Make Your Voice Heard: Resources for noncitizen protestors
During the Webinar

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Questions During the Webinar

Chat Box: You can enter your questions in the chat box, and instructors will answer them, if time permits.
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Agenda

- Why are we here?
- Best Practices during protests generally
- Special considerations for noncitizens at protests
- ICE arrest considerations
- Immigration consequences of criminal offenses
- Where to learn more
Why are we providing this webinar?

- Knowledge is power
- Know the Risks
- Know Your Rights
Why are we here?
“There is nothing like returning to a place that remains unchanged to find the ways in which you yourself have altered” Nelson Mandela
Intersectionality

- Race
- Gender Identity
- Class
- Nationality
- Education
- Religion
• Supportive Organizations for Black Immigrants:
  • Undocublack Network
  • National Immigration Law Center
  • National Immigration Project

• Social Justice Organizations:
  • Black Lives Matter
  • Black Alliance for Just Immigration
  • Haitian Bridge Alliance
  • Black LGBTQ+ Migrant Project
  • African Advocacy Network
General Best Practices for Protests
Things to Know About the Protest You’re Attending

ROUTE

PERMIT

BAIL FUND

LAW ENFORCEMENT DYNAMICS
Your Rights as a Protestor

• Your rights are strongest in what are known as “traditional public forums” (streets, sidewalks, parks).

• You likely have the right to speak out on other public property (e.g. plazas in front of government buildings) as long as you are not blocking access to the government or interfering with other purposes for which the property was designed.

• You don’t need a permit to march in the streets or on sidewalks, as long as marchers don’t obstruct car or pedestrian traffic. If you don’t have a permit, police officers can ask you to move to the side of a street or sidewalk to let others pass or for safety reasons.
I want to take pictures or shoot videos at a protest

• When you are lawfully present in any public space, you have the right to photograph anything in plain view, including federal buildings and the police.

• Police officers may not confiscate or demand to view your photographs or video without a warrant, nor may they delete data under any circumstances. However, they may order citizens to cease activities that are truly interfering with legitimate law enforcement operations.
What happens if the police issues an order to disperse the protest?

• Shutting down a protest through a dispersal order must be law enforcement’s last resort. Police may not break up a gathering unless there is a clear and present danger of riot, disorder, interference with traffic, or other immediate threat to public safety.

• If officers issue a dispersal order, they must provide a reasonable opportunity to comply, including sufficient time and a clear, unobstructed exit path.

• Individuals must receive clear and detailed notice of a dispersal order, including how much time they have to disperse, the consequences of failing to disperse, and what clear exit route they can follow, before they may be arrested or charged with any crime.
I was stopped by the police while protesting

• Stay calm. Make sure to keep your hands visible. Don’t argue, resist, or obstruct the police, even if you believe they are violating your rights.

• Point out that you are not disrupting anyone else’s activity and that the First Amendment protects your actions.

• Ask if you are free to leave. If the officer says yes, calmly walk away.

• If you are under arrest, you have a right to ask why. Otherwise, say you wish to remain silent and ask for a lawyer immediately. Don’t say anything or sign anything without a lawyer.

• In CA, police are prohibited from asking about your immigration status so do not volunteer your immigration status!
I was stopped by the police while protesting (cont’d)

• You have the right to make a local phone call, and if you’re calling your lawyer, police are not allowed to listen.

• You never have to consent to a search of yourself or your belongings. If you do explicitly consent, it can affect you later in court.

• Police may “pat down” your clothing if they suspect you have a weapon and may search you after an arrest.
What to do if you believe your rights have been violated?

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<td>When you can, write down everything you remember, including the officers’ badge and patrol car numbers and the agency they work for.</td>
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<td>Get contact information for witnesses.</td>
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<td>Take photographs of any injuries.</td>
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<td>Once you have all of this information, you can file a written complaint with the agency’s internal affairs division or civilian complaint board.</td>
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Special Considerations for Noncitizen Protestors

Know the Risks, Know Your Rights
How does the criminal system cooperate with ICE?

- Fingerprints & other database sharing
- Interviews in Jails
- Other cooperation with LEAs

Limited by CA Values Act
Regulated by CA TRUTH Act
What happens once you are arrested?

Note that local law enforcement often have discretion on whether they need to arrest you in the first place. Some offenses may trigger a cite and release.

If you are taken to a jail, you will be fingerprinted and booked.

Local law enforcement and ICE share databases. Once you’re printed, ICE has access to your booking information.
• **Everyone has a right to an attorney.** If you cannot afford one, you may be able to get a public defender

• **Try to find out:** The court date, who your defense attorney will be, and the charges

• Within 24-48 hours of arrest, you will generally see a judge to hear what you’re **charged** with and whether you’ll be **released or pay bail**

What happens once you are arrested?

(con’td)

Everyone has a right to an attorney. If you cannot afford one, you may be able to get a public defender.

Try to find out: The court date, who your defense attorney will be, and the charges.

Within 24-48 hours of arrest, you will generally see a judge to hear what you’re charged with and whether you’ll be released or pay bail.
I’ve been arrested. What do I need to know about how these agencies work together?

In California – we have state laws that limit the level of cooperation between local law enforcement and ICE:

• **ICE cannot interview you in jail unless you have been provided a written explanation of who is interviewing you. You have the right to decline the interview or to do the interview with your attorney.**

• **Your personal, non-public information cannot be shared with ICE for immigration enforcement purposes.**

• **Police cannot hold you past your release time in order to help ICE arrest you.**
I’ve been arrested. What do I need to know about how these agencies work together?

(cont’d)

- While cooperation is completely voluntary – police can choose to not cooperate at all – once you are arrested, ICE will have access to your booking information.

- You can also check with a local immigrant rights organization to see if there are stronger “sanctuary” policies, which would further limit local cooperation.
  - Police and Sheriff Departments each have their own policies. Note that the sheriff is the one who typically controls the jail.
  - Check ILRC’s Enforcement map: www.ilrc.org/local-enforcement-map
ICE Presence at Protests

There have been sightings of ICE officers at protests.

California law limits the level of cooperation between ICE and local law enforcement and, in some cases, prohibits it. Things to keep in mind:

• ICE officers cannot be used as interpreters for police.

• Police cannot help ICE with immigration enforcement. This means they cannot ask you about your immigration status, help participate in an immigration arrest, or call an agent to arrest you.

If you notice that there are DHS (ICE, HSI, CBP) officers at protests, please let the ACLU know!

Report ICE presence at: mromani@aclunc.org
Who is at greater risk?

The risk increases once someone is taken to jail, booked, and/or their fingerprints are taken.

Certain people are at greater risk:

• Undocumented people
• People with DACA
• People with prior orders of removal
• People with prior criminal convictions
• People who have lawful status (e.g. a green card) who have a criminal offenses that ICE doesn’t know about yet
• People who have pending removal cases

If you choose to protest

• Know the Risk; Know Your Rights. Assess and read the crowd.
• Have the name of an immigration atty on hand
• Tell a trusted friend/family member about your plan
• Follow other protest best practices
• Consult with an atty to fully know the risks in your case
Remember: Know Your Rights!

- Right to remain **silent**.
- **Do not sign anything** without consulting an attorney.
- You have rights in immigration **court**, too.
  - Right to an attorney (but not at government expense; no public defenders)
  - Right to an interpreter
  - Right to see an immigration judge
  - Right to contact one’s consulate
  - If you are detained, you may have a right to a bond hearing
Immigration Consequences of Criminal Offenses

How will an arrest/conviction affect my immigration status?
Types of Immigration Status

1. U.S. Citizen
2. Lawful Permanent Resident (LPR/Greencard Holder)
3. Refugees & Asylees
4. Temporary Protected Status/DACA
5. Undocumented/Out of Status
**Starting point** and goals will depend on a person’s immigration status and other individual factors.

**Crimes:**
- **Can be a barrier** (temp/permanent) to immigration goals
- **No one size fits all rule** re which offense have which consequences: Same offense can impact ppl differently; some minor offenses have big consequences and vice versa
- Conviction and sometimes charge, might be enough

**Immigration goals:**
- Getting status (e.g. getting a green card)
- Keeping status (avoid becoming deportable)
- Becoming a US Citizen
Potential charges during protests

• **Remember: Potential for a criminal arrest and charge will depend on many factors**
  - Arrest/charging practices in that jurisdiction; Type of protest you’re participating in; Other variables: Differences in municipal/state codes

• **Potential CA criminal offenses**
  - Resisting arrest; battery or assault on a peace officer; participating in a riot; inciting a riot; failure to disperse; disturbing the peace; arson; looting during emergency; theft; many others. **This is only a sample!**

  • Immigration consequences for all of these vary from minor to more serious depending on a person’s immigration status, a person’s prior criminal history, and sometimes facts re the individual criminal case (like sentence)

  • **Check with an expert in both criminal and immigration law for advice in your case!**
Examples of Immigration Consequences: The good, the bad, and the ugly

The “Good”
• Misdemeanor resisting arrest, disturbing the peace, or trespass

The Not So Bad:
• Misd simple assault or battery
• Misd simple battery on an officer with no injury
• Vandalism

The Ugly
• Arson. Anything to do with fire can be extremely dangerous
• More serious assault

Get individual consult!
• DACA is different from TPS is different from asylum.
• These are just examples.
• Get individual counseling.
MARIJUANA:

• Prop 64 may have legalized MJ in California (and other states), but it’s still illegal under federal law. And immigration law is federal!

• Marijuana offenses can trigger deportability, bar naturalization, and can inhibit a green card

• So, if you are a non-citizen... some important warnings:

  • Don’t use marijuana at a protest
  • Don’t carry a medical MJ card or any paraphernalia (like a pipe, t-shirt, or sticker), at a protest
Other important warnings:

• Don’t work in a marijuana shop
• Get legal counsel if you have real medical need.
• Don’t have Facebook/social media posts, photos, or texts about MJ—nowhere!
• NEVER admit to any immigration or border official that you have ever used or possessed MJ, unless you have expert legal advice that tells you this is OK.
• Always say you want to talk to a lawyer!
Tell your public defender (and only your PD) if you are not a US citizen!

- Everything you tell them is private

- They have a constitutional DUTY to advise you on any immigration consequences and defend against them

- Don’t plead guilty (to even minor offenses) without first discussing the immigration consequences with your atty
Find out if/how paying bail impacts an immigrant at your jail.

• In some places, paying bail can trigger a transfer to ICE
• In other places, paying bail quickly after arrest can avoid an ICE transfer.
• The risk will also vary depending on the person’s immigration history.
• Connect with local immigration organizers, attorneys, or public defenders.

If you think you may be transferred to ICE, or already have a pending immigration case of any type, contact an immigration attorney asap

Source: Immigrant Justice Network
http://immigrantjusticenetwork.org/
Constitutional rights of Immigrant Defendants

**Defense Counsel**
- Advise of *specific* immigration consequences. *(Padilla v. Kentucky)*
- Defense against Consequences

**Prosecutor**
- Consider avoiding immigration consequences when plea bargaining (in CA)

**Court**
- Advise of *potential* immigration consequences
I wasn’t advised of the immigration consequences – what now?

• If someone entered a plea agreement of “guilty” or “no contest” without knowing or understanding the immigration consequences, that person *might* be able to get conviction vacated.

• Talk to a “clean slate” lawyer or their defense attorney.

• If your lawyer is looking for expertise in this area, talk to the ILRC (www.ilrc.org/immigrant-post-conviction-relief)
Where to Learn More!

Organizations to Follow:

• Undocublack Network: https://undocublack.org/
• Black Lives Matter: https://blacklivesmatter.com/
• Color of Change: https://colorofchange.org/
• Dignity and Power Now: http://dignityandpowernow.org/
• Freedom Inc.: http://freedom-inc.org/
• Project South: http://www.projectsouth.org/
• Southerners on New Ground: https://southernersonnewground.org/
• Black Alliance for Just Immigration https://baji.org/
• African Advocacy Network https://www.aansf.org/
• Black LGBTQ+ Migrant Project https://transgenderlawcenter.org/programs/blmp
• Haitian Bridge Alliance https://haitianbridge.org/
Where to Learn More!

Additional KYRs/Preparedness Resources:

• IDP’s Know Your Rights Against ICE in the Street Infographics: https://bit.ly/2XskGWu
• ILRC’s Family Preparedness Plan if Someone is Arrested by ICE: https://bit.ly/2XsFhK4
• ACLU’s Rights Photographing and Filming at Protests: https://bit.ly/2Xs6hJL
• WIRED’s Article on Protecting Your Cell phone Data at Protests: https://bit.ly/2XrRlvg
Q&A

Thank you!