

KNOW YOUR RIGHTS

Immigrants' Participation in Protests

NOVEMBER 2020

Immigrants are part of a long history of resistance to oppression in the United States, resistance that often has been led by Black communities. Organizing and political participation are freedoms afforded to all who reside in the U.S, including to immigrants. However, reports of U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) **presence** and **surveillance** at mass demonstrations in solidarity with Black lives earlier this year, as well as the presence of local law enforcement officers and federal troops, create risks for immigrants who plan to attend future demonstrations.¹

Immigrants, including undocumented immigrants, face additional risks from any encounter with law enforcement, because any police interaction, even if it doesn't result in a criminal charge or arrest, could lead to deportation. This know-your-rights resource provides immigrants and their allies with accurate information so that immigrants can *know their rights, understand the possible risks of participating in protests, and feel empowered to participate meaningfully, safely, and fully in our democracy.*

What rights do immigrants, including undocumented immigrants, have to engage in protest actions?

- **Right to free speech.** The First Amendment to the U.S. Constitution prohibits the government from restricting your right to free speech. This means that *you have a right to participate in political protests, marches, and demonstrations.* The First Amendment also protects freedom of the press (among other rights). These rights apply to everyone in the U.S., regardless of immigration status. However, courts are not consistent in vindicating the First Amendment rights of immigrants. People who are undocumented therefore should plan carefully, because they cannot rely on the courts to protect their First Amendment rights.
- **Right to be free from retaliation.** The First Amendment also prohibits the government from retaliating against you for exercising your rights to free speech and protest. However, the Trump administration has arrested immigrant leaders, activists, and students to retaliate against them for speaking out against its immigration policies. Therefore, if you're concerned about your immigration status, you should think carefully about the risks, create a safety plan, and maybe consult with a trusted immigration lawyer when deciding whether to participate in high-profile protest actions.
- **Right to remain silent.** Under the Fifth Amendment, you have the right to remain silent and refuse to answer questions asked by law enforcement, which includes police officers and immigration agents. If a law enforcement officer or agent begins to question you, your response should be, "I know my right to remain silent, and I choose to exercise it."

LOS ANGELES (Headquarters)
3450 Wilshire Blvd. #108 - 62
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax



WASHINGTON, DC
P.O. Box 34573
Washington, DC 20043
202 216-0261
202 216-0266 fax

- **Right to refuse consent to a search.** The Fourth Amendment protects you against unreasonable searches and seizures. You do *not* have to consent to a search of yourself or your belongings. If law enforcement asks to search you or your belongings, you should reply only to clearly refuse consent, by saying, “I do not consent to this search.” Note that an officer may ask indirectly, by telling you to do something that, if you comply, could be interpreted as your consenting to the search. Keep this in mind if, for example, an officer says to you, “Empty your pockets,” or asks you questions about your possessions such as, “What’s inside your bag?”
- **Right to speak to a lawyer.** If you are arrested or detained, you have the right to contact an attorney. You can simply say, “I need to speak with my attorney.”

What are best practices for protecting yourself and others when participating in protests?

If you are participating in a protest, march, rally, or any other public demonstration, remember the following:

Preparedness planning

- **Create a safety plan before attending a protest.** You should have (1) contact information for an attorney readily available and (2) a plan in place to meet any childcare or other needs. If you are attending the protest with others, create a plan for keeping each other safe.
- **Carry a paper document that lists resources.** These resources should include information about bail fund assistance programs and organizations that provide legal support.
- **Know who is organizing the event and have the contact information** of the organizers or other local support networks, if it’s available.
- **Know the protest route and emergency exits.**²

Digital privacy and social media precautions

- **Leave mobile devices at home or turn off facial and fingerprint recognition.** If you need to take a phone to the protest, you should turn off its facial and fingerprint recognition systems so your device can be accessed only by a lock code. This reduces the likelihood of law enforcement accessing your phone’s contents without your consent.
- **Use encrypted messaging applications when communicating regarding the protest.** Certain messaging applications, such as Signal and WhatsApp, encrypt your messages and make it more difficult for others to intercept message exchanges.
- **Avoid posting photos online of your participation in protests.** Law enforcement, including immigration agents, can monitor your social media accounts and use any online postings against you.
- **Know your rights and state laws regarding photo and video documentation of law enforcement.**³ While you may take photos and videos while in public, the law in different states varies as to whether the content of any videos you take in public is considered private and whether you can be required to surrender such content to law enforcement.⁴

Interacting with law enforcement officers or agents

- **You do not have to answer any questions, but you may have to provide identification (see below).** You can say that you are exercising your right to remain silent. *Do not provide any false information.*

- **If you are stopped, ask if you are free to leave.** Walk away if the answer is yes. Do not walk away without asking. If the answer is no, you are detained and should not answer any questions. Ask to speak with a lawyer and do not sign any documents or volunteer any information.
- **Do not consent to a search.** If you are being patted down, clearly state that you are not consenting to the officer searching you or your belongings.
- **Do not sign anything** without speaking with a lawyer first and making sure that you understand the document. Ask for a translated copy if you do not read English.
- **Do not use force or resist arrest, even if you think your rights are being violated.** Instead, document all the facts from the incident and contact an attorney to assess any legal options available to you.
- **Do not plead to a charge against you in court** unless you have spoken with a lawyer and understand the immigration consequences of your plea.

Identifying yourself

- **Some states require you to identify yourself.** Know in advance whether your state has that requirement, or whether you can remain silent.⁵ If you must identify yourself, you may present a state-issued identification document or another form of documentation issued in the U.S.
- **Do not provide any false information or false documentation.** You are *not* required to disclose your immigration status, country of origin, date of birth, date of entry into the U.S., or any other immigration-related information. Exercise your right to remain silent.
- **If you are undocumented, avoid carrying documents issued by other countries.** Documents you carry that are issued by countries other than the U.S. can be used to prove that you are not a U.S. citizen. If you are detained and are carrying a passport or other identity document issued by a country other than the U.S., you can exercise your right to remain silent and not answer any questions until you have an attorney present.

NOTE: Undocumented immigrants who have been in the U.S. less than two years should be aware of a **new policy, effective October 2020**, that expands *expedited removal* (a process that allows ICE to deport you without a hearing).⁶ Keep this in mind when you decide which documents to carry with you and which to leave at home. We suggest you learn more about your rights with respect to expanded expedited removal and **related best practices with respect to carrying certain documents**.⁷ And we suggest you consult with an immigration attorney if you're concerned this policy may affect you.

- **If you are a lawful permanent resident, you should carry your “green card” with you.** Federal law requires lawful permanent residents to carry evidence of their lawful permanent residence status, or “green card.”

Additional risks

- **Threat of retaliation.** Contact an advocacy organization if you believe you have been targeted because of your participation in a protest. Make sure to document all the facts surrounding your arrest and any information regarding your participation in the incident that led to the arrest.
- **Immigration-related risks if you are undocumented:**
 - If ICE agents are present at the protest and become aware of your undocumented status, they may arrest you. Under **ICE’s Sensitive Locations Memorandum**,⁸ ICE should not interrogate, arrest, or search individuals engaged in public demonstrations. However, as a general statement of policy, the Sensitive Locations Memorandum does not fully protect individuals

against ICE enforcement at such events. Nor has it stopped ICE from **being present at protests**.⁹ This is why exercising your right to remain silent and taking precautions when speaking out, and especially about your immigration status, is critical.

- Any interaction with law enforcement can lead to an ICE encounter, even if you didn’t commit a crime or are not charged with an offense.
- **Immigration-related risks if you have *lawful immigration status*.** If you are convicted in court for an offense you are accused of committing during a protest, the conviction can have immigration consequences, including that you may be deported.

Whom should you contact if you are retaliated against or targeted for participating in protests?

If you or a loved one is arrested, detained, or otherwise retaliated against because of your participation in protests, contact your local **immigrants’ rights advocacy group**.¹⁰ For more information, contact us at reply@nilc.org or check out the resources below.

Additional resources

- To learn more about your rights and how to best respond when encountering ICE and law enforcement, visit www.nilc.org/lawenf/.
- To learn more about immigrants’ protest-related rights, visit www.nilc.org/demonstrations/.
- To find an immigration attorney:
 - National Immigration Legal Services Directory (Immigration Advocates Network), <https://www.immigrationadvocates.org/legaldirectory/>
 - Immigration Lawyer Search (American Immigration Lawyers Association), <https://ailalawyer.com/>
 - Find a Service Organization Near You (Informed Immigrant), <https://www.informedimmigrant.com/service-organization-search/>
- If you or someone you know is detained by police or immigration authorities:
 - Resources for Families Facing Detention or at Risk of Deportation (Freedom for Immigrants), <https://www.freedomforimmigrants.org/for-immigrants>
 - Contact your local **immigrants’ rights advocacy group**.¹⁰

¹ Presence: <https://www.nbcnews.com/news/latino/federal-immigration-agents-detain-floyd-protester-nyc-n1226086>; surveillance: <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

² For additional guidance on how to prepare for a protest, see <https://www.wired.com/story/how-to-protest-safely-gear-tips/> and <https://www.teenvogue.com/story/how-to-prepare-protest>.

³ For more on photographers’ rights, see <https://www.aclu.org/know-your-rights/protesters-rights/#i-want-to-take-pictures-or-shoot-video-at-a-protest>.

⁴ For additional digital safety tips, see <https://unitedwedream.org/2020/06/top-6-digital-security-tips-for-undocu-folks/>.

⁵ For state-specific information, see <https://www.ilrc.org/chart-stop-and-identify-state-statutes>.

⁶ <https://www.ice.gov/news/releases/ice-implements-july-23-2019-expedited-removal-designation>.

⁷ <https://immigrantjustice.org/know-your-rights/know-your-rights-ice-enforcement-actions-and-expanded-expedited-removal>.

⁸ <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>. ICE’s Sensitive Location memorandum designates sites of public demonstrations, marches, rallies, and parades as “sensitive locations” where enforcement activity (including arrests, interviews, searches, and immigration-related surveillance) should not occur.

⁹ <https://www.nbcnews.com/news/latino/federal-immigration-agents-detain-floyd-protester-nyc-n1226086>.

¹⁰ <https://www.informedimmigrant.com/service-organization-search/>.