https://perma.cc/AQJ2-VS6L>].

<sup>295</sup> See *id.*

<sup>296</sup> See U.S. DEP’T OF STATE, *Extraditions*, <https://2017-2021.state.gov/extraditions> [<https://perma.cc/SL22-R8FT>] (last visited Nov. 23, 2025).

<sup>297</sup> See Masters, *What is Extradition?*, *supra* note 142.

<sup>298</sup> See U.S. DEP’T OF STATE, *supra* note 296; Samuel Witten, *International Extradition: A Guide to U.S. and International Practice*, ARNOLD & PORTER (Nov. 10, 2020), <https://www.arnoldporter.com/en/perspectives/advisories/2020/11/international-extradition-a-guide> [<https://perma.cc/5VQR-GG95>].

<sup>299</sup> See *id.*

<sup>300</sup> See U.S. Dep’t of Just., *Crim. Res. Manual* § 603, <https://www.justice.gov/archives/jm/criminal-resource-manual-603-determination-extraditability> [<https://perma.cc/JE4L-6M2L>].

<sup>301</sup> See Witten, *supra* note 298.

<sup>302</sup> See U.S. Dep’t of Just., *7 Foreign Affairs Manual* § 1603, <https://fam.state.gov/fam/07fam/07fam1630.html> [<https://perma.cc/V5JX-SZQC>].

an extradition hearing. To find the individual extraditable, the court must determine that (1) an extradition treaty exists between the United States and the requesting state; (2) criminal charges remain pending in the requesting state; (3) the criminal charges are covered by the relevant extradition treaty; (4) the individual in custody is the person wanted for committing the alleged crimes; and (5) that probable cause exists to believe the wanted person committed the alleged crimes.<sup>303</sup> If the court finds the person extraditable, it issues a certificate of extraditability, and the Department of State issues a surrender warrant for the person.<sup>304</sup> The Secretary of State has final discretion over extradition.<sup>305</sup> In the end, if the United States opts to surrender the individual, it coordinates with the foreign country to arrange transfer.<sup>306</sup> The entire process typically takes over a year from initial request to surrender, with more complex or contested cases taking several years.<sup>307</sup> This intensive, multi-step, and multi-agency and court process aims to ensure that individuals are not simply turned over to foreign governments where they may face unlawful persecution and torture. The safeguards and more robust procedure in the extradition process reflects international treaty obligations.

These safeguards, however, are absent when Red Notices lead to the initiation of immigration removal proceedings and deportation. Unlike extradition treaties that rely on mutual trust, INTERPOL member states must commit to, and ultimately, trust the administrative procedures and checks that INTERPOL provides. Thus, when a member state acts based on a Red Notice, it theoretically operates under the assumption that the end goal of the requesting state is nonpolitical. As addressed above, however, this is often not the case. Because removal proceedings based on Red Notices lack the additional checks and judicial protections present in extradition proceedings, noncitizens often have to carry an impossible burden brought about by a Red Notice.

Despite these differences, extradition and removal proceedings lead to the same result for those who fled their home countries seeking safety: return to persecution or torture. Failing to afford sufficient protections in both proceedings means that states seeking the return of their nationals as quickly and easily as possible—whether for persecutory reasons or not—may seek their deportation, rather than extradition. For example, in one recent case, a Colombian man was detained by ICE and placed into removal proceedings after a Colombian government liaison alerted ICE—not the Department of State via the proper extradition channels—that this individual was subject to a Red Notice.<sup>308</sup> ICE's willingness to act based on Red Notices perpetuates these requests by foreign governments.

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<sup>303</sup> See Witten, *supra* note 298.

<sup>304</sup> See *id.*

<sup>305</sup> See *id.*

<sup>306</sup> See *id.*

<sup>307</sup> See Masters, *supra* note 142.

<sup>308</sup> See Shook, *supra* note 144.

*B. The United States and INTERPOL should implement additional reforms to ensure Red Notice subjects are not returned to persecution or torture*

INTERPOL continues to serve a legitimate and important purpose of broadening international cooperation to fight crime. The organization has also made some crucial steps towards preventing abuse of its notices and diffusions system. While abuse can never be fully eliminated, as that would require eliminating abuse within each individual member state, reforms can be made within INTERPOL and in the United States. While other changes not discussed below would certainly improve the various systems, these recommendations relate only to the interaction between INTERPOL and removal proceedings to reduce violations of non-refoulement obligations and due process rights.

*1. Reforms to INTERPOL*

INTERPOL should make significant changes to the structure and substance of review criteria for those entities that interact with notices and diffusions to increase capacity, transparency, and scrutiny. First, the Notices and Diffusions Task Force (NDTF), which screens all notice requests before publication, should enhance its review mechanisms for notice requests. This involves, at the very least, ensuring compliance with INTERPOL's existing rules for notices. As the data on complaints and the examples above show, many abusive notices that do not meet INTERPOL's standards for publication still slip through the cracks.<sup>309</sup> In order to provide adequate review of the growing number of notice requests, however, the NDTF needs additional staffing and resources.

While each notice receives a case-by-case analysis, INTERPOL also conducts general assessments of requests made by individual countries.<sup>310</sup> It is unclear how formalized this process is and whether it is of notice requests, complaints, or both. If not done already, the NDTF and CCF should conduct periodic reviews of both notice requests and approved, but ultimately deleted, notices to identify patterns or errors that might improve initial review processes. Such patterns might identify country-specific abuses that warrant implementation of one or more of the corrective actions discussed above.<sup>311</sup> To increase transparency and allow more recourse for victims of Red Notice abuse, the NDTF should also publish the results of these reviews and more generalized data, such as the number of published notices and deleted notices broken down by color and country.

INTERPOL should also consider whether, in limited circumstances, harsher corrective actions might be necessary to curb repeat offenders.

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<sup>309</sup> See 2021, 2022, and 2023 Activity Reports, *supra* notes 122, 130, 131.

<sup>310</sup> See McHenry, *supra* note 126.

<sup>311</sup> See *supra* p. 90-92.

Without INTERPOL's willingness to use corrective action, member states that choose to use notices as a means of transnational repression will continue to do so because it is effective and low-cost.<sup>312</sup>

INTERPOL must also expand the capacity, efficiency, and transparency of its Commission for the Control of INTERPOL's Files. INTERPOL did take a laudable step this year in expanding the CCF's budget by 60 percent.<sup>313</sup> The growing influx of complaints and requests the CCF receives, however, merits its status as a full-time body with sufficient staff and resources. With increased resources, the CCF would be able to implement changes that make this appellate process more accessible to notice subjects. This includes reducing and enforcing the timeline for responding to requests for access, correction, or deletion, as well as implementing an appeals procedure for denials of requests. Additionally, the CCF should publish more decisions, allowing for the creation of a more robust body of precedent and examples to assist in the drafting of future complaints and requests.<sup>314</sup>

## 2. Reforms by the United States government

There is also more to be done in the United States to push for INTERPOL reform and to reduce violations of non-refoulement obligations and due process in removal proceedings. These steps would limit the United States' role in transnational repression. There was bipartisan support for the Transnational Repression Accountability and Prevention (TRAP) Act. While the TRAP Act that was ultimately passed by Congress was weakened from its preceding versions, the measures included—if implemented—would help reduce transnational repression through INTERPOL.<sup>315</sup> The TRAP Act, first and foremost, recognizes that Red Notices are abused and used to commit transnational repression.<sup>316</sup> The Act requires the United States to promote INTERPOL reforms, including enhancing the screening processes for notices and diffusions, increasing funding for the NDTF and CCF, and encouraging INTERPOL to provide increased data.<sup>317</sup> The Act also requires

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<sup>312</sup> See, e.g., Ted R. Bromund, Sandra Grossman, & Ilan Greenberg, *supra* note 19; Meacham, *supra* note 47.

<sup>313</sup> See INTERPOL, RESOLUTION No. 15, GA-2024-92-RES-15, at 2, <https://www.interpol.int/en/content/download/22265/file/GA-2024-92-RES-15%20E%20Budget2025.pdf> [<https://perma.cc/CPZ9-ETGE>].

<sup>314</sup> See BROMUND, HOW THE ABUSE OF INTERPOL CONTRIBUTES TO TRANSNATIONAL REPRESSION, *supra* note 10, at 5-6.

<sup>315</sup> See TED R. BROMUND & JONATHAN REICH, ABUSE OF INTERPOL FOR TRANSNATIONAL REPRESSION: ASSESSING THE FY22 NDAA'S PROVISIONS FOR PREVENTION, JUST SECURITY (Nov. 10, 2021), <https://www.justsecurity.org/79161/abuse-of-interpol-for-transnational-repression-assessing-the-fy22-ndaas-provisions-for-prevention/> [<https://perma.cc/465U-WVE8>].

<sup>316</sup> The TRAP Act has been incorporated in part through the National Defense Authorization Act (NDAA). See Transnational Repression Accountability and Prevention Act, 22 U.S.C. § 236(b) (2021).

<sup>317</sup> See *id.*

the United States to request sanctions against member states which repeatedly abuse the notice and diffusion systems.<sup>318</sup> The TRAP Act additionally prohibits the United States from extraditing anyone based solely on a Red Notice or diffusion.<sup>319</sup> Lastly, for four years following its enactment, the TRAP Act requires biannual reports assessing abuse of notices and diffusions by INTERPOL's member states.<sup>320</sup> More specifically, it requires publication of a list of countries determined to repeatedly abuse and misuse the Red Notice and diffusion system for political purposes; the tactics employed and crimes most alleged; and a description of incidents in which the U.S. government may have unlawfully, or against policy, used a Red Notice to seek an individual's detention or denial of immigration status.<sup>321</sup>

Unfortunately, the TRAP Act has largely failed to meet its important goals. Despite all evidence to the contrary, the biannual TRAP reports claim: "Although instances of member countries misusing or attempting to misuse INTERPOL notices and diffusions still occur, this particular form of transnational repression seems to have receded since INTERPOL implemented reforms in 2016 and 2017."<sup>322</sup> This assertion is made more puzzling by the fact that the TRAP Act only passed in 2021, in which Congress recognized the repeated misuse and abuse of Red Notices but, less than a year later, without any new significant reforms at INTERPOL, the report claims that the abuse has "receded . . . since the reforms in 2016 and 2017."<sup>323</sup> Further, the reports fail to provide any listing of countries whose governments have abused the notice and diffusion system. It instead states that "such listings could lead to retaliation against the United States and its international law enforcement efforts and may also diminish the effectiveness of INTERPOL's law enforcement work with member countries."<sup>324</sup> The United States should commit to fully implementing the TRAP Act's requirements, including by complying with all reporting requirements and more closely examining how DOJ and DHS use Red Notices in immigration removal proceedings. The agencies should provide detailed reports and data on the use of Red Notices

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<sup>318</sup> *See id.*

<sup>319</sup> *See id.*

<sup>320</sup> *See id.*

<sup>321</sup> *See id.*

<sup>322</sup> *See* U.S. Dep't of State, *Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices, Diffusions, and Other INTERPOL Communications for Political Motives and Other Unlawful Purposes 1*, <https://www.state.gov/wp-content/uploads/2022/09/2022-Transnational-Repression-Accountability-and-Prevention-Act-Report.pdf> [<https://perma.cc/786L-KZU2>] (last visited Oct. 4, 2025). Additionally, the U.S. Department of State's Country Reports on Human Rights Practices continue to document transnational repression through INTERPOL notices in several countries, including Belarus, Russia, Bangladesh, Türkiye, Venezuela, Nicaragua, China. *See 2023 Country Reports on Human Rights Practices*, U.S. Dep't of State, <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices> [<https://perma.cc/E2ML-FQ9V>] (last visited Oct. 4, 2025).

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

in immigration cases. Such reports would include details like the requesting country, crime alleged, outcome of the case, and measures taken to verify that the Red Notice is not abusive in nature.

Separately from the TRAP Act, the United States should take greater responsibility for its facilitation of transnational repression through the use of Red Notices and foreign reports in removal proceedings. The U.S. National Central Bureau can play a critical role in screening for abusive Red Notices before they cause further damage to individuals' lives. Since ICE is meant to contact the NCB when acting on a Red Notice,<sup>325</sup> the NCB has an opportunity to independently vet the Red Notice beyond INTERPOL's initial screening. Indeed, "NCBs are supposed to be part of the line of defense against abuse in the Interpol system."<sup>326</sup> If the NCB notified ICE of concerns in advance of an enforcement action or use of the Red Notice in immigration court, it would, at the very least, put ICE on notice of the fact that continued use of the Red Notice would implicate the United States in an act of transnational repression and risk violation of its non-refoulement obligations.

The U.S. DOJ and DHS must also mandate greater training and guidelines for use of Red Notices and foreign reports in enforcement actions and in immigration court. For example, DHS can mandate that its attorneys separately review Red Notices and foreign reports for transnational repression concerns before filing them in immigration court and arguing the SNPC bar. DHS should also maintain data on how often Red Notices are used for enforcement actions and in immigration court, including information on what action was taken, what country the Red Notice originated from, the crime alleged, what measures were taken to verify its accuracy, and the outcome of the case.

The DOJ can also implement training for immigration adjudicators on how to vet Red Notices and foreign reports for credibility, errors, and abuse issues, and provide data on those countries observed to use Red Notices for abusive purposes. Immigration judges should be trained on how to evaluate whether Red Notices and foreign reports contain multiple levels of hearsay, lack investigative details, or are authored by countries committing regular abuse of INTERPOL's notice system. Immigration judges should additionally require independent corroborating evidence, separate from the Red Notice, as a requirement for admission for the purpose of demonstrating that the individual committed the crime alleged.

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<sup>325</sup> See ICE, *ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions*, *supra* note 146.

<sup>326</sup> BROMUND, *HOW THE ABUSE OF INTERPOL CONTRIBUTES TO TRANSNATIONAL REPRESSION*, *supra* note 10, at 13.

## V. CONCLUSION

A Red Notice has the power to drastically alter and harm an individual's life, particularly if it is the result of abuse and persecution, rather than an attempt at securing prosecution. INTERPOL and the United States must take affirmative action to identify abusive Red Notices in order to reduce their use as weapons of transnational repression and prevent violations of due process protections and non-refoulement obligations.

