

YOUR RIGHT TO FILM ICE AND FEDERAL LAW ENFORCEMENT

KNOW YOUR RIGHTS



You have the right to film federal law enforcement – including Immigration and Customs Enforcement (ICE) and National Guard soldiers – regardless of your immigration status or whether you know the person being arrested. The information in this resource is specific to New York City, but many aspects can be applicable to communities in other parts of New York State.

Documenting ICE's actions can add a layer of accountability and shine a light on inhumane ICE tactics and immigration policies, and helps us advocate for abolishing these harmful policies and practices.

Below are your rights to record ICE and federal law enforcement, and best practices for filming or documenting an incident.

This KYR is not a replacement for legal advice.

Can I film ICE agents in a courthouse? What about outside a courthouse?

The public has a right – regardless of immigration status – under the First Amendment and the Right to Record Act, to record video and take pictures in public places. You also have the right to film law enforcement, including ICE and other federal immigration authorities, in public spaces. These rights extend to filming and recording outside of courthouses, but generally do not allow you to film inside of a courthouse.

The government can place reasonable restrictions on the time, place, and manner in which you film or take photos.

New York State passed the Protect Our Courts Act (POCA) in 2019, prohibiting ICE from making arrests at state, city and

municipal courthouses within New York. The law also prohibits ICE from arresting people going to or leaving those courthouses without a judicial warrant. However, ICE may not always follow the law and could still be present in or around state, city and municipal court houses. The protections in POCA also do not apply to federal courts.

Can I film ICE agents making an arrest?

Yes, as long as you don't interfere with officers' or agents' law enforcement activities. While you may film ICE agents from a reasonable distance with handheld phones and cameras, the First Amendment and Right to Record Act don't protect filming that impedes officers in the performance of their duties.

What it means to impede or interfere with law enforcement activities is not clearly defined. However, some federal court decisions suggest that the right to record may be subject to limitations if a person gets too close to officers when filming, does not comply with an officer's reasonable request to back up from the scene of an incident or steers a drone with a filming device too close to the site of an active police investigation.

What should I film? Is there anything I shouldn't film?

Remember to focus the camera on the law enforcement officer –not the person being harassed or targeted.

Far too often, footage of violence and abuse is used against the person or community we're hoping to help protect. If it's not possible to focus only on the ICE officer, there are tools to help you blur out identifying details such as faces, license plates, tattoos, etc. before sharing the footage publicly. Check out WITNESS' tutorial on how to use Youtube's free blurring tool. It can also be helpful to film

horizontally and not vertically in order to capture more of the scene. Try to film as much of the interaction between the ICE agents and individual(s) they are arresting, even if you are across the street.

Capture details like:

- Any paperwork the officers are holding
- Badges (or lack thereof). If they have a visible badge, try to film it. If it's too difficult to capture the badge numbers on camera, you can read them out loud so that it is captured on audio.
- The officer's clothing – are they in uniform or plain clothes?
- Any weapons officers have on them
- Vehicles/license plates – some Department of Homeland Security vehicles have special license plates or even permits in the front.
- Communications between officers or among different agencies like police officers and ICE agents
- Any other law enforcement present, such as local or state police or National Guard, and what they are doing.
- Hateful comments or slurs, and discriminatory symbols or signage
- Torn clothing or property damage caused by the officer
- Other cameras in the vicinity including surveillance cameras – these can offer a corroborating angle for your footage in the future

Make your footage easier to authenticate by filming context, like:

- A clear shot of the location
- Any landmarks nearby
- Street signs, a clock or smartphone home screen – these details can help verify your time date and location

What if they tell me to stop filming?

If an ICE officer, National Guard soldier, or other law enforcement officer tells you to stop filming, depending on your comfort level interacting with law enforcement, you may want to comply with orders, or assert your rights but continue to film from a further distance. Remember that even if the agent doesn't target you, they could take out their frustration on the person in custody. And if you or someone close to you has a vulnerable immigration status, it might be best to stop filming altogether.

If you stop recording, you can still make note of what else you witness and write it down afterward. Remember there is great value in bearing witness to an incident even if you don't film – having eyes on an ICE agent or incident can help deter violence. Even taking a single photo has a lot of value.

Taking written notes, filming an incident from across the street, or just recording audio can be helpful in one party consent states like New York where it is legal to record audio from a conversation without the other person's consent.

Not filming might even allow you to safely get closer to the incident and hear important details you might not feel comfortable capturing on camera. Take note of things like:

- Date, location – be specific and include street names, or nearby landmarks
- How many officers there were, and what types of law enforcement were present (ICE, National Guard, etc.)
- How agents were dressed
- How agents identified themselves
- Did they present a warrant or refuse to?

How can I protect my footage and myself?

- Avoid the fingerprint ID and face ID to lock your phone. Secure your phone with at least a 6 digit password. Know that you have a right to object to a search of your device, refuse to give your pin or password, and refuse to unlock it for law enforcement. Law enforcement can't force you to give up a passcode without a warrant or court order, but they may ask or coerce you to unlock your phone with your fingerprint or face.
- Having a legal support number or trusted contact's info handy can also help keep you and the person you are filming safe. Immigrant Defense Project (IDP) offers criminal-immigration advice and support to immigrants and their loved ones: 212. 725. 6422
- Be aware that ICE agents and police care mainly about their safety, not yours. Moving quickly or suddenly to grab your phone or reaching into your pocket could escalate the situation.
- To help protect the person you are filming, avoid alleging anything about the person's immigration status or criminal history on video – anything learned during an arrest can be used against the person in court. Avoid filming their face or any identifying details if possible, and always think before sharing footage – see below for more on sharing.

What do I do with my footage after filming?

It is crucial to stop and think before sharing or posting footage online. Without taking necessary precautions, sharing footage publicly could put you, the person who was harassed or abused, or others at further risk of harm or retraumatization by exposing their identity, immigration status, etc., and could risk exposure to facial recognition tools. Before sharing, seek advice from a trusted advocacy group or lawyer about how you can best protect yourself and those on camera. While not applicable to all situations, it is best practice to ask permission from those you film before posting on social media. Video advocacy does not have to happen alone – in fact, video is best utilized as a tool to expose abuses, corroborate other forms of evidence, and create change when you work with others.

Remember that if you have filmed a human rights abuse, don't edit or change anything about the file or file name, and save copies of the unedited footage in a safe place.



NYCLU

ACLU of New York

www.nyclu.org

For more information on filming immigration abuses, visit **WITNESS' Eyes on ICE** project page.