

How Abusive Red Notices Affect People in the U.S. Immigration System and Steps That Can Be Taken Within the U.S. and at INTERPOL to Protect Victims¹

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Introduction

Chairman Hastings, Co-Chairman Wicker, and members of the Commission, my name is Sandra Grossman. I am a founding partner of the law firm Grossman Young and Hammond. I am an attorney practicing in the field of U.S. immigration law for over 15 years and a member of the American Immigration Lawyers Association. I became involved in Interpol-related work through my representation of politically exposed individuals who retained me to help them navigate the byzantine U.S. immigration system. I have represented hundreds of individuals fleeing persecution from all over the world. I have also written, published, and spoken extensively about U.S. asylum law and different aspects of the U.S. immigration system. In the course of my work, I have witnessed far-too-often how oppressive regimes manipulate INTERPOL to persecute political dissidents seeking refuge in the United States.

Authoritarian regimes in Russia, China, Turkey, Venezuela, and a growing list of other countries are attempting to achieve through the back door of the U.S. immigration system what they cannot accomplish through formal extradition proceedings: utilizing our justice system to arrest and jail political dissidents. In my experience, victims of Interpol abuse are often powerless to mitigate the grave effects of an illegitimate diffusion or Red Notice. These effects include extensive limitations on their ability to travel, efforts by federal authorities to deport them, lengthy detention in immigration custody, the denial of immigration benefits such as permanent residency or naturalization, the closure of bank accounts, and separation from family, friends, and colleagues. Illegitimate Red Notices literally devastate the lives of already vulnerable people.

How is the U.S. immigration system coopted by foreign governments?

Before publishing a Red Notice, INTERPOL is required to review any request for compliance with Articles 2 and 3 of its Constitution and the subsidiary rules. However, because of inherent flaws in its system of review and its reflexive deference to member countries, and because INTERPOL is itself not an investigative body, far too often the organization publishes Red Notices and diffusions that have not been properly vetted but are, in fact, persecutory in nature. Autocratic nations accomplish this by accusing dissidents of crimes such as fraud or tax evasion, which on their face appear to be non-political.

¹ This submission is largely based on an original article co-authored by Sandra A. Grossman and Dr. Ted R. Bromund (theodore.bromund@heritage.org), who is the Senior Research Fellow in Anglo-American Relations in the Margaret Thatcher Center for Freedom at the Heritage Foundation. The author would like to thank Dr. Bromund and also attorney Thomas Ragland for their assistance in preparing this article.

Those abusive Red Notices begin to circulate in U.S. law enforcement databases after they are communicated to the United States. Although a Red Notice alone is *not* a sufficient legal basis for arrest in the United States, law enforcement agencies – and in particular Immigration and Customs Enforcement or ICE – utilize Red Notices to target foreign nationals for detention and deportation. Accepting a Red Notice without scrutiny can, and often does, turn ICE agents and Immigration Judges into unwitting agents of the individual’s abusive home country. Worse, if a person enters the U.S. on a valid visa that is then cancelled based on the publication of a Red Notice, the abusive foreign nation has essentially “manufactured” an immigration violation in the U.S. by simply lodging the Red Notice request.

Examples of INTERPOL abuse and how authoritarian regimes use illegitimate Red Notices to manipulate the U.S. immigration system

Illegitimate Red Notices have real life implications for vulnerable people and their families.

1. A U.S. government-credentialed Turkish journalist who held lawful permanent residence in the United States sought our services to obtain his U.S. citizenship. He then learned of a Red Notice issued against him from the Turkish government related to his criticisms of the government while working for an independent newspaper. As acknowledged by multiple international human rights organizations, the Red Notices against him and others similarly situated were part of a large scale, politically-motivated crackdown on dissent by the Turkish regime. Despite more than a year of communications with the Commission for the Control of INTERPOL’s Files, and despite the fact that the prosecutor’s office of the Turkish appeals court itself declared that most of the trial’s defendants should be acquitted, INTERPOL has yet to remove the Red Notice lodged against this individual. In the meantime, he cannot travel internationally, and is unable to pursue U.S. citizenship. Importantly, the Red Notice has also had the effect of acting as a virtual gag order; as the journalist has made the decision to seriously limit his criticisms of the Turkish regime.
2. In another case involving an individual accused of tax fraud by the Russian Federation, my client filed for asylum in the United States shortly after discovering that he was the subject of a Red Notice. DHS detained the individual at his asylum interview and he spent four months in jail before being released on bond. The results of a request under the Freedom of Information Act (FOIA) filed with ICE later revealed that ICE had immediately categorized the individual as a danger to the community and a flight risk based on nothing more than the Red Notice. An Immigration Judge eventually released him on a very high \$100,000 bond. Due to our efforts before the Commission for the Control of INTERPOL’s Files, the Red Notice was deleted, but only after the client and his family had suffered most of the Red Notice’s worse effects. Years after his initial ICE arrest, he is still fighting deportation in Immigration Court.
3. In another recent case, a U.S. citizen filed an immigrant visa petition for her father, a citizen of Armenia. Unbeknownst to him, he was the subject of a Red Notice that arose from a private business dispute with corrupt Armenian officials. ICE detained my client due to the Red Notice. The Immigration Judge denied a request to lower the extremely high bond amount, despite the fact that the Respondent appeared eligible for permanent residency and

asylum and had extensive family ties in the U.S. The sole stated reason for refusing to lower the bond amount was the existence of an INTERPOL Red Notice. In fact, a Red Notice actually *decreases* flight risk and makes travel more difficult. Nevertheless, DHS officials and Immigration Judges alike consistently miss this point.

4. Several years ago, I represented a Venezuelan citizen with lawful permanent resident status, who had his company raided and unlawfully expropriated by the Venezuelan government. Venezuela issued an illegitimate Red Notice, as it so often does. For years, until we were able to convince INTERPOL to cancel the Red Notice, he was unable to travel. In the meantime, his mother who resided in Mexico was diagnosed with cancer and he was unable to visit or care for her.
5. A recent survey by the American Immigration Lawyers Association (AILA) uncovered many more similar examples of INTERPOL abuse within the U.S. immigration system. Attorneys consistently described how immigration authorities, rarely questioning their legitimacy, used the existence of a Red Notice as justification to detain valid asylum seekers and press for their deportation.

Conclusion

The Department of Justice does not consider a Red Notice alone to be sufficient basis for arrest, because it does not meet the requirements of the Fourth Amendment to the Constitution. Instead, the U.S. treats a foreign issued Red Notice only as a formalized request to be “on the lookout” for the individual in question and to advise if they are located. Unfortunately, this message is not getting across to decision-makers in the immigration system.

Last year, the United States Court of Appeals for the Third Circuit *denied* a petition for release from detention (habeas corpus petition) for a Russian citizen who had languished in U.S. immigration detention for over two-and-a-half years solely because of a Red Notice issued by Russia accusing him of fraud. In his dissent, Judge Roth declared that “the judicial branch of our federal government should be sheltered from the political maneuverings of foreign nations.... Nevertheless, there are occasions when it becomes evident that the machinations of a foreign government have inadvertently ... become entangled in the judicial process.” The issue of INTERPOL abuse is such an occasion, which has repeated itself far too often and needs to be remedied.

The U.S. must ensure that INTERPOL enhances the screening process for INTERPOL communications, and that the U.S. National Central Bureau (NCB), which is responsible for communicating with INTERPOL, acts as a second layer of protection against abusive notices. The U.S. NCB should more carefully examine the full, original Red Notice, especially if the issuing state is a member country that is known to repeatedly misuse INTERPOL. The NCB should then ensure that the Notice or diffusion meets all the conditions and contains all the judicial data required by INTERPOL, and to assess whether the Notice contains any information or assertions that violate INTERPOL’s rules or indicate bias on the part of the requesting authorities. The U.S.

must also play a greater role in ensuring that INTERPOL and the CCF is more transparent, publishes its jurisprudence and reports, and that its activities actually comply with its rules, including the political predominance test. Those nations which consistently violate the rules should have their memberships suspended. If the Transnational Repression Accountability and Prevention Act (or the “TRAP” Act) accomplishes even some of these goals, it will be a much-needed first step to address the problem of INTERPOL abuse, and to prevent our justice system from being manipulated by authoritarian regimes. International police cooperation is certainly necessary in a world of transnational crime, but it must be accomplished in such a way that is also protective of individual human rights.