



WANTED BY INTERPOL

**Strategic Thinking about Red Notices,
Diffusions, and Extradition**

BY NINA MARINO AND REED GRANTHAM

[T]his power had to be given the instrument of permanent, exhaustive, omnipresent surveillance, capable of making all visible. . . . It had to be like a faceless gaze that transformed the whole social body into a field of perception: *thousands of eyes posted everywhere.*

—Michel Foucault, *Discipline and Punish: The Birth of the Prison* (1975)

There can be little doubt that advancements in technology in recent years have had a profound impact on policing in the United States and around the world. From the incorporation of military-grade technology by local police to the use of GPS technology, facial recognition software, and biometrics devices, policing has undergone a fundamental transformation. (See ACLU, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING* (2014), <http://tinyurl.com/myxzoju>.) As part of this trend, international policing has likewise experienced an evolution in communications and information-sharing technology that more rapidly facilitates the exchange of information between countries worldwide. Indeed, since 2002, Interpol—the world’s largest international law enforcement agency—has seen a 700 percent increase in the number of red notices issued seeking the location and arrest of wanted individuals across the globe. (Compare INTERPOL, *ANNUAL REPORT 2003*, at 5 (1,277 red notices issued in 2002), with INTERPOL, *INTERNATIONAL NOTICES SYSTEM FACT SHEET 2* (10,718 red notices issued in 2014), both available at <http://tinyurl.com/q6nox99>.) Likewise, diffusions—informal requests placed on behalf of one country to certain member countries seeking the arrest and detention of an individual—have skyrocketed. (Compare INTERPOL, *ANNUAL REPORT 2002*, at 5 (7,500 diffusions issued in 2002), with INTERNATIONAL NOTICES SYSTEM FACT SHEET, *supra*, at 2 (21,922 diffusions issued in 2014).) Thanks in large part to streamlined operational systems designed to improve the exchange of information, international policing has experienced an unprecedented transformation.

Such advances have not been without controversy. After Interpol’s release of I-link in 2009, critics argued that the technology enables member countries to circulate incomplete and inaccurate information without Interpol oversight, thus subverting safeguards intended to prevent abuse of the international notice system. (See FAIR TRIALS INT’L, *STRENGTHENING RESPECT FOR HUMAN RIGHTS, STRENGTHENING INTERPOL* 38–40 (2013), <http://tinyurl.com/la8y7e5> [hereinafter FAIR TRIALS REPORT].) In addition,

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commentators have pointed out that many of the countries utilizing Interpol’s international notice system lack significant civil liberties, such as the right to due process, and have hijacked the system to locate and detain political, religious, or ethnic enemies. (*Id.* at 23–27.) These concerns raise important questions, particularly when the issuance of a red notice or diffusion can have profound and long-lasting effects on the life of the targeted individual.

The recent proliferation of red notices and diffusions—and the corresponding rise in extradition requests—has resulted in an increased need for criminal defense attorneys to understand what red notices and diffusions are and how best to protect a client who has become the target of such a notice. Accordingly, this article seeks to (1) provide an overview of the role of Interpol as a global criminal intelligence agency, (2) offer an introduction to Interpol’s international notice system, (3) outline the consequences—both direct and collateral—of a red notice issuance, (4) provide guidance on how to successfully challenge a red notice once issued, and (5) examine extradition procedure in the event efforts to remove a notice are unsuccessful.

Interpol

Interpol was founded in 1914 with the mission of “[p]reventing and fighting crime through enhanced cooperation and innovation on police and security matters.” (*Vision and Mission*, INTERPOL, <http://tinyurl.com/nkxsu8k> (last visited Aug. 20, 2015).) Today, Interpol is the largest international law enforcement agency in the world, boasting cooperation with 190 countries around the world and operating with an annual budget of over \$85 million. (*Funding*, INTERPOL, <http://tinyurl.com/naa4td8> (last visited Aug. 20, 2015) (noting a 2013 annual budget of €78 million).) Although Interpol is generally referred to as a law enforcement agency, Interpol does not staff police officers, conduct investigations, or otherwise make arrests, nor does it enforce national or international laws. (It does have two “response teams” to provide specialized assistance in specific situations, e.g., a disaster or crisis or to provide investigative or analytical support, upon a member country’s request.) Instead, Interpol is primarily an “information clearinghouse,” staffed by criminal intelligence specialists who maintain international criminal databases and facilitate contact between officers from different national police forces. With the advances in communications and information-sharing technology, one of Interpol’s primary services—issuing notices at the request of member countries to help locate individuals accused of crimes—has grown exponentially and has led to a dramatic increase in the circulation of red notices and diffusions.

The General Secretariat of Interpol is located in Lyon, France, and is headed by a secretary general responsible for overseeing the day-to-day work of international police cooperation. Interpol is also composed of two governing bodies, the General Assembly—comprised of one delegate from each member country who meet once a year to make all major policy decisions—and the Executive Committee—13 individuals from different member countries who meet three times a year to carry out the executive decisions

of the General Assembly. Paramount to Interpol's objectives are the National Central Bureaus (NCBs) located in each member country, which serve to link the national police of the member country to the Interpol network. (See *Structure and Governance: National Central Bureaus*, INTERPOL, <http://tinyurl.com/q3hoxxr> (last visited Aug. 20, 2015).) Lastly, the Commission for the Control of Interpol's Files (CCF) is an independent body that monitors the application of Interpol's data protection rules, advises Interpol with regard to any operations concerning the processing of personal information, and processes requests for access to Interpol's files. (See *Structure and Governance: Commission for Control of INTERPOL's Files*, INTERPOL, <http://tinyurl.com/ptf96dx> (last visited Aug. 20, 2015).)

In addition to the above, Interpol is governed by the Interpol Constitution, the Rules on the Processing of Data (RPD), and the Rules on the Control of Information and Access to Interpol's Files (RCI). The Interpol Constitution lays out the rules governing the structure of the organization and outlines the ideals by which Interpol is governed. Pursuant to Articles 2 and 3 of the Constitution, "[i]t is strictly forbidden for [Interpol] to undertake any intervention or activities of a political, military, religious or racial character," and its actions must comply with the laws existing in the different countries and in the "spirit of the Universal Declaration of Human Rights." (*The Constitution*, INTERPOL, <http://tinyurl.com/q65mjh2> (last visited Aug. 20, 2015).) The RPD set forth the rules with respect to processing, reviewing, and publishing data. Accordingly, the aim of the RPD "is to ensure the efficiency and quality of international cooperation between criminal police authorities . . . with due respect for the basic rights of the persons who are the subject of this cooperation." (INTERPOL's Rules on the Processing of Data, art. 2, III/IRPD/GA/2011(2014) (Mar. 14, 2013), available at <http://tinyurl.com/pq6y3f5>.) Lastly, the RCI set forth the rules establishing the CCF and provide a mechanism by which an individual can request, alter, or remove personal information that has been processed by Interpol. (See Rules on the Control of Information and Access to INTERPOL's Files, II.E/RCIA/GA/2007(2009) (Feb. 15, 2010), available at <http://tinyurl.com/pq6y3f5>.)

Although not a police force in the traditional sense, Interpol functions as an international criminal intelligence agency whose primary objective is to put different national police agencies in contact with one another in order to facilitate the arrest of individuals accused of crimes in member countries.

Red Notices and Diffusions

Interpol's principal mechanism for facilitating the capture of wanted individuals is the use of a system of international notices. Interpol first implemented its color-coded system

of notices in 1946, and at the time the system was used by police to communicate information about crimes, criminals, and threats to their law enforcement counterparts around the world. Since then, Interpol has created eight distinct types of notices. (See *Notices*, INTERPOL, <http://tinyurl.com/pdep4ks> (last visited Aug. 20, 2015).) However, the most widely used—and most controversial—are without a doubt red notices and diffusions. A red notice is issued after a request for detention is reviewed by Interpol and circulated to all member countries at the request of one member country "[t]o seek the location and arrest of a person wanted by a judicial jurisdiction . . . with a view to his/her extradition." (INTERNATIONAL NOTICES SYSTEM FACT SHEET, *supra*, at 1.) By contrast, a diffusion—often described as an "all-points bulletin"—while similar to a red notice in that it seeks to locate and arrest a wanted individual, is sent directly by a member country to the countries of the requesting country's choice via Interpol's web-based information-sharing system. Although red notices and diffusions are commonly referred to as the closest instruments to international arrest warrants in use today, not all countries treat red notices and diffusions as de facto arrest warrants. In the United States, for example, a red notice, by itself, is not sufficient to justify an arrest. (See U.S. ATTORNEYS' MANUAL: CRIMINAL RESOURCE MANUAL 611, <http://tinyurl.com/pcp7p9q> [hereinafter CRM 611].)

Before a red notice may be published on Interpol's public website, "[a]ll notice requests shall be examined . . . for compliance" with the rules governing the publication of information on Interpol's website. (INTERPOL's Rules on the Processing of Data, *supra*, art. 77.) These rules require that Interpol verify that the offense for which the individual is sought involved "a serious ordinary-law crime" and that the offense not "raise controversial issues relating to behavioural or cultural norms" or "family/private matters," and not originate "from a violation of laws or regulations of an administrative nature." (*Id.* art. 83.) In addition, a red notice may only be published if the offense "is punishable by a maximum deprivation of liberty of at least two years" or "if the person is sought to serve a sentence [of] at least six months of imprisonment and/or there is at least six months of the sentence remaining to be served." (*Id.*) To demonstrate this, Interpol requires that "sufficient judicial data" be provided, including a summary of the facts of the case, a list of the charges, the national laws covering the offenses, the maximum penalty possible or sentence to be imposed, and a reference to a valid arrest warrant or judicial decision. (*Id.*) The country requesting the red notice must also provide sufficient identifiers, such as the family name of the person sought, the sex of the individual, his or her date of birth, and a physical description or a photograph of the individual. (*Id.*) Prior to approving the publication of a red notice, the General Secretariat must "conduct a legal review



of all red notices . . . to ensure compliance with INTERPOL’s Constitution and Rules, in particular with Articles 2 and 3 of INTERPOL’s Constitution,” which safeguard against abuse of the notice system to locate and arrest political, religious, or ethnic enemies. (*Id.* art. 86.) While a request for publication of a red notice is pending, the request is temporarily recorded in a private database that is accessible to all Interpol member countries. Once approved by the General Secretariat, the red notice is published on Interpol’s public website and a paper red notice is mailed to all member countries seeking the arrest of the wanted individual if he or she comes to the attention of the police in one of those states.

Unlike a red notice, the transmission of a diffusion requires no oversight by Interpol. As Interpol states, “a diffusion is issued for the same purposes as notices but sent directly by a member country or an international entity to the countries of their choice,” without being subject to the review required under the RPD for the publication of red notices. (INTERNATIONAL NOTICES SYSTEM FACT SHEET, *supra*, at 2.)

According to a 2013 report conducted by Fair Trials International, between 2008 and 2009, when I-link was formally launched, the number of red notices and diffusions issued jumped 60 percent. (*See* FAIR TRIALS REPORT, *supra*, at 39.) And according to Interpol’s yearly statistics, the number of red notices published by Interpol has jumped from 1,277 in 2002 to 10,718 in 2014, a sevenfold increase over 12 years. (*See* ANNUAL REPORT 2003, *supra*, at 5; INTERNATIONAL NOTICES SYSTEM FACT SHEET, *supra*, at 2.) Likewise, between 2003 and 2014, the number of diffusions issued rose from 7,977 to 21,922, respectively. In total, by the end of 2014, more than 60,000 notices and 74,000 diffusions were in circulation. (INTERNATIONAL NOTICES SYSTEM FACT SHEET, *supra*, at 2.)

The increased ease with which member countries can now publish red notices and diffusions is problematic. In a 2011 report, Freedom House International concluded that approximately 28 percent of red notices studied were from countries identified as having no civil liberties, and almost

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INTERNATIONAL NOTICES SYSTEM FACT SHEET, *supra*, at 2; *Notices*, *supra*.) Once issued, diffusions are also recorded on Interpol’s private database and are accessible by Interpol member countries. As such, both diffusions and red notices pending publication are made accessible via Interpol to law enforcement agencies around the world even though the information submitted may not be in compliance with Interpol’s RPD, including the requirement that a valid arrest warrant or judicial decision be issued in the requesting country or that the offense for which the individual is sought not be of a political, cultural, or religious nature.

Recent advances in communications and information-sharing technology have resulted in a significant increase in informal and unregulated contact between member countries via Interpol’s operating system. Indeed, I-link, Interpol’s web-based information-sharing system launched in 2009, drastically improved the ability of member countries to exchange information by putting data submission and control functions directly into the hands of local officers in NCBs, and allowing them to record data directly into Interpol’s database. (*See Data Exchange*, INTERPOL, <http://tinyurl.com/p4mhmlz> (last visited Aug. 20, 2015).)

half were from countries ranked as the most corrupt in the world. (Kathy Gilsinan, *Interpol at 100: Does the World’s Police Force Work?*, ATLANTIC (May 12, 2014), <http://tinyurl.com/o5z9kj2>.) In a system where approximately one-third of participating Interpol member countries treat a red notice or diffusion as a de facto arrest warrant, significant problems arise. (*See* U.S. DEP’T OF JUSTICE, OFFICE OF INSPECTOR GEN., AUDIT DIV., THE UNITED STATES NATIONAL CENTRAL BUREAU OF INTERPOL: AUDIT REPORT 09-35, at 11 (2009), <http://tinyurl.com/nppmmvmg>.)

Consequences of Red Notices and Diffusions

The consequences of having a red notice or diffusion issued against an individual can be devastating. Beyond the likely arrest, detention, and possible extradition of a targeted individual, additional collateral consequences often attend the issuance of a red notice or diffusion, including the loss of ability to travel and the damage to reputation that accompanies the public posting of an individual’s information online.

As noted above, it is estimated that approximately 30 percent of Interpol member countries treat the issuance of

a red notice or diffusion as a de facto arrest warrant. And while red notices and diffusions are most commonly enforced at points of entry, an individual may be apprehended anywhere, at any time in a country that permits such arrests. In the United States, although the arrest of an individual on the basis of a red notice alone is generally prohibited, if such an individual is located within the United States, procedures exist that can result in the targeted individual's arrest. For instance, once an individual is found within the United States, the Department of Justice (DOJ) will determine whether a valid extradition treaty exists between the United States and the requesting country. If there is a valid extradition treaty, the DOJ will inform the requesting country, at which point the requesting country can make a diplomatic request for a provisional arrest with a view to the individual's eventual extradition. If this request is approved, the facts and circumstances of the case are communicated to the US attorney's office in the district in which the individual is found, and an arrest warrant requesting extradition will likely be sought. As may be expected, the end result will likely be an extradition hearing before a magistrate judge in federal court. (See CRM 611, *supra*.)

In addition to the possibility of arrest, detention, and extradition, those targeted by a red notice often experience day-to-day struggles (while others may be targeted but unaware that they are the object of a red notice or diffusion), as today member countries are able to communicate directly with one another. For instance, a targeted individual may be unable to travel abroad for fear of being apprehended at a point of entry, causing significant economic consequences if the individual's employment requires such travel. Additionally, targeted individuals report having their bank accounts frozen as a result of red notices issued against them. Most also experience some form of damage to their reputation, particularly where the individual's photograph and personal information are posted publicly on Interpol's website. (See INTERPOL's searchable "wanted list" at www.interpol.int/notice/search/wanted.) An individual seeking to challenge the issuance and publication of a red notice may also be forced to cover substantial legal costs. A challenge to a red notice will often involve hiring two attorneys—an attorney familiar with judicial proceedings in the requesting country as well as an attorney in the country of residence. Those targeted by a diffusion encounter even greater difficulty. Because a diffusion is not publicly accessible, a targeted individual will likely have no warning that a request has been made seeking his or her arrest.

Challenging a Red Notice or Diffusion

An effective challenge to the issuance and publication of an Interpol red notice will often involve a two-pronged approach. First, contact with local authorities or the local NCB in the requesting jurisdiction may reveal deficiencies

in the requesting jurisdiction's application, requiring dismissal of the underlying offense and/or removal of the red notice. Second, a formal request to remove a red notice may be filed with Interpol's independent monitoring body, the CCF, based on the Interpol Constitution and its RPD. Although either of these two approaches may be undertaken independently, the two are often complimentary.

While each case will invariably be fact-specific, efforts to remove a red notice from Interpol's website almost always begin by making inquiries in the country issuing the request for arrest. Such inquiries may take the form of contact with judicial authorities in the requesting country or contact with that country's NCB office to determine the precise nature of the charges for which the red notice was issued. Although perhaps not always required, such inquiries are often best accomplished through the engagement of a local lawyer in that country. A local lawyer may more capably aid in understanding the legal proceedings in a foreign jurisdiction and facilitate understanding of the offense for which the requesting country is seeking an arrest. In addition, a local lawyer may aid in obtaining additional factual information likely absent from that submitted to Interpol in that country's red notice request. The information obtained in this manner may aid considerably, especially if additional facts indicate that the charged offense is tainted by political, religious, or cultural considerations, that the offense is civil in nature, or that the offense does not meet the penalty threshold set forth in Interpol's processing rules. Further inquiry may also reveal deficiencies in the local legal proceedings leading to the arrest warrant or judicial decision that is the basis of the red notice. If such deficiencies are detected, a local lawyer may seek to have the local case dismissed and the red notice removed by local authorities, or may take the matter to the local NCB for further evaluation of the validity of the notice.

In the event that local authorities or the local NCB is unwilling to either dismiss the case against the targeted individual or seek removal of the red notice, an appeal to the CCF will be necessary. As noted above, the CCF is an independent monitoring body charged with supervising the application of Interpol's RPD, processing applications and files, and advising Interpol on the processing of personal information. Under the CCF's rules, a request may be made to access information pertaining to an individual targeted by a red notice, or a request for removal of the red notice may be made. (See INTERPOL, Operating Rules of the Commission for the Control of INTERPOL's Files, arts. 16–18, II.E/RCCF/CCF/2008 (Oct. 31, 2008), available at <http://tinyurl.com/pq6y3f5> [hereinafter CCF Operating Rules].) A successful challenge to a red notice should contain a summary of the arguments in support of the request for removal as well as copies of any relevant documents supporting the removal of the red notice. (See *What Are*

Your Rights?, INTERPOL, <http://tinyurl.com/pmmfeyu> (last visited Aug. 20, 2015).

Removal of a red notice may be based on the Interpol Constitution or may be made under Interpol's RPD. Under Articles 2 and 3 of the Constitution, challenge to a red notice may be made if it can be shown that the red notice was issued for an offense that involved "activities of a political, military, religious or racial character," or if the red notice fails to comply with the "spirit of the Universal Declaration of Human Rights." (*The Constitution, supra*, art. 2.) Article 77 of the RPD further provides that Interpol "may not publish a notice . . . if . . . the data provided [does] not meet the conditions for publishing a notice" or if the "publication of the notice could prejudice the Organization's or its Members' interests." (INTERPOL's Rules on the Processing of Data, *supra*, art. 77.) Perhaps most often used in challenging a red notice, Article 83 of the RPD requires that, prior to publication, the General Secretariat determine that the offense is an ordinary-law crime not involving controversial issues relating to cultural norms, that the offense meets the penalty threshold of two years (six months if a sentence has already been handed down), and that the minimum judicial data was provided to support the issuance of the red notice. Lastly, challenge to a red notice may be made under Article 12 of the RPD, which provides that information processed by Interpol be "accurate, relevant, [and] not excessive in relation to their purpose." (*Id.* art. 12.) Ultimately, after reviewing an individual's request to remove a red notice, the CCF will notify the requesting party and the decision will become final. (*See What Are Your Rights?*, *supra*.)

Diffusions, unlike publicly issued red notices, require particular caution. Because diffusions, by their very nature, are not made public, individuals will typically be unaware that a diffusion has been issued against them. And if the individual is not currently the subject of a diffusion or red notice, an informational request from counsel to an NCB or to the CCF may have the adverse effect of setting off an investigation, ultimately resulting in the issuance of a diffusion or red notice. That being said, if the individual has reason to believe that an outstanding diffusion—or a red notice pending Interpol approval—has been sought, counsel may inquire with the CCF to determine whether such a diffusion has issued. Article 9 of the RCI provides that "[a]ny person who so wishes may, freely and free of charge, exercise the right of access to personal information concerning him which has been recorded in INTERPOL's files." As such, individuals can request access to information about themselves on Interpol's database by submitting a request with proper supporting documentation to the CCF. (*See CCF Operating Rules, supra*, art. 10.) However, because member countries "remain the owners of information they communicate to INTERPOL" a requesting country's NCB

"must give permission for . . . disclosure [of information] to requesting parties." (*Access to INTERPOL's Files*, INTERPOL, <http://tinyurl.com/p8ulpf5> (last visited Aug. 20, 2015).) Accordingly, after a request to access personal information is submitted, the CCF will review the request and perform a "detailed assessment" (*FAQs*, INTERPOL, <http://tinyurl.com/ofuduc5> (last visited Aug. 20, 2015)) to determine whether a diffusion has issued, whether the diffusion is in compliance with Interpol's Constitution and rules, and whether the requesting NCB will permit disclosure of the request to the requesting party.

While challenging a red notice or a diffusion is not an exact science and each case will contain fact-specific variables, the above sets forth the two primary avenues by which an individual can detect and remove a red notice or a diffusion improperly issued.

International Extradition

If a request to remove a red notice is unsuccessful, and arrest, detention, and extradition seem likely, it is essential to understand how extradition is carried out in the United States. Extradition is the formal surrender of a person from one country to another country for prosecution or punishment. At present, the United States maintains extradition treaties with over 120 countries. (*See* 18 U.S.C. § 3181.) And while extradition proceedings are initially held in federal court—typically before a magistrate judge in the jurisdiction in which the individual is found—extradition is primarily a diplomatic process that is carried out through the powers of the executive, and not the judicial, branch. (*See Blaxland v. Commonwealth Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1207 (9th Cir. 2003); *Lopez-Smith v. Hood*, 121 F.3d 1322, 1326 (9th Cir. 1997); *Martin v. Warden, Atlanta Pen*, 993 F.2d 824, 828 (11th Cir. 1993).)

To initiate extradition of an individual located within the United States, the country seeking extradition must first file a request with the State Department. (*See* 18 U.S.C. § 3184.) Once the request has been evaluated by the State Department to ensure that the request is within the scope of the relevant extradition treaty, the matter is assigned to a US attorney who may then file a complaint in federal district court seeking a provisional arrest warrant for the person to be extradited. (*See Vo v. Benov*, 447 F.3d 1235, 1237–38 (9th Cir. 2006) (describing the extradition process).) The complaint typically sets forth the relevant terms of the extradition treaty, the nature of and basis for the underlying criminal charges, the identity of the individual, and his or her location, if known. The complaint may also include relevant documents provided by the requesting country regarding the individual and the offense. Once arrested, the defendant will be informed of the charges at an initial appearance and, if indigent, may be appointed counsel. Although there is a presumption against bail in extradition

proceedings, bail may be granted in a narrow range of cases upon a showing that the defendant is neither a flight risk nor a danger to the community and that “special circumstances” warrant the defendant’s release. (*See* *Wright v. Henkel*, 190 U.S. 40, 62–63 (1903) (presumption against bail); *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989) (“There is a presumption against bail in an extradition case and only ‘special circumstances’ will justify bail.”).)

Because extradition is primarily the prerogative of the executive branch, the scope of the court’s inquiry during an extradition hearing is limited to determining an individual’s eligibility to be extradited. Accordingly, the magistrate judge must confirm that a valid treaty exists, that the offense charged constitutes a crime for which extradition is proper, that the extradition request complies with the relevant treaty provisions, and that the complaint is supported by probable cause. (*See Vo*, 447 F.3d at 1237.) Ultimately, the central issue in an extradition hearing is whether there is competent evidence to establish probable cause that the defendant committed the offense underlying the extradition request. (*Id.*)

on an alibi to the underlying offense may not be considered, as courts have found that they implicate issues that should be resolved during trial proceedings in the requesting country. However, one of the more common defenses to extradition, dual criminality—that the offense underlying a request for extradition is not recognized in both the requested and requesting countries—is available to a defendant facing extradition. In order to ascertain whether the dual criminality doctrine is satisfied, the court must engage in an analysis of the offense charged to determine if it has an analogous domestic counterpart. Lastly, while a defendant may seek to oppose extradition on the grounds that he or she will face physical harm, unjust treatment, or torture if returned, the rule of noninquiry traditionally limits a court’s ability to scrutinize the fairness of the requesting country’s legal system or to examine the conditions that await the defendant if returned.

Once the magistrate judge orders certification of extradition, the matter is sent to the secretary of state for final review. Because the magistrate’s order is not final within the meaning of 28 U.S.C. § 3191, the magistrate’s order is not

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Significantly, the Federal Rules of Evidence and the Federal Rules of Criminal Procedure do not apply to extradition proceedings. (*See* *Mainero v. Gregg*, 164 F.3d 1199, 1206 (9th Cir. 1999).) Instead, the admissibility of evidence presented at an extradition hearing is governed by statute, 18 U.S.C. § 3190, which permits a more lenient standard of admissibility than that under the federal rules. As such, a defendant does not have a right to discovery (*but see* *Quinn v. Robinson*, 783 F.2d 776, 817 n.41 (9th Cir. 1986) (holding discovery is at the judge’s discretion “as law and justice require”)), and hearsay is generally permitted (*see* *Then v. Melendez*, 92 F.3d 851, 855 (9th Cir. 1996)). In addition, the defendant is limited to introducing evidence that is “explanatory” in that it tends to undermine the government’s showing of probable cause, but may not introduce evidence that merely “contradicts” the government’s case or is offered to undermine credibility. (*See* *Hooker v. Klein*, 573 F.2d 1360, 1369 (9th Cir. 1978).) Courts have struggled to explain the distinction between “explanatory” and “contradictory” evidence, and at least one court has described the distinction as “meta-physical.” (*In re* *Extradition of Strunk*, 293 F. Supp. 2d 1117, 1122 (E.D. Cal. 2003).)

Due to the narrow scope of extradition proceedings, defenses available to a defendant in a criminal matter are not available to an individual in an extradition proceeding. Accordingly, the defense of insanity or a defense predicated

appealable. Nonetheless, a defendant may seek relief from an extradition order via a writ of habeas corpus filed with the district court, which may then be appealed to the US court of appeals. However, appellate review of a district court’s ruling in an extradition habeas is de novo and limited to whether there was jurisdiction, whether the offense charged fell within the extradition treaty, and whether probable cause existed to warrant extradition. (*See* *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925).) The ultimate decision to extradite—once certification has been issued—rests with the secretary of state to exercise at his or her discretion. If the secretary of state elects to extradite, a surrender warrant will issue and the foreign jurisdiction will take custody of the defendant.

Conclusion

Advances in communications and information-sharing technology have fundamentally altered the landscape of international policing. As a result, law enforcement agencies around the globe now possess almost unfettered access to criminal databases worldwide. Consequently, publication of red notices and diffusions are on the rise. A successful defense requires a thorough understanding of twenty-first century international policing and the ways in which such notices may be challenged. ■