# APPENDIX

# APPENDIX

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## APPENDIX A

**UNITED STATES COURT OF APPEALS**
**FOR THE SECOND CIRCUIT**

**August Term, 2021**

**Argued: February 3, 2022 Decided: May 24, 2022**

**Docket No. 21-1458-cv**

**[Filed: May 24, 2022]**

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| OUSSAMA EL OMARI, | ) |
| | ) |
| *Plaintiff-Appellant,* | ) |
| | ) |
| — v. — | ) |
| | ) |
| THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION, also known as INTERPOL, | ) |
| | ) |
| *Defendant-Appellee.*[*] | ) |

B e f o r e:

CABRANES, LYNCH, and CHIN, *Circuit Judges.*

Oussama El Omari appeals from the dismissal, for lack of subject matter jurisdiction, of his civil action

[*] The Clerk of Court is directed to amend the official caption in this case to conform with the caption above.

against the International Criminal Police Organization ("Interpol"), based on the district court's conclusion that Interpol is immune from suit under the International Organizations Immunities Act, 22 U.S.C. §§ 288-288*l*. El Omari argues that Interpol is not a "public international organization" within the meaning of § 288 and is thus ineligible for immunity under that Act, and, in the alternative, that Interpol has waived immunity for purposes of the present suit. We agree with the district court that Interpol is immune from suit and has not waived its immunity. Accordingly, we AFFIRM the district court's order and judgment.

SCOTT M. MOORE, Moore International Law PLLC, New York, NY, *for Plaintiff-Appellant.*

GINGER D. ANDERS (Jonathan S. Meltzer, *on the brief*), Munger, Tolles & Olson LLP, Washington, DC, *for Defendant-Appellee.*

GERARD E. LYNCH, *Circuit Judge*:

Plaintiff-Appellant Oussama El Omari brought this action in the United States District Court for the Eastern District of New York against the International Criminal Police Organization, commonly known as "Interpol," charging negligent infliction of emotional distress and violation of his right to due process of law under the New York State Constitution, after Interpol refused to delete a so-called "red notice" identifying El Omari as a convicted criminal in the United Arab Emirates ("UAE"). The district court (Sterling Johnson, Jr., *J.*) granted Interpol's motion to dismiss for lack of subject matter jurisdiction, holding that Interpol is a

protected organization under the International Organizations Immunities Act ("IOIA"), 22 U.S.C. §§ 288-288*l*, and thus enjoys the same immunity from suit normally enjoyed by foreign sovereigns. *See id.* § 288a(b). On appeal, El Omari argues that Interpol is not a "public international organization" within the meaning of § 288 and is thus not immune under the IOIA. Alternatively, El Omari argues that provisions in a 2008 agreement between Interpol and the Government of France (the "Headquarters Agreement") acted as a waiver of any immunity Interpol possesses under the IOIA and thus permits jurisdiction over the present suit. He also argues that the district court erred in denying his request for jurisdictional discovery.

We conclude that Interpol qualifies as a "public international organization" within the meaning of § 288 and enjoys the same immunity from suit extended to foreign sovereigns. Furthermore, we agree with the district court that any arguable immunity waiver contained in the Headquarters Agreement is inapplicable to this action and that Interpol has not waived its immunity for the purposes of the present suit. We also conclude that the district court did not abuse its discretion by denying El Omari's request for jurisdictional discovery.

We therefore AFFIRM the order and judgment of the district court.

## BACKGROUND

### I. Interpol and the Headquarters Agreement

Interpol is an organization headquartered in Lyon, France. Although it is sometimes depicted in the popular culture as an operational law enforcement organization along the lines of the FBI, Interpol's primary function is simply to facilitate communications between the various domestic police agencies in its 194 participating countries. One way Interpol performs that function is by issuing color-coded notices at the request of participating countries. A red notice is, in effect, a notice that an identified person is wanted for prosecution or has been convicted by one of the participating countries. Interpol's procedures for issuing and maintaining red notices is largely governed by Interpol's Constitution and its Rules for the Processing of Data. Any individual may challenge the accuracy of a red notice by instituting proceedings directly before the Commission for the Control of Interpol's Files ("CCF").[1]

In 2008, Interpol negotiated a Headquarters Agreement with the Government of France to "define, on the territory of the French Republic, the status, privileges and immunities of . . . [Interpol,] which are

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[1] A record of "certain anonymized decisions" by CCF is available on Interpol's website. *See CCF Sessions and Decisions*, INTERPOL, https://www.interpol.int/en/Who-we-are/Commission-for-the-Control-of-INTERPOL-s-Files-CCF/CCF-sessions-and-decisions (last visited May 9, 2022). Among ten anonymized decisions from 2019 – the most recent year from which such decisions have been released – five challenges to Interpol notices resulted in data being successfully removed from Interpol files.

necessary for the exercise of its functions and the achievement of its aims." Joint App'x 153. That agreement entered into force on September 4, 2009. Under Article 24 of the agreement, "any dispute between [Interpol] and a private party shall be settled in accordance with the Optional Rules for Arbitration between International Organizations and Private Parties of the Permanent Court of Arbitration" by a tribunal of "members appointed by the Secretary General of the Permanent Court of Arbitration."[2] *Id.* at 160. On March 17, 2016, the Government of France promulgated Decree No. 2016-326 in the form of letters between Interpol and French government officials clarifying that the arbitration provision in Article 24 "does not apply . . . to disputes regarding the processing of data in Interpol's Information System – such as Interpol notices, diffusions or messages." *Id.* at 166. That decree seemingly clarified that the Headquarters Agreement does not enable private parties to force Interpol into arbitration over its handling of red notices.

## II. El Omari's Interactions With Interpol

According to the complaint he filed in this case, Oussama El Omari is a United States citizen who lives in North Carolina. He previously worked in the UAE

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[2] The Permanent Court of Arbitration was created by the Convention for the Pacific Settlement of International Disputes, which was concluded at The Hague in 1899 during the first Hague Peace Conference, and revised at the second Hague Peace Conference in 1907. *See History*, PERMANENT COURT OF ARBITRATION, https://pca-cpa.org/en/about/introduction/history/ (last accessed May 9, 2022).

for a member of one of that country's ruling families, Sheikh Faisal bin Saqr Al Qassimi. El Omari asserts that his trouble began after Sheikh Faisal fell out with his brother, Sheikh Saud bin Saqr Al Qasimi, the ruler of Ras Al Khaimah, one of the UAE's seven Emirates. *See Zoarab v. Mukasey*, 524 F.3d 777, 778 (6th Cir. 2008). As a result of that fraternal dispute, El Omari and his co-workers were terminated from their positions and wrongfully prosecuted on a variety of spurious charges before secretive tribunals.

When El Omari returned to the United States on July 31, 2016, he was temporarily detained by U.S. Customs officers – causing him to miss his connecting flight – and informed that he was wanted in the UAE. El Omari later learned that Interpol had issued a red notice for him at the request of the UAE following his February 8, 2015, conviction *in absentia* for embezzlement and abuse of position by the Criminal Court of Ras Al Khaimah.

El Omari asked Interpol to remove or modify the red notice, arguing that he had been wrongfully convicted for political reasons.[3] Interpol declined to

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[3] More generally, the complaint alleges that the red notice system has been repeatedly abused by the UAE to attack political opponents and gain leverage in civil disputes. *See* Joint App'x at 16. Similar concerns about nations abusing Interpol's notice system appear in the news with some regularity. *See, e.g.*, Editorial Board, Opinion, *Hong Kong Exiles Fear an Interpol Red Notice*, WALL ST. J., Feb 11, 2022, at A16 ("Authoritarian governments have abused the [red notice] system in the past to hound opponents and limit their freedom of movement."); Matt Apuzzo, *How Repressive World Leaders Turned Interpol Into Their Personal Weapon,* N.Y. TIMES, Mar. 23, 2019, at A10.

modify the red notice, concluding that El Omari had not established that the political elements of his case outweighed the ordinary criminal law elements, and that El Omari had the right to appeal the decision against him in the UAE with the assistance of counsel.

El Omari responded by bringing this action against Interpol, alleging that its refusal to remove or otherwise alter the red notice constituted negligent infliction of emotional distress and violated his due process rights under the New York State Constitution. The district court dismissed the case for lack of subject matter jurisdiction, concluding that Interpol was immune from suit under the IOIA, and had not waived that immunity. *See El Omari v. International Crim. Police Org. - Interpol*, No. 19-cv-1457, 2021 WL 1924183, at *4-7 (E.D.N.Y. May 13, 2021). This appeal followed.

## DISCUSSION

"We review *de novo* a district court's dismissal of a claim for lack of subject-matter jurisdiction." *Brzak v. United Nations*, 597 F.3d 107, 110–11 (2d Cir. 2010), citing *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 241 (2d Cir. 2003). "We also review *de novo* legal conclusions which grant or deny immunity." *Id.* at 111, citing *Aurelius Cap. Partners, LP v. Republic of Argentina*, 584 F.3d 120, 129 (2d Cir. 2009).

### I. Interpol Is Immune from Suit Under the IOIA.

The IOIA, first enacted in 1945, provides that "[i]nternational organizations . . . shall enjoy the same immunity from suit and every form of judicial process

as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C. § 288a(b). For the purposes of the IOIA "international organization" is defined as:

> [1] a public international organization [2] in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and [3] which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.

22 U.S.C. §288. The parties do not dispute that Interpol satisfies the second and third criteria. Congress has provided statutory authorization for the United States to participate in Interpol, 22 U.S.C. § 263a, and President Reagan issued an Executive Order designating Interpol as an organization entitled to certain immunities and privileges under the IOIA. *See* Exec. Order No. 12,425, 48 Fed. Reg. 28,069 (June 16, 1983) ("[T]he International Criminal Police Organization . . . is hereby designated as a public international organization entitled to enjoy the privileges, exemptions and immunities conferred by the International Organizations Immunities Act . . . ."). That designation was reaffirmed by Presidents Clinton and Obama when each expanded the scope of the IOIA immunities and privileges to which Interpol was

entitled. *See* Exec. Order No. 12,971, 60 Fed. Reg. 48,617 (Sep. 15, 1995); Exec. Order No. 13,524, 74 Fed. Reg. 67,803 (Dec. 16, 2009).

The parties disagree, however, about whether Interpol is a "public international organization" within the meaning of § 288, and is thus eligible to receive the privileges, exemptions, and immunities conferred by the IOIA. Accordingly, the first issue we must address is whether Interpol qualifies as a "public international organization" under § 288.

A. Public International Organizations Under the IOIA

"Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009) (internal quotations omitted). To determine that ordinary meaning, courts may look to contemporary dictionary definitions. *See id.* at 176. If the text of the statute "is not entirely clear, we then turn to the broader statutory context and its history." *Khalid v. Sessions*, 904 F.3d 129, 132 (2d Cir. 2018).

Starting with the text, the district court found that the term "public" ordinarily means "of or provided by the state rather than an independent, commercial company." *El Omari,* 2021 WL 1924183, at *5. That is generally consistent with dictionary definitions that existed at the time the IOIA was adopted. *See, e.g.*, *Public*, THE OXFORD ENGLISH DICTIONARY (1933) ("Of or pertaining to the people as a whole; that belongs to,

affects, or concerns the community or nation"). The term "public" was also defined as being the antithesis of "private." *See, e.g.*, *Public*, THE OXFORD ENGLISH DICTIONARY (1933) ("In general, and in most of the senses, the opposite of Private."). During the same time period, "international" was defined as concerning relations between nations, and "organization" referred to a coordinated entity. *See, e.g.*, *International*, THE OXFORD ENGLISH DICTIONARY (1933) ("Existing, constituted, or carried on between different nations; pertaining to the relations between nations."); *Organization*, THE OXFORD ENGLISH DICTIONARY (1933) ("An organized structure, body, or being . . . ."). Those definitions suggest that a "public international organization" must be a coordinated product of states and governments acting to serve their public interest. Interpol thus meets the straightforward dictionary definition of a public international organization.

To the extent there is any ambiguity about the meaning of a "public international organization" under the IOIA, the legislative history confirms that a public international organization includes any organization whose membership is composed of governments. As explained in the House Report for the IOIA:

> The term "international organization" as used in the bill and generally in this report is specifically limited to public international organizations, i. e., *those which are composed of governments as members*—and of these, to those of which the United States is a member and which shall have been designated by the

> President by Executive order as being entitled to enjoy the benefits of the bill.

H.R. REP. NO. 79-1203, at 1 (1945) ("House Report") (emphasis added). In other words, the House Report explicitly defined "public international organizations" in the context of the IOIA as organizations "which are composed of governments as members." *Id.* That definition is consistent with the ordinary meaning of the language and removes any ambiguity about the proper interpretation of the statutory text. *Id*.

That understanding is further confirmed by its adoption by the executive branch. The first executive order designating Interpol as entitled to IOIA protections was issued after President Reagan sought and obtained legal advice from the Department of Justice's Office of Legal Counsel ("OLC"). OLC responded to President Reagan with a January 1983 memorandum concluding that Interpol qualified as a "public international organization" because it is "composed of governments as members." Joint App'x 566-68, quoting House Report. OLC's 1983 conclusion tracked the requirements contained in the State Department's 1946 guidance for applicants seeking designation under the IOIA. *See* 14 State Department Bulletin No. 348, at 348-49 (Mar. 3, 1946). The decision by the State Department and, in turn, OLC to adopt the definition from the House Report, and the decisions by successive Presidents to rely on that analysis, are entitled to considerable persuasive weight. *See Gonzales v. Oregon*, 546 U.S. 243, 268-69 (2006) (noting that the persuasiveness of the Executive Branch's interpretation of statutes outside of the rulemaking

context depends, *inter alia*, on "the thoroughness evident in its consideration" and "its consistency with earlier and later pronouncements").

On appeal, El Omari proposes several alternative criteria that he argues should be required to qualify an entity as a "public international organization" within the meaning of the IOIA. First, he argues that Interpol is not "public" because it is not a government actor. Second, he argues that "public" is a term of art within United States tax law, and thus Interpol cannot be "public" because it would not qualify as tax exempt public charity under 26 U.S.C. § 501(c)(3), as evidenced by the fact that it accepts donations though its affiliate the Interpol Foundation rather than receiving donations directly. Finally, he points to dicta in *Jam v. International Finance Corp.* identifying examples of public international organizations entitled to IOIA immunity, "includ[ing] the United Nations, the International Monetary Fund, and the World Bank," and asks us to infer from those examples that IOIA protections may be extended only to organizations

formed by international treaty.[4] 139 S.Ct. 759, 765 (2019). All of those arguments are unavailing.

There is no persuasive basis, textual or otherwise, for limiting a "public international organization" under § 288 to entities that are part of a single government. Similarly, there is no basis for construing the term "public" as incorporating portions of the United States Tax Code. The portion of the code defining tax-exempt organizations, which by its terms applies only for domestic tax purposes, *see* 26 U.S.C. §§ 501(a), (c), has no conceivable relevance to questions of international organization immunity. Indeed, the exemplary organizations identified by the Supreme Court in *Jam* – which El Omari concedes are proper examples of organizations entitled to IOIA immunity – would fail to satisfy those proposed criteria.[5]

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[4] El Omari also argues that the decision in *Steinberg v. International Crim. Police Org.*, 672 F.2d 927 (D.C. Cir. 1981), which found that Interpol was subject to the personal jurisdiction of that court, demonstrates that Interpol is not entitled to IOIA immunity. Steinberg was decided in 1981, before President Reagan signed the first executive order granting Interpol immunity under the IOIA, and thus at a time when Interpol lacked immunity under the IOIA because it had not yet been "designated by the President through appropriate Executive order" to enjoy such immunity, 22 U.S.C. § 288. That decision, which did not discuss whether Interpol qualifies as a "public international organization" under the IOIA, has no bearing on whether a court may exercise jurisdiction over Interpol today, in view of the intervening executive orders.

[5] The United Nations, for example, is neither a government actor nor a public charity. Rather, it is a forum for nations to conduct intergovernmental business. Similar to Interpol, the United Nations does not directly receive donations, but solicits funds through a variety of affiliated groups. *See, e.g.*, *How to Donate to*

We also disagree that *Jam* limits "public international organizations" to bodies that have been formed through international treaties. In *Jam*, the Supreme Court held that the IOIA "grants international organizations the same immunity from suit as is enjoyed by foreign governments at any given time." 139 S.Ct. at 772 (internal quotations omitted). As part of its discussion, the Supreme Court identified the United Nations, the International Monetary Fund, the World Bank, and the World Health Organization as examples of organizations entitled to immunity under the IOIA, and noted that the scope of that immunity can be curtailed by either the terms of the organization's founding charter or by the President acting pursuant to the authority delegated by the IOIA to withhold or withdraw the immunity of otherwise qualified public international organizations. *See id.* at 764-765. The *Jam* opinion did not address the proper interpretation of "public international organizations" under § 288, nor did it explain what specific characteristics of the listed organizations qualified them for that designation. It would not be appropriate for us to divine some limiting principle for what

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*the United Nations System*, UNITED NATIONS, https://www.un.org/en/about-us/how-to-donate-to-the-un-system (last visited May 16, 2022) (inviting donations to affiliated organizations such as the UN Human Rights Office, the UN Central Emergency Response Fund, the UN World Food Programme, the United Nations Children's Fund, and the UNESCO World Heritage Center). For similar reasons, we reject El Omari's passing argument that public international organizations must be restricted to agencies or instrumentalities of foreign governments based on the definition of "foreign state" under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-03. *See* Appellant's Br. 14-15.

qualifies as "public" based solely on the organizations mentioned in the *Jam* opinion as examples of that category. And while *Jam* states that an organization's charter may in some cases override the IOIA's default rules regarding immunity, *id.* at 771, it did not suggest that all "public international organizations" must be formed pursuant to such a charter.

Moreover, the text of the IOIA itself refutes El Omari's contention that a "public organization" must be one created by treaty. "It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal citations and quotations omitted). The IOIA explicitly extends its protections to otherwise eligible organizations "in which the United States participates pursuant to any treaty *or under the authority of any Act of Congress* authorizing such participation." 22 U.S.C. § 288 (emphasis added). The use of the word "or" suggests that IOIA protections may extend to organizations where United States participation is authorized by statute, rather than by a treaty.[6]

Accordingly, based on the statutory language, the broader statutory context, the legislative history, and the consistent practice of the Executive Branch, we

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[6] For example, President George W. Bush designated the ITER International Fusion Energy Organization as protected under the IOIA, *see* Exec. Order No. 13,451, 72 Fed. Reg. 65,653 (Nov. 19, 2007), in which the United States participates pursuant to a statute, *see* 42 U.S.C. § 16312(c).

conclude that a "public international organization" as used in § 288 includes, at minimum, any international organization that is composed of governments as its members, regardless of whether it has been formed by international treaty.

### B. Interpol Qualifies as a Public International Organization.

We next turn to whether Interpol is properly categorized as a "public international organization" under that definition, and is thus eligible for designation by the President to receive the privileges and immunities conferred by the IOIA. El Omari's complaint alleged that Interpol is composed of "member countries." Joint App'x 9. Interpol seemingly agrees with that characterization, describing itself throughout its brief as being composed of "member countries." *See, e.g.*, Appellee's Br. 1. More technically, however, Article 4 of Interpol's Constitution specifies that membership in Interpol is conferred on government agencies rather than on the nations they represent. Article 4 provides that participating countries "may delegate as a Member to the Organization *any official police body* whose functions come within the framework of activities of the Organization." Joint App'x 93 (emphasis added). Therefore, membership in Interpol formally belongs to the delegated "official police body" of each participating country.[7]

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[7] For example, the United States participates in Interpol through a dedicated agency within the Department of Justice, the Interpol-U.S. National Central Bureau ("USNCB"). *See* 28 C.F.R. § 0.34. It is thus presumably the USNCB, rather than the United States itself, that is formally an Interpol member.

Interpol's extending membership to police organizations, combined with the fact that Interpol was not formed by international treaty, has led some to question whether Interpol is truly an international organization.[8] But to qualify as a "public international organization" under the IOIA, it is sufficient that membership in Interpol is restricted to official government actors whose involvement is controlled by the particular participating nations. The political branches may authorize a government-controlled agency to represent the interests of the United States

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[8] The proper classification of Interpol has been a topic of debate among international law scholars, with some arguing that it is a non-governmental organization that cannot technically qualify as an international organization as that term is used in international law, and others arguing that it has long-since achieved the status of a de facto intergovernmental organization whose membership is composed of central government organs. *Compare*, Andreas Gallas, Interpol, *in* 5 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 187, 187 (Rudolf Bernhardt ed., 1983) (arguing that Interpol is not an international organization) *with* Sabine Gless, Interpol, *in* 6 THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 252, 255 (Rüdinger Wolfrum ed., 2012) (arguing that Interpol is such an organization). *See also* Giulio Calcara, A Transnational Police Network Co-operating Up to the Limits of the Law: Examination of the Origin of Interpol, 11 TRANSNATIONAL LEGAL THEORY 521, 536-37 (2020) (summarizing the majority view that Interpol is a de facto intergovernmental organization but noting that "a minority of scholars, until very recently, still claimed that [Interpol] is an NGO"). There is no indication that this academic debate, which post-dates the IOIA by at least several decades, was part of the contemporary "ordinary meaning," *Gross*, 557 U.S. at 175, when Congress in 1945 authorized immunity for "public international organization[s]" that meet the statutory criteria. We thus have no need to arbitrate between the competing academic theories.

within an organization. In the case of Interpol, Congress explicitly authorized the Attorney General "to accept and maintain, on behalf of the United States, membership in the International Criminal Police Organization, and to designate any departments and agencies which may participate in the United States representation with that organization." 22 U.S.C. § 263a. That the United States acts through a specific government agency does not alter the fact that it is still the United States, subject to Congressional authorization and Executive control, that participates in Interpol. Similarly, the "official police bod[ies]" designated by the other participating nations are, for all relevant purposes, agents of their respective nations. CONSTITUTION OF THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION-INTERPOL, Art. 4 (2021), Joint App'x 93; *see also id.* Art. 45, Joint App'x at 98 (indicating that the official police bodies "represent[]" the countries to which Interpol's Constitution applies). Because Interpol is functionally restricted to governments as members, acting through their chosen delegates, we conclude that it qualifies as a "public international organization" within the meaning of § 288.

## II. Interpol Has Not Waived Its Immunity.

The IOIA provides immunity to public international organizations designated by the President "except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C. § 288a(b). Like sovereign states, therefore, such organizations may waive the immunity provided to them by statute. El

Omari argues that, even if Interpol is protected from suit by the IOIA, it effectively waived that protection by entering into the Headquarters Agreement with the Government of France in 2008. We disagree.

At the outset, we note that the Headquarters Agreement is a contract between Interpol and the Government of France that by its express terms is designed to define the "status, privileges and immunities" afforded to Interpol "*on the territory of the French Republic*." Headquarters Agreement, Preamble, Joint App'x 153 (emphasis added). There is no indication that either Interpol or the Government of France had any thought, in agreeing upon the terms on which Interpol would be subject to disputes arising from its day-to-day business on French soil, as to the rights, under New York law, of American citizens affected by Interpol's dissemination of information in the United States about criminal cases pending in the UAE.

Moreover, even if we were to make the extraordinary assumption that the dispute resolution provisions of the Headquarters Agreement had some application to this case, those provisions do not waive any immunity Interpol might have from suit in the courts of France, let alone of the United States. Article 24 of the Headquarters Agreement, which El Omari points to as a possible immunity waiver, provides a right to settle disputes "in accordance with the Optional Rules for Arbitration between International Organizations and Private Parties of the Permanent Court of Arbitration by a tribunal composed either of one or of three members appointed by the Secretary

General of the Permanent Court of Arbitration." Joint App'x 160. At most, that provision creates only a right to arbitration. By comparison, other portions of the Headquarters Agreement suggest, if anything, that Interpol is immune to most civil suits within the French legal system. *See, e.g.*, Headquarters Agreement Art. 5, Joint App'x 154 (Interpol "shall enjoy immunity from legal process" except in certain enumerated cases). On no reasonable reading can the Headquarters Agreement be understood as an explicit waiver of the immunity from suit in American courts conferred by the IOIA.

Nor can we accept El Omari's argument that the Headquarters Agreement should be understood as an implicit immunity waiver. In the context of sovereign immunity under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602-11, some courts have found "an implicit waiver . . . involving contracts in which a foreign state has agreed to arbitrate disputes without specifying jurisdiction in a particular country or forum, or where another nation has stipulated that American law should govern any contractual disputes." *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 377 (7th Cir. 1985) (internal citations omitted). *But cf. Cargill Int'l S.A. v. M/T Pavel Dybenko*, 991 F.2d 1012, 1017 (2d Cir. 1993) ("[A]n agreement to arbitrate in a foreign country, without more, ought not to operate as a waiver of sovereign immunity in United States courts, especially in favor of a non-party to the agreement." ). El Omari urges that, in view of *Jam*, similar restrictions would apply to international organizations under the IOIA. *See* 139 S. Ct. at 769 ("The IOIA . . . link[s] the law of international

organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with the other."). But even assuming that similar standards apply in the FSIA and IOIA contexts, the Headquarters Agreement would not function as an implicit immunity waiver. Unlike the contracts discussed in *Frolova* as potentially creating such a waiver, the Headquarters Agreement specifies a particular forum for the arbitration, and a specialized set of rules to govern the arbitration that differ from general American law. *See* 761 F.2d at 377. If anything, the Headquarters Agreement is more akin to the sorts of agreements to arbitrate in foreign countries that, without more, do not generally act as immunity waivers to permit suit in federal district court. *See Cargill*, 991 F.2d at 1017.

For those reasons, even assuming that the right to arbitration in the Headquarters Agreement applied to the present suit, that right to arbitration would not act as either an explicit or implicit immunity wavier permitting El Omari to bring the present suit against Interpol in a federal district court.

Finally, we note that, before the present dispute between El Omari and Interpol arose, the French government promulgated Decree No. 2016-326, expressly accepting Interpol's understanding that the arbitration provision in Article 24 "does not apply . . . to disputes regarding the processing of data in Interpol's Information System – such as Interpol notices, diffusions or messages." Joint App'x 166. Thus, the parties to the Headquarters Agreement themselves – the Government of France and Interpol acting through its Secretary General – have made clear that

the provisions on which El Omari relies for his contention that Interpol has waived immunity do not permit private parties to force Interpol into arbitration, still less into any court, over its handling of red notices. Therefore, even if the Headquarters Agreement would have somehow acted as an immunity waiver in the past, any such hypothetical waiver does not apply to El Omari's present suit.

For all of the above reasons, El Omari's argument that Interpol has waived the protections of the IOIA is without merit.

## III. Jurisdictional Discovery

Finally, El Omari argues that the district court erred by denying him leave to conduct jurisdictional discovery prior to dismissal. Specifically, El Omari sought a variety of documents intended to show that "on the date El Omari was detained at JFK, . . . Interpol had no legal status under the laws of France other than [as] a commonplace non-profit entity, and [to] support a finding that Interpol is not 'public' and not immune from suit." Appellant's Br. 20. The district court tacitly denied El Omari's request by granting Interpol's motion to dismiss for want of subject matter jurisdiction. *See El Omari,* 2021 WL 1924183, at *4.

"We review a district court's denial of jurisdictional discovery for abuse of discretion, always mindful that a district court has wide latitude to determine the scope of discovery." *Arch Trading Corp. v. Republic of Ecuador*, 839 F.3d 193, 206 (2d Cir. 2016) (internal citations and quotations omitted). "When sovereign immunity is at issue, discovery is warranted 'only to

verify allegations of specific facts crucial to an immunity determination.'" *Id.* at 207, citing *EM Ltd. v. Republic of Argentina*, 473 F.3d 463, 486 (2d Cir. 2007). A similar standard applies to immunity under the IOIA because it "develops in tandem" with the law of foreign sovereign immunity. *Jam*, 139 S. Ct. at 769.

In the present case, the information sought by El Omari has no bearing on the immunity determination. Interpol's non-profit status under the laws of France sheds no light on whether Interpol qualifies as a "public international organization" entitled to the protections conferred by the IOIA. 22 U.S.C. § 288. Rather, as explained above, the relevant inquiry is whether the organization is effectively composed of governments as members, whether Congress has authorized the United States to participate in the organization, and whether the President has chosen to extend protections to the organization through an executive order. *See id.* Because the requested discovery was not germane to the immunity determination, it was not an abuse of discretion for the district court to deny the request for jurisdictional discovery. *See Arch Trading*, 839 F.3d at 207.

## CONCLUSION

To summarize, we conclude that:

1. The term "public international organizations" as used in 22 U.S.C. § 288 includes any international organization that is composed of governments as its members, regardless of whether it has been formed by international treaty.

2. Interpol qualifies as a "public international organization" for the purposes of 22 U.S.C. § 288 because its members are official government actors whose involvement is subject to control by participating nations.

3. The Headquarters Agreement between Interpol and the Government of France does not constitute an immunity waiver that would permit the present suit in a United States district court.

4. The district court did not abuse its discretion by denying El Omari's request for jurisdictional discovery prior to dismissal.

Accordingly, the judgment of the district court is **AFFIRMED**.

## APPENDIX B

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

**19CV1457 (SJ) (PK)**

**[Filed: May 13, 2021]**

OUSSAMA EL OMARI,

Plaintiff,

- against -

THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION – INTERPOL,

Defendant.

MEMORANDUM AND ORDER

**JOHNSON, Senior District Judge:**

Plaintiff Oussamma El Omari ("Plaintiff"), a citizen of the United States and a resident of North Carolina, brings this action against the International Criminal Police Organization ("Interpol" or "Defendant"), an inter-governmental organization headquartered in Lyon, France. Plaintiff claims that Defendant's issuance and refusal to delete a Red Notice against Plaintiff constituted Negligent Infliction of Emotional Distress and violated his due process rights under the

New York State Constitution, NY Const. Art. I, § 6. Plaintiff seeks a money judgment against Defendant. In the alternative, Plaintiff seeks a declaratory judgment that Defendant waived its immunity under 22 U.S.C. § 288a(b).

Presently before this Court is Defendant Interpol's Motion to Dismiss for Lack of Subject Matter Jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1), Lack of Personal Jurisdiction, pursuant to Federal Civil Procedure 12(b)(2), Insufficient Service of Process, pursuant to 12(b)(5), and Failure to State a Claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). Based on the submissions of the parties and for the reasons stated herein, the Motion is GRANTED and the case DISMISSED.

## FACTUAL BACKGROUND

### I. Interpol

Interpol is an international police organization with 194 member countries. Starner Decl., Ex. A. Its headquarters is in Lyon, France and it is governed by an agreement between France and Interpol—The Agreement Between the International Criminal Police Organization - INTERPOL and the Government of the French Republic Regarding INTERPOL's Headquarters in France ("Headquarters Agreement"). *See id.*, Ex. E. The operative Headquarters Agreement entered into force on September 1, 2009 and was modified by additional protocol on March 17, 2016. *See id.*, Ex. F. The General Secretariat, the body that coordinates Interpol's day-to-day activities, sits in Lyon and is staffed by Interpol employees and police officials from

Interpol member countries who are seconded to the organization. *See id.*, Ex. A.

Interpol also maintains a global complex for innovation in Singapore and several satellite offices. *Id.* Every Interpol member country has a National Central Bureau (NCB). *Id.* Each Interpol NCB is run by national police officials and is intended to serve as link between the member country's national police and the global Interpol network. *Id.*

Interpol's primary function is to facilitate transnational policing by providing member countries' police agencies with a communication network. *See* James Sheptycki, *The Accountability of Transnational Policing institutions: The Strange Case of Interpol*, 19 CAN. J.L. & SOC. 107, 116. (2004). To do this, Interpol serves as "a central repository for the collection, transmission, and analysis of information on transnational criminals." Ethan A. Nadelmann, *Role of the United States in the International Enforcement of Criminal Law*, 31(1) Harv. Int'l. L.J. 37, 46 (1990). It also acts as a conduit for international arrest warrants, extradition requests, and requests for criminal evidence. *Id.* It is not, however, an operational police force. Interpol does not issue judgments, pursue criminal evidence, or pursue fugitives. *See* Sheptycki, *supra.*

**a. Red Notices**

To facilitate communication among members' police forces, Interpol uses a system of color-coded notices. Starner Decl., Ex. D. At issue here is the red notice. A red notice is, in effect, an international wanted persons'

notice. *See* Mario Savino, *Global Administrative Law Meets Soft Powers: The Uncomfortable Case of Interpol Red Notices*, 43 N.Y.U. J. INT'L L. & POL. 263, 286 (2011). At the request of an international organization or an NCB, Interpol will draft a red notice and disseminate it "in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender or similar lawful action." Starner Decl., Ex. D.

A red notice must meet certain criteria for dissemination.[1] These criteria include offense, penalty, and data threshold requirements. *Id.* A red notice will not be published until the General Secretariat conducts a legal review for compliance. *Id.* Following the publication of a red notice, the subject of the red notice may request information about or deletion of the red notice via the Commission for Control of Interpol's Files ("CCF"), a quasi-judicial independent body. The subject may also submit a request for deletion of the red notice to the CCF. Compl. ¶ 53. There is no appeals process, but the subject may request a revision based on new information. *Id.* at ¶ 55.

**b. The United States and Interpol**

The United States joined Interpol in 1938. *See* 22 U.S.C.A. § 263a ("[t]he Attorney General is authorized to accept and maintain, on behalf of the United States, membership in the International Criminal Police

[1] Access to red notices tends to be restricted to law enforcement. At present, there are approximately 62,000 valid red notices, 7,000 are public. *See* https://www.interpol.int/en/How-we-work/Notices/Red-Notices.

Organization"). Congress subsequently amended the legislation to specify that the United States' member dues for Interpol were to be paid from the Department of Justice Budget. *Id.* In 1968 the United States established its NCB ("USNCB") in Washington DC. *See* Mot. to Dismiss at 3. The USNCB operates under the joint supervision of the Department of Justice and the Department of Homeland Security. *Id.*

On June 16, 1983, President Reagan designated Interpol an "International Organization" with limited immunity under the International Organization Immunities Act ("IOIA"), 22 U.S.C. § 288 via Executive Order No. 12,425. The IOIA articulates the process for designating an organization an international organization. Designation as an international organization under the IOIA entitles organizations to the same immunity granted to foreign sovereigns. *See* 12 U.S.C. § 288a(b) ("International organizations… shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign government"); *see also* Committee on Ways and Means, Granting Certain Privileges and Immunities to International Organizations and Employees H.R. Rep. No. 1203, 79th Cong., 1 Sess. 1 (1945), at 1 (the purpose of the act is to provide international organizations and their officials and employees "privileges and immunities of a governmental nature"). Congress passed the IOIA on December 29, 1945 in response to the United States' increasing participation in international organizations. *See* Edward Chukwuemeke Okeke, *Jurisdictional Immunity of International Organizations in the United States in the Wake of the Supreme Court Decision in Jam v. IFC,*

*2020*, INTERGOVERNMENTAL ORG. IN-HOUSE COUNS. J. 1, 2 (2020). Since 1983, presidents have decreased the restrictions on Interpol's immunity under the Act, and in 2009 President Obama issued Executive Order 13,524, which removed all remaining limitations on Interpol's IOIA immunity.

## II. PLAINTIFF'S CLAIM

As stated *supra*, Plaintiff is a United States citizen and a North Carolina citizen. Compl. ¶ 1. He previously worked in an Economic Free Zone in the United Arab Emirates (UAE) as an employee of Sheikh Faisal Bin Saqr Al Qassimi, a member of the UAE's royal family. *Id.* at ¶ 52. On July 31, 2016, Plaintiff landed at JFK Airport, New York. *Id.* at ¶ 46. As Plaintiff passed through U.S. Customs and Border Protection ("CBP"), several CBP Officers stopped Plaintiff and questioned him about his experiences in the UAE. *Id.* at ¶ 47. The CBP officers also cautioned Plaintiff against returning to the UAE, warning him be "careful" because if he returned to the UAE he would be arrested and put in jail. *Id.*

Following this exchange, a CBP officer moved Plaintiff to a different room and took his passport. *Id.* at ¶ 48. Plaintiff overheard the CBP officers talking about Plaintiff over the phone. *Id.* After multiple phone calls about Plaintiff, the officer returned Plaintiff's passport, inspected Plaintiff's luggage, and allowed Plaintiff to leave the airport. Plaintiff returned to North Carolina the next day after missing his original connecting flight. *Id.* at ¶ 49.

The incident alerted Plaintiff to the possibility that Interpol had issued a red notice against him. *Id.* at ¶ 50. On October 26, 2016, Plaintiff submitted a written request to Interpol seeking all information it had about Plaintiff. *Id.* On November 24, 2016 Interpol responded by letter, confirming that Plaintiff's file did contain a red notice. Interpol informed Plaintiff that the red notice stated that the UAE NCB had requested the issuance of a red notice in connection with Plaintiff's February 8, 2015 conviction *in absentia* of embezzlement and abuse of power by the Criminal Court of Ras Al Kaimah. Compl. *Id.* at ¶ 51.

Plaintiff claims that before he was detained at JFK, he was unaware of the judgment against him because the UAE denied him notice of the charges, barred him from accessing evidence or witnesses, and issued the judgment in secret and *in absentia.*[2] *Id.* at ¶ 52.

In response, Plaintiff submitted a written request to Interpol on December 15, 2016. In the response, Plaintiff lodged a complaint against Interpol, asked that Interpol delete the red notice and all related documents and files, and requested the opportunity to appear in front of Interpol by counsel with an expert witness. *Id.* at ¶ 53. On July 20, 2017, Interpol declined to delete the red notice and did not address Plaintiff's

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[2] The underlying offense does not bear on the Court's decision. Accordingly, the Court describes the events only briefly. According to Plaintiff, while he was employed by Sheikh Faisal Bin Saqr Al Qassimi, Sheikh Faisal Bin Saqr Al Qassimi had a dispute with his brother, Sheikh Saud Bin Saqr Al Qassimi. Plaintiff's employer lost the dispute and, as a result, Plaintiff was terminated and allegedly convicted on spurious charges. Compl. at ¶ 52.

request for a hearing. Instead, it invited Plaintiff to reach out directly to the UAE to dispute the conviction. *Id.* at ¶ 54. On August 17, 2017 Plaintiff requested that Interpol revise its decision. On November 6, 2017, Interpol denied Plaintiff's request for revision. *Id.* at ¶ 56.

Plaintiff then brought this action on March 13, 2019. Plaintiff argues that by issuing and failing to delete the red notice, Interpol puts him "in serious and extreme fear for his physical safety." *Id.* at ¶ 57. According to Plaintiff, if he is returned to the UAE he faces "torture and disappearance in the [UAE] jails." *Id.* In addition, Plaintiff argues that the red notice and the risk of extradition trap him in the United States. This is a particular problem for Plaintiff because his family lives in Morocco and his field of expertise is Economic Free Zones. *Id.* Thus, the red notice bars him from maintaining his familial relationships and from gaining full employment. *Id.*

**DISCUSSION**

Defendant moves to dismiss the complaint, *inter alia*, on the ground that the Court lacks subject matter jurisdiction over Plaintiff's claim. *See* Fed. R. Civ. P. 12(b)(1). *See Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) ("A case is properly dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it.").

Defendant argues that it has been designated an international organization under the IOIA, and there are no exceptions to immunity. As a result, Defendant

is immune from suit and the Court must dismiss Plaintiff's claim for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Defendant raises alternative arguments in its motion. *See* Mot. to Dismiss at 9-12, 20-23. The Court focuses only on whether it has subject matter jurisdiction, however, as when a court finds it lacks subject matter jurisdiction it need not consider alternative arguments. *See, e.g.*, *Zapolski v. Fed. Republic of Germany*, 425 F. App'x 5, 6 (2d Cir. 2011) (affirming dismissal of a claim because a district court must, at any time, dismiss an action where a court finds it lacks subject matter jurisdiction ); *Sampaio v. Inter-Am. Dev. Bank*, 806 F. Supp. 2d 238, 243 (D.D.C. 2011), *aff'd*, 468 F. App'x 10 (D.C. Cir. 2012) (dismissing claim without reaching defendant's other arguments because defendant was immune from suit under the IOIA).

## I. Legal Standard

"In considering a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, a court must assume that all of the factual allegations in the complaint are true." *Shipping Fin. Serv. Corp. v. Drakos*, 140 F.3d 129, 131 (2d Cir. 1998), at 5 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236, (1974)). The plaintiff ultimately bears the burden to prove, by a preponderance of the evidence, the existence of subject matter jurisdiction. *Makarova,* 201 F.3d at 113 (citing *Malik v. Meissner*, 82 F.3d 560, 562 (2d Cir.1996)).

A district court lacks subject matter jurisdiction and must dismiss a claim where defendant organization is immune from suit. *See Zuza v. Off. of High Representative,* 107 F. Supp. 3d 90, 93 (D.D.C. 2015),

*aff'd sub nom. Zuza v. Off. of the High Representative*, 857 F.3d 935 (D.C. Cir. 2017) (collecting cases); *Brzak v. United Nations*, 551 F. Supp. 2d 313, 317 (S.D.N.Y. 2008), *aff'd*, 597 F.3d 107 (2d Cir. 2010); *Georges v. United Nations*, 834 F.3d 88, 98 (2d Cir. 2016).

The IOIA confers the "immunity from suit and every form of judicial process as is enjoyed by foreign governments," to international organizations "except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C.A. § 288a. An international organization under the Act is one "in which the United States participates pursuant to…the authority of any Act of Congress authorizing such participation or making an appropriation for such participation" and "which shall have been designated by the President through appropriate Executive order." 22 U.S.C.A. § 288.

## II. Interpol is an international organization under the IOIA.

For an organization to be considered an international organization under the IOIA it must satisfy three criteria. The organization must be (1) a public international organization, (2) in which the United States participates pursuant to an act or an authorization of Congress, and (3) designated as enjoying the privileges, exemptions, and immunities by the President via executive order. *See id.* Interpol satisfies all three criteria.[3]

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[3] Also, the Second Circuit and the Supreme Court have accepted Interpol as an international organization without controversy in

First, Interpol is a public international organization. According to Plaintiff, because the term, public international organization, is undefined, it is vague and subject to multiple interpretations. Defendant argues, and Plaintiff does not dispute, however, that Interpol meets the legal definition of an international organization.[4] Instead, Plaintiff claims that Interpol is not a public international organization.

Plaintiff argues without support that the term public refers to an organization's structure under the tax code of the country in which it is headquartered. Interpol fails to show that it is a public international organization under this definition because it does not provide documentation of its organization under French law. According to Plaintiff, this leaves open the possibility that Interpol is a private foundation rather than a public charity. (Strangely, Plaintiff does not point to French law, rather it suggests that French law might be similar to the Internal Revenue Code of the

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dicta. *See United States v. Ng Lap Seng*, 934 F.3d 110, 124 (2d Cir. 2019), *cert. denied*, 141 S. Ct. 161, 207 L. Ed. 2d 1098 (2020) (listing Interpol as a public organization under the IOIA); *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 770 (2019) (referencing Interpol as a designated international organization by executive order).

[4] *See* Restatement (Third) of Foreign Relations Law § 221 (1987) (defining an international organization as "an inter-state organization, established by an international agreement governed by international law" with "headquarters, staff, and budget."); *see also* 44B Am. Jur. 2d International Law § 15 (defining an international organization as one created by international agreement with a membership consisting entirely or principally of states).

United States). Which would mean that Interpol is not a public international organization. See Opp'n at 13-14.

This argument is wrong. "[U]nless otherwise defined, individual statutory words are assumed to carry their "ordinary, contemporary, common meaning." *Burgo v. Gen. Dynamics Corp.*, 122 F.3d 140, 143 (2d Cir. 1997) (quotation and citation omitted) *cert. denied*, 523 U.S. 1136, 118 S. Ct. 1839, 140 L.Ed.2d 1089 (1998). To determine a word's "ordinary, contemporary, common meaning" the Court may look to the word's dictionary definition. *See, e.g.*, *id.* Relevant here, public is defined as "of or provided by the state rather than an independent, commercial company." *Public*, Oxford Dictionaries (2021).

Interpol is a public organization because it is made up of member states and assists them in executing their police powers by facilitating mutual assistance and working to prevent and suppress ordinary law crimes. *See id.*, Ex. C. The police power is exclusively a state power. *See In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71, 92 (2d Cir. 2008), *abrogated on other grounds by Samantar v. Yousuf*, 560 U.S. 305, 130 S. Ct. 2278, 176 L. Ed. 2d 1047 ("exercise of the power of its police has long been understood…as peculiarly sovereign in nature.") (quoting *Saudi Arabia v. Nelson*, 507 U.S. 349, 362 (1993)). Given that Interpol exclusively assists member states with the execution of their police powers, Interpol is a public international organization.

Interpol satisfies the second criterion of § 288—that the United States participates in the international organization pursuant to an act or authorization of

Congress. In 1938 Congress authorized the United States' participation in Interpol. *See* 22 U.S.C.A. § 263a ("[t]he Attorney General is authorized to accept and maintain, on behalf of the United States, membership in the International Criminal Police Organization"). Congress later amended the Act to specify that the United States' dues to Interpol would be paid from the Department of Justice's budget. *See supra.*

Interpol also satisfies the third criterion. It was designated by the President through appropriate Executive Order as being entitled to enjoy immunity under § 288a. On June 16, 1983, President Reagan designated Interpol an "International Organization" with limited immunity via Executive Order No. 12,425. *See* International Criminal Police Organizations, 48 FR 28069 (designating Interpol a public international organization entitled to all immunities conferred by the Act except those enumerated in the Executive Order). Subsequently, two presidents have issued executive orders that have reduced limitations on Interpol's immunity. In 1995, President Clinton issued Executive Order 12,971 removing some limitations on Interpol's immunity. *See* Amendment to Executive Order No. 12425, 60 FR 48617. In 2009 President Obama issued Executive Order 13,524, which removed all remaining immunity limitations from Interpol under § 288a. *See* Amending Executive Order 12425 Designating Interpol as a Public International Organization Entitled To Enjoy Certain Privileges, Exemptions, and Immunities, 74 FR 67803. As a result, Interpol currently enjoys all immunity conferred by the IOIA.

Plaintiff does not dispute that Interpol was properly designated pursuant to § 288. Instead he takes issue with the constitutionality of § 288 itself. Plaintiff argues that Congress' delegation of the designation power to the executive violates the nondelegation doctrine. This argument fails. Delegations of congressional authority are upheld "so long as Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.'" *United States v. Dhafir*, 461 F.3d 211, 215 (2d Cir. 2006) (quoting *Mistretta v. United States*, 488 U.S. 361, 372 (1989)). The Supreme Court has rarely found an impermissible delegation following the articulation of the "intelligible principle" in *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406 (1928). *Id.* Indeed, the Supreme Court has found no impermissible delegations in the foreign affairs sphere, as the executive is afforded wide deference in the sphere. *Id.*

The President is the "sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320, 57 S. Ct. 216, 221, 81 L. Ed. 255 (1936). Accordingly, the President must be accorded "a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." *Id.*; *Owens v. Republic of Sudan*, 531 F.3d 884, 891 (D.C. Cir. 2008) ("[a] statute that delegates factfinding decisions to the President which rely on his foreign relations powers is less susceptible to attack on nondelegation grounds

than one delegating a power over which the President has less or no inherent Constitutional authority.") The designation of organizations made up of international actors pursuing international public activities unquestionably falls within the sphere of foreign relations. *See* LOUIS HENKIN, FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION 31-50 (2d ed. 1996) (under his foreign affairs power, the President may, *inter alia*, pursue new foreign policies and diplomatic relations). As a result, § 288 does not violate the nondelegation doctrine. *See Zuza*, 107 F. Supp. 3d at 97 ("delegation [under § 288] does not run afoul of the separation of powers doctrine"); *Weidner v. Int'l Telecommunications Satellite Org.*, 392 A.2d 508, 510 (D.D.C. 1978) (finding President Ford's designation of the International Telecommunications Satellite Organization as an international organization "well within [his] authority, and [that] the designation was not Ultra vires.")

## III. No exceptions to immunity apply.

International organizations are not absolutely immune from suit. *See Jam*, 139 S. Ct. at 772. Under the IOIA, "[international] organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract." 22 U.S.C.A. § 288a(b). The immunity provided by § 288a(b) is also not unlimited.. Designated international organizations "enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." *Id.* The Supreme Court held that § 288a(b) affords international organizations the restrictive immunity that foreign

governments enjoy today, as codified by the Foreign Sovereign Immunities Act ("FSIA"). *See Jam*, 139 S. Ct. at 768.[5] FSIA "gives foreign sovereign governments presumptive immunity from suit, subject to several statutory exceptions." *Id.* Accordingly, for a court to exercise jurisdiction over a claim against an international organization, the organization must have waived its immunity or fall within one of the FSIA's exceptions. *See Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 47 (2d Cir. 2010).

Plaintiff argues that Interpol has waived its immunity under § 288a(b) or § 28 U.S.C.A. § 1605(a)(1).[6] Plaintiff writes Defendant waived its immunity through art. 24(1) of its Headquarter Agreement with France, which requires that disputes must be heard at the Permanent Court of Arbitration at the Hague. This argument is irrelevant. As Plaintiff concedes, French Decree 2016-326 abrogates art. 24(1). French Decree 2016-326 states that the "arbitration channel provided for in paragraph 1 of Article 24…does not apply…to disputes regarding the processing of data in Interpol's Information System—such as Interpol

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[5] Prior to the Supreme Court's decision in *Jams* there had been intense disagreement about whether 288a(b) entitled international organizations to the virtually absolute immunity afforded to foreign nations in 1945 when the Act was passed, or to the more restrictive immunity enjoyed by foreign nations today.

[6] FSIA provides for no immunity from jurisdiction where "the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver." 28 U.S.C.A. § 1605.

notices." The decree was promulgated on March 17, 2016, before any of the events at issue transpired. Thus, even if the Headquarter Agreement had waived Interpol's immunity at one point (which the Court does not find), by the time Plaintiff was detained at JFK it did not.

Finally, Plaintiff argues that accepting French Decree 2016-326 and finding Interpol immune from suit leads to an unacceptable result—i.e. it leaves "Interpol above the law." Opp'n. at 19 (emphasis in the original). This argument fails as it does little besides question why immunity exists. "[L]egislatively and judicially crafted immunities of one sort or another have existed since well before the framing of the Constitution, have been extended and modified over time, and are firmly embedded in Amelican law," however. *Brzak v. United Nations,* 597 F.3d 107, 114 (2d Cir. 2010). If the Court were to accept Plaintiff's argument, "judicial immunity, prosecutorial immunity, and legislative immunity, for example, could not exist." *Id.*; *see also Georges v. United Nations,* 834 F.3d 88, 98 (2d Cir. 2016).

## IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is granted. The Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: May 13, 2021
Brooklyn NY

signed Sterling Johnson, Jr., U.S.D.J.

Sterling Johnson, Jr., U.S.D.J.

## APPENDIX C

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

**19 CV 1457 (SJ) (PK)**

**[Filed: May 14, 2021]**

OUSSAMA EL OMARI,

Plaintiff,

v.

THE INTERNATIONAL CRIMINAL POLICE ORGANIZATION – INTERPOL,

Defendant.

JUDGMENT

A Memorandum and Order of the Honorable Sterling Johnson, United States District Judge, having been filed on May 13, 2021, granting Defendant's motion to dismiss; it is

ORDERED and ADJUDGED that Defendant's motion to dismiss is granted.

Dated: Brooklyn, New York
May 14, 2021

Douglas C. Palmer
Clerk of Court

By: */s/Jalitza Poveda*
Deputy Clerk