



ICE IMPOSES GUARDRAILS ON USE OF RED NOTICES AGAINST NONCITIZENS IN REMOVAL PROCEEDINGS

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A Red Notice is a request to locate and provisionally arrest an individual pending extradition, which INTERPOL issues at the request of a member country or an international tribunal based on a valid national arrest warrant. A Red Notice does not establish that the person has been convicted of a crime. It is based on the word of the government that issued the arrest warrant, and does not add any further force or legitimacy to it. Unfortunately, the issuance of a Red Notice by a country whose government is corrupt or abusive can result in adverse consequences for persons applying for immigration benefits under US law. Many immigration benefits may not be granted based on the commission of a crime or if there is reason to believe that the person will commit a certain crime. For an excellent overview, please read [Challenging a Red Notice – What Immigration Attorneys Need to Know About INTERPOL](#) by Ted R. Bromund and Sandra A. Grossman, AILA Law Journal, April 2019.

On September 29, 2023, U.S. Immigration and Customs Enforcement (ICE) [announced](#) new agency-wide guidance, ICE Directive 15006.1, about the use of Red Notices and Wanted Person Diffusions, as part of its commitment to comply with the requirements of INTERPOL's Constitution and Rules on the Processing of Data.

More specifically, a Red Notice, as defined by the [INTERPOL](#) on its website, is a request to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action. It is based on an arrest warrant or court order issued by the judicial authorities in the requesting country. Member countries apply their own laws in deciding whether to arrest a

person.

It contains two main types of information:

- *Information to identify the wanted person, such as their name, date of birth, nationality, hair and eye colour, photographs and fingerprints if available.*
- *Information related to the crime they are wanted for, which can typically be murder, rape, child abuse or armed robbery.*

Red Notices are published by INTERPOL at the request of a member country, and must comply with INTERPOL's Constitution and Rules

INTERPOL [further](#) indicates that once a Red Notice is published, each member country determines what effect to give it within its jurisdiction according to its national law and practice. The US does not consider a Red Notice alone to be a sufficient basis for an arrest because it does not meet the requirements for arrest under the 4th Amendment to the Constitution. Instead, the US treats Red Notices only as "a formalized request by the issuing law enforcement authority to 'be on the look-out' for the fugitive in question, and to advise if they are located." The [Department of Justice](#) (DOJ) also recognizes that in the US, "national law prohibits the arrest of the subject of a Red Notice issued by another INTERPOL member country, based upon the notice alone."

ICE Directive 15006.1 aims to codify and strengthen the agency's "best practices and supports the U.S. Department of Homeland Security's (DHS) broader efforts to combat transnational repression by helping ensure Red Notices and Wanted Person Diffusions are issued for legitimate law enforcement purposes and comply with governing rules." The new guidance also claims that ICE Directive 15006.1 "prohibits ICE personnel from relying exclusively on a Red Notice or Wanted Person Diffusion to justify law enforcement actions or during immigration proceedings." It also limits ICE personnel's ability to rely on a Red Notice or Wanted Person Diffusion to help inform whether an enforcement action should be taken or during immigration proceedings by stating that

reliance on either should be done “sparingly and only after certain threshold criteria have been met, as outlined in the directive.”

ICE Directive 15006.1 provides the following safeguards by instructing personnel to:

- *Complete mandatory training annually.*
- *Verify the validity of a Red Notice or Wanted Person Diffusion to ensure it has not been suspended, withdrawn, or expired.*
- *Conduct a preliminary review of available information for any indications of potential abuse or non-compliance with INTERPOL’s rules.*
- *Obtain supervisory approval to act upon a Red Notice or Wanted Person Diffusion.*
- *Request the associated underlying documentation via INTERPOL Washington.*
- *Request use authorization via INTERPOL Washington if ICE intends to use a Red Notice or Wanted Person Diffusion in immigration proceedings.*
- *Provide the wanted person with underlying documentation associated with the Red Notice or Wanted Person Diffusion, as applicable, and provide them with a meaningful opportunity to contest it or its contents.*
- *Not represent or imply that a Red Notice or Wanted Person*

Diffusion is an arrest warrant, nor that it conveys independent legal authority or represents an independent judgment by INTERPOL concerning probable cause or the validity of the underlying criminal proceedings.

In practice, we have seen DHS use Red Notices as a basis to detain clients and place them in removal proceedings on the ground that they are a danger to the community and a flight risk. This, however, is not correct and constitutes abuse of Red Notices. Indeed, many asylum applicants fleeing from persecution from governmental actors in their home countries may have outstanding Red Notices as their persecutors levy false criminal charges against them. Even individuals who were not subject to detention due to a Red Notice may still face hurdles as they attempt to adjust their status or obtain US citizenship. The Board of Immigration Appeals in [Matter of W-E-R-B-](#), 27 I&N Dec. 795 (BIA 2020) ruled that an INTERPOL Red Notice may constitute reliable evidence of criminality that serves as a bar for asylum and withholding of removal. As we commented in a [prior blog](#), *W-E-R-B* unfortunately gives leeway for a foreign government persecuting the asylum claimant to issue an arrest warrant based on a false charge, and then inform INTERPOL to issue a Red Notice. If the charges remain outstanding, an IJ can potentially take for true the accusations in the charge even though there has not been a conviction. The burden of establishing the nonpolitical nature of the accusation is high under *Matter of E-A*, 26 I&N Dec. 1 (BIA 2012), as well as the nonseriousness of the crime. It is hoped that ICE will comport with its new policy, and a future BIA ruling on Red Notices will take account of the new ICE policy and allow respondents to challenge red notices if they do not comport with the guardrails established in ICE Directive 15006.1.

Though we don't often share this sentiment for ICE, this time we think US Citizenship and Immigration Services (USCIS) should take example from ICE and issue similar policy guidance that discourages USCIS officers from using a record of a Red Notice from denying someone immigration benefits such as adjustment of status or naturalization. Oftentimes, the charges against an individual applying for immigration benefits may remain outstanding indefinitely. If the DOJ intended to extradite an individual subject to a Red Notice it would do so, but it usually does not. As a Red Notice does not constitute a conviction and does not prove that the individual committed any

crime, it cannot be used to determine that someone is inadmissible for having committed a crime involving moral turpitude.

Under the new ICE policy, which until USCIS also adopts, it ought to be persuasive in USCIS adjudications, and the applicant subject to bogus charges must be prepared to strenuously contest that the underlying charges of a Red Notice are without merit, the applicant never committed the crime and provide evidence that the country abused the process in having INTERPOL issue the Red Notice to target him or her. The applicant must also insist that all the procedures set forth in ICE Directive 15006.1 have been followed. Bromund and Grossman's [article](#) in the AILA Law Journal provide invaluable advice on how to challenge a Red Notice if it violates INTERPOL rules or indicates a bias on the part of the requesting authorities. More often than not, the charges against a non-citizen who is already in the US applying for a benefit will likely remain outstanding indefinitely in the foreign country. The Department of Justice infrequently extradites people subject to a Red Notice. If the DOJ has not taken any action, this too could be pointed out that the US has not taken the Red Notice seriously. One should try to convince the adjudicating official that the accusation, apart from not constituting a conviction, does not necessarily prove that the applicant even committed the crimes and do not render him or her inadmissible. Even if the applicant is granted permanent residence, it can further be asserted that the government can always hypothetically commence removal proceedings if there is a conviction that would render the applicant deportable. INTERPOL Red Notices are being erroneously viewed by the US immigration authorities as conclusive proof of criminality against non-citizens living in the US. Every effort must therefore be made to push back against this assumption. Otherwise, the US becomes complicit in the abuse by foreign governments to manipulate and undermine the integrity of immigration proceedings, including asylum claims, that otherwise ought to assure fairness and due process to non-citizens under the law.

(This blog is for informational purposes and cannot be relied upon as a substitute for legal advice).

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