

United States Senate

WASHINGTON, DC 20510

October 30, 2025

Kristi Noem
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528

Dear Secretary Noem:

The U.S. Department of Homeland Security (DHS) must immediately stop the unlawful and unconstitutional arrests of individuals, including U.S. citizens, for exercising a core First Amendment right: filming law enforcement activities that take place in public. These arrests appear to constitute clear First Amendment retaliation and a knowing and willful violation of clearly established law. Notably, law enforcement officers guilty of such abuses of power are **not** entitled to qualified immunity.

As the United States Court of Appeals for the Tenth Circuit unanimously ruled in 2022, the “... right to film the police falls squarely within the First Amendment’s core purposes to protect free and robust discussion of public affairs, hold government officials accountable, and check abuse of power.” Prior to this ruling by the Tenth Circuit, six other United States Courts of Appeals for various circuits had also determined that the First Amendment guarantees the right to film law enforcement officers performing their duties in public.

Importantly, **no circuit court** has reached a different conclusion. This explains why the Tenth Circuit unanimous opinion also held, “The substantial weight of this authority” puts a reasonable law enforcement officer on notice of the right to film police officers conducting activities in public—and thus, when law enforcement officers violate this clearly established law, such police officers are **not** entitled to qualified immunity.

Documenting and sharing the civil immigration enforcement actions of U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) officials is protected First Amendment activity. And recording public operations and disseminating the footage does not inherently endanger CBP and ICE agents, but it does encourage accountability.

This is especially valuable as DHS wastes taxpayer dollars to deploy film crews and photographers for the explicit purpose of recording and posting misleading, inflammatory images and videos of ICE and CBP officials engaged in civil immigration enforcement actions, in addition to DHS posting deceptive and dishonest videos on social media platforms that seek to mislead Americans into believing footage recorded in other States represented activity in Chicago.

It is imperative that public safety officers be accountable to the communities they serve. As such, DHS must immediately cease threatening to arrest or arresting individuals for recording the public activities of CBP and ICE officials. Failure to do so is a suppression of free speech and an impediment to ensuring government accountability.

As Secretary of Homeland Security, you swore an oath to support and defend the Constitution. Faithfully upholding your oath requires immediately ending the Trump administration's authoritarian assault on American values, freedom, and individual liberty.

Sincerely,



Tammy Duckworth
United States Senator



Richard J. Durbin
United States Senator