

The TRAP Act's Contribution to Preventing Transnational Repression Through Interpol

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The Transnational Repression Accountability and Prevention (TRAP) Act of 2019, introduced in both the House and Senate in September, is a bipartisan response to widespread concern about the abuse of Interpol by authoritarian governments for political purposes.¹ Repressive regimes, particularly in Russia, China, Turkey, and Venezuela, use Interpol to issue illegitimate Red Notices and diffusions against political opponents. The effect of this abuse can be severe and is borne by individuals whose due process guarantees and human rights are harmed. As a result, Interpol abuse has drawn increasing attention and criticism from a wide range of international organizations, political leaders, and non-governmental organizations.

From a U.S. perspective, Interpol abuse is a problem for several reasons. It undermines the legitimacy of an international organization that otherwise serves U.S. interests in fighting terrorism and transnational crime. U.S. judicial and law enforcement organizations waste resources by processing illegitimate and abusive claims. U.S. law enforcement officials can unwittingly become involved in furthering human rights abuses against already persecuted individuals, some of whom are seeking refuge in the United States. Most seriously, Interpol abuse subverts the legal sovereignty of the United States by allowing authoritarian regimes to use U.S. legal proceedings to define their political opponents as criminals, and then to punish these political opponents or even have them imprisoned in the United States.

While the TRAP Act does not address every kind of Interpol abuse that affects the U.S., it makes a valuable contribution to shedding light on this abuse. It also requires the U.S. to adopt processes to strengthen accountability and transparency within Interpol, thus limiting abuse at its source. Its introduction is an important first step in reducing the effects of Interpol abuse in the U.S. and enhancing Interpol's ability to function with greater legitimacy and efficacy in the future.

I. WHAT INTERPOL IS, AND IS NOT

To understand the problem of Interpol abuse, it is important to first understand what Interpol is, and what it is not. Hollywood portrays Interpol as an international police agency with the power to investigate crimes and make arrests around the globe—like a local police force, but on a worldwide stage.² Every part of this depiction is completely incorrect.

In reality, Interpol has no ability to conduct investigations or make arrests. Known formally as ICPO-INTERPOL, it is an organization of 194 sovereign states, including the United States, which helps its members coordinate police cooperation

1 For another example of the seriousness with which Congress is treating Interpol abuse, see the Defending American Security from Kremlin Aggression Act of 2019, S. 482, 116th Cong. § 707 (2019).

2 See Most Popular Interpol Movies and TV Shows, IMDB, <https://www.imdb.com/search/keyword/?keywords=interpol>. For one prominent example, see *Now You See Me* (2013).

against ordinary crime.³ In the U.S., relations with Interpol are co-managed by the Departments of Justice and Homeland Security. Interpol's constitution strictly prohibits it from becoming involved in political, racial, religious, or military affairs.⁴ Interpol is akin to a bulletin board on which the world's police forces can post their own, national wanted notices. It is up to every member state to decide what use, if any, it will make of a national wanted notice posted through the organization. The fact that Interpol has published a national wanted notice does not transform it into an international wanted notice or make it any more reliable than it was when it was originally published at the national level.

Interpol has two primary mechanisms for coordinating police cooperation. First, it publishes Red Notices.⁵ These are commonly described as international arrest warrants, but this is again inaccurate. A Red Notice is an Interpol publication made at the request of a member nation. To obtain a Red Notice, a member nation must 1) assert that it has a national arrest warrant for an individual, 2) identify that individual, 3) provide judicial information about the crime that it alleges has been committed, and 4) pledge to seek extradition once the individual is located and provisionally detained.⁶

Precisely because it respects the sovereignty of its member nations, all Interpol can do is to ensure that the requesting nation fulfills the bureaucratic requirements for obtaining a Red Notice and check the data available to it to see if the notice request might be political. Its respect for its members' sovereignty means Interpol cannot look into the basis of domestic prosecutions to determine whether they are political, and Interpol begins with the assumption that all requests from all its members are legitimate. Thus, it is too easy for autocratic member nations to illegitimately get Red Notices published by Interpol based on political offenses.⁷

Interpol's second mechanism for coordinating police cooperation against ordinary crime is its electronic network, the I-24/7 system.⁸ This is a secure global communications system that links law enforcement organizations in all of Interpol's member nations and allows them to search Interpol-maintained databases of nationally-collected information, such as the Stolen and Lost Travel Documents database. Established in 2003, the I-24/7 system works in tandem with Interpol's I-Link system, a web-based interface which allows member nations to request

Red Notices and distribute other communications, known as diffusions, simply by filling out an online form.⁹

When the I-Link system came on-line in 2009, the Interpol system became much easier to use, which led to an explosion in the number of Red Notices published. In 1998, Interpol published only 737 Red Notices; in 2018, it published 13,516.¹⁰ As a result, Interpol must verify the compliance with its rules of more than one Red Notice request every hour of every day. The rise of electronic communications systems in Interpol has not only facilitated legitimate police business; it has also facilitated abuse of the Interpol system and made it easier to hide that abuse in the rising volume of Red Notice requests.¹¹

II. INTERPOL ABUSE AND ITS EFFECTS

U.S. Department of Justice (DOJ) policy does not consider a Red Notice alone to be a sufficient basis for arrest, because the notices do not meet the requirements of the Fourth Amendment to the Constitution. Instead, the U.S. treats a Red Notice only as a formalized request to be on the lookout for the individual in question and to advise the interested nation if they are located in the United States.¹²

U.S. law enforcement action against any particular individual pursuant to a Red Notice must originate through an arrest warrant issued by the U.S. Attorney's Office.¹³ The DOJ's Criminal Division must first determine if there is a valid extradition treaty for the specified crime between the U.S. and the requesting country. If there is a basis for extradition, the requesting country must also submit a diplomatic request for a provisional arrest. The U.S. Attorney's Office with appropriate jurisdiction will then file a complaint and request an arrest warrant for extradition.¹⁴

Although the process for acting pursuant to a Red Notice is clear, law enforcement agencies, in particular Immigration and

3 *What Is INTERPOL?*, Interpol, <https://www.interpol.int/Who-we-are/What-is-INTERPOL>.

4 Constitution of the International Criminal Police Organization-INTERPOL, art. 3, available at <https://www.interpol.int/en/content/download/590/file/Constitution%20of%20the%20ICPO-INTERPOL-EN.pdf>.

5 *Red Notices*, Interpol, <https://www.interpol.int/How-we-work/Notices/Red-Notices>.

6 INTERPOL's Rules on the Processing of Data, art. 83, available at https://www.interpol.int/content/download/5694/file/24%20E%20RPD%20UPDATE%207%2011%2019_ok.pdf?inLanguage=eng-GB (setting forth "specific conditions for publication of red notices").

7 See *infra* at Section III.

8 *Databases*, Interpol, <https://www.interpol.int/en/How-we-work/Databases>.

9 Diffusions are informal messages transmitted directly from one Interpol member nation to another. They can concern a wide range of police business, including requesting the arrest of an individual. See *About Notices*, Interpol, <https://www.interpol.int/en/How-we-work/Notices/About-Notices>.

10 Interpol Annual Activity Report 1999, p. 6, available at <https://www.interpol.int/en/content/download/4918/file/Annual%20Report%201999-EN.pdf> and Interpol Annual Report 2018, p. 5, available at https://www.interpol.int/content/download/13974/file/19COM0009%20-%202018%20Annual%20Report06_EN_LR.pdf.

11 *Strengthening Respect for Human Rights, Strengthening INTERPOL*, Fair Trials International, November 2013, Section III.3, available at <https://www.fairtrials.org/wp-content/uploads/Strengthening-respect-for-human-rights-strengthening-INTERPOL4.pdf>.

12 *Frequently Asked Questions*, INTERPOL Washington, U.S. Department of Justice, <https://www.justice.gov/interpol-washington/frequently-asked-questions> ("Can a person be arrested based on an INTERPOL Red Notice?").

13 Section 3, "Provisional Arrests and International Extradition Requests – Red, Blue, or Green Notices," in *Justice Manual – Organization and Functions Manual*, U.S. Department of Justice, <https://www.justice.gov/jm/organization-and-functions-manual-3-provisional-arrests-and-international-extradition-requests>.

14 *Id.*

Customs Enforcement (ICE), use Red Notices to target foreign nationals for detention and deportation without following the prescribed procedures.¹⁵ Since 2010, ICE has promoted a program called “Project Red,” which is described as a coordinated effort between ICE and Interpol to arrest and detain individuals in the U.S. who are the subjects of Red Notices.¹⁶ The program has led to the arrest, detention, and removal of what ICE describes as “1,800 foreign fugitives.”¹⁷ Troublingly, nowhere on the project’s website is there a recognition that a Red Notice is not an international arrest warrant, and that it is not a reliable indicator of guilt. Indeed, ICE wrongly asserts that a Red Notice “serves as an international wanted notice.”¹⁸ Additionally, ICE does not acknowledge that Red Notices may be challenged and deleted due to improper and abusive requests by member states.¹⁹ Thus, ICE agents often detain individuals based on a Red Notice alone.²⁰

In a recent case, a U.S. citizen filed an immigrant visa petition for her father, a citizen of Armenia.²¹ Unbeknownst to him, he was the subject of a Red Notice that arose from a private business dispute with corrupt Armenian officials. ICE detained him due to the Red Notice. The immigration judge denied his request to lower the extremely high bond amount, despite the fact that he 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 a Red Notice, even though a Red Notice actually *decreases* flight risk since it makes travel more difficult.²² Department of Homeland Security officials and immigration judges consistently miss this point, sometimes resulting in prolonged detention for innocent people.

Accepting a Red Notice in this way without scrutiny can, and often does, turn ICE agents and immigration judges into unwitting agents of abusive foreign nations. Worse, if a person enters the U.S. on a valid visa that is then cancelled or revoked²³

based solely on the publication of a Red Notice, the abusive foreign nation has essentially manufactured an immigration violation in the U.S. by simply publishing the Red Notice.²⁴ Subjects of Red Notices may then be detained, placed into deportation proceedings, denied bond (or reasonable bond), and prevented from successfully obtaining visas, asylum, lawful permanent residence, or citizenship.²⁵ Interpol abuse has far reaching effects outside of the U.S. immigration system as well. Individuals with Red Notices can be restricted from international travel, have their bank accounts closed or questioned, or face challenges seeking employment.²⁶

III. RISING CONCERN OVER INTERPOL ABUSE

Concern over Interpol abuse has risen steadily for the past decade. The case that has attracted the most attention is that of William Browder, the London-based investor and the inspiration behind the U.S.’s Magnitsky Act, signed into law in 2012.²⁷ Mr. Browder has been the subject of repeated and abusive Russian requests for Interpol action. But focusing on Mr. Browder alone misses the wider pattern of abuse by many nations, not just Russia.

In a March 2019 article titled “How Strongmen Turned Interpol Into Their Personal Weapon,” the *New York Times* described the problem this way: “unwaveringly confident in its fellowship of nations, Interpol was slow to recognize an era in which autocrats and strongmen wield increasing power over international institutions.”²⁸ Particularly significant was the admission by Koo Boon Hui, President of Interpol from 2008 to 2012, that “[a]t that time, we felt we had the processes in place to have the right balance. I think now they’ve found that not to be adequate.”²⁹ The *Wall Street Journal’s* Editorial Board weighed in with a stinging February 2019 call to address “Interpol’s Dictator Problem,” noting that “Interpol’s obeisance to dictators remains a problem, and reform should be on Washington’s agenda.”³⁰

These expressions of concern from U.S. publications, while valuable, were belated. German Chancellor Angela Merkel publicly denounced Turkey’s abuse of Interpol during Germany’s

15 Ted R. Bromund, *ICE Wrongly Continues To Use Interpol Red Notices for Targeting*, FORBES, December 19, 2018, <https://www.forbes.com/sites/redbromund/2018/12/19/ice-wrongly-continues-to-use-interpol-red-notices-for-targeting/#3df3add8175e>.

16 *Project Red*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/features/project-red>.

17 *Id.*

18 *ICE, US Marshals Arrest 45 International Fugitives with Interpol Notices*, U.S. Immigration and Customs Enforcement, June 24, 2016, <https://www.ice.gov/news/releases/ice-us-marshals-arrest-45-international-fugitives-interpol-notices>.

19 *Project Red*, *supra* note 16.

20 Bromund, *ICE Wrongly Continues*, *supra* note 15.

21 Unfortunately, the authors are unable to provide a citation here due to client confidentiality. For the case of Alexey Kharis, which offers a similar example of Interpol abuse affecting individuals lawfully in the United States, see Natasha Bertrand, *How Russia Persecutes Its Dissidents Using U.S. Courts*, THE ATLANTIC, <https://www.theatlantic.com/politics/archive/2018/07/how-russia-persecutes-its-dissidents-using-us-courts/566309/>.

22 *Id.*

23 Visa cancellations are not governed by any known process and are therefore subject only to the discretion of immigration officials.

24 Bromund, *ICE Wrongly Continues*, *supra* note 15.

25 Ted R. Bromund and Sandra A. Grossman, *Challenging a Red Notice: What Immigration Attorneys Need to Know About INTERPOL*, AILA Law Journal, April 2019, Vol. 1, No. 1, <https://www.grossmanyoung.com/wp-content/uploads/sites/155/2019/04/AILA-1-1-bromund.pdf>.

26 Ted R. Bromund, *Putin’s Long Arm*, THE WEEKLY STANDARD, March 2, 2015, <https://www.washingtonexaminer.com/weekly-standard/putins-long-arm>.

27 Joshua Yaffa, *How Bill Browder Became Russia’s Most Wanted Man*, THE NEW YORKER, August 13, 2018, <https://www.newyorker.com/magazine/2018/08/20/how-bill-browder-became-russias-most-wanted-man>.

28 Matt Apuzzo, *How Strongmen Turned Interpol Into Their Personal Weapon*, N.Y. TIMES, March 22, 2019, <https://www.nytimes.com/2019/03/22/world/europe/interpol-most-wanted-red-notices.html>.

29 *Id.*

30 *Fixing Interpol’s Dictator Problem*, WALL ST. J., February 10, 2019, <https://www.wsj.com/articles/fixing-interpols-dictator-problem-11549836628>.

2017 election.³¹ That same year, the Parliamentary Assembly of the Council of Europe published a comprehensive report on “Abusive Recourse to the Interpol System.”³²

Non-governmental organizations across the ideological spectrum had already reached a similar conclusion. Fair Trials International, headquartered in London, began to shed light on Interpol abuse through a series of reports in 2013 and engaged with Interpol to foster its reform.³³ Scholars at the Heritage Foundation started to draw attention to the need for a U.S. policy response to Interpol abuse in the same year.³⁴ Attorneys representing immigrants in the United States with Red Notices, or representing U.S. citizens with family members targeted by Interpol, also began to advocate on their behalf.³⁵

Awareness of Interpol abuse has started to affect how cases involving Red Notices are adjudicated in the United States. While ICE wrongly continues to rely on Red Notices to identify criminals and act based on manufactured immigration violations, at least some federal judges are starting to show an increasing willingness to challenge this reliance. In 2018, for example, one Third Circuit judge dissented from the denial of a petition for release from detention of 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.³⁶ In her dissent, Judge Jane Richards 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.”³⁷ Judge Roth’s dissent and the decisions of other federal judges point out the serious due process concerns that arise when officials place undue weight on the existence of a Red Notice, especially considering the flawed process for publishing such notices.³⁸ These decisions highlight the critical

need for additional safeguards and checks within the Interpol communications system.

Similar concern was expressed by all participants in a Sept. 12, 2019 hearing held by the bipartisan Commission on Security and Cooperation in Europe, commonly known as the U.S. Helsinki Commission. The hearing on the “Tools of Transnational Repression” focused on the politically-motivated abuse of Interpol. Sen. Roger Wicker, co-chairman of the commission, said in his opening statement, “Repressive regimes have seized on INTERPOL’s potent tools to harass and detain their perceived enemies anywhere in the world. . . . The organization is in dire need of greater transparency, and countries should face consequences . . . for repeated abuses.”³⁹ It was with this emphasis on accountability and deterrence that the commission proposed the bipartisan TRAP Act after its hearing.

IV. THE TRAP ACT: IMPROVING INTERPOL’S ACCOUNTABILITY AND DETERRENCE

The TRAP Act is framed as a response to the problem of transnational repression, a problem that is wider than Interpol abuse. “Transnational repression” is a relatively new term which summarizes the way that authoritarian regimes exercise coercive power outside their borders to target—through assassination, policing, threats, or surveillance—opposing individuals or groups abroad in order to deter or impose costs on dissent when it is expressed.⁴⁰ While these practices are not new, autocratic regimes do have access to new tools to extend their reach, including tools such as Interpol’s I-Link and Red Notices.

The TRAP Act requires that the U.S. use its “voice, vote, and influence . . . within INTERPOL’s General Assembly and Executive Committee to . . . improv[e] the transparency of INTERPOL and ensur[e] its operation consistent with its Constitution.”⁴¹ The problem Interpol faces is not with its rules, but with the failure of some member nations and Interpol itself to *follow* the rules.

The Act assumes that, if Interpol does not deter abuse by imposing penalties on violators, the abuse is guaranteed to

31 *Merkel Attacks Turkey’s ‘Misuse’ of Interpol Warrants*, REUTERS, August 20, 2017, <https://www.reuters.com/article/us-eu-turkey-election/merkel-attacks-turkey-misuse-of-interpol-warrants-idUSKCN1B00IP>.

32 Parliamentary Assembly of the Council of Europe, *Abusive Recourse to the Interpol System: The Need for More Stringent Legal Safeguards*, Resolution 2161 (2017), April 26, 2017, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23714&lang=en>.

33 See, e.g., *Strengthening INTERPOL: An Update*, Fair Trials International, February 20, 2018, <https://www.fairtrials.org/publication/strengthening-interpol-update>.

34 Ted R. Bromund and David Kopel, *Necessary Reforms Can Keep Interpol Working in the U.S. Interest*, Heritage Foundation Backgrounder #2861, December 11, 2013, <https://www.heritage.org/global-politics/report/necessary-reforms-can-keep-interpol-working-the-us-interest>.

35 See, e.g., *Witness Statement of Sandra A. Grossman*, U.S. Commission on Security and Cooperation in Europe, September 12, 2019, <https://www.csce.gov/sites/helsinkicommission.house.gov/files/GROSSMAN%20Sandra%20-%20Testimony.pdf>.

36 See *Borbot v. Warden Hudson County Correction*, 906 F.3d 274 (3d Cir. 2018).

37 *Id.* at 280.

38 See, e.g., *Radiowala v. Attorney Gen. United States*, 930 F.3d 577 (3d Cir. 2019) (explaining that a Red Notice is not sufficient basis for an arrest

or an independent ground for removal); *Kharis v. Sessions*, No. 18-CV-04800-JST (N.D. Cal. Nov. 6, 2018) (finding that Immigration Judges may place some weight on the existence of a Red Notice in making bond determinations, but recognizing that there are serious flaws in the Red Notice process).

39 Sen. Roger Wicker, *Opening Statement of Helsinki Commission Co-Chairman Roger Wicker*, U.S. Commission on Security and Cooperation in Europe, September 12, 2019, <https://www.csce.gov/sites/helsinkicommission.house.gov/files/WickerStatementToolsofTransnationalRepression.pdf>. This emphasis was repeated by co-chairman Sen. Ben Cardin in his own opening statement. Sen. Ben Cardin, *Opening Statement of Senator Ben Cardin, Ranking Member*, U.S. Commission on Security and Cooperation in Europe, September 12, 2019, https://www.csce.gov/sites/helsinkicommission.house.gov/files/CardinStatementToolsofTransnationalRepression_0.pdf.

40 See, e.g., *Witness Statement of Alexander Cooley*, U.S. Commission on Security and Cooperation in Europe, September 12, 2019, <https://www.csce.gov/sites/helsinkicommission.house.gov/files/COOLEY%20Alex%20-%20Testimony.pdf>.

41 Transnational Repression Accountability and Prevention Act of 2019, S. 2483, 116th Cong., § 4(1) (2019).

continue. It therefore breaks new ground by seeking to require Interpol—in accordance with its own rules—to “impose penalties on countries for regular or egregious violations of INTERPOL’s Constitution . . . , including the temporary suspension of member countries’ access to INTERPOL systems.”⁴² The Act also requires extensive improvements in Interpol’s own reporting, and that the U.S. oppose the election of candidates to senior Interpol positions from countries that do not respect the rule of law.⁴³ In short, the Act establishes a framework for exposing and deterring abuse that addresses Interpol’s policies, publications, and personnel.

Importantly, the TRAP Act also indicates the sense of Congress, which clearly acknowledges the reality of Interpol abuse.⁴⁴ This section will be particularly useful to attorneys defending clients who have been detained wholly or partly on the basis of a Red Notice. For the first time, they will be able to point to an authoritative statement in law that Red Notices are not the reliable and objective statement some U.S. authorities believe them to be. According to the Act:

It is the sense of Congress that the Russian Federation and other autocratic countries have abused INTERPOL’s databases and processes, including Notice and Diffusion mechanisms and the Stolen and Lost Travel Documents Database, for political and other unlawful purposes, such as intimidating, harassing, and persecuting political opponents, journalists, members of civil society, and non-plicant members of the business community.⁴⁵

The Act makes clear in its findings that it is not seeking to condemn Interpol, and that the U.S. regards Interpol as a valuable tool in combatting international crime and terrorism.⁴⁶ The point of the Act is to require that the U.S. act to ensure that Interpol lives up to the requirements of its own constitution to focus solely on ordinary crime and avoid any involvement in politics.

Given the Helsinki Commission’s emphasis on accountability, much of the TRAP Act understandably focuses on the need for greater transparency in Interpol and greater openness about the problem of Interpol abuse. The Act requires the State Department to include examples of “credible reporting of likely attempts by countries to misuse international law enforcement tools, such as INTERPOL’s communications, for politically motivated reprisals” in its annual country reports on human rights practices.⁴⁷ This requirement will allow lawyers, judges, and journalists to draw on these widely respected reports in opposing efforts at transnational repression through Interpol in the United States.

Even more significantly for the purposes of shedding light on and combating Interpol abuse, the Act requires that the Attorney General submit a report to Congress assessing how member countries have abused Interpol over the past three

years.⁴⁸ It requires that the Justice Department 1) explain how it monitors and responds to Interpol abuse that could affect the interests of U.S. citizens or others with lawful claims to be in the United States, 2) set out a strategy for improving this monitoring and response, and 3) describe the U.S. advocacy for reform and good governance within Interpol.⁴⁹ The Section 5 report must also contain comprehensive information about common Interpol abuse tactics, the volume of this abuse, the nations responsible for it, the penalties to which the abusers have been subjected, and the adequacy of the mechanisms within Interpol for challenging abuse.⁵⁰ In short, if the TRAP Act becomes law, the Section 5 reporting will provide information about Interpol abuse that goes far beyond the journalism and anecdotal evidence that has so far shaped the policy debate.

While much of the TRAP Act emphasizes the need to improve Interpol’s accountability, it also makes important changes in the way the U.S. deals with Interpol communications, such as Red Notices. First, the Act directs relevant U.S. departments or agencies to respond to abusive Notices by alerting other Interpol member nations to the abuse, lodging diplomatic complaints with the abusing nation, and engaging with foreign immigration and security services to prevent abusive Notices from affecting the freedom of the targets of the abuse.⁵¹ The Act makes a particular point of emphasizing that Interpol abuse can work through the financial system, and that the U.S. must work with other nations to protect the freedom of lawful commerce of targets of abuse.⁵² Given that one of the goals of Interpol abuse is often to legitimize the official theft of foreign assets by stigmatizing the victims of abuse as criminals, this emphasis is important and welcome.

Secondly, the Act includes a “Prohibition on Denial of Services.”⁵³ This section may not appear to be particularly significant on its face, but in practice, it could be an essential contribution to preventing abusive Red Notices from leaching into the U.S. judicial system. Section 6(a) emphasizes that U.S. law does not allow the U.S. government to arrest an individual based solely on a Red Notice unless the U.S. and the requesting nation have a valid treaty of extradition, unless the U.S. receives a diplomatic request from the requesting nation, and unless the U.S. issues a valid arrest warrant.⁵⁴ In short, Section 6(a) reemphasizes that in the United States, a Red Notice is not an arrest warrant, and that it cannot serve as the basis for circumventing the normal requirement for securing an arrest warrant.

While Section 6(a) reiterates existing U.S. law, Section 6(b) goes beyond existing law. It bars the U.S. government from denying services to any individual on the basis of an Interpol communication that comes from a nation with no valid

⁴² *Id.* at § 4(1)(C).

⁴³ *Id.* at § 4(1)(E).

⁴⁴ *Id.* at § 3.

⁴⁵ *Id.*

⁴⁶ *Id.* at § 2(1)-(2).

⁴⁷ *Id.* at § 7.

⁴⁸ *Id.* at § 5.

⁴⁹ *Id.* at § 5(b)(4), (6)-(7).

⁵⁰ *Id.* at § 5(b)(1)(A)-(C), (b)(2).

⁵¹ *Id.* at § 4(2)(A)-(D).

⁵² *Id.* at § 4(E).

⁵³ *Id.* at § 6.

⁵⁴ *Id.* at § 6(a).

extradition treaty with the U.S. unless the U.S. first verifies that the communication is likely not abusive.⁵⁵ This is perhaps the most complicated provision in the entire Act, and it is also among the most significant. This provision on the denial of services prevents federal agencies from relying on an unverified Red Notice as the sole ground to detain and remove individuals from the United States, or to deny them immigration benefits like applications for a visa, asylum, or citizenship.⁵⁶ The provision requiring Red Notices to be verified when the U.S. lacks a valid extradition treaty reflects the fact that most Interpol abuse comes from nations—like Russia—with which the U.S. lacks such a treaty. Thus, Section 6(b) imposes a special burden on Interpol communications from nations such as Russia: these communications cannot be used to deny services unless the U.S. is reasonably certain that they are not abusive.

V. CRITIQUE

The TRAP Act is not flawless. While it does recognize the importance of protecting the freedom of commerce, it does not prevent the U.S. or U.S.-based financial institutions from relying on abusive Red Notices to limit this freedom. It would have been better if the Act had extended its groundbreaking provisions on the denial of services to prevent the U.S. Treasury from enforcing rules that would deny banking privileges on the basis of an abusive Red Notice. As it stands, the Act's emphasis on the importance of freedom of commerce applies only to U.S. efforts to ensure other nations will not credit abusive Red Notices; it does not apply to the U.S. itself.

The Act also has no provisions to protect non-U.S. citizens who have a U.S. nexus. In spite of the fact that William Browder is the best known victim of Interpol abuse, the Act would not allow the U.S. to intervene on his behalf because he is not an American citizen, and he is not seeking asylum or other lawful residence in the United States. While there are good reasons the U.S. should not seek to police the entire Interpol system—it would be excessive, for example, to require the U.S. to examine all Red Notices for abuse—it is regrettable that the TRAP Act does not capture U.S. nexus cases. The Act could have done this by giving the State Department the formal role of raising such cases within the U.S. policy process and requiring other executive agencies to treat such cases as though a U.S. citizen was involved. This would strike a balance between requiring the U.S. to protect everyone and limiting the U.S.'s diplomatic efforts against Interpol abuse solely to citizens or other lawful residents of the United States.

Finally, while Section 6(b) takes a valuable step by preventing the U.S. from denying services on the basis of potentially abusive Red Notices from nations with which the U.S. does not have an extradition treaty, it could be read to imply that services *can* be denied on the basis of a Red Notice if that notice comes from a nation with which the U.S. *does* have an extradition treaty. This implication is undesirable because not all nations with which the U.S. has extradition treaties are lawful actors. It would be better if the Act banned *any* denial of services as a result of a Red Notice from *any* country unless the U.S. followed a defined policy

⁵⁵ *Id.* at § 6(b).

⁵⁶ *Id.*

process for assessing the Red Notice. It seems unreasonable that a U.S. citizen could be expelled from the Global Entry program on the basis of a Red Notice from Turkey—with which the U.S. has an extradition treaty—without any further process. The Act rightly emphasizes that a Red Notice is not an arrest warrant, but it does leave the door open for known abusers like Turkey to continue to use Red Notices to affect administrative procedures inside the United States.

VI. CONCLUSION

Interpol stands outside the normal world of law enforcement, a world of publicly available evidence that gives accused criminals the right to challenge government actions both before and after enforcement actions. In Interpol's world, evidence is secret, and there is no way to challenge a Red Notice before it is published. Yet Red Notices can and do have wide-ranging effects, up to and including imprisonment. The TRAP Act's emphasis on openness and accountability, coupled with its prohibitions and limits on how Red Notices can be used in the U.S. legal system, are appropriate initial responses to the abuse that has been fostered and enabled by a system that gives autocratic regimes the power to accuse individuals largely with impunity and harass them beyond national borders. The TRAP Act is a necessary first step to help ensure the basic due process rights of persons who are present in the United States and subject to the jurisdiction of our legal system.

It is unreasonable to believe that lawless nations will reliably abide by the provisions of Interpol, which require them to clearly distinguish between ordinary and political crime. The only way to protect Interpol and the victims of abuse from such nations is to sanction those nations for repeated abuses until they come to recognize that the game of abuse is not worth the candle. If abuses do not meet a proportionate response—if there is no deterrence—then the abuses will continue. The TRAP Act is ultimately based not just on openness, but on a clear-eyed recognition that while all nations are equal in their sovereignty, they are not equally responsible in their use of their sovereignty, and that Interpol must recognize this fact. The TRAP Act contributes to sanity in international relations—and Interpol—by setting out the principle that an organization that is supposed to support law enforcement organizations cannot relentlessly turn a blind eye to the defects of its member nations.

The TRAP Act makes a valuable contribution to assessing and combating Interpol abuse in the United States. If passed, it would shed significant light on the volume and kinds of Interpol abuse around the world, and it would significantly reduce the effects of this abuse in the United States. The TRAP Act has the potential to be a significant step forward in the effort to protect international institutions from malign misuse by autocratic nations. It therefore has the potential not just to protect individuals from abuse through Interpol, but to protect Interpol from the consequences of that abuse. If left unchecked, continuing abuse of Interpol by autocratic regimes, will eventually discredit the organization and diminish the value of the services it provides by connecting reputable and democratic law enforcement agencies around the world.

