

**Assessment of INTERPOL Member Country Abuse of INTERPOL Red Notices,
Diffusions, and
Other INTERPOL Communications for
Political Motives and Other Unlawful Purposes**

This report is submitted jointly by the Department of Justice and the Department of State in accordance with section 6503(c) of the National Defense Authorization Act, Public Law 117-81 (NDAA) for Fiscal Year 2022. The Administration shares the serious concerns of Congress regarding transnational repression, which are the 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. As part of its broader commitment to stem rising authoritarianism around the world, the Administration is committed to pushing back against governments that reach beyond their borders – including into the United States – to threaten or harm persons for peacefully exercising their human rights and fundamental freedoms. The Administration recognizes acts of transnational repression are intended to have a chilling impact that extends beyond specific targeted individuals to intimidate entire diaspora communities, family members who remain in the country of origin, independent media, civil society writ large, and actual or potential political rivals. Transnational repression is incompatible with respect for human rights and dignity. Accordingly, the Department of State has sought to strengthen its reporting of transnational repression in its annual Country Reports on Human Rights Practices.

The Administration is taking a whole-of-government approach to deter repressive governments from engaging in transnational repression, promote accountability for those that engage in it, and increase measures to protect victims against it. To these ends, the United States is working to heighten domestic and international awareness of, build opposition to, and take effective measures against transnational repression in all its forms, which include: assassinations, assaults, abductions and forced disappearances; long-distance threats and coercion, including over digital platforms; physical and online surveillance and harassment; mobility controls, such as passport confiscation or denial of consular services; use of other states or international institutions to facilitate the detention or forced return of targeted individuals; the misuse or attempted misuse of counterterrorism tools, such as information-sharing arrangements; and – the particular focus of section 6503 – the misuse or attempted misuse of INTERPOL systems.

Notably, although instances of INTERPOL misuse still occur, this particular form of transnational repression seems to have receded since INTERPOL implemented reforms in 2016 and 2017. As such, supporting the reforms of 2016 and 2017 and good governance within INTERPOL will continue to be the most effective strategy for the United States to address the concern of misuse of INTERPOL notices and diffusions.

INTERPOL Reforms and Mechanisms to Prevent Misuse

The INTERPOL constitution specifically prohibits INTERPOL and its member countries from engaging in activities of “a political, military, religious, or racial character”. Therefore, the use by governments of red notices or other INTERPOL resources to apprehend dissidents, peaceful

critics, or political opponents is not permitted and is contrary to INTERPOL's fundamental principles.

In response to allegations of misuse of INTERPOL and its notice system, from 2015 to 2016 INTERPOL conducted an extensive study of INTERPOL's supervisory mechanisms through an expert working group. The United States participated in the working group and supported its recommendations. The working group also consulted with and heard from several non-governmental organizations that had conducted studies of INTERPOL, including Fair Trials International. The expert working group recommended several measures to address the allegations, including enhanced legal review of red notices and wanted person diffusions and reform of INTERPOL's independent redress and access body, the Commission for Control of INTERPOL's Files (CCF).

In late 2016, INTERPOL created the Notices and Diffusions Task Force (NDTF) and instituted a rigorous legal review process for all requests for red notices and wanted person diffusions to ensure compliance with its constitution and rules, and to protect individuals from the potential misuse of its notice program. The NDTF now reviews all requests for red notices prior to their publication and all wanted person diffusions prior to their being recorded in INTERPOL's database. The NDTF is also conducting a retrospective review of all red notices and wanted person diffusions published prior to its creation to ensure compliance with the organization's stricter standards. Since the implementation of reforms, the United States believes the NDTF has been largely successful in preventing misuse of INTERPOL for politically motivated purposes, although INTERPOL has called for additional staffing and funding from member countries in order to enhance the NDTF's capabilities.

The same expert working group recommended new rules for the CCF that were implemented in March 2017. These new rules enhance the powers of the CCF by giving it binding decision-making authority over the activities of INTERPOL and the ability to provide effective remedies for petitioners.

The creation of the NDTF and enhanced powers of the CCF have given INTERPOL the important tools to address potential misuse of INTERPOL's notices and diffusions by governments engaged in transnational repression, while safeguarding the notices' and diffusions' effective and legitimate use to combat crime and protect the public. As noted in Section 6503(b), the United States should support INTERPOL reforms and related institutions, including with dedicated funding. Providing support to the NDTF and CCF is the most impactful way for the United States to help thwart the misuse of INTERPOL notices and diffusions for illegitimate purposes.

Additionally, beginning in 2014, INTERPOL instituted a new policy on refugees that the INTERPOL General Assembly formally adopted in 2017. Pursuant to this policy, if a member country confirms an individual's refugee status, and the individual is the subject of a notice or diffusion requested by the country where he or she fears persecution, INTERPOL will delete the notice or diffusion from its databases. INTERPOL also will inform all member countries of their obligations to update their databases and of the prohibition against using INTERPOL for any further assistance relating to the case.

The reforms discussed above have created robust mechanisms through which INTERPOL is broadly able to identify and prevent misuse of its systems. Nevertheless, some governments persist in attempting to misuse INTERPOL notices and diffusions for political and other inappropriate purposes contrary to INTERPOL's constitution and rules.

Governments attempting to misuse INTERPOL communications for purposes of transnational repression may seek the publication of red notices and wanted person diffusions for individuals based on politically motivated charges or send targeted diffusions for individuals to specific other governments that may wittingly or unwittingly assist or facilitate the repressive activity. Governments seeking to misuse INTERPOL systems tend not to cite political offenses in their red notices or diffusions, but instead cite what appear on their face to be ordinary law crimes, such as fraud, financial crimes, terrorism,¹ and other offenses that would not facially conflict with INTERPOL's constitution and/or rules but are in fact fabricated charges or cases based on weak information or loose associations. In such cases, in the absence of open source information on the situation, or information from other INTERPOL member countries, it can be difficult for NDTF as well as the other member countries to distinguish legitimate notices or diffusions from those based on political motives.

As noted above, all red notices are reviewed by the NDTF for compliance with INTERPOL's constitution and rules prior to their publication, whereupon they are disseminated to all INTERPOL member states and visible in INTERPOL's database. Wanted person diffusions, which can be sent selectively by member countries' National Central Bureaus (NCBs) to other countries' NCBs, undergo the same review by the NDTF as red notices, but only after they have already been sent and received by the recipient NCBs. If approved on review, a diffusion is recorded in INTERPOL's database; disapproval results in a message to all recipient NCBs stating that the diffusion was found to be non-compliant and no further action should be taken on it. Because diffusions may be limited in distribution and undergo review only after the fact, they are presumably the most commonly exploited INTERPOL communication. However, the extent to which diffusions are misused cannot be fully confirmed as diffusions are not visible to all members of INTERPOL. For example, a country could send a diffusion immediately to select recipients to provide information and request detention of an individual without scrutiny from INTERPOL or the knowledge of non-recipient countries until after the diffusion has been received and repressive action potentially already taken. It is important to underscore, however, that the immediacy and selectivity which characterize the use of diffusions also greatly benefit legitimate law enforcement efforts. The United States uses diffusions extensively and effectively in time-sensitive matters when operational security and protection of sensitive investigative information are required.

While the review process for red notices and diffusions conducted by INTERPOL's NDTF is confidential and information concerning that process and the NDTF's findings is not available to member countries, including the United States, we understand that the review process includes review for compliance with the requirements of the INTERPOL constitution and Rules for Processing Data (RPD). This review includes public source research on each case, and

¹ Freedom House, *Out of Sight, Not Out of Reach: The Global Scale and Scope of Transnational Repression*, February 2021, <https://freedomhouse.org/report/transnational-repression>.

consultations with the requesting and other countries as needed. The NDTF also coordinates closely with INTERPOL's independent redress and access body, the CCF, on cases that are before the CCF for review or were previously considered by the CCF.

It appears that some cases of alleged INTERPOL misuse recently reported by the media and/or non-governmental organizations concern actions taken pursuant to notices published prior to the reforms of 2016 and 2017 and the creation of the NDTF. As previously noted, the NDTF is conducting a retrospective review of all red notices and wanted person diffusions published prior to its creation to ensure compliance with the organization's stricter standards. Other recently reported cases seem likely to be attributable to an information gap between what was available to the NDTF at the time it was reviewing the request for a notice or diffusion and what was subsequently reported publicly. Had more information been known to the NDTF at the time of review, it might have been able to assess more comprehensively the requesting governments' motivations and taken appropriate action consistent with INTERPOL's constitution and rules. To this end, INTERPOL has encouraged all member countries to provide relevant information, which can be kept confidential, to the NDTF to consider in its review of red notices and wanted person diffusions.

The U.S. response in a given case to alleged instances of INTERPOL misuse depends on the type of communication allegedly being abused, which agency is alerted to the alleged misuse, and the circumstances in which the alleged misuse occurs. The primary goal of the U.S. response is to facilitate timely communication among U.S. agencies to identify any incorrect information and prevent usage of any such information in ways that are detrimental to the civil and human rights of those individuals targeted. For more information, see Annex.

In response to reports that U.S. Government employees or former officials may be targeted by foreign governments through use of INTERPOL notices or diffusions, INTERPOL Washington, the U.S. National Central Bureau (USNCB), takes a proactive approach and measures to prevent possible mistreatment of these individuals. These measures include screening all inbound messages, notices, and diffusions for relevant information; restrictive handling and review of responsive materials; coordination with appropriate U.S. agencies; notification of the officials involved; and formally disputing published notices and diffusions. Further information on U.S. procedures in such cases is included in the annex to this report.

With regard to publicly listing countries whose governments have abused and misused INTERPOL systems repeatedly, the Department of Justice believes 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. This retaliation could take the form of other countries contesting or disputing U.S. red notices and diffusions, effectively blocking their dissemination and use, and/or restriction by other countries of U.S. access to their data in the INTERPOL system as provided for in the INTERPOL Rules for Processing Data (RPD). With respect to international law enforcement cooperation apart from INTERPOL, placing governments on such a list would damage the ability of FBI legal attachés to cooperate and share vital information effectively in order to protect U.S. citizens against foreign criminal, intelligence, and terrorist activities.

The State Department's annual Country Reports on Human Rights Practices beginning with the reports for calendar year 2019, include, as part of a broader "if applicable" subsection covering transnational repression, references to information from credible sources on misuse or attempted misuse of INTERPOL.

U.S. Advocacy for Reform and Good Governance Within INTERPOL

The United States continues to remain an active and engaged member of INTERPOL and works with allies and partners to support INTERPOL reforms. For example, in September 2021, G7 Interior and Security Ministers committed to "strengthen our collective efforts to deter the misuse of INTERPOL notices to improperly target and detain individuals for exercising their human rights and fundamental freedoms, including through supporting INTERPOL's use of corrective measures, as appropriate, and increasing outreach on this issue". G7 ministers also committed to play a leading role in INTERPOL's governance and standards working groups, actively supporting INTERPOL's strategic planning and the work of the CCF and the NDTF. U.S. officials currently serve on a number of INTERPOL working groups, including the Governance Working Group, which was successful in making amendments to the constitution and related INTERPOL rules enhancing the accountability and transparency of the Executive Committee, and the Committee for Processing Data (CPD), a standing committee responsible for the review and amendment of INTERPOL's rules. The United States also supports INTERPOL's legal review and other programs and will explore options to increase monetary and staffing support to ensure they remain robust and effective, upholding democratic principles and the rule of law.

The United States will continue to nominate well-qualified and persuasive officials for positions on INTERPOL's Executive Committee and the CCF and work collaboratively with like-minded governments to ensure that they also nominate strong candidates for these positions. Consistent with this approach, at the 2021 INTERPOL General Assembly, U.S. officials were elected to positions on the Executive Committee and the CCF. The election of these two officials to terms of three and five years, respectively, will ensure U.S. input on important INTERPOL decisions relating to policies, programs, cases, and data privacy and sharing matters.

Similarly, the United States will explore the means to financially support and assign experienced agents, analysts, attorneys and other officials to the Secretariat General of INTERPOL in Lyon, France, to work on INTERPOL programs and projects, including the NDTF, to directly affect the work of the organization and reinforce its fidelity to its governing principles and the rule of law.

Incidents in Which U.S. Courts, Departments, or Agencies Relied on INTERPOL Communications in Contravention of Existing Law or Policy to Detain or Render Judgment Against Individuals and Any Measures Taken in Response

The Department of Justice and its law enforcement officials do not arrest or detain individuals based upon INTERPOL notices or diffusions. The Department of Homeland Security and other agencies that might rely upon INTERPOL notices and diffusions in the course of their

own duties relating to the enforcement of U.S. immigration law are more appropriately positioned to report the information described in this section.

Immigration and Customs Enforcement (ICE) law enforcement officers and agents do not have the authority to arrest based solely on the existence of an INTERPOL notice. ICE Enforcement and Removal Operations (ERO) conducts civil immigration enforcement actions based on the subject's amenability to removal proceedings and in accordance with the current civil immigration enforcement priorities guidance. The United States does not consider a red notice alone to be a sufficient basis for the arrest of a subject because it does not meet the requirements for arrest under the Fourth Amendment to the Constitution.

Conclusion

As an integral part of the Administration's global commitment to combating transnational repression in all its forms, the U.S. Government will continue to work at home and abroad to deter and thwart the misuse of INTERPOL systems and to support and strengthen INTERPOL reforms.