

ICE Issues Updated Guidance on Use of INTERPOL Red Notices

By Meg Hobbins and Ted R. Bromund*

On September 29, 2023, U.S. Immigration and Customs Enforcement (ICE) announced new agency-wide guidance on the use of INTERPOL Red Notices and Wanted Person Diffusions (WPD). While questions remain about how ICE will interpret and implement this guidance in practice, it marks a major step forward in the sophistication of ICE's use of INTERPOL communications in law enforcement actions and immigration proceedings.

The new ICE guidance is codified in ICE Directive 15006.1, which has not been released to the public. The publication of the guidance was foreshadowed in the GAO's October 3, 2023 report "Human Rights: Agency Actions Needed to Address Harassment of Dissidents and Other Tactics of Transnational Repression in the U.S." (GAO-24-106183), and the guidance states that it is part of the U.S. Department of Homeland Security's (DHS) "broader efforts to combat transnational repression by helping ensure that Red Notices and Wanted Person Diffusions are issued for legitimate law enforcement purposes and comply with governing rules."

This statement reflects the major change underlying the new guidance: increased awareness on the part of ICE that Red Notices and WPDs can, in the words of ICE Deputy Director Patrick Lechleitner, "be based on unsubstantiated

or fabricated evidence." As such, the new directive generally prohibits ICE personnel from relying exclusively on a Red Notice or WPD, and instructs that any reliance should be done "sparingly" after meeting certain threshold criteria outlined in the directive.

As summarized by the publicly-available guidance, the directive requires ICE personnel to:

- complete annual mandatory training;
- verify that a Red Notice or WPD has not been suspended, withdrawn, or expired;
- conduct a preliminary review for indications of abuse or non-compliance with INTERPOL's rules;
- obtain supervisory approval to act on a Red Notice or WPD;
- request associated underlying documentation via INTERPOL Washington (otherwise known as the U.S. National Central Bureau);
- request use authorization via INTERPOL Washington if ICE intends to use a Red Notice or WPD in immigration proceedings;
- provide the wanted individual with the relevant underlying documentation, and provide them "with a meaningful opportunity to contest it or its contents";
- not imply that a Red Notice or WPD is an arrest warrant, that it conveys independent legal authority, or that it represents an independent judgment by INTERPOL concerning probable cause or the validity of the underlying criminal proceedings.

Taken together, these measures constitute – if implemented in practice – a significant change in ICE's use of INTERPOL communications.

In the past, ICE followed few if any of the practices now mandated by the directive. ICE frequently presented Red Notices as probative evidence of criminality in support of enforcement actions such as removal proceedings and custody determinations. Respondents in these scenarios were routinely deprived of a "meaningful opportunity" to contest INTERPOL communications, often learning of the existence of these communications only after being placed in removal proceedings, and then working against the clock to defend against false allegations and educate the Immigration Judge about autocratic states successfully requesting Red Notices to abuse and harass beyond their borders.

If these new guidelines, which come after engagement by external INTERPOL experts and immigration attorneys, genuinely end these practices, the effect of INTERPOL abuse in the United States – and its effectiveness as a tool of transnational repression – should be considerably reduced.

That being said, there are a number of unanswered questions about ICE's guidance. Will ongoing proceedings that were triggered by the existence of a Red Notice (or other Interpol communication) be reviewed for compliance with these guidelines? While this guidance commits to allowing a

* Meg Hobbins is a Partner at Grossman Young & Hammond with over 16 years of experience handling complex U.S. immigration and human rights matters,

focusing on challenging persecutory INTERPOL Red Notices. Dr. Ted R. Bromund is a Senior Research Fellow at the Heritage Foundation.

“meaningful opportunity” to contest such communications, it does not actually commit to providing the communication – only the “underlying documentation.” So will ICE now provide access to the Red Notice (or other Interpol communication) for all pending cases? Finally, will ICE apply this guidance to other Interpol communications subject to abuse – in particular, Blue Notices?

ICE’s commitment to mandatory annual training is commendable, but without clarity on the contents and quality of this training, it is difficult to judge what this training seeks to achieve or how effective it will be. Similarly, the commitment to assess INTERPOL communications for indications of abuse is commendable, but this commitment would be even more valuable if ICE committed to track and report publicly detailed information on its use of Red Notices and other Interpol communications.

More fundamentally, ICE personnel cannot be expected to be experts on INTERPOL’s rules, the politics, taxation systems, and legal systems of abusive foreign regimes, or the details of controversial business transactions, and as such, it is difficult to know they can be expected to conduct a meaningful “preliminary review” for abuse. It seems unlikely that in most cases, ICE personnel will know more about a case than the task force in INTERPOL’s General Secretariat which approved the publication of the alert.

This may be why the guidance requires authorization via INTERPOL Washington for ICE to use an INTERPOL

communication in immigration proceedings. But requiring a review by the U.S. Department of State’s Bureau of Democracy, Human Rights, and Labor, which is more likely to have a command of many of the relevant subjects, might have been a more effective way to detect potential abuse. The guidance also does not require ICE to close the loop on abusive INTERPOL communications by instructing ICE personnel to report any concerns to INTERPOL Washington so it can in turn convey those concerns to INTERPOL’s General Secretariat.

Finally, the guidance closes with the statement that “the interest of another law enforcement agency – either here in the United States or abroad – may inform the analysis of whether an individual is a noncitizen, is removable under the immigration laws, or qualifies for immigration relief or release from custody.” Missing here is a clear acknowledgment that not all foreign law enforcement bodies have the credibility and human rights track record that would qualify them to inform legal proceedings in the United States in any capacity. This statement should be clarified by ICE’s leadership.

While the new ICE guidelines are neither perfect nor fully explained, they do represent major and welcome departures from past ICE practices, a recognition that U.S. interests are not served by wasting time and resources in pursuing cases started by an INTERPOL communication that are in fact nothing more than efforts at transnational repression, and a significant commitment by ICE leadership to ensuring

that INTERPOL communications serve the valuable purpose for which they are intended.

Georgia Extradites Serbian Leader of \$70M Cryptocurrency and Binary Options Fraud to the U.S.

By Bruce Zagaris

On November 3, 2023, the United States Department of Justice announced that Georgian authorities extradited Kristijan Krstic, 48, a Serbia national to the U.S., where he is charged with two separate federal indictments in the Northern District of Texas and the Eastern District of New York for his alleged participation in cryptocurrency and binary options schemes.¹

On February 3, Georgian authorities arrested Krstic in Batumi, Georgia, on a U.S. request for provisional arrest followed by a request for extradition. On October 30, the U.S. Marshal Service removed Krstic from Georgia and brought him to the Northern District of Texas.

Northern District of Texas

In March 2020, a federal grand jury in the Northern District of Texas indicted Krstic for participating in a scheme to defraud investors worldwide out of more than \$70 million through fraudulent cryptocurrency and binary options investment platforms. Krstic and more than a dozen other persons were also indicted on charges of conspiracy to commit wire fraud and conspiracy to

¹ U.S. Department of Justice, *Leader of \$70M Cryptocurrency and Binary Options Fraud Schemes*

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