



**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

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U.S. immigration officials separated Maria from her 3-year-old son in 2019 because of information obtained through a foreign data-sharing program that accused her of “gang affiliation.” After months of investigation, her NIJC lawyers obtained an official document from the government of her home country confirming she had no criminal record. Only after Maria’s attorneys submitted this document to the U.S. Department of Justice was she released and finally reunited with her son. They were separated for more than three months.*

Maria’s story is one of many tragic cases of people caught up in a web of unreliable foreign-data-sharing programs that prejudice immigrants seeking asylum or other lawful status in the United States. Foreign data sharing has become deeply embedded in U.S. immigration enforcement, resulting in myriad due process and civil rights violations.

The U.S. government operates an expansive network of transnational data-sharing programs that immigration enforcement agencies access to target immigrants in the United States for arrest and to restrict access to asylum

** This policy brief uses pseudonyms or first names only to protect the identity of all the individuals who shared their stories.*

and other forms of relief. Many of the programs operate through bilateral agreements and task-force operations in which U.S. agencies gather unverifiable information from foreign police forces. Agents abroad then transmit the information through a network of data systems that U.S. Customs and Border Protection (CBP) agents use to screen people at the U.S. border, and Immigration and Customs Enforcement (ICE) officials use to target immigrants throughout the country for detention and deportation.

These Department of Homeland Security (DHS) agencies often use information obtained through transnational data-sharing programs against immigrants without disclosing the basis of the allegations. DHS's reliance on foreign data programs discounts critical questions such as whether a person is guilty of an alleged offense and whether the initial data entered by foreign police was the result of coercion or false accusations. The same foreign security forces providing the data are themselves documented by U.S. agencies to be engaged in corruption and abuses such as warrantless arrests and acts of political repression.¹ Still, U.S. government attorneys and immigration judges rely on the faulty information these entities provide to determine the fate of immigrants seeking safety or immigration status in the United States.

Transnational data sharing plays an increasingly prominent role in pushing U.S. migration-control

operations abroad.² DHS officials often conflate immigration processing with national security, border security, and anti-gang and anti-crime programs. Multi-agency data systems link law enforcement, foreign intelligence, and immigration adjudication agencies together in ways that prejudice immigrants falsely accused of wrongdoing. For asylum seekers and refugees, foreign data sharing gives repressive authorities an avenue to pursue their victims and force them back to their home countries to face the violence they fled in the first place.

In 2022, NIJC conducted an investigation into the ways in which foreign data interacts with immigration enforcement programs, utilizing open records requests to obtain internal government records and a survey completed by 34 attorneys.

This policy brief presents the results of this investigation: Section I) provides an overview of prominent U.S. transnational data-sharing programs that rely on unreliable foreign sources, and the harms they cause; Section II) examines the ways in which information obtained through foreign data prejudices immigrants seeking asylum and other forms of protection in the United States; and Section III) provides recommendations on ways to restrict the reliance on foreign data and protect the rights of individuals swept up in such programs.

A note on methodology used to develop this policy brief: NIJC designed a survey on DHS enforcement programs involving transnational data sharing and opened it to immigration attorneys, community groups, and people directly impacted by foreign-data-sharing practices. Thirty-four people filled out the survey between October 2021 and March 2022. NIJC conducted interviews by phone and video with attorneys who filled out the survey from March through September 2022, who shared additional details and supporting records on immigration cases that involved foreign -data-sharing programs. The interviews included attorneys with NIJC, Capital Area Immigrants' Rights (CAIR) Coalition, National Immigration Project of the National Lawyers Guild, New York Legal Assistance Group (NYLAG), Pangea Legal Services, Hofstra Law School Deportation Defense Clinic, and the Refugee and Immigrant Center for Education and Legal Services (RAICES).³

I. Casting the Net: How DHS collects data from foreign governments

U.S. immigration agents are privy to a steady stream of data accusing immigrants of past crimes or gang affiliation in their home countries. As set forth below, this data lacks credibility and prejudices people's chances for immigration relief on a large scale. The information is shared with U.S. federal agencies through a web of transnational programs that includes U.S.-led task forces stationed abroad, Interpol Red Notices, and information sharing through bilateral agreements with foreign governments.⁴


A. U.S.-Led Transnational Task Forces

One way that ICE and CBP agents gain broad access to unsubstantiated information is through U.S.-led transnational task forces that collect information and monitor people long before they reach the U.S. border. Publicly available information about these programs is limited, but NIJC has been able to glean some information regard-

ing one program known as the Security Alliance for Fugitive Enforcement (SAFE) program. The SAFE program is a network of ICE-led task forces that operate transnationally, composed of foreign law enforcement agencies and immigration authorities.⁵

ICE's Enforcement and Removal Office (ERO) launched the SAFE program as a pilot in El Salvador in 2012.⁶ The program expanded⁷ as part of the Trump administration's efforts to conflate migration with gangs and crime to demonize immigrants.⁸ In 2020, ICE reported publicly about a workshop held in El Salvador with law enforcement in the region to plan the expansion of the SAFE program.⁹ The program has grown to include Guatemala, Honduras, Mexico and other countries, and operates in coordination with other ICE multi-agency operations.¹⁰

Another cross-border data sharing program that increased in prominence during the Trump administration is the FBI's Transnational Anti-Gang (TAG) Task Force initiative.¹¹ This initiative shares

ICE/ERO SECURITY ALLIANCE FOR FUGITIVE ENFORCEMENT (SAFE)												
	AME NOMBRE	[REDACTED]				ALIAS CONOCIDO POR	N/A		AGE EDAD	[REDACTED]		
	ADDRESS RESIDENCIA	[REDACTED]							PROFESSION PROFESION	[REDACTED]		
	PHYSICAL FEATURES (CARAC. FÍSICAS)	HEIGHT ESTATURA	[REDACTED]	WEIGHT PESO	[REDACTED]	HAIR CABELLO	[REDACTED]	EYES OJOS	[REDACTED]	SKIN PIEL	[REDACTED]	
	POB LUGAR DE NACIMIENTO	MUNICIPALITY MUNICIPIO	[REDACTED]			DEPARTMENT DEPARTAMENTO	[REDACTED]					
	DOB FECHA DE NACIMIENTO	DD	MM	YY	EL SALVADOR ID# DOC. DE IDENTIDAD	[REDACTED]		MARITAL STATUS ESTADO CIVIL	[REDACTED]			
	FATHER PADRE	[REDACTED]				MOTHER MADRE	[REDACTED]					
	SPOUSE CONYUGE	Haga clic o pulse aquí para escribir texto.										
	GANG PANDILLA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	OTHER OTRAS	N/A					
	CRIMINAL RECORD ANT. DELINCUENC.	[REDACTED]										
	INTERPOL INFO. INTERPOL	No	NOTICE DIFUSION	N/A		SPECIFY ESPECIFIQUE	N/A					
	ARREST WARRANT ORDEN DE CAPTURA	No	SPECIFY ESPECIFIQUE	N/A								
	INMIGRATION INFO. REGISTRO (DGME)	No	SPECIFY ESPECIFIQUE	N/A		CONSULATE CONSULADO	Haga clic o pulse aquí para escribir texto.					
REMARKS DATOS DE INTERES	No	SPECIFY ESPECIFIQUE	N/A		IN CUSTODY EN CUSTODIA	No	SPECIFY ESPECIFIQUE	N/A				
											SAFE ANALYST ANALISTA SAFE	

Information transmitted through the SAFE program to DHS officials.
(Source: Records submitted by ICE Chief Counsel in removal proceedings of an NIJC client.¹²)

information with local security officials in El Salvador, Guatemala, and Honduras.¹³ The FBI's TAG units also work with ICE's Homeland Security Investigations Transnational Criminal Investigative Units on transnational investigations and arrests of suspected gang members in Central America and the United States.¹⁴

NIJC and other legal service providers have observed the SAFE and TAG programs result in DHS wrongfully targeting people for arrest, detention, and deportation on the basis of wrongful allegations of criminal offenses or gang affiliation in their home countries. One NIJC client endured prolonged detention because of vague allegations of gang membership that DHS obtained through the SAFE program. DHS simply assumed the allegations to be true. Ultimately, ICE released the young man from custody, and ICE officials admitted to NIJC's legal team that the allegations were baseless.¹⁵ Another legal service provider told NIJC about a client who was wrongfully accused of gang membership because of the TAG program.¹⁶

The U.S. government's own reporting confirms the unreliable nature of information obtained from foreign task forces, which frequently originates with Central American police and security forces

known for abuse and wrongful arrests. The U.S. State Department's Country Report on Human Rights Practices in El Salvador for 2021, for example, documented how Salvadoran police "frequently ignored" their constitutional requirement for a written warrant of arrest when "allegations of gang membership arose."¹⁷ The same report discussed cases where young people in areas with a supposed high presence of gangs were victims of "arbitrary or illegal detentions" by the national police.¹⁸ Similarly, the State Department's most recent human rights report for Guatemala documents "illegal detention by police," with reports that the "police ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood anti-gang operations."¹⁹ And, in Honduras, the State Department has documented credible reports of "torture and cases of cruel, inhuman, or degrading treatment or punishment by government agents," as well as "arbitrary arrest or detention."²⁰

Moreover, ICE and FBI-led foreign task forces rely on extremely broad criteria when considering who to label as gang-affiliated. Internal records shared with NIJC, for example, show that the TAG Task Force in El Salvador uses vague and ill-defined factors to determine if someone is gang-affiliated, including: "tattoos; associates;

***Accused of gang affiliation, denied release from ICE detention:
Camilo's story***

Camilo is an asylum seeker who fled to the United States from El Salvador after police repeatedly threatened to harm him if he refused to falsely testify against gang members. Only after his detention in the United States, however, did he learn that Salvadoran police had followed through on their threats and levied unfounded charges against him. The criminal allegations brought against Camilo as part of his persecution ended up being included in a SAFE report, which indicated that Camilo was part of the MS-13 gang but with no source or evidentiary basis for the allegation.

Camilo's I-213 form (Border Patrol's version of an arrest report) shows that CBP falsely accused him of being part of a transnational organized criminal group, apparently because of the accusations delivered through the SAFE program. Border agents then sent him to detention, and ICE repeatedly denied his release, presumably on the same grounds. Throughout, ICE and CBP appeared to take the allegations included in the SAFE report for the truth, without any inquiry or questioning.

Camilo, through NIJC counsel, hired a Salvadoran attorney who confirmed there were no police or judicial records in San Salvador in Camilo's name. ICE finally released him from detention in the fall of 2021. Based on the evidence submitted by his legal team, ICE officials admitted at the time of his release that the allegations against him had been false. Camilo paid a steep price for his months detained in punitive conditions in ICE custody, including deteriorating physical and mental health.

family members; residential locations; locations frequently visited; dialect and words used while speaking; manner of dress” and other factors.²¹ DHS agents thus arrest and deport thousands of people each year who they accuse of foreign crimes or gang membership with no way to determine the validity or the basis of the information.²²

B. Interpol Red Notices

A “Red Notice” from Interpol is used by member countries to alert law enforcement worldwide about “internationally wanted fugitives.”²³ The U.S. government does not consider a Red Notice alone sufficient for arrest in the United States, due to the fact that such notices do “not meet the requirements for arrest under the 4th Amendment to the Constitution.”²⁴ Such notices do not have “independent probative value” and are not the result of a judicial process.²⁵ Despite their unreliability and inherent due process concerns, U.S. immigration agencies regularly rely on Interpol Red Notices to decide whether to detain

someone or grant them asylum or other forms of immigration relief.²⁶

Multiple U.S. law enforcement agencies use Interpol Red Notices to target immigrants. The U.S. Justice Department’s Interpol office works directly with ICE and the U.S. Marshals Service in multi-agency enforcement operations to track down immigrants accused of crimes via Interpol Red Notice.²⁷ ICE also assigns deportation officers to Interpol to assist in targeting and apprehending people in the United States based on allegations of crimes committed in other countries.²⁸ Interpol data also feeds into mobile biometrics scanning devices used by ICE in immigration raids.²⁹

An attorney with the New York Legal Assistance Group (NYLAG) discussed with NIJC some of the due process concerns that arise when DHS relies on data obtained through foreign sources.³⁰ In her casework, the attorney has seen DHS use Interpol Red Notices as “shadow evidence,” with little transparency, to undermine a person’s chances for discretionary immigration relief or

Accused of gang affiliation, denied asylum: Alex's story

Alex was wrongfully labeled a gang member by police in his home country and denied asylum after a DHS attorney submitted information obtained through the Transnational Anti-Gang Task Force (TAG) program as evidence against him. The government attorney prosecuting the case did not share the evidence used to support the gang affiliation until very late in his case, and even then, the document had not been translated and lacked official markings.

Alex’s attorney raised objections to this late introduction of evidence and was granted a continuance. He then investigated the TAG program to counter the evidence presented, but public information was sparse. During the next hearing, Alex explained that, like many men in El Salvador, he was arrested in El Salvador and accused of being a gang member by Salvadoran police simply because he was young, poor, and lived in a gang-controlled neighborhood. A country expert affirmed that, after reviewing the printout allegedly from the TAG program, the evidence did not support the allegations that Alex was in a gang. Still, the immigration judge found that Alex wasn’t credible and denied his asylum claim because of the accusations. He remained in ICE detention while he appealed the decision.

On appeal, the Board of Immigration Appeals (BIA) remanded the case back to the immigration judge. To authenticate the TAG printout, the DHS attorney introduced new evidence — an email purportedly written by an FBI attaché who provided a few sentences about the TAG program. The judge again denied the asylum claim, and Alex again appealed. The BIA again remanded the decision back to the immigration judge, and the case was then placed with another DHS attorney, who agreed to Alex’s request for deferral of removal under the Convention Against Torture (CAT).³¹ ICE detained Alex for more than four years.

access to benefits. She has observed ICE agents and attorneys fail to disclose the existence of Red Notices in their charging documents, requiring immigrants' attorneys to uncover any evidence relating to allegations of past crimes or arrest warrants issued abroad. When DHS discloses its reliance on a Red Notice, it does so in seemingly haphazard and arbitrary ways. The attorney recalled that she only happened to discover DHS's reliance on a Red Notice for one of her clients because an ICE attorney mentioned it in an opposition to a motion to reopen. In another case, a deportation officer told her about a Red Notice in response to a parole request. In yet another case, she found out through a congressional liaison.

When DHS does reveal records on alleged foreign arrests, they often do so in opposition to substantive arguments made by attorneys advocating for their client's release or appealing their deportation in immigration court. There are no formal rules of evidence governing immigration proceedings as there are in criminal proceedings, making it more difficult to dispute accusations stemming from foreign data sharing.³² It can often

take months to get such information from DHS, leaving people at a disadvantage when attempting to challenge evidence used against them.

C. Collecting criminal histories and biometric data from foreign governments

The U.S. government maintains a network of information-sharing agreements with foreign governments, which DHS uses to collect and share data for arrests, detention, and deportation. Such agreements fuel the widespread sharing of sensitive biometric data with far-reaching consequences for immigrants accused of having a suspected criminal history, both in countries participating in the programs and within the United States. The programs exhibit a host of chilling problems, including unreliable sources and privacy and civil liberties concerns.

One illustrative program is the Criminal History Information Sharing (CHIS) program, which allows ICE agents access to data on people

Fleeing persecution, detained, returned to danger: Alfred's story

An Interpol Red Notice landed Alfred in ICE detention, was used to undermine his asylum claim, and resulted in his deportation. Alfred suffered these consequences even after the Red Notice was provisionally blocked by the oversight body that handles requests to correct or delete Interpol data.

Alfred is a gay asylum seeker from Jamaica, a country known for widespread anti-gay violence and which criminalizes same-sex conduct.³³ Alfred was accused of violating these discriminatory laws, and subsequently, the Jamaican government wrongfully issued a Red Notice accusing him of crimes that he adamantly denies. He fled Jamaica because his life was in danger after the accusations against him spread.

ICE arrested Alfred after he was admitted to the United States on a tourist visa and submitted an asylum application, an unusually aggressive exercise of enforcement authority that appears to have been based on the Red Notice. ICE not only detained Alfred but also placed him in solitary confinement because of the accusations against him stemming from the Red Notice. While Alfred was detained, his asylum application was denied by the immigration judge and the BIA on the basis of the "serious non-political crime bar," with DHS using the Red Notice to justify the bar's application.³⁴ Alfred's case remains pending before the Fourth Circuit.

Alfred's legal team at the National Immigration Project worked with an expert on Interpol who helped get the notice provisionally blocked in March 2022. Nonetheless, the Fourth Circuit and BIA denied Alfred's second stay of removal request, and ICE deported him in early April 2022. While his attorneys seek to reopen his case, Alfred is forced to live in hiding in Jamaica.

from around the world.³⁵ Data collected from foreign governments through the CHIS programs is entered into ICE's Enforcement Integrated Database (EID), which both ICE and CBP agents query for enforcement purposes.³⁶ ICE's Criminal Alien Program (CAP) officials received "6,990 inbound transmissions" in Fiscal Year 2021 through CHIS agreements with the governments of the Bahamas, Cape Verde, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, and the United Kingdom.³⁷ In practice, the CHIS program transmits data from foreign governments through a maze of databases that routinely result in CBP and ICE enforcement actions.³⁸

A 2016 DHS Privacy Impact Assessment addressed a number of risk factors associated with the CHIS program, including accuracy issues, incorrect data entry, security failures, and data security.³⁹ Criminology scholar Ana Muñiz has conducted an in-depth examination of the privacy and civil liberties concerns associated with the CHIS program, finding that the program conflates "national security, public safety, and immigration control."⁴⁰

In addition to the CHIS programs, DHS also signed biometrics data-sharing agreements with El Salvador, Honduras, and Guatemala in 2019, as part of the Trump administration's third country asylum offshoring agreements known as the Asylum Cooperation Agreements (ACAs).⁴¹ At the time, rights groups raised concerns over the information-sharing aspects of the agreements, including the potential implications for the rights of families and children and the lack of transparency regarding DNA testing.⁴² While the Biden administration terminated the Trump-era ACAs,⁴³ the biometric-data-sharing agreements appear to still be in effect.

U.S. government reporting illuminates serious reliability concerns regarding the information transmitted from foreign partners through bilateral and regional data-sharing agreements. The U.S. State Department's 2021 human rights reporting, for example, addressed judicial deficiencies and acts of repression in the same countries that

provide information through such agreements for DHS. In Jamaica, for instance, the U.S. State Department reported on the "denial of a fair public trial for thousands of citizens," along with reports of "unlawful and arbitrary killings by government security forces; arbitrary arrest and detention; significant government corruption."⁴⁴ In the Dominican Republic, "police made sporadic sweeps or roundups in low-income, high-crime communities during which they arrested and detained individuals without warrants."⁴⁵

The governments with bilateral biometrics data-sharing arrangements with DHS also have documented serious human rights and corruption issues. El Salvador's President Nayib Bukele declared a "State of Exception" after government negotiations with gang leaders fell apart in March 2022, suspending basic rights, including freedom of expression, association, and due process rights.⁴⁶ In Guatemala, the U.S. State Department has expressed deep concern over the attorney general's "continued, brazen attacks on Guatemala's justice system through politically motivated arrests and detentions of current and former public servants fighting corruption."⁴⁷ DHS signed the data-sharing agreement with Honduras under the administration of former President Juan Orlando Hernandez⁴⁸ at a time when the U.S. Department of Justice reported that Mr. Hernandez was using the country's "law enforcement, military, and financial resources to further his drug trafficking scheme."⁴⁹

The agreements signed during the Trump administration and expanded upon during the Biden administration have only exacerbated rights violations against asylum seekers and migrants and should not form the basis of any legitimate policy today.⁵⁰ Nonetheless, the Biden administration continues to expand DHS's surveillance reach through bilateral and regional information-sharing programs, and by deploying more immigration agents abroad.⁵¹ ICE Acting Director Tae Johnson admitted to Congress in May 2022 that the efforts were intended to "reduce the flow of migrants" arriving to the United States and "push the U.S. border south."⁵²

II. How DHS's reliance on foreign data sharing harms people seeking protection in the United States

As foreign data flows into domestic federal data systems, it impacts people seeking immigration relief in multiple stages. DHS officials have broad prosecutorial discretion at nearly every stage of an immigration case, from deciding to initiate removal proceedings to whether and how long to detain an individual to whether to stipulate to asylum or another form of relief in open court. Foreign data sharing results in family separation because border patrol agents rely on such data when processing arriving asylum seekers. Immigration judges also frequently utilize discretion in bond determinations and in discretionary decisions about whether to grant asylum or other relief from removal. Officers and judges rely on foreign data in these discretionary decision-making processes with little transparency.

A. Family separations

The Biden administration continues to separate families at the U.S.-Mexico border despite publicly denouncing the practice.⁵³ In many cases, the underlying justification utilized by DHS for the separation is an allegation of criminal or gang history obtained through foreign data sharing. These separations result in the same life-long scars as the separations reported on widely during the Trump administration's "Zero Tolerance" policy and are rendered, with little transparency, on the basis of allegations that are often false and have little-to-no connection to an individual's fitness to be a parent.

In *Ms. L vs. ICE*, the U.S. District Court for the Southern District of California prohibited the government from separating migrant parents and their minor children but allowed for separations to occur in certain cases, including where the government determined that a parent had a "criminal history."⁵⁴ DHS exploited this loophole to continue to separate thousands who the government determined fell outside of the *Ms. L* class, including parents wrongfully accused of past crimes or gang affiliation in their home countries.⁵⁵

NIJC raised the alarm over separations still occurring because of false allegations of criminality shared by foreign sources months after the Trump administration claimed to have stopped engaging in the family separation practice.⁵⁶ The Texas Civil Rights Project also documented cases in which DHS separated parents from their children based on "suspicion" or "evidence" of criminal history or gang affiliation shared by foreign governments.⁵⁷ Internal records show DHS separated hundreds of families well beyond the end of the "Zero-Tolerance" program based on suspected criminal histories in the United States or the parent's home country.⁵⁸

From June 2018 to July 2019, NIJC represented more than 100 separated children and their parents, including asylum seekers separated because DHS relied on foreign data to allege that the mother was a gang member.⁵⁹ In nearly all of the cases involving gang-affiliation allegations, the mothers were in fact *victims* of severe gang violence; NIJC was eventually able to disprove the allegations.⁶⁰ NIJC found that parents were sometimes given some verbal indication at their credible fear interviews of the basis for the separations but no specific details or documentation. Their NIJC attorneys asked numerous government officers, including ICE deportation officers, U.S. Citizenship and Immigration Services asylum officers, ICE trial attorneys, and attorneys from the Department of Justice, for documentation to substantiate allegations of gang affiliation or criminal history. In all but one case, the government refused to provide NIJC with documentation reflecting the reason or justification for the separation.⁶¹

Although the media spotlight is gone, family separations persist today, and the experience of NIJC and other legal service providers suggests that foreign data sharing is a driver behind these separations. Congressional appropriators require monthly reporting from the Biden administration and continue to express concern about foreign-intelligence sharing resulting in family separations.⁶² As of October 2022, DHS has reported 107 cases of family separation from October 2020 through May 2022, resulting because

the parent had a “criminal history,” and 26 cases of separation resulting from information alleging “cartel/gang affiliation.”⁶³ These separations impacted people primarily from Honduras, El Salvador, and Guatemala, countries with active information-sharing agreements and security forces riddled with corruption and abuse. However, DHS has thus far failed to abide by its congressional requirement to disclose which of those separations resulted because of information obtained from a foreign government.⁶⁴

B. Immigration detention bond and custody decisions

DHS frequently relies on foreign data when making decisions regarding when to detain a person and for how long, often leading to prolonged detention without access to judicial review. ICE officers rely on foreign data — often without notifying the detained person of the existence or use of the data — when making initial and subsequent bond determinations. ICE attorneys use the same information as evidence before the immigration judge in bond hearings.⁶⁵

When DHS apprehends an individual at the border or in the interior of the United States, an immigration officer determines whether they will remain in custody or be released during their removal proceedings.⁶⁶ These determinations are discretionary, and ICE officers regularly rely on foreign data but are not required to disclose such reliance in writing or provide the detained

individual or their attorney a copy of the data. Some individuals may seek review of the custody determination by an immigration judge.⁶⁷ The majority of those detained, however, are not eligible to seek such review under mandatory custody provisions of federal immigration law.⁶⁸

At bond hearings, the burden of proof falls to immigrants to prove they should be released.⁶⁹ When DHS officials introduce information relating to a person’s criminal history, immigration judges often rely fully on the government’s allegations to decide whether a person is a “danger to the community” or “flight risk.”⁷⁰ In such cases, immigration judges often deny bond or set a high bond based on criminal accusations gleaned through foreign data sharing, such as on the basis of the existence of an Interpol Red Notice.

Foreign data sharing practices compound existing concerns relating to ICE’s custody determinations, which suffer from opacity and inconsistencies. The Capital Area Immigrants’ Rights Coalition has represented numerous clients who faced detention because of foreign data sharing, including a case where DHS kept a client in detention even after Interpol rescinded the Red Notice that landed him in detention in the first place. The client was held in ICE detention for more than six months after he won his asylum case and told his attorney that his prolonged detention was agonizing and caused him mental suffering. He feels that the time he lost in detention is time he will never get back.⁷¹

C. Prosecutorial discretion

Separated because of allegations of gang affiliation: Maria's story

Maria fled her home country with her three-year-old son after suffering physical and sexual violence at the hands of gang members. When she entered the United States in February 2019, immigration officials separated her from her child on the basis of allegations of a criminal history shared by the government of her country of origin.

Internal U.S. documents reveal that at the time, DHS recorded the reason for the separation as “parent has a criminal history (U.S. or home country).” Yet for a month after she was separated from her son, Maria was completely unaware of any basis for the separation. NIJC attorneys discovered that the government cited alleged “gang affiliation” and a “criminal record” as the reason for the separation. They had to obtain an official document from the Salvadoran government confirming that there was no documentation of any criminal record in their systems. After Maria’s attorneys submitted this document to the U.S. Department of Justice, she was released and finally reunited with her son. They were separated for more than three months.

Family separations based on secret allegations: Victoria's story

Victoria fled Colombia with her husband and their 10-year-old child, Felipe, to seek asylum in the United States. But the family was separated at the U.S.-Mexico border in May 2022 after a U.S. official accused Victoria of being affiliated with an armed group in her home country.

In CBP detention, a plain-clothed U.S. official who introduced himself as an “investigator” interrogated Victoria and accused her of belonging to an armed group and having spent time in jail in Colombia. Victoria was shocked and explained that none of the allegations were true. In fact, Victoria was internally displaced as a young child and fled her country because of death threats after her family joined a process to reclaim land stolen during Colombia’s internal armed conflict. Victoria felt the CBP investigator’s accusations were discriminatory based on the stigma associated with people from Colombia.

The day after the interrogation, CBP officials took Felipe away. Victoria had no chance to say good-bye. A few hours later, she was in a vehicle with her husband en route to a U.S. Marshals facility, without any knowledge of her son’s whereabouts. CBP referred Victoria and her husband for criminal prosecution for a misdemeanor offense for failure to present themselves at a port of entry. U.S. officials sent their son to an Office of Refugee Resettlement (ORR) shelter more than a thousand miles away.

Months after their separation, NIJC obtained official documents from the Colombian government confirming there were no records of criminal history associated with either Victoria nor her husband. Still, despite extensive outreach to ICE’s parental interests unit, DHS officials, and various levels of ORR hierarchy, the U.S. government has not disclosed any information about the basis for the separation. To date, Victoria is still separated from her child, causing her and her family irreparable lasting trauma and harm. Felipe struggles daily with increasing mental health challenges. Victoria is so distraught by her absence from her son that she can barely speak his name.⁷²



in ICE enforcement actions

DHS officials have broad access to unreliable data culled from foreign sources when considering requests for “prosecutorial discretion” from individuals facing detention and deportation.⁷³ ICE has discretionary authority to determine when to carry out enforcement actions, and its exercise of prosecutorial discretion varies based on guidance that can vary from one administration to the next.⁷⁴

The Biden administration’s September 2021 immigration enforcement priorities were enjoined by a federal court and are subject to ongoing litigation.⁷⁵ Still, DHS agencies continue to make decisions regarding detention and deportation with discretion and on a case-by-case basis, and attorneys continue to advocate for prosecutorial discretion for their clients.⁷⁶ Foreign data sharing continues to play a harmful role in these decisions.

An attorney with NYLAG told NIJC that her organization has observed an increase over the last year of ICE arrests and execution of removal

Hernandez-Lara v. Lyons

Ana Ruth Hernandez-Lara spent 10 months in ICE detention after an immigration judge denied her request for bond because of an Interpol Red Notice falsely accusing her of gang membership. On August 19, 2021, the First Circuit Court of Appeals affirmed the lower court’s ruling that ICE violated Ms. Hernandez-Lara’s due process rights when it conducted a bond hearing where she had the burden of showing that she was not a danger and not a flight risk. The court found that the “burden of proof on Hernandez decisively exploited her inability to rebut the Red Notice, even though it did not specify a single act of criminal or dangerous conduct.” The court further ruled that “due process requires that the burden of showing dangerousness and flight risk must be on the government by clear and convincing evidence.”⁷⁷

Arrested, denied asylum, denied release from detention: Gustavo's story

Gustavo fled his home country after false charges were lodged against him in retaliation for whistleblowing. Those same retaliatory charges led to his arrest and detention in the United States and were used against him in immigration court.

After Gustavo arrived in the United States in 2021, the government of his home country submitted an Interpol Red Notice in his name. ICE became aware of the Red Notice when they found out that Gustavo had overstayed his visa. Shortly after, ICE apprehended him with the help of local law enforcement.

ICE cited the Red Notice to deny Gustavo’s release from detention, and the immigration judge relied on the notice to deny bond. The judge in Gustavo’s asylum case also denied his application for asylum because of the Red Notice, finding him ineligible for such relief on the basis of allegations of having committed a serious nonpolitical crime. ICE ultimately released Gustavo from custody in June 2022 after his attorney at the Refugee and Immigrant Center for Education and Legal Services escalated his case to DHS headquarters, citing evidence to show the Red Notice was political in nature and not based on any criminal arrest or conviction. Gustavo was detained for nearly nine months, all on the basis of a Red Notice that arose because of the same persecution he fled.

orders based on information gleaned through foreign sources, including Red Notices. ICE has rarely provided information regarding their justification for arrest or explained why they considered a person to be a danger to the community. Some of NYLAG's clients have lived peacefully in their communities for decades before ICE detained them because of Red Notices. The attorney shared the story of one individual who ICE detained for months on the basis of a Red Notice, despite the fact that he suffered from a traumatic brain injury.⁷⁸

D. Access to asylum and other forms of relief from removal in immigration court

In immigration court proceedings, DHS officials often present information relating to a person's alleged involvement in criminal activity, at home or abroad, to argue for the immigration judge to deny them asylum or other forms of relief. For-

Barahona v Garland

In Barahona v Garland, the Eighth Circuit Court of Appeals held that a Red Notice, on its own without supporting evidence, is insufficient to show probable cause that an asylum seeker committed a "serious non-political crime." The court's holding is in line with the U.S. government's position that a Red Notice alone is not sufficient to support legal action that requires a showing of probable cause.⁷⁹ Importantly, the court's ruling means that non-citizens should not be denied asylum for criminal activity based solely on evidence presented in an Interpol Red Notice and reinforces the government's burden to establish probable cause in such cases.⁸⁰ Unfortunately, this case is not binding on immigration judges outside of the Eighth Circuit.

Arrested, detained, and denied asylum based on the non-political crime bar: Zavier's story

Zavier was wrongfully accused of a crime as a teenager and fled his home country in 2018 to escape persecution associated with the investigation into those responsible for the crime. Because he was a minor traveling alone when he entered the United States, he was placed in ORR custody. He was then released to a sponsor and, years later, served a sentence for juvenile delinquency. On the day he was scheduled for release from U.S. juvenile detention, however, authorities discovered an Interpol Red Notice had been issued in his name based on a warrant from a juvenile court in his home country. Because of the Red Notice, rather than release him, authorities turned him over to ICE and then back to ORR because he was still a minor. He was transferred to ICE detention when he turned 18.

As Zavier's attorney told NIJC, the Red Notice was based on a warrant and not a conviction, raising significant due process concerns, particularly given that Zavier's ongoing detention restricted his ability to clear his name. Had he been able to visit his consulate to provide sworn testimony regarding the crime he was accused of, his home government likely would have rescinded the Red Notice. Despite these problems, the immigration judge granted protection under the Convention Against Torture (CAT) but denied him asylum, finding that the Red Notice triggered the serious nonpolitical crime bar. Zavier appealed, and the appeals board overturned the ruling, but the judge again denied asylum because of the Red Notice. Zavier chose not to continue to appeal and accepted relief under CAT, hoping to be released from detention. He was detained for more than two years before finally being released from ICE detention in November 2022. Zavier told his attorney that the anguish of being detained for years as a teenager had a detrimental mental and emotional impact.

foreign data can therefore have an extremely prejudicial impact on individuals, given the centrality of credibility and discretion to decisions regarding asylum and other forms of relief from removal.⁸¹

One common way foreign data sharing practices such as Red Notices impede access to asylum is by triggering immigration adjudicators to apply the statutory bar to asylum that applies to individuals who carried out a “serious non-political crime.”⁸² In order to provide that a person is barred from asylum under this provision, the gov-

ernment must establish that there are “serious reasons for believing” the person committed a disqualifying crime.⁸³ Courts have interpreted this phrase to require a showing of probable cause.⁸⁴ Attorneys argue that allegations of arrests or criminal activity as reported by foreign governments are not sufficient to meet the government’s burden; yet, judges continue to rely on Red Notices to deny asylum on the basis of the serious non-political crime bar.

III. Conclusion

Foreign-data-sharing operations involve a web of programs whose parameters and operations are difficult to navigate, intersect in opaque ways with domestic criminal and biometrics databases, lack transparency, and fail to hold accountable unreliable data sources. To protect the rights of immigrants and asylum seekers, the U.S. government must review all foreign-data-sharing programs and terminate those that result in rights violations and/or the separation of families.

In January 2021, the White House ordered a review of foreign government information-sharing practices to “evaluate the efficacy of those practices” and examine how the United States ensures the accuracy and reliability of the information provided by foreign governments.⁸⁵ To date, however, there is no public information regarding this review process or the resulting recommend-

ed policy changes. Congress has also sought to pierce the secrecy on the issue of foreign data sharing, but with little success.⁸⁶

The research presented in this policy brief adds to the growing body of literature drawing attention to the negative impact of DHS surveillance and foreign-data-sharing programs on immigrants seeking protection in the United States.⁸⁷ Lawmakers and policymakers must undertake measures to develop safeguards to protect due process and human rights when foreign data is used, curtail the indiscriminate use of foreign-data programs in the immigration system, and enhance transparency and accountability for the programs that provide DHS broad access to foreign data.

IV. Recommendations

To the Administration: Safeguards

- **Restrict the reliance on foreign data in immigration decision-making and adjudication:** DHS should issue guidance to component agencies (ICE ERO, ICE Office of the Principal Legal Advisor, and CBP) stating that arrests or convictions for an offense in a foreign country alone do not constitute sufficient grounds to deny a positive exercise of prosecutorial discretion, whether that be release from detention, dismissal of proceedings, stipulation to relief, or otherwise. DHS should limit the circumstances in which foreign data sharing can trigger an enforcement action, including arrest, continued detention, or the initiation of removal proceedings. DHS should give little or no weight to allegations arising from foreign governments in cases where the allegations are made against an asylum seeker by the government of a country where the individual fears return.
- **Prevent foreign data sharing programs from causing family separations:** The Family Reunification Task Force should issue recommendations to DHS to explicitly prevent family separations from occurring based solely on information obtained through foreign sources. CBP should issue responsive guidance to prohibit separations from occurring on the basis of foreign data.
- **Terminate bilateral and regional agreements:** The administration should review and terminate the bilateral and regional biometrics data sharing agreements signed or in operation during the prior administration.

To the Administration: Transparency & Accountability

- **Publish the findings of the White House review:** The administration should make public the multi-agency review of the foreign government information sharing practices involving the U.S., and the associated recommendations, as instructed in the January 2021 White House Proclamation.⁸⁸
- **Issue privacy and civil liberties reports:** DHS and the Justice Department should issue up-to-date Privacy Impact Assessments on the SAFE program, FBI's TAG program, use of Interpol Red Notices, and other known programs that impact the privacy and due process rights of immigrants and asylum seekers.
- **Provide transparency in immigration adjudications and decision-making:** DHS should issue public guidance to require ICE and CBP officers to provide a copy of any evidence, arrest warrants, or other documentation of allegations arising from foreign data sharing programs to individuals (and, if represented, their attorneys) any time such information is utilized to render a determination that impacts the individual's liberty or due process rights. DHS should require ICE OPLA attorneys to provide a copy of evidence arising from foreign data sharing programs any time such information is utilized in prosecutorial discretion determinations and/or inform positions taken in the course of bond and/or removal proceedings. In all cases, the impacted individual and their counsel should immediately be given ample opportunity to rebut allegations arising from foreign data sharing programs and to present countervailing evidence to the relevant DHS adjudicator and/or immigration judge.

- **Create complaint mechanisms for impacted individuals:** DHS CRCL and the Office of the Inspection General (OIG) should create a process for individuals to submit formal complaints specifically for any circumstance in which an individual believes DHS's reliance solely on information obtained through foreign data sharing programs has led to family separation, is negatively impacting their immigration case, is resulting in ongoing detention, or causing other harms.
- **Investigate foreign data sharing agreements that lead to family separations:** The Family Reunification Task Force should investigate cases of family separation resulting from foreign data sharing programs and include in its progress reports updates on such cases and recommendations and recommendations on the policies and programs responsible for the separations.

To Congress: Safeguards & Oversight

- **Restrict ICE and CBP access to foreign data:** Through appropriations and other legislative vehicles, Congress should restrict the use of foreign data programs for immigration enforcement purposes. At a minimum, Congress should set limits on the use of foreign data so that the information alone cannot constitute sufficient grounds to deny a positive exercise of prosecutorial discretion, deny access to asylum and other forms of relief from removal, or separate families.
- **Convene oversight hearings on DHS's use of foreign data:** Congress should hold hearings and request investigations by the DHS Government Accountability Office (GAO) and the OIG to examine the extent of the use of foreign data sharing programs in DHS enforcement practices and adjudication decisions.
- **Divest funding from unaccountable data systems:** Congress should cut funding for data systems with a track record of abuse and overreach and which interact regularly with foreign data, such as the DHS Homeland Advanced Recognition Technology (HART) system, and reallocate funding to ensuring access to immigration benefits and asylum processing.⁸⁹

Acknowledgments

This report was authored by Jesse Franzblau, Senior Policy Analyst at the National Immigrant Justice Center. For questions email jfranzblau@heartlandalliance.org.

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Endnotes

1. See *infra*, Sections I. A. and I. C. for information on U.S. State Department reporting on abuses carried out by security forces that regularly provide U.S. immigration agencies with data used for enforcement and adjudication purposes.
2. See, e.g., Azadeh Erfani and Maria Garcia, et al., *Pushing Back Protection: How Offshoring and Externalization Imperil the Right to Asylum*, Chapter 5, National Immigrant Justice Center & FWD.us (August 2021), <https://immigrantjustice.org/press-releases/new-report-how-offshoring-and-externalization-policies-imperil-right-asylum> (providing a detailed examination of U.S. offshoring of asylum processing and immigration enforcement, including through asylum cooperation agreements that include information sharing components).
3. NIJC presented the initial findings of the survey during a presentation with the Capital Area Immigrants' Rights (CAIR) Coalition & Seton Hall School of Law in February 2022, entitled "How to Challenge Tainted Interpol Red Notices & Foreign Data." NIJC also made the preliminary findings of the survey available in March 2022. See National Immigrant Justice Center, *DHS Enforcement Programs Involving Foreign Data Sharing* (March 2022), <https://rb.gy/cf5wbh>.
4. DHS also gathers information from foreign governments through programs not discussed in detail in this report. This includes, for example, the Biometric Identification Transnational Migration Alert Program (BITMAP); a program in which ICE "trains and equips foreign governments to collect and share biometric and biographic data on migrants outside the United States." See, e.g., Paromita Shah et. al, *ICE'S EDDIE PROGRAM: How ICE Uses Biometric Scanner Tech To Ramp Up Raids*, Mijente and Just Futures Law (Washington, DC: November 2020) at 18 [hereinafter "Shah et. al, ICE's EDDIE Program, 2020"]
5. See U.S. Immigration and Customs Enforcement, *ICE ERO hosts Security Alliance for Fugitive Enforcement workshop for Central American counterparts in El Salvador*, ICE new release (San Salvador, El Salvador: January, 22, 2020), [hereinafter "ICE ERO SAFE workshop, 2020"] <https://www.ice.gov/news/releases/ice-ero-hosts-security-alliance-fugitive-enforcement-workshop-central-american>.
6. *Id.*
7. ICE reported removing 468 people to their home countries through the SAFE program in FY 2018. See U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, *ERO-101, Program Overview* (Washington, DC: 2020) <https://s3.documentcloud.org/documents/21398276/ice-ero-powerpoint-handout.pdf>. The Trump administration expanded the U.S. government's foreign data collection reach as part of its focus on anti-gang initiatives. See e.g., Derek N. Benner and Matthew Albence, *The MS-13 Problem: Investigating Gang Membership as Well as its Nexus to Illegal Immigration and Assessing the Federal Efforts to End the Threat* (Washington, DC: U.S. Immigration and Customs Enforcement, June 21, 2017), <https://www.ice.gov/sites/default/files/documents/Speech/2017/170621ms13.pdf>; U.S. Immigration and Customs Enforcement, *The MS-13 Problem: Investigating Gang Membership as Well It's Nexus to Illegal Immigration and Assessing the Federal Efforts to End the Threat, Responses to Question for the Record, U.S. Senate Judiciary Committee* (Washington, DC: 2017) <https://www.judiciary.senate.gov/imo/media/doc/Albence-Benner-Pro-vost%20Responses%20to%20QFRs.pdf>.
8. See, e.g., Southern Poverty Law Center, *Trump is lying about immigrant crime and research proves it*, SPLC News, May 17, 2019, <https://www.splcenter.org/news/2019/05/17/trump-lying-about-immigrant-crime-and-research-proves-it> (discussing research showing that the Trump administration falsely conflated immigration with crime). See also Aliza Luft and Daniel Solomon, "How dangerous is it when Trump calls immigrants animals," *Washington Post*, May 25, 2018, www.washingtonpost.com/news/monkey-cage/wp/2018/05/25/how-dangerous-is-it-when-trump-calls-some-immigrant-animals.
9. See *ICE ERO SAFE workshop, 2020, supra* note 5 ("The workshop, which took place in early December 2019, offered participants presentations about the SAFE task force program and later broke them into groups to formulate additional ideas on how to best expand the SAFE program throughout Latin America and around the world.")
10. *Id.* See also U.S. Department of Homeland Security, *Congressional Justification, U.S. Immigration and Customs Enforcement Budget Overview, Fiscal Year 2023* (Washington, DC: March 2022) at 147,

https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Immigration%20and%20Customs%20Enforcement_Remediated.pdf. [hereinafter “ICE FY23 Congressional Budget Justification”] (reporting that the National Criminal Analysis and Targeting Center provides targeting and operational support for a number of ongoing, “multi-agency investigative and intelligence activities” including the SAFE program). See also U.S. Immigration and Customs Enforcement, *ICE makes history with first non-US law enforcement partner receiving prestigious award*, ICE Newsroom (Washington, DC: September 23, 2022) <https://www.ice.gov/news/releases/ice-makes-history-first-non-us-law-enforcement-partner-receiving-prestigious-award>. (ICE provided an award to an official in Mexico City for “leading Interpol Mexico’s contributions to ERO Mexico City’s Security Alliance for Fugitive Enforcement (SAFE),” what ICE called “a robust information sharing relationship with the Government of Mexico that supports ERO’s ability to identify, arrest, and remove fugitives with active criminal arrest warrants in Mexico from the United States.”)

11. See Kristin Finklea, *MS-13 in the United States and Federal Law Enforcement Efforts*, Congressional Research Service (CRS), R45292 (Washington, DC: August 20, 2018), <https://sgp.fas.org/crs/homesecc/R45292.pdf> (reporting that the Transnational Anti-Gang Task Force initiative led to the arrests of thousands of suspected gang members in the United States and in Central America in 2017-2018). See also U.S. Department of Justice, “3,800 Gang Members Charged in Operation Spanning United States and Central America” (Washington, DC: September 29, 2017), <https://www.justice.gov/opa/pr/3800-gang-members-charged-operation-spanning-united-states-and-central-america>.

12. ICE Chief Counsel submitted the SAFE records in immigration court in NIJC client Camilo’s removal proceedings in August 2021. Records on file with NIJC.

13. See U.S. Federal Bureau of Investigations, *What we Investigate: Gangs*, (Washington, DC: 2022) [last visited Oct. 19, 2022] <https://www.fbi.gov/investigate/violent-crime/gangs>.

14. See U.S. Department of Justice, *More than 700 Members Of Transnational Organized Crime Groups Arrested in Central America in U.S. Assisted Operation*, Office of Public Affairs, Press Release No. 20-1291 (Washington, DC: November 27, 2020), <https://www.justice.gov/opa/pr/more-700-members-transnational-organized-crime-groups-ar>

[rested-central-america-us-assisted](#).

15. See *infra* page 4 sidebar, Camilo’s story. Case records provided by Camilo’s attorney, on file with author.

16. See *infra* page 5 sidebar, Alex’s story. Interview notes and email exchanges with Alex’s attorney on file with author.

17. U.S. Department of State, *2021 Country Reports on Human Rights Practices: El Salvador*, page 8 (Washington, DC: 2022) https://www.state.gov/wp-content/uploads/2022/02/313615_EL-SALVADOR-2021-HUMAN-RIGHTS-REPORT.pdf [hereinafter “State Department Report El Salvador 2021”]

18. *Id.* See also United Nations Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on her mission to El Salvador*, UNHRC (December 2018), <https://digitallibrary.un.org/record/1663022?ln=en> (a UN investigation found that police and state officials in El Salvador consider young people gang members based simply on the area they live, carry out extrajudicial killings of alleged gang members, and tamper with crime scenes).

19. See U.S. Department of State, *2021 Country Reports on Human Rights Practices: Guatemala* (Washington, DC: 2022), https://www.state.gov/wp-content/uploads/2022/02/313615_GUATEMALA-2021-HUMAN-RIGHTS-REPORT.pdf [hereinafter “State Department Report Guatemala 2021”].

20. See U.S. Department of State, *2021 Country Reports on Human Rights Practices: Honduras* (Washington, DC: 2022) https://www.state.gov/wp-content/uploads/2022/02/313615_HONDURAS-2021-HUMAN-RIGHTS-REPORT.pdf [hereinafter “State Department Report Honduras 2021”].

21. Email from FBI Assistant Legal Attache in El Salvador. Document provided by an attorney interviewed for this report, on file with NIJC. (According to the email, FBI’s standards include: “tattoos; associates; family members; residential location; locations frequently visited; dialect and words used while speaking; manner of dress; admission by individual upon arrest to determine their placement in custodial system; investigative intelligence.”)

22. See U.S. Customs and Border Protection, *CBP Enforcement Statistics Fiscal Year 2022*, CBP Newsroom (Washington, DC: October 2022) <https://>

- www.cbp.gov/newsroom/stats/cbp-enforcement-statistics. (CBP arrested 627 people attempting to enter the United States from September 31, 2021, to August 15, 2022, who they claimed had a “gang affiliation.” CBP also arrested 7,441 people during the same period who the FBI’s National Crime Information Center accused of being “wanted by other law enforcement agencies.”) See also U.S. Immigration and Customs Enforcement, *Fiscal Year 2020 Enforcement and Removal Operations Report* (Washington, DC: 2021) <https://www.ice.gov/features/ERO-2020> & U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2021*, (Washington, DC: March 2022) <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2021.pdf> (ICE reported removing 4,276 people in FY 2020 and 2,718 people in FY 2021 who were “known or suspected gang members.”)
23. See INTERPOL, *About Red Notices* (INTERPOL General Secretariat, France) [last visited August 19, 2022], <https://www.interpol.int/en/How-we-work/Notices/Red-Notices>.
24. See U.S. Department of Justice, *Frequently Asked Questions, Can a person be arrested based on an INTERPOL Red Notice?* (Washington, DC: August 18, 2022), <https://www.justice.gov/interpol-washington/frequently-asked-questions#thirteen>. See also U.S. Department of Justice, *Organization and Functions Manual*, Sec. 3, A (Washington, DC: 2018), <https://www.justice.gov/jm/organization-and-functions-manual-3-provisional-arrests-and-international-extradition-requests>.
25. Ted R. Bromund and Sandra A. Grossman, “Challenging a Red Notice What Immigration Attorneys Need to Know About INTERPOL,” *AILA Law Journal*, Vol. 1, No. 1 (April 2019), <https://www.grossmanyong.com/wp-content/uploads/sites/155/2019/04/AILA-1-1-bromund.pdf>.
26. Chanel Cornet and Sandra Grossman, “*Barahona v. Wilkinson* Practice Pointer – Red Notices and the Application of the Serious Non-Political Crime Bar,” American Immigration Lawyers Association, Doc. No. 21060137 (June 1, 2021) [hereinafter “*Barahona v. Wilkinson* AILA Practice Pointer 2021”] <https://www.grossmanyong.com/wp-content/uploads/sites/155/2018/10/Barahona-AILA-PP.pdf>. See also Hamed Aleaziz, “No One Has To Prove The Allegations In An Interpol Red Notice. But They Were Enough For ICE To Separate This Mother From Her Family,” *Buzzfeed News*, January 27, 2019, <https://www.buzzfeednews.com/article/hamedaleaziz/mother-detention-ice-red-notice-interpol>.
27. See U.S. Justice Department, *Working with ICE, USMS to Apprehend Criminal Aliens*, Interpol Washington, (Washington, DC: June 22, 2016), <https://www.justice.gov/interpol-washington/pr/working-ice-usms-apprehend-criminal-aliens>.
28. See U.S. Immigration and Customs Enforcement, *Who We Are* (Washington, DC: 2022) <https://www.ice.gov/about-ice>.
29. See Shah et. al, *ICE’s EDDIE Program*, 2020, *supra* note 4, at 14 (Interpol data feeds into the DHS mobile application used by ICE and CBP called “EDDIE,” which “collects and shares, in real time, fingerprints, facial scans, location information, and immigration history during immigration raids.”)
30. Interview with Jodi Ziesemer, director, Immigrant Protection Unit, at New York Legal Assistance Group, conducted June 2022. Notes on file with author. [hereinafter “Ms. Ziesemer interview”]
31. People barred from asylum can apply for protection under the Convention Against Torture (CAT). For relief under CAT, people must show that they will be tortured if they return to their home country, and it must be granted by an immigration judge. See, e.g., Aruna Sury, *Qualifying for Protection under the Convention Against Torture*, Practice Advisory, Immigrant Resource Legal Center (April 2020) https://www.ilrc.org/sites/default/files/resources/cat_advisory-04_2020.pdf. See also, National Immigrant Justice Center and the American Immigration Council, *The Difference Between Asylum and Withholding of Removal*, Fact Sheet (Washington, DC: October 2020), <https://www.americanimmigrationcouncil.org/research/asylum-withholding-of-removal>.
32. Because immigration proceedings and decisions are considered civil and administrative, they are not governed by the Federal Rules of Evidence. See, e.g., Rebecca Scholtz et al., *Rules of Evidence in Immigration Court Proceedings*, Catholic Legal Immigration Network (March 30, 2020), <https://cliniclegal.org/resources/removal-proceedings/practice-advisory-rules-evidence-immigration-court-proceedings>.
33. See Neela Ghoshal, *Human Rights Body Calls for Repeal of Jamaica’s Anti-LGBT laws*, Human Rights Watch (2021), <https://www.hrw.org/news/2021/02/17/human-rights-body-calls-repeal-jamaicas-anti-lgbt-laws> (reporting that international bodies such as the Inter-American Commission on Human Rights have called on Jamaica to repeal laws prohibiting consensual same-sex conduct).

34. The serious non-political crime bar states that an individual is not eligible for asylum or withholding of removal if “there are serious reasons for considering that ... he has committed a serious non-political crime” abroad. 8 U.S.C. §§ 1158(b)(2)(A)(iii) (asylum), 1231(b)(3)(B)(iii) (withholding of removal). For more discussion of the serious non-political crime bar, see *infra*, Section II. D.
35. See *ICE FY23 Congressional Budget Justification*, *supra* note 10, at 156. (ICE reported in its budget overview for FY 2023 that as of March 2022, the program included 10 countries with 3 countries in negotiations.) For examples of Criminal History Information Sharing (CHIS) agreements, see *Immigrant Advocates Response Collaborative v. DHS* (N.D.N.Y.), a lawsuit under the Freedom of Information Act seeking records related to the Criminal History Program (CHIP), CHIS, and the Biometric Identification Transnational Migration Alert Program, National Immigration Litigation Alliance, complaint filed November 15, 2021, <https://immigrationlitigation.org/wp-content/uploads/2022/10/IARC-ICE.pdf>.
36. DHS personnel access the data in EID using software including the ENFORCE Alien Removal Module, which supports ICE’s processing and deportations. See U.S. Department of Homeland Security, *Privacy Impact Assessment for the Enforcement Integrated Database (EID)*, DHS/ICE/PIA-015(i) (Washington, DC: December 2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf>. EID also receives and shares data with the FBI’s National Crime Information Center (NCIC). See Erin M. Prest, Privacy and Civil Liberties Officer, *PIA: National Instant Criminal Background Check System (NICS)*, U.S. Federal Bureau of Investigation (FBI) (Washington, DC: November 2019), <https://www.fbi.gov/file-repository/pia-nics.pdf/view>.
37. See *ICE FY23 Congressional Budget Justification*, *supra* note 10, at 156. DHS also shares biometric data from ICE’s EID with foreign partners with CHIS agreements, including photographs captured in EID, and fingerprints retrieved from the DHS Automated Biometric Identification System (IDENT). DHS personnel enter biometric data received from foreign countries with agreements to use in enforcement and custody determinations. See U.S. Department of Homeland Security, *Privacy Impact Assessment for the Enforcement Integrated Database (EID)*, DHS/ICE/PIA-015(f) (Washington, DC: April 2014). DHS’s Homeland Advanced Recognition Technology (HART) is replacing DHS’s current IDENT biometrics database. It will “centralize access to federal and international databases, provide real-time access in the field, and involve the use of ‘multi-modal biometrics.’” See National Immigration Law Center, *Glossary at a Glance: Immigration Databases, Information Sharing Systems, and Case Management Systems*, NILC, (August 2021) <https://www.nilc.org/wp-content/uploads/2018/01/databases-glossary.pdf>.
38. See e.g., Ana Muñoz, “Bordering Circuitry: Cross jurisdictional Immigration Surveillance,” *U.C.L.A. Law Review*, 66 *UCLA L. Rev.* 1636 (UCLA, 2019), <https://www.uclalawreview.org/wp-content/uploads/securepdfs/2020/06/Muniz-66-6.pdf>. [hereinafter “Muñoz, Bordering Circuitry”]
39. U.S. Department of Homeland Security, *Privacy Impact Assessment for the Enforcement Integrated Database (EID) and Criminal History Information Sharing (CHIS) Program*, DHS/ICE/PIA-015(h) (Washington, DC: January 2016), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eidchis-january2016.pdf>.
40. See Muñoz, *Bordering Circuitry*, 2019, *supra* note 38 at 1678.
41. See U.S. Department of Homeland Security, *Fact Sheet: DHS Agreements with Guatemala, Honduras and El Salvador* (Washington, DC: November 2019), https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.
42. See, e.g., Latin America Working Group et. al, *Forced Return to Danger: Civil Society Concerns with the Agreements Signed between the United States and Guatemala, Honduras, and El Salvador* (December 2019), <https://www.wola.org/wp-content/uploads/2019/12/Forced-Return-to-Danger-STC-Civil-Society-Memo-12.4.19.pdf>.
43. See Anthony Blinken, U.S. Secretary of State, *Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras*, U.S. Department of State (Washington, DC: February 2021), <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras>.
44. See U.S. Department of State, *Jamaica 2021 Human Rights Report* (Washington, DC: 2022) https://www.state.gov/wp-content/uploads/2022/02/313615_JAMAICA-2021-HU-

[MAN-RIGHTS-REPORT.pdf](#). (The same report highlighted “unlawful and arbitrary killings by government security forces; arbitrary arrest and detention; significant government corruption” and other rights abuses)

45. See U.S. Department of State, *Dominican Republic 2021 Human Rights Report* (Washington, DC: 2022) https://www.state.gov/wp-content/uploads/2022/02/313615_DOMINICAN-REPUBLIC-2021-HUMAN-RIGHTS-REPORT.pdf. The State Department reporting repeats itself with other foreign-data-sharing partners that provide unreliable information to DHS through the CHIS program. See, e.g., State Department Report El Salvador 2021, *supra* note 17 (In El Salvador, the government did “not always respect judicial independence,” the judiciary was “burdened by inefficiency, and some agencies “ignored or minimally complied with [court] orders.”) See also State Department Report Guatemala 2021, *supra* note 19 (In Guatemala, the lack of “sufficient personnel, training, and evidence hampered Public Ministry prosecutors ability to bring cases to trial.”) See also State Department Report Honduras 2021, *supra* note 20 (In Honduras, there was a “lack of admissible evidence, judicial corruption, and witness intimidation.”) See also U.S. Department of State, Ecuador 2021 Human Rights Report (Washington, DC: 2022), https://www.state.gov/wp-content/uploads/2022/02/313615_ECUADOR-2021-HUMAN-RIGHTS-REPORT.pdf. (In Ecuador, “Corruption and general judicial deficiencies caused trial delays,” and “outside pressure and corruption impaired the judicial process.”)
46. See Human Rights Watch, *El Salvador: Broad ‘State of Emergency’ Risks Abuse* (Washington, DC: March 2022), <https://www.hrw.org/news/2022/03/29/el-salvador-broad-state-emergency-risks-abuse-0>. See also UN Human Rights Office of the High Commissioner, *El Salvador: Concern at measures in response to rising gang violence*, UNHRC (Geneva: April 2022), <https://www.ohchr.org/en/press-briefing-notes/2022/04/el-salvador-concern-measures-response-rising-gang-violence>. Since then, police forces have carried out massive sweeps of suspected gang members, arresting upwards of 50,000 people without warrants. See U.S. Congress Tom Lantos Human Rights Commission, *State of Exception in El Salvador*, Tom Lantos Human Rights Commission hearing (Washington, DC: September 12, 2022), <https://humanrightscommission.house.gov/events/hearings/state-exception-el-salvador>. See also Committee in Solidarity with the People of El Salvador (CISPES), *Government threatens arrests of those who march on International Workers Day*, CISPES Press Release, April 29, 2022, <https://cispes.org/article/government-threatens-arrests-those-who-march-international-workers-day>.
47. See Ned Price, *Guatemala’s Public Ministry’s Continued Attacks Against Independent Judges and Prosecutors*, U.S. Department of State, Press Statement (Washington, DC: March 2022), <https://www.state.gov/guatemalas-public-ministrys-continued-attacks-against-independent-judges-and-prosecutors>. See also Human Rights Watch, *In Guatemala, A Fresh Crackdown on Prosecutors* (March 1, 2022), <https://www.hrw.org/news/2022/03/01/guatemala-fresh-crackdown-prosecutors>.
48. See U.S. Embassy in Honduras, *Acting DHS Secretary Wolf’s Remarks with Honduran President Juan Orlando Hernández*, (Tegucigalpa, Honduras: January 9, 2020) <https://hn.usembassy.gov/acting-dhs-secretary-wolfs-remarks-with-honduran-president-juan-orlando-hernandez>.
49. See United States Department of Justice, Juan Orlando Hernández, *Former President of Honduras, Indicted on Drug-Trafficking and Firearms Charges, Extradited to the United States from Honduras*, Justice News (Washington, DC: April 2022), <https://www.justice.gov/opa/pr/juan-orlando-hernandez-former-president-honduras-indicted-drug-trafficking>. (according to the U.S. Drug Enforcement Administration, as president, Juan Orlando Hernández was “a central figure in one of the largest and most violent cocaine trafficking conspiracies in the world.”)
50. Members of the U.S. Congress have expressed hope over the recently elected government of Xiomara Castro in Honduras. See U.S. House of Representatives, State, Foreign Operations, and Related Programs Appropriation Bill, 2023, Report to accompany H.R. 8282 (Washington, DC: July 2022), <https://www.congress.gov/117/crpt/hrpt401/CRPT-117hrpt401.pdf> (“The Committee is encouraged by the positive steps taken by the recently elected Government of Honduras to address corruption, inequality, and poverty and urges the new Government to strengthen support for the rule of law, advance equity in its judicial and security sectors.”)
51. See, e.g., David J. Bier, “ICE Agents Deployed Abroad Increase 16% from 2020–2022 to Nearly 200,” CATO Institute, September 29, 2022, <https://www.cato.org/blog/ice-agents-deployed-abroad-increase-16-2020-2022-nearly-200>.
52. This includes, according to Tae Jonson, “increasing

- our [U.S.] international footprint” by “getting more special agents down in Mexico and the Northern Triangle.” See U.S. House Appropriations Committee, Subcommittee on Homeland Security Hearing, *Fiscal Year 2023 Budget Request for the U.S. Immigration and Customs Enforcement* (Washington, DC: May 2022), <https://appropriations.house.gov/events/hearings/fiscal-year-2023-budget-request-for-the-us-immigration-and-customs-enforcement>.
53. See e.g., U.S. White House, *Executive Order on the Establishment of Interagency Task Force on the Reunification of Families* (Washington, DC: February 2, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-the-establishment-of-interagency-task-force-on-the-reunification-of-families/>. See also John Washington & Anna-Catherine Brigida, “Biden is Still Separating Immigrant Kids from their Families,” *Texas Observer*, November 21, 2021, <https://www.texasobserver.org/the-biden-administration-is-still-separating-kids-from-their-families>.
54. See *Ms. L. v. U.S. Immigration and Customs Enforcement*, No. 18-cv-0428 DMS MDD (S.D. Cal. January 13, 2020).
55. See National Immigrant Justice Center, *Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families*, comment in response to request from the Family Reunification Task Force (January 2022), <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2022-01/Family-separation-policies-NIJC-comment-2022-01-19.pdf>. See also, Melissa del Bosque, “Immigration Officials Use Secretive Gang Databases to Deny Migrant Asylum Claims,” *ProPublica*, July 8, 2019, <https://www.propublica.org/article/immigration-officials-use-secretive-gang-databases-to-deny-migrant-asylum-claims>.
56. See National Immigrant Justice Center, *Oversight of Family Separation and U.S. Customs and Border Protection Short-Term Custody under the Trump Administration*, Statement submitted to the U.S. House Judiciary Committee Hearing (Washington, DC: July 25, 2019), <https://docs.house.gov/meetings/JU/JU00/20190725/109852/HHRG-116-JU00-20190725-SD014.pdf>.
57. Laura Peña et. al, *The Real National Emergency: Zero Tolerance & the Continuing Horrors of Family Separation at the Border*, Texas Civil Rights Project (2020) <https://txcivilrights.org/wp-content/uploads/2020/05/FamilySeparations-Report-FINAL.pdf>.
58. See Jesse Franzblau, “Family Separation Policy Continues, New Documents Show,” National Immigrant Justice Center, June 22, 2019, <https://immigrantjustice.org/staff/blog/family-separation-policy-continues-new-documents-show>. See also Lomi Kriel and Dug Begley, “Trump administration still separating hundreds of migrant children at the border through often questionable claims of danger,” *Houston Chronicle*, June 24, 2019, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-administration-still-separatinghundreds-of-14029494.php>.
59. See *Ms. L. v. U.S. Immigration and Customs Enforcement*, Declaration of Lisa Koop, No. 18-cv-00428 DMS MDD (S.D. Cal. July 20, 2019).
60. *Id.*
61. *Id.*
62. See U.S. Senate Explanatory Statement for the Homeland Security Appropriations Bill, 2022, (Washington, DC: October 2021), https://www.appropriations.senate.gov/imo/media/doc/DHS-Rept_FINAL.PDF (the U.S. Senate Committee on Appropriations explanatory statement for the FY 2022 Homeland Security Appropriations bill expressed concern that “DHS has relied on information obtained through State Department foreign intelligence sharing programs to make determinations to separate family units at the U.S.–Mexico border,” and required DHS to report on cases of separation where “DHS relies on information obtained through the HART database or through U.S. State Department foreign intelligence sharing, to separate a minor child from a parent, primary caregiver, or close relative who is caring for or traveling with that child,” and report the incidents to the “DHS Office of the Inspector General and Office of Civil Rights and Civil Liberties within 24 hours of the separation.”) See also U.S. House of Representatives, Department of Homeland Security Appropriations Act, 2022, Division F, Title I, Family Separation and Reunification, at 4 (Washington, DC: 2023) <https://docs.house.gov/billsthisweek/20220307/BILLS-117RCP35-JES-DIVISION-F.pdf>. [hereinafter “FY22 DHS Appropriations Joint Explanatory Statement”]
63. See U.S. Department of Homeland Security, *Family Unit Actions Report*, Fiscal Year 2021 Report to Congress (Washington, DC: March 23, 2022), https://www.dhs.gov/sites/default/files/2022-03/22_0323_plcy_family_unit_actions_report_fy21_September_0.pdf. See also U.S. Department of Homeland Security, *Family Unit Actions*

- Report October 1, 2021–May 31, 2022* (Washington, DC: September 20, 2020), https://www.dhs.gov/sites/default/files/2022-10/2022_0920_plcy_familly_unit_actions_report_may_2022.pdf. Health and Human Services (HHS) reported 16 separations resulting from “criminal history” and 5 because of “parent cartel/gang affiliation” in June and July 2022. See U.S. Health and Human Services, *Reports to Congress on Separated Children* (Washington, DC: 2022) <https://www.hhs.gov/programs/social-services/unaccompanied-children/index.html>.
64. See FY22 DHS Appropriations Joint Explanatory Statement, *supra* note 62 at 4 (the FY22 Joint Explanatory Statement for the Department of Homeland Security Appropriations bill requires DHS to report on the basis for any family separations, “including whether such separation was based on information obtained by a foreign government.”)
65. See e.g., Vanita Gupta, *How to Address Evidentiary Issues in Bond Proceedings*, Practice Advisory, Immigrant Legal Resource Center (December 2019), <https://www.ilrc.org/sites/default/files/resources/evidentiaryissuesinbondproceedings-final.pdf>.
66. See Hillel R. Smith, *Immigration Detention: A Legal Overview*, Congressional Research Service, R45915 (Washington, DC: September 2019), https://www.everycrsreport.com/files/20190916_R45915_5690fe9b6f95bc3e28626582de67bdba-57677fa8.pdf.
- 67.8 U.S.C. § 1226(a).
68. See, e.g., National Immigrant Justice Center, *Ending Mandatory Detention*, Policy Brief (March 2021), [hereinafter “NIJC, Ending Mandatory Detention”] https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2021-03/Policy-Brief_Ending-Mandatory-Detention_March-2021.pdf.
69. See *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006).
70. See NIJC, *Ending Mandatory Detention*, *supra* note 68. See also *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006); *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976).
71. Communication with Elizabeth Schmelzel, senior attorney with the CAIR Coalition. Email exchanges on file with author.
72. See Jesse Franzblau, “Biden Administration Must Stop Family Separations, Starting With Reuniting 11-Year-Old Felipe And His Parents,” National Immigrant Justice Center, November 21, 2022, <https://immigrantjustice.org/staff/blog/biden-administration-must-stop-family-separations-starting-reuniting-11-year-old-felipe>.
73. Requests for prosecutorial discretion include (this list is non-exhaustive): requests to ICE Enforcement and Removal Operations for release from detention or stays of removal; and requests to ICE Office of the Principal Legal Advisor to stipulate to relief, joint motions to reopen immigration proceedings, or terminate or close immigration proceedings. See, e.g., Shoba Wadhia, “The Role of Prosecutorial Discretion in Immigration Law,” 9 *Conn. Pub. L. J.* 243 (2010), https://elibrary.law.psu.edu/fac_works/17.
74. The Biden administration issued a set of enforcement priorities intended to guide ICE attorneys and officers regarding how to use their discretion when making decisions on whether to detain, initiate removal proceedings, allow relief from removal, or order someone deported. See Memorandum from Secretary Alejandro Mayorkas to Tae Johnson, Acting Director of Immigration and Customs Enforcement, *Guidelines for the Enforcement of Civil Immigration Law* (Washington, DC: September 30, 2021), www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf; Memorandum from Kerry E. Doyle, Principal Legal Advisor of Immigration and Customs Enforcement, to all Office of the Principal Legal Advisor Attorneys, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (Washington, DC: April 3, 2022), www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf [hereinafter “OPLA Guidance Memo”]. These guidelines are currently not in effect because of a nationwide injunction and ongoing federal litigation that is likely to soon reach the Supreme Court. See Shalina Bhargava Ray, “Immigration Enforcement Priorities and Presidential Duty,” *Lawfare*, August 23, 2022, <https://www.lawfareblog.com/immigration-enforcement-priorities-and-presidential-duty>. DHS officers and ICE attorneys, however, maintain their longstanding authority to engage in prosecutorial discretion decisions on a case by case basis. See, e.g., U.S. Immigration and Customs Enforcement, Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor, *Frequently Asked Questions* (Washington, DC: September 2022), <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>.

75. See Joanna Mexicano Furmanska, *Texas Judge Vacates Mayorkas Enforcement Priorities Memo*, Catholic Legal Immigration Network, June 28, 2022, <https://cliniclegal.org/resources/texas-judge-vacates-mayorkas-enforcement-priorities-memo>.
76. *Id.*
77. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 24–25 (1st Cir. 2021).
78. See Ms. Ziesemer interview, *supra* note 30.
79. *Barahona v. Garland*, 993 F.3d at 7.
80. See *Barahona v. Wilkinson* AILA Practice Pointer 2021, *supra* note 26.
81. Asylum, cancellation of removal, adjustment of status, and voluntary departure are some of the forms of discretionary relief regularly considered in immigration court. See 8 U.S.C. § 1158 (2012) (asylum); § 1229b (cancellation of removal); § 1229c (voluntary departure); § 1255 (adjustment of status).
82. See *supra* note 34.
83. *Barahona v. Garland*, 993 F.3d 1024 (8th Cir. 2021)
84. *Id.* at 1028. See also *Khouzam v. Ashcroft*, 361 F.3d 161, 165 (2d Cir. 2004).
85. U.S. White House, *Proclamation on Ending Discriminatory Bans on Entry to The United States*, Sec. 3, (Washington, DC: January 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states> [hereinafter “White House Proclamation 2021”].
86. See Commission on Security and Cooperation in Europe, U.S. Helsinki Commission, “Helsinki Commission Welcomes Passage of TRAP Provision in 2022 National Defense Authorization Act” (Washington, DC: December 15, 2021), <https://www.csce.gov/international-impact/press-and-media/press-releases/helsinki-commission-welcomes-passage-trap>. (Members of Congress included a provision in the National Defense Authorization Act in December 2021 aimed at forcing some measures of transparency and accountability for countries that abuse Interpol Red Notices.) See also *FY22 DHS Appropriations Joint Explanatory Statement*, *supra* note 62 at 14 (Congressional appropriations includes a requirement in the explanatory statement accompanying FY 2022 DHS funding bill requiring the disclosure of information related to “its technologies, data collection mechanisms, and sharing agreements among DHS immigration enforcement agencies, other Federal, State, local, and foreign law enforcement agencies, and fusion centers as relates to the development of HART.” This reporting requirement that passed in March 2022 required DHS to provide this information to Congress within 60 days. DHS has failed so far to abide by this reporting requirement.)
87. Years of research and advocacy has helped raise awareness of the unprecedented scope of DHS surveillance. See e.g., Georgetown Law Center on Privacy & Technology, *American Dragnet: Data-Driven Deportation in the 21st Century*, May 10, 2022, www.americandragnet.org/recommendations. A growing coalition of immigrant rights advocates and privacy experts have called for the U.S. government to end DHS sweeping surveillance practices, and to dismantle data systems that disproportionately impact Black and Brown immigrant communities. See, e.g., Julie Mao et. al, *ICE Intelligence Centers: How ICE Gathers Data to Conduct Raids and Deportations*, Just Futures Law, Mijente, and James H. Binger Center for New Americans, (2021), <https://www.flipsnack.com/justfutures/ice-intelligence-centers/full-view.html>. See also Mizue Aizeki and Paromita Shah et. al, *HART Attack: How DHS’s massive biometrics database will supercharge surveillance and threaten rights*, Just Futures Law, The Immigrant Defense Project and Mijente, March 4, 2022, justfutureslaw.org/wp-content/uploads/2022/05/HART-Attack.pdf. [hereinafter Aizeki & Shah, “HART Attack,” 2022]
88. See *White House Proclamation 2021*, *supra* note 85 at Sec. 3.(b). (The Proclamation called for “A review of foreign government information-sharing practices vis-à-vis the United States in order to evaluate the efficacy of those practices, their contribution to processes for screening and vetting those individuals seeking entry to the United States as immigrants and nonimmigrants, and how the United States ensures the accuracy and reliability of the information provided by foreign governments.”)
89. For a detailed study with recommendations relating to the HART database, see Aizeki & Shah, *HART Attack*, 2022, *supra* note 87.