

**Ted R. Bromund and Sandra A. Grossman, *Challenging a Red Notice: What Immigration Attorneys Need to Know About INTERPOL*. 1 AILA Law J 19 (2019).**

Problem: DHS & IJs may uncritically defer to INTERPOL publications like Red Notices in their decisions. Attorneys may need to advocate for a second look, because sometimes Red Notices are used by authoritarian regimes for political, religious, and ethnic persecution. (19)

INTERPOL = organization that advances international police coordination through databases, communication, and notices. (20-21)

- 194 member nations (NK is not one of them)
- Each nation has to have a National Central Bureau (NCB)
- Head office is in Lyons, France
- In US, the NCB is managed by DHS/DoJ
- All its activities must conform to its Constitution, especially:
  - **Article 2:** such police cooperation should adhere to Universal Declaration of Human Rights
  - **Article 3:** INTERPOL may not “undertake any intervention or activities of a political, military, religious, or racial character” (q.20-21)
- Some nations can abuse INTERPOL’s publications.

INTERPOL’s Publications: (21)

- Messages between NCBs (not seen by Lyons unless copied/forwarded)
- “Diffusions”
  - Copied to head office but not reviewed
  - “can concern a wide variety of subjects, up to and including identifying an individual as a suspect and requesting his or her arrest” (21)
- Colored Notices
  - Requested by an NCB
  - Reviewed by Lyons
  - Only visible to law enforcement agency like DHS
  - Individual may not know it till involved in immigration proceedings
  - **Yellow Notices:** Missing persons
  - **Blue Notices:** Requesting additional info about suspect
  - **Green Notices:** Warnings about criminal history
  - **Red Notices:** Requesting the location and arrest of a wanted person for extradition

Red Notices

- NOT an “international arrest warrant” —more like a Wanted poster
- “They must concern serious ordinary-law crimes not related to behavioral or cultural norms, family or private matters, or private disputes that are not serious or are not connected with organized crime, and must meet a penalty threshold.” (22)

- “The requesting NCB must adequately identify the individual sought, must provide judicial data on the facts of the case, the charge, the laws covering the offense, and the maximum penalty possible, and must refer to a valid arrest warrant or comparable judicial decision.” (22)

#### Review of Red Notices

- “In conducting its review of Red Notice requests, INTERPOL operates on the belief that, as all of its member states are sovereign, they are all equal, and that therefore all of their requests must be presumed to have equal validity.” (22)
- “INTERPOL begins with the assumption that a request for a Red Notice is compliant.”
- Looks for administrative conditions being met.
- Additional scrutiny if there are red flags, but if not then an attorney can help raise the issue.
- INTERPOL is NOT an investigative body. (Didn’t even investigate the disappearance of its own president in 2018 in China!)
- “For individuals who are fleeing persecution, including illegitimate and politically motivated prosecutions in their home countries, it is up to their attorneys to challenge an INTERPOL Red Notice both before an IJ and in INTERPOL itself.” (23)

#### Misuse, Misunderstanding, & Abuse of Red Notices (23)

- “In short, Red Notices are the result of an administrative process, not a judicial procedure. They are not based on any INTERPOL investigation. They are not an arrest warrant. They do not meet the probable cause standard. If they concern an individual accused of a crime, they do not denote any assumption of guilt. They are not based on any evidence other than the unsupported allegation of the NCB that made the request. They have no independent probative value. They can be published without a valid arrest warrant from the requesting nation, and even if that nation provides an arrest warrant, a Red Notice offers no proof that the arrest warrant is valid, that the purported crime has been committed, or that the crime has not been concocted by the authorities for political purposes.” (23)
- “The only facts a Red Notice proves, are that the requesting nation is a member of INTERPOL, that it has completed the online form requesting the Notice, and that the case did not initially raise political or other improper motives within the internal INTERPOL vetting process.” (23)
- “The only fact a diffusion proves is that the transmitting nation is a member of INTERPOL and has successfully sent an email.” (23)

- INTERPOL abuse: “when INTERPOL’s channels or publications are used by an INTERPOL member nation for political, military, racial, or religious reasons.” (23)

#### Challenging Red Notices (24-26)

- On INTERPOL abuse: Fair Trials International
- Especially pay attention to financial crimes (little physical evidence) and claims of “terrorism” (how political opposition is characterized)
- Tell the IJ these things:
  - This is NOT an arrest warrant. There’s no evidentiary foundation here and it’s not based on investigation. There’s no independent corroboration here of a crime.
  - Challenge assumption that individual poses danger to community: no proof here.
- ICE uses Red Notices to guide its targeting of non-citizens, which means that if the notice is being used by a foreign government abusively, ICE/DHS ends up being complicit.
- Examine original text in full. Does it meet INTERPOL’s own requirements?
- Unlikely to be a flight risk because you’ll get stopped at the border.
- U.S. NCB’s & US DoJ’s position on Red Notices, summed up:
  - “In short, the fact that INTERPOL has published a Red Notice on an individual should not mystify anyone, including an IJ, or an attorney, into accepting that the named individual is guilty, or that the named individual is the subject of charges that are supported with evidence that is on its face credible and sufficient. A Red Notice is not by itself a sufficient basis for arresting anyone in the United States, much less detaining or deporting anyone, or denying them asylum.” (26)
- Find out if US has extradition treaty with that country; if not, Red Notice is moot.

#### Direct Challenge thru INTERPOL (CCF office) (27-28)

- Get an official one started: similar to asylum case, but rooted in international human rights law and INTERPOL’s own constitution
- “In the asylum or removal process, providing documentary evidence to the IJ or to the DHS that the INTERPOL Red Notice is being challenged as illegitimate may

provide critical support to a request for a continuance, or requests for other immigration benefits or bond.” (27)

- Steps:
  - Get an application from the website and submit it.
  - Acknowledgement receipt from CCF
  - w/in 1 month: CCF checks on admissibility of request
  - w/in 9 months: issues decision
  - w/in 2 months: implements decision
  
- “making a request to CCF does testify to a belief on the part of a client and attorney that the charges that led to the Red Notice are political (or racial, religious, or military) in nature, and if the CCF recommends the deletion [of] the Red Notice as the result of a successful application, this is powerful evidence that this belief was correct.” (28)
  
- Maybe CCF will issue a letter, which can be powerful evidence. “Paradoxically, therefore, while the publication of a Red Notice is not proof of an individual’s guilt, the cancellation of a Red Notice offers considerable evidence that the purported underlying offense was not a crime in ordinary law.” (28)