

**Commission on Security & Cooperation in Europe:
U.S. Helsinki Commission**

**“Tools of Transnational Repression: How Autocrats Punish Dissent
Overseas”**

Committee Members Present:

**Senator Roger F. Wicker (R-MS), Co-Chairman;
Senator Benjamin L. Cardin (D-MD), Ranking Member;
Representative Joe Wilson (R-SC), Ranking Member;
Senator Cory Gardner (R-CO);
Senator Sheldon Whitehouse (D-RI);
Representative Marc Veasey (D-TX)**

Witnesses:

**Alexander Cooley, Director, Columbia University's Harriman Institute for the
Study of Russia, Eurasia and Eastern Europe; Claire Tow Professor of
Political Science, Barnard College;
Sandra A. Grossman, Partner, Grossman Young & Hammond, Immigration
Law, LLC;
Bruno Min, Senior Legal and Policy Advisor, Fair Trials;
Nate Schenkan, Director for Special Research, Freedom House**

**The Hearing Was Held From 10:19 a.m. To 11:31 a.m. in Room 210, Cannon
House Office Building, Washington, D.C., Senator Roger F. Wicker (R-MS),
Co-Chairman, Commission for Security and Cooperation in Europe,
presiding**

Date: Thursday, September 12, 2019

WICKER: Well, welcome, everyone. How are we doing? Good to see you. This hearing will come to order. Welcome, on behalf of the Helsinki Commission to this hearing on “Tools of Transnational Repression: How Autocrats Punish Dissent Overseas.” And I think I’ll turn my ringer off before you all learn what my ringtone is.

We’ve assembled an expert panel to probe how autocratic states project repressive force beyond their borders to silence dissenters, human rights defenders, journalists, and other perceived enemies overseas. Autocrats today have access to a range of tools to extend their reach by thousands of miles, sometimes in fractions of a second. Some schemes rely on 21st century technologies to hack, surveil, and intimidate targets, while others use blunter tactics, such as extortion, abduction, and assassination. This practice of transnational repression constitutes a wholesale assault on the rule of law internationally. It requires the attention of all democratic nations.

This Commission, the Helsinki Commission, is particularly concerned by the politically motivated abuse of Interpol by autocratic states wishing to harass and detain their opponents overseas, often in the hopes of trying them on bogus criminal charges. Interpol is a legitimate instrument for international law enforcement cooperation, linking the law enforcement arms of its 194 member countries through a global communications and database network. The United States relies on Interpol daily to bring criminals to justice and foil threats to global security. As with the United Nations, however, Interpol’s broad membership leaves it open to manipulation by authoritarians.

Repressive regimes have seized on Interpol’s potent tools to harass and detain their perceived enemies anywhere in the world. Red notices and diffusions are among the most commonly abused instruments at Interpol, as they constitute international request for detention and extradition. The Helsinki Commission regularly receives reports from dissidents, journalists, and human rights defenders across the OSCE region who are targets of Interpol notices or diffusions issued by autocratic states on trumped up charges.

Perhaps the most prominent case is that of outspoken Kremlin critic Bill Browder. After his lawyer, Sergei Magnitsky, was murdered by Russian thugs for exposing state-sponsored corruption, Mr. Browder emerged as a champion of transparency and accountability for President Putin’s misrule. In response, the Kremlin has embarked on a more than decade-long campaign to silence Bill Browder. As of today Russia has issued at least eight politically motivated diffusions against Mr. Browder. And yet, to our knowledge, Interpol has not penalized Russia in any way to punish or deter this abuse.

To the contrary, Russia felt comfortable enough in its position in the organization to have proposed a leading candidate for the presidency of Interpol last fall. At the time I joined with fellow Helsinki Commissioners Shaheen and Rubio, along with Senator Coons, to denounce the Russian candidacy, which fortunately was ultimately defeated after an outcry from the United States and our European allies. Of course, Mr. Browder is one victim, and Russia one abuser, among many. Ahead of this hearing, the Helsinki Commission received statements from

individuals from China, Turkey, Uzbekistan, and Tajikistan who have been targeted by authorities using Interpol.

At this point I request that these statements be entered into the record of this hearing. Is there objection? Without objection, they'll be entered at this point. The Helsinki Commission is taking action to address these assaults on the rule of law. Chairman Alcee Hastings and I are preparing to introduce bipartisan legislation in the House and Senate to tackle the abuse of Interpol by autocrats.

The Transnational Repression Accountability and Prevention Act will lay out priorities for U.S. engagement with Interpol, encourage executive branch agencies to approve processes for responding to politically motivated Interpol notices, and codify strict limits on how Interpol communications can be used by U.S. authorities against individuals in our country. In addition, this legislation will require the State Department to report on trends in transnational repression in its annual human rights report.

The U.S. has long been a champion of reform and good governance within Interpol. Since 2016, Interpol, with U.S. support, has enhanced vetting of notices and diffusions, created special protections for refugees, instituted greater transparency regarding its adjudication of complaints from victims, made rulings on complaints binding, and begun reviewing thousands of long-standing notices and diffusions. But more remains to be done. The organization is in dire need of greater transparency. Countries should face consequences, including being denied leadership positions, for repeated abuses.

I might add that this matter has been brought to the attention, successfully, of the OSCE Parliamentary Assembly at our annual legislative meeting, just this past July. I appreciate the support we had from around the OSCE area.

Our witnesses this morning will provide expert testimony on the scale of this problem and policy recommendations to address it. Before introducing them, do members of the Commission request to be heard on this issue?

Senator Cardin.

CARDIN: Mr. Chairman, first let me thank you and Congressman Hastings for calling this hearing. It's critically important. As I was listening to your opening statement, I agree completely with everything you said. This hearing couldn't be more appropriately chaired by Senator Wicker, "Tools for Transnational Repression." He's not only the Senate chair of the Helsinki Commission, but he's vice president of the OSCE Parliamentary Assembly. So he's very much engaged with our international partners in carrying out the commitments of the Helsinki Final Act. And I applaud you for your leadership on this.

As we know, the principles of Helsinki are freedom, and peaceful and just democratic societies. And that those principles are to protect the human rights of the citizens of each country—from religious persecution, from the freedom of the media, to freedom of NGOs, to the ability to peacefully disagree with your government. That's part of the fundamental principles of

Helsinki. And as we all know, one of the binding principles is that each member state has the right to challenge actions in any other member state.

The problem we have is that it's not only oppression within the country itself of its citizens. We now see the outreach beyond their own geographical borders. And that is absolutely outrageous. The most blatant example was Jamal Khashoggi's murder in Turkey—the outreach of the Saudis in doing that. But Turkey itself has abducted a dissenter from Malaysia. So, you know, we find that—and the chairman's comments about the use of red notices by Interpol is shocking, and something that has to end. And I applaud your efforts to spotlight that at this hearing, but also to pursue legislation.

How do we respond to it? Well, one way we respond to it is by having this hearing. And we thank the witnesses that are here. We put a spotlight on it. That's an extremely important part. Passing legislation. And I very much look forward to working with Senator Wicker on his legislation. Enforcing the Magnitsky sanctions. We're now 10 years from when Sergei Magnitsky was murdered. And the Congress responded in 2012 by the passage of the Sergei Magnitsky sanctions law against Russia—expanded it to global in 2016. And that has now taken roots in many other countries around the world to let abusers know that if they do this there will be consequences.

We used that against the Saudis in regard to the Khashoggi murder, but it was used but not to the full extent. Congress, under the Magnitsky statute, asked for further considerations, which this administration has not complied with. So it's also enforcing our laws here that can help deal with this international problem. So, Mr. Chairman, I wanted to take this time to thank you for your leadership on this, to thank the panel for being here, let us know that we very much will be united – Democrats and Republicans – to deal with what is this new trend of the transnational repression.

WICKER: Thank you, Senator Cardin.

Representative Wilson.

WILSON: Thank you, co-Chairman Roger Wicker, with Chairman Alcee Hastings, for calling this important hearing. This topic is a critical and startling one. The enemies of freedom and democracy around the world have always persecuted those who dared to criticize them. This is an unfortunate reality, one that I'm grateful to say the United States has always fought against to promote freedom. But it is appalling that now these tyrants and authoritarian regimes around the world seek not only to persecute their critics at home: they now chase them to the ends of the Earth, ensuring that no one and no country in the world is safe for critics. Unfortunately, these criminal regimes do this by exploiting the very international rules-based order meant to prevent and fight international crime.

This is a very serious issue. The fact that countries like Russia, China, and Venezuela abuse their access to the International Criminal Police Organization, or Interpol, to issue bogus notices with the express intent to repress dissent against their own democratic regimes is dangerous. It is not only imperiling to the champions of freedom around the world, but it

undermines the very integrity of Interpol and, more broadly, of the international system we've worked so hard to build.

Knowing how critical this issue really is, I'd like to thank our expert panel today for their work and their testimony today. I'm also appreciative of the opportunity to work with Chairman Hastings on the House version of the Transnational Repression Accountability Act, TRAP, which seeks to address some of the ways autocrats exploit Interpol, as well as to improve U.S. capabilities to identify and respond to instances of abuse. I thank Chairman Hastings for his leadership on this issue and commend the Helsinki Commission staff for their hard work on the TRAP Act.

With that, I yield back the balance of my time, and I look forward to the hearing from our distinguished panel today.

WICKER: Senator Whitehouse.

WHITEHOUSE: Well, this is a very special occasion because Joe Wilson and I agree virtually 100 percent, which is always a wonderful thing. (Laughter.) There is a lot of talk about how there has been a clash of civilizations that dominates the globe. I think there is a clash of civilizations, and it's between rule of law civilization and kleptocracy, autocracy, and criminality. Unfortunately, kleptocracy, autocracy, and criminality, at some point, depend upon rule of law. Because once you've stolen enough to become a very rich person, suddenly rule of law looks like a good thing. And the transit of the illicit proceeds from kleptocracy, autocracy, and criminality into the protection of our rule of law is something that we have a national security interest in preventing.

And I'd like to ask that the article to that effect that General David Petraeus, the former CIA director, and I wrote be entered into the record, and express my appreciation to all of these people here for helping to bring to light the dangers. It's not just our allowing their use of the rule of law to protect their ill-gotten gains. It's also needing to make sure that their tools of repression that keep their populations in place and punish whistleblowers are exposed, and that we do not allow our rule of law tools to be used for purposes of oppression. So, Mr. Chairman, thank you. Thank you to the witnesses. This is terrific work by the Helsinki Commission.

WICKER: I thank Senator Whitehouse. And without objection, that article will be entered into the record.

And now to our panel.

First, Alexander Cooley, a political science professor at Barnard College and director of Columbia University's Harriman Institute. Professor Cooley wrote the book on extraterritorial authoritarian practices. The book is entitled, *Dictators without Borders: Power and Money in Central Asia*, which was co-authored by John Heathershaw and published in 2017. Drawing on his scholarly work, Professor Cooley we hope will explain the origins, scope, and trajectory of transnational repression.

Then we will hear from Nate Schenckan to provide concrete examples of these authoritarian practices based on his work as director of special research at Freedom House.

Our third witness is Bruno Min, a senior legal and policy advisor at Fair Trials, and international nonprofit that monitors criminal justice standards around the world. Mr. Min will present his experience leading the Fair Trials advocacy relating to Interpol and other examples of cross-border justice and discrimination.

And finally, we will hear from Sandra A. Grossman, an immigration lawyer and founding partner of Grossman, Young & Hammond, where she has honed her expertise in complex and sensitive immigration issues, often involving statements targeted by politically motivated Interpol communications.

I will refer you to the materials in your folders for our witnesses' full bios. I look forward to their testimony. I invite Professor Cooley to begin. We ask each of you to limit your verbal remarks to five minutes. Welcome, Professor Cooley.

COOLEY: Thank you, co-Chairman Wicker and members of the Commission. Thank you for inviting me to testify about the topic of transnational repression as part of this hearing on reforming Interpol. And I request that my written testimony be admitted into the record.

WICKER: Everyone's written statement will be admitted into the record, without objection.

COOLEY: Thank you.

My aim today is to explain why autocrats are increasingly projecting their reach overseas and highlight how Interpol has become a weapon in these efforts. By transnational repression, I refer to the targeting by governments and their internal security and intelligence services of the exiled co-national political challengers, civil society advocates, non-pliant business community members, and journalists who reside abroad. These extraterritorial acts of repression may include coercive acts, including assassination attempts, disappearances, forced abductions, and renditions back to the home country—also, the act of monitoring, infiltration, disruption of exiled communities abroad, the harassment and intimidation of an exiled political opponent's family members in the home state in order to deter political activities abroad, and cooperation between the security services of a host and assenting country to deny exiles due process that would determine eligibility for political asylum.

Transnational repression is certainly not new. Think of Soviet security services going after exiles and emigres after the 1917 revolution. But this current wave does have distinctive drivers and dynamics. It's foremost an outcome of the recent global backlash against democratization. Democratic optimism in the 1990s and early 2000s has given way to the emergence of a more aggressive and a savvier breed of autocrat. The so-called color revolutions of the mid-2000s and Arab Spring in the Middle East have prompted authoritarians to reframe democratic opponents and civil society activists as security threats, intent on destabilizing and disrupting their rule. So as political opponents flee these crackdowns and go abroad, autocrats

aggressively pursue them in exile and attempt to deny safe spaces from which they can organize, broadcast independent or oppositional media, and spotlight their governments' abuses.

Second, globalization has created new diaspora communities of economic migrants that leave their poor authoritarian home countries in search for work. Cheap international transportation, low-cost communications, allow for the constant transmission of information, ideas, and values between diasporas and their home-country communities. And this raises the concerns of autocrats that these overseas groups may become radicalized or politically active back home.

Third, the rise of new digital and information technologies, including social media, offers new tools to authoritarians to extend their control of the information space. Without leaving their own territorial borders, dictators can now target the communications and social media profiles of exiles abroad, disrupt online platforms, and damage anti-government websites, and intimidate outspoken regime critics with electronic messages and the collection of their personal information.

This new transnational repression is taking place at a time when the international environment during which liberal democratic norms are weakening. Autocrats are actively cooperating with one another and learning how to successfully repurpose international institutions to avoid international scrutiny and accountability for human rights abuses. Some of this cooperation has been formalized with international organizations. For example, the Shanghai Cooperation Organization, led by China and Russia and including most Central Asian countries, maintains a common blacklist of individuals and organizations under the auspices of its regional anti-terrorism structure—RATS for short.

Though the list is officially meant to target the three evils of extremism, terrorism, and separatism, in practice human rights organizations have noted that member country regimes use the SCO blacklist to deny each other's regime opponents safe harbor and asylum. Experts have also cautioned about the organization's overly broad definition of the three evils, its practice of unconditional extradition, and its opaque data sharing and classification practices.

In this more unsure international environment, autocrats are also now repurposing Interpol to use against their political enemies abroad, with the Interpol alerting system. Interpol's own constitution mandates that the alert system must not be abused for political purposes. However, in practice authoritarians are increasingly violating neutrality by designating wanted political opponents as criminals or even terrorists. Over the last two decades, we've seen an explosion in Interpol alerts, increasing almost tenfold from about 1,400 in 2001 to over 13,000 in 2013. The latest account on the website mentioned 58,000 active notices, about 7,000 of which are public.

Russia and China issue a high volume of alerts, but autocrats in smaller countries also appear to be abusing the organization. For example, political scientist Ed Lemon has uncovered that the small Central Asian state Tajikistan has issued 2,500 red notices, while we have reporting that the governments of Azerbaijan, Egypt, Iran, India and Venezuela also aggressively abuse the list for political purposes.

I think it's important to mention that the repressive effect of this abuse does not just hinge on whether a political opponents is successfully extradited. In most democracies, properly functioning judicial systems tend to eventually weed out the obviously politically motivated extradition request. However, the alerts can still have devastating consequences. They prevent travel and lead to unexpected detentions in third countries. They incur costly legal bills. And they make it difficult for those listed to conduct banking and other financial transactions. Moreover, repressive governments use the very act of being listed that they initiate to tarnish the personal reputations of those in exile, intimidate their family members, and confiscate their property and business.

Nadejda Atayeva, whose testimony is in the record, is a human rights defender with refugee status in France. She remained on the red notice list for over 15 years after she was accused by the government of Uzbekistan of an economic crime, which was her family pointed out corruption in a particular sector, and later convicted in absentia. This conviction appears to have been intended to hamper her advocacy work abroad as a human rights defender.

Journalists and advocacy organizations have spotlighted many of these abuses, but the continued lack of transparency makes it difficult to assess the progress of reform efforts. The TRAP Act would provide much-needed basic data about which member states issue notices and in what frequency, it would shed light on how Interpol's own independent oversight board adjudicates complaints of abuses and which member states are the most frequent violators. And in turn, this will allow other member governments, activists, and the media to identify and track obvious abuses of the international policing network. Finally, it will help ensure that politically motivated abuse of Interpol is kept in check and deter other authoritarians from similarly misusing the organization.

Although it may not be realistic for the United States or any one country to check all of the malevolent transnational activities of autocrats and their foreign security services, the TRAP Act would send a powerful signal that autocracies will not have a free hand to refashion international organizations and redefine basic human rights standards and critical protections. Thank you for your attention.

WICKER: Well, thank you very much.

And Mr. Schenkkan, we'll continue with you. We appreciate your attendance.

SCHENKKAN: Thank you very much. Co-Chairman Wicker and members of the Commission, it's an honor to testify before you today.

I think Professor Cooley has already provided a summary of transnational repression and what it is, so let me skip ahead to the Turkish case, which is the prime example in my testimony.

I began focusing on this issue, transnational repression, in my work at Freedom House after the July 2016 coup attempt in Turkey. In response to that coup attempt, the Turkish government embarked on a global campaign against those that it held responsible, principally

members of the Gülen movement. Using an expansive guilt by association approach, Turkey designated anyone associated with the movement as part of a terrorist organization, and aggressively pursued them around the world. This involved multiple tools. Turkey uploaded tens of thousands of request for detention into Interpol's systems. It cancelled the passports of thousands of people who were outside the country. It refused to renew the passports of others. And it refused to issue passports for some Turkish children born outside the country, in an effort to get their parents to return to Turkey so that they could be arrested.

Most strikingly, Turkey physically brought back at least 104 Turkish citizens from 21 countries, according to its own official statements. At least 30 of those were kidnappings – citizens taken from abroad without any legal process whatsoever. People pulled off the streets of foreign citizens, bundled onto private jets linked to Turkey's intelligence services. In one well-documented case, the kidnapping of six Turkish citizens from Kosovo, one of the men Turkey took was the wrong person – a different Turkish citizen with a similar name. That man remains in prison in Turkey anyway, while the, quote/unquote, “right,” man received asylum in Europe.

The Turkish example since 2016 is striking, and useful to study for several reasons. Because it's so concentrated in term—this is only in the last three years—because it is so aggressive, and because it uses so many different tactics.

But transnational repression is universal. Freedom House has just embarked on a new study of transnational repression that will document its scope and scale around the world since 2014. Data collection is far from complete, but we've already documented 208 cases of violent transnational repression in the last seven years, targeting exiles from 21 countries and we know there are hundreds more waiting to be identified.

These documented cases range from Saudi Arabia's murder of Jamal Khashoggi in Istanbul to Azerbaijan's kidnapping of Afqan Muxtarli in Georgia, to the disappearing of Thai activists from Laos, to the mass detention and deportation of Uighurs, Tibetans, and Falun Gong practitioners to China from a range of countries. Transnational repression occurs in all parts of the world and affects activists and even apolitical exiles everywhere they live, including in the United States.

Now let me speak about some recommendations. The political scientist Yossi Shain in his book, “The Frontier of Loyalty,” laid out a three-part test for why states would engage in persecution of exiles. These three parts are the regime's perception of the threat posed by exiles, a regime's available options and skills for suppression through coercion, and a regime's cost-benefit calculations for using coercion. Regarding the first, authoritarian regimes fundamentally see their citizens as subjects to be ruled, not voices to be heeded. Any kind of political engagement is taken as a threat. We can't change the first part of the equation.

But we can change the second and the third parts. First, we need to blunt the tools of transnational repression or, in Shain's vocabulary, weaken the available options and skills that a regime has. There are several ways to do this. I think Interpol is a necessary focus for this panel, and I'm sure we'll discuss it widely. The TRAP Act is a welcome step in this direction. It

should help counter Interpol abuse in the United States and perhaps globally if it's able to achieve reforms within Interpol itself.

Another tool of transnational repression to be blunted is commercially available spyware, which has been deployed against exiles by countries like Saudi Arabia, China, and others. The U.N. Special Rapporteur for Freedom of Expression David Kaye has called for tighter regulation of targeted surveillance technology and a moratorium on the export of spyware. There's new draft U.S. guidance for the export of surveillance technology prepared by DRL. That's a welcome step, placing human rights due diligence at the center of the guidance. But this guidance must be translated into mandatory regulations governing these exports, including those that carry penalties for violations. We cannot rely on industry to self-regulate in this area.

Second, the U.S. needs to reduce the benefit of engaging in transnational repression. The best way to do this is to support targeted diasporas, especially in the United States. I believe yesterday the Senate passed the Uighur Human Rights Policy Act, which includes measures to protect the Chinese diaspora. This is a welcome measures, and I hope it will be reconciled. Freedom House supports it.

In addition, Congress should pursue legislation to support all vulnerable diaspora communities in the United States, including by providing additional resources to strengthen the ability of the FBI and appropriate U.S. law enforcement to counter transnational repression campaigns. It should make resources available to educate local law enforcement and immigration authorities in parts of the country where there are high concentrations of vulnerable diasporas.

Outside of the United States, in its democracy promotion work, the United States can reduce the benefits of transnational repression by supporting shelter models that strengthen the resilience of exiled activists and journalists. Last, the United States should show leadership by providing safe haven to persecuted individuals. Instead of reducing the number of refugees the United States accepts, we should significantly increase it.

Third and finally, the United States needs to raise the cost of engaging in transnational repression. On the diplomatic front, we should make a consistent practice of issuing private, and where necessary public, protest to diplomats and consular officials who abuse their positions to intimidate, threaten, or undermine the rights and freedoms of exiles and members of diasporas in the United States. And we should sanction individuals responsible for grave human rights violations against exiles, using the Global Magnitsky Act or other authorities as appropriate.

Especially where the persecuting state is a U.S. ally, units and individuals should be scrutinized to ensure they do not receive security assistance if they're committing human rights violations. The United States and other democracies have the ability and the responsibility to blunt the tools of transnational repression and protect vulnerable exiles. Thank you for your time and attention, and I look forward to our discussion.

WICKER: Thank you very much.

Mr. Min.

MIN: Thank you, Chair. I'd like to thank the chair and the co-chair of the Commission for this opportunity to speak at this panel. I'm also very thankful that the Commission has decided to take an interest in what we believe is a very important matter. Interpol is not subject to any formal external effective oversight, so the oversight of member countries, and particularly the United States – the largest state donor financially speaking to Interpol – is particularly helpful. Fair Trials has been campaigning for the past seven years or so for the reform of Interpol. We believe that Interpol plays a very important role in making the world a safer place, and the system of red notices and diffusions are central to the fulfillment of that objective.

Just to get the basics right, red notices – as quite rightly pointed out earlier – are electronic alerts circulated through Interpol's systems to seek the location and the arrest of an individual – a wanted individual – with a view to extradition. They're often described as international arrest warrants, but they are not. There is no international legal obligation to act upon a red notice. Diffusions are electronic alerts that are also circulated through Interpol's information system that carry a request for police cooperation, which can be exactly the same as a red notice – namely, to seek the location and the arrest of a wanted individual. But the key differences between red notices and diffusions are formality – with diffusions being less formal than red notices – and also the manner in which they are checked and disseminated, which I will come to a little bit later.

The big challenge for Fair Trials is that Interpol is not always able to ensure that red notices and diffusions comply with their rules relating to human rights and political neutrality, as a result of which we get certain states abusing its systems to target dissidents and others in need of international protection. Our concerns were outlined in our 2018 report, "Dismantling the Tools of Oppression," where we identified that there were serious flaws to Interpol's systems that needed fixing. In summary, those two concerns are, one, the ways in which Interpol reviews red notices and diffusions, both prior to their dissemination and after their dissemination, and also the ways in which they interpret their rules relating to human rights and neutrality.

I'd like to emphasize, though, that Interpol is fully aware of these concerns, and they've taken steps to address them through a set of reforms adopted, probably for the past five years or so. At the moment, I think one of the biggest challenges is how Interpol reviews red notices and diffusions prior to and during circulation. Interpol has a team of about 30-40 staff members in the general secretariat whose role it is to check red notices and diffusions so they're not violating their rules. There's a big question about how effective these mechanisms are, primarily because there are no statistics around them. So we don't know of over 10,000 new red notices per year how many of those red notice requests get refused. Same goes for diffusions as well. If we even had just very basic data, just a percentage of how many red notices are rejected, that would persuade us to have a little more confidence that they are doing something.

And the other big challenge is that we simply have no idea what the procedures are for checking these red notice requests. We don't know, for example, what would trigger Interpol to carry out a more cautious assessment of whether or not a red notice request is compliant with its rules. We also don't know what kind of information they would consult if they find that a red

notice request requires a bit more review. Whatever these processes are wasn't quite clear from the cases that we see. We see red notices being issued in very clear cases of abuse, including against refugees who have a very public profile. So what we can tell is that whatever these systems are, they're simply not working as well as they should.

And in a way, that's not very surprising, considering particularly that we have about 30 to 40 staff members at Interpol reviewing over 10,000 new red notices per year, and on top of that about 50,000 diffusions per year as well. You don't need to do very complicated math to figure out that that's an enormously difficult task. The other big problem here is about diffusions as well, which I mentioned are checked in a different way to red notices. The problem is that they are not subject to the same sort of scrutiny as red notices, as a result of which there is a risk that unchecked data – possibly very devastating data – can enter into national databases and stay there. This is what has been causing the very high-profile arrests of Bill Browder.

For the lack of time, I won't be able to go into too much detail about the other concerns we had, just very briefly: there were lots of concerns about the effectiveness of Interpol's redress mechanism, the Commission for the Control of Interpol's File, or the CCF. In its previous form, the procedures of the CCF had basically no regard for basic due process standards, and it was unable to even make binding decisions, making it pretty ineffective as a redress mechanism. Fortunately, Interpol has taken steps to dramatically improve the CCF, as a result of which it's a much more fair process, and it's more independent and more capable of performing its role. But there are still problems in relation to its transparency, the fact that it's understaffed and under resourced. It's worth mentioning that it is not possible to challenge the CCF's decisions. So if you are affected by an abusive red notice and you don't get the right outcome, then there is no further recourse.

Finally, Fair Trials also had concerns about the interpretation of Interpol's rules, particularly in relation to human rights, because there is very little information about how those rules are interpreted. One policy development, a very positive development, over the past five years is the adoption of the refugee policy, which aims to protect individuals who have been granted refugee status under international law. But even there, although there are many positive things about it, we find that the scope of that policy is rather limited, and there are some problems in its effective implementation, given the first challenge that I talked about: Interpol's ability to weed out bad red notice requests.

In terms of our recommendations to member countries, the main thing that I wanted to say was that Interpol has been on a path of reform, making gradual improvements over the past few years. It needs encouragement to do that – not only to make sure that its current reforms are effectively implemented but also to be encouraged to adopt further reforms to address the rest of the concerns that remain. The other thing that member countries, and the United States included, should do, we think, is to help Interpol to do what they're supposed to do—that might be in relation to its decision making, helping them make the right decisions in the cases that they see, and also to alert them of potential patterns of abuse.

A really crucial thing is the lack of funding at Interpol for these very important mechanisms that keep their systems in check. The Commission for the Control of Interpol's

Files and the specialist team within Interpol that reviews red notice requests and diffusions are currently understaffed, in our opinion, and under resourced. They quite often depend on the generosity of member states to fund them and resource them. My other recommendations are outlined in the written briefing that I've submitted in advance. Of course, I'd be happy to discuss them in more detail. Thank you.

WICKER: We appreciate those recommendations.

And I think we're going to depart at this point from our assigned procedure. There's been a vote called on the House floor. And I want to give Mr. Veasey a chance to ask a question or two before these House members have to beat the clock. So, Mr. Veasey, you're recognized for questions. And then we'll take Ms. Grossman's testimony.

VEASEY: Thank you very much. I really had one question. I would just like to try to get into the mindset of the people that issue these—is it red flags?—because obviously that takes away time and resources when they issue these for people that are just dissenters from very serious violators out there that could be committing very serious acts like terrorism acts. What I'm trying to figure out is knowing that they could be taking away resources from more serious matters, why do they continue to do that? Obviously if there was a terrorism act that took place in Turkey that could have been prevented, because they were just trying to squash dissenters, obviously you wouldn't want that sort of blood on your hands. So if you could put me into the mindset of some of the leaders over there. We, obviously, in the United States, see terrorism as very serious. We probably place it on probably the highest of high priority. But maybe for them dissenting is just as big of a deal as terrorism. Can you just sort of put me into their mindset?

COOLEY: Sure. Thank you for that question.

I think part of the shift that's happened, especially over the last 15 years, is looking at the security and insecurity of their own rule and what are the sources of threat, right? So one source of threat is, of course, terrorists. In a post-9/11 war – a world of sort of global radicalization, these kinds of frames are a foremost concern around the world. But what happened, particularly in the mid-2000s, is that all forms of domestic opposition started to be recoded as threatening—as security threats. Security services who had been active in going after actual terrorist threats and fears of radicalization, started turning these same surveillance instruments, these same tools onto also political opponents, right?

So now we have a broad array of regime opposition that includes what we would regard possibly as terrorists, as well as ordinary domestic opponents. In countries like Tajikistan a political party that as part of the ruling coalition was banned in 2015 with all of its leadership rebranded terrorists and going abroad. So I think that's the switch that's happening.

SCHENKKAN: If I could just add one point to that too. I pretty much agree with what Alex said. The cost is actually quite low of inputting these requests. In the post-coup environment in Turkey, what we saw was essentially a batch upload. If you can imagine, you have a spreadsheet of names: that spreadsheet could have 20,000 names on it. Once the system is automated, you can essentially – I'm not speaking about the actual system – just upload these

names and generate requests – or, seek to generate requests. So the time spent—the effort spent—is low, because the technology enables you to diffuse those requests very rapidly.

That’s why it’s so important to get insight into the processes themselves and to try to improve the processes, because that’s really a due process question as I hope Bruno would agree. This is a due process question. How do you examine what can, in its impacts, have the effect of being an arrest warrant? That means you need a real process for examining them and making sure that they’re not in violation.

WICKER: Other questions from either Mr. Veasey or Mr. Wilson before we turn to Ms. Grossman?

OK, Ms. Grossman, you’re recognized. And I think you’re probably going to talk more about individual examples.

GROSSMAN: That’s right. As the only U.S. immigration attorney on this panel, I’m going to really focus on that topic. In my work as an immigration attorney over the past few years, I have seen how oppressive regimes are actually manipulating the U.S. immigration system to persecute political dissidents seeking refuge in this country. They are utilizing our justice system to arrest and jail political dissidents. And the manner in which this is happening is quite clear. Law enforcement agencies, in particular Immigration and Customs Enforcement, or ICE, utilize red notices to target foreign nationals, many times asylum seekers, and to detain them and press for their deportation.

The Department of Justice does not consider a red notice to be sufficient basis for an arrest. It does not meet the probable cause standard under the Fourth Amendment, and really offers little assurance into the legitimacy of the allegations it concerns. Unfortunately, what we’re observing in the immigration field is that ICE is treating many red notices as conclusive evidence of criminality, with consequences on the basic rights of victims of persecution. Even worse, this blind acceptance of an Interpol communication without scrutiny can, and often does, turn ICE officials and our own immigration judges into unwitting agents of repressive regimes.

I’d like to share with you some real-life examples of Interpol abuse that are currently processing through our immigration system. My client, a citizen of Russia, entered the U.S. with a valid visa and applied for asylum before the U.S. Citizenship and Immigration Services (USCIS). His persecution claim is based on spurious and persecutory tax fraud charges lodged against him by the same tax office that prosecuted Sergei Magnitsky. He appeared for what was supposed to be a non-adversarial asylum interview before USCIS. Instead, ICE arrived at the interview and detained him. He spent four months in jail before being released on a very high bond.

Interpol actually cancelled the red notice, recognizing its illegitimacy. However, my client and his family had already suffered the worst effects of the red notice through the U.S. immigration system. Years later, his case continues to languish in U.S. immigration court. We filed a Freedom of Information Act request in his case, which revealed that ICE categorized my client as a danger to the community and a flight risk based on nothing more than the existence of

the red notice. So in this very specific example, ICE agents and the immigration courts became tools in advancing bogus criminal allegations made by an autocratic government. There are many, many more examples.

In another case, a U.S. citizen filed to obtain lawful permanent residency for her father, a citizen of Armenia. Her father was the subject of a red notice that arose from a private business dispute with corrupt Armenian officials. ICE went to his home and detained him. The immigration judge denied a request to lower an extremely high bond amount, and this was in spite of extensive ties with U.S. citizen family members and his eligibility for permanent residence. The sole stated reason for refusing to lower the bond amount was the existence of the Interpol red notice. In fact, a red notice actually decreases flight risk and makes travel a lot more difficult. Nevertheless, DHS officials and immigration judges alike consistently miss this point, all at the expense of the liberty of persecuted persons, like my Armenian and Russian clients.

I'd also like to point out that a recent survey issued by the American Immigration Lawyers Association – which has more than 16,000 members – uncovered many more similar examples of Interpol abuse in the United States. As my colleagues here have testified today, Interpol does serve a good purpose, and the built-in human rights protections found in the constitution and subsidiary rules are sound. They only work if they are properly applied.

My recommendation is that part of holding Interpol and the Commission for the Control of Interpol's Files to a higher standard is requiring them to have greater transparency. Jurisprudence and reports must be published, and the organization must allow for more access to information and opportunities for advocacy, especially for persons who allege Interpol abuse. Within our own borders, we must do a better job at ensuring that immigration officials understand that the mere existence of a red notice, especially when it concerns an asylum seeker or affects the interests of U.S. citizens or lawful permanent residents, cannot be considered conclusive evidence of criminality.

If the Transnational Repression Accountability and Prevention Act accomplishes even some of these goals, it will be a much-needed first step to address the problem of Interpol abuse and to prevent our justice and immigration from being further manipulated by autocratic regimes. Thank you.

WICKER: Well, thank you very much to all four of you for your excellent testimony.

Who can tell us how much the United States donates to Interpol each year?

MIN: I'm afraid I don't have the exact statistics, although there might be other people in the room who might be able to get the statistics for you. The United States, at least among states donors, is easily the largest donor to Interpol. But I don't have the statistics.

WICKER: Well, try to get that to us.

GROSSMAN: I believe I do, sir.

WICKER: OK, yes.

GROSSMAN: This is, in part, thanks to the research of Dr. Ted Bromund. It looks like the United States contributed 19.4 percent in 2019, 11 million euros. And this is compared to Japan, which is second, who contributed 6 million euros. And China third, Russia, then Turkey. The United States is, by far, the greatest statutory contributor to Interpol.

WICKER: When was Interpol formed?

MIN: I believe Interpol was formed around, I think, the 1930s. It's often criticized for the fact that I think there was German involvement or German leadership in the creation of Interpol at the time. But that's the historic origin of the organization. I think it's evolved considerably since then, obviously. It started very much, I think, like a nongovernmental organization, a policeman's club. And now it's a much more formal entity.

WICKER: Was it abused during the run-up to Nazism in Germany?

MIN: I don't know about that. What we would say is that the phenomenon of red notices, and diffusions, and other Interpol tools being misused at this scale is a relatively new phenomenon. Obviously red notices have been around for decades. But it's relatively recent that they can be circulated with this much ease. And that's primarily due to technological developments, first of all, and also the growing understanding amongst states that international cooperation on police matters is absolutely crucial these days, given the global nature of security threats and crime.

WICKER: No question, it's a vital tool. No question it's being abused on a large scale.

Who was giving – I'm jotting notes here and trying to juggle members who had to go vote. Who was giving us information – was it you, Mr. Min – about the number of red notices per year and the number of diffusions per year, in the entirety of Interpol?

MIN: Yes, I think the latest statistics were something on the region of around 13,000 or 14,000 new red notices per year, and about 50,000 new diffusions per year. And those, I think, are just diffusions that call on the location and the arrest of individuals. I think it's worth mentioning at this point that the number of new diffusions issued jumped dramatically in the past couple of years. I think Interpol would attribute that primarily to the increasing use of their systems for foreign terrorist fighter alerts. But there are concerns that as there are better safeguards that prevent the misuse of red notices, countries are turning to diffusions instead, which have a less stringent checking mechanism.

WICKER: OK, well, tell us about that. Let's give the Commission and our friends listening worldwide those differences. When would you – and you want to jump in Mr. Schenkkan – when would a country decide to go through the more difficult procedure of a red notice? What does that entail? And then why is a diffusion easier?

SCHENKKAN: I'll also defer, I think, to Bruno and to Sandra Grossman on these matters. But I would say that the concern that observers of Interpol have is that the diffusion process essentially sends the communication directly. So Interpol is acting as a middleman, but without necessarily a process by which that diffusion is reviewed.

WICKER: So they don't vet the diffusion at –

SCHENKKAN: At the moment of submission.

MIN: Right. I mean, there's some unclarity on this. And what would be ideal would be someone from Interpol to explain that to us in that much more detail. So the reason why countries would use red notices instead of diffusions is that red notices are meant to have a higher injunctive value. Red notices are meant to be more serious. And that's the reason why they use that, whereas diffusions are meant to be more informal kind of casual variants, I suppose, in lots of situations.

So in terms of how the two are different in terms of how they're being checked, with red notices the information that eventually gets uploaded onto red notices doesn't become visible to other member countries until the request for the red notice is checked. So the country would send the request to Interpol's general secretariat saying that they want to have a red notice disseminated and providing all the details. That would be checked by Interpol. And then only if it's found to be compliant would that red notice be disseminated to all the member countries.

Whereas with diffusions, diffusions start their lives off pretty much like emails – like normal electronic communications between member countries of Interpol. And it is only after – when that information is sent out that Interpol is able to review that information. And only after it has done that is it able to validate that communication as a valid diffusion.

GROSSMAN: And I'd just like to point out, the organization is supposed to properly vet red noticed requests before they are sent out. The organization has very sound rules in its constitution: the principle of neutrality, the idea that any request by a member state has to comply with the spirit of the Universal Declaration of Human Rights.

But what's nebulous in these cases is exactly how Interpol is going about the process of making sure that these requests comply with the rules. And clearly there are some significant gaps there that are allowing some of these requests to be emitted. And then what makes the situation worse is that the mechanisms for then addressing illegitimate requests is extremely lengthy, inefficient. There's very little access for information. You know, you can write to the Commission for the Control of Interpol's Files to get a review of your case but, as someone else here pointed out, there is no appeal. Sometimes you're not able to learn exactly the details of the allegation. So it's a very difficult process that leaves victims with little opportunity for redress.

WICKER: Mr. Min, on this CCF, that stands for Commission for the Control of Files, it's the body which handles requests from individuals seeking access to or removal of information from Interpol's files. How well is this commission staffed? How big is this commission? How many member and how many staff?

MIN: So the commission is structured in a way that it's divided into two chambers. One deals with kind of data protection issues, and the other deals with complaints. I think the division is three-four. So there are four, I think, commissioners, I think, in the complaints chamber, if that's right?

GROSSMAN: There's three commissioners in the supervisory and advisory chamber, and then there's five –

MIN: Five, sorry. Thank you. And they sit a few times a year to decide on requests and complaints. But they work with a team of, I think, around a dozen people. There's like a secretariat for the Commission for the Control of Interpol's Files, who are there full time. And they're the ones who really do most of the leg work. But even then, I mean, I think what we hear from them, from speaking to the Commission for the Control of Interpol's Files, is that there's always a big challenge in terms of sifting through all these requests with the limited funding and staff resources that they have. So it was very disappointing that in last year's budget for Interpol it seemed as though the staffing had increased by one, but the funding for the CCF had actually decreased.

WICKER: Where is it housed?

MIN: It's in Lyon. It's basically next to Interpol.

WICKER: In the most celebrated case that I know of, the case of Bill Browder, how is it that there's just not a flag anytime the Russian Federation submits a red notice on Bill Browder, that this is probably bogus and it's probably just a rehashing of what's already been determined to be invalid? Who wants to try that?

MIN: If I can just jump in there as well, I think the main issue about Mr. Browder's case is that these are diffusions. And for the reasons that we mentioned earlier, diffusions are notoriously difficult to check for Interpol, because the information that forms the basis of diffusions are sent out directly between states. The real problem, I think, is that we can always delete red notices and diffusions after they've been disseminated through the Commission for the Control of Interpol's Files, or whatever other means. But the frank reality is that in the policing context, I'd be very surprised if data was ever really deleted. The data that's being circulated via and on Interpol's systems is quite often transferred into domestic databases. And Interpol might, for reasons that a red notice or a diffusion is incompliant with its rules, delete that from their databases and ask other countries to delete copies of that information from their domestic databases, but there's a big problem with compliance.

And it was quite telling last year, I think, a question was asked in the German Bundestag about how often the German police complied with Interpol's requests to delete red notices and diffusions. The response that came back was that they delete the vast majority, but they don't delete all of them. So given that Germany's been particularly vocal about misuse of Interpol, we found that quite interesting and surprising.

WICKER: Let me just ask this. And unfortunately they tell me there's a car waiting for me outside at 11:30 to take me to another meeting. So we're scheduled way too tight for this important matter, and I apologize for that. Is there anything in the constitution or bylaws or procedures of Interpol to stop resubmitting these notices and diffusions? Is there any sanctions or penalties? Yes, ma'am, Ms. Grossman?

GROSSMAN: If I may, Senator Wicker, there is a possibility within Interpol to make preventative requests. And we have done that in cases where there are blatant human rights abuses. And also I'd like to point out that in the Bill Browder case Interpol did stop issuing diffusions and red notices against him in recognition of the illegitimacy of those requests from Russia. So there are some mechanisms where one is able to make this kind of a request. The issue is too that Interpol has very stringent rules on admissibility. It's an organization that is built to respond to the requests of member states for law enforcement purposes. So when you as an individual are arguing that you are a victim of human rights abuses, you have to show that your request is admissible. And you have to know that, in fact, you are included on Interpol databases already. So there again, while there are avenues for redress, they are difficult to access.

MIN: On the point about how they're able to prevent repeated cases of abuse on exactly the same case, we haven't had a very convincing, in my opinion, answer from Interpol as to how they do that. We've been given assurance that once a red notice, for example, has been found to be incompliant with its rules, there are systems to make sure that repeat attempts of red notice requests are refused because, again, there's a question about diffusions, which are not circulated in the same manner.

But we've have seen at least one example of that system not working. And that was about two, three years ago, where we had one individual who claimed asylum from a Latin American country. And once she did that, and she got her refugee status, she contacted Interpol immediately to say: 'I'm very concerned that I might get a red notice against me. This is proof of my refugee status. Could you please block any attempts at getting a red notice?' That didn't work, and she was arrested on the basis of a red notice in another Latin American country within a matter of months.

So there is a big question about how efficiently that system works. In terms of what can be done in terms of repeat offenders – as in, the repeat offending countries. It's well within Interpol's functions to restrict access to its databases to countries that are repeat offenders. My understanding is that that doesn't happen that often. We don't know of any kind of specific examples of that being done. And this is partly to do with them being a membership organization and being sensitive to the opinions of other member countries, perhaps.

WICKER: Mr. Cooley,—really I'm going to be chastised if I don't make this next meeting—Mr. Schenkan made specific recommendations. Is he absolutely right-on on all of them? Do you support wholeheartedly what he had to say, or would you make any modifications or offer some advice to us? And then I'll ask the other two also.

COOLEY: No, on the specific recommendations I would wholeheartedly support those.

My final comment would be a general one, which is many of these organizations that the Commission deals with on the international, regional front, the overall change in the international context has also changed authoritarians' calculations. There's a certain sense that there's a good-faith nature to the protections that are in Interpol that we're not going to abuse them for these sort of constitutional reasons. Once that good faith is no longer there, then there are all sorts of manners in which these safeguards and protections within the DNA of these organizations can be twisted and manipulated. So that's just my word of warning.

WICKER: Mr. Min? Were those good recommendations?

MIN: Mr. Schenkkan's recommendations?

WICKER: Yes.

MIN: I do agree with Mr. Schenkkan's recommendations, yes.

WICKER: OK.

GROSSMAN: I agree with them as well. I would like to point out just one addition to your question about how much the United States contributes. And what I cited to you were the statutory contributions. It also makes additional contributions on a per project basis to Interpol's trust fund and special account. So I do have statistics from 2017. The U.S. Department of State supported projects through Interpol with a total value of 2.6 million euros. And then there are other projects, apparently memoranda of understanding with the FBI, which result in payments of unspecified amounts to Interpol. So we're looking at at least 13 million euros in U.S. statutory and project contributions in 2017. So the United States has the possibility to influence what happens in this organization and to advocate that the organization utilize its best efforts to apply the rules that it has in the constitution and in its subsidiary rules.

WICKER: And I hope this hearing provides a bit of a push, among others, that need to be made in that regard. Your testimony is that different organs of the United States government view these notices and diffusions different?

GROSSMAN: Yes, Senator. My testimony is centered around the fact that the U.S. Department of Justice has a very clear policy that red notices do not meet our minimum standards for arrest under our Constitution. Nevertheless, that message isn't getting across to decisionmakers in our immigration system who are using red notices to target foreign nationals in the United States. Many times these individuals are fleeing persecution in their home countries.

WICKER: Good information to have and something for us to follow up on.

Let me just observe that it's – this hearing is about a broad tool – about a broad subject. And that's transnational repression. My questions have centered in on Interpol, because it's something that's so visible and so egregious, that we have so many examples of. It seems that

we come down to the real problem here and that is that there are a large number of members of Interpol, including some of our allies, who are frankly international scofflaws. And to the extent that we have to defer to these governments who take at face value what they send to us, that has become a real problem, and a real abuse. I, for one, am determined to be part of a solution to getting to the bottom of this and reversing that.

Thank you very much for being here. Thanks to all of you for attending and for, I hope, thousands and thousands of people who are participating with us on livestream today. Thank you and, unfortunately, this hearing is adjourned.

[Whereupon, at 11:31 a.m., the hearing ended.]