


MAY 3 - 2013



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: All ICE Employees

FROM: Daniel H. Ragsdale 
Deputy Director

SUBJECT: Participation in DHS Approved Multimedia Productions

Purpose:

This memorandum notifies U.S. Immigration and Customs Enforcement (ICE) personnel who participate in the filming of Department of Homeland Security (DHS) approved multimedia productions that potential constitutional and privacy issues may arise as a result of allowing the media and/or others involved in multimedia productions to observe certain law enforcement activities. As a general matter, ICE supports participation in multimedia productions that showcase the agency's excellent work. However, employees should be aware that encounter-based scenarios (e.g., work at ports of entry) generally raise less potential for adverse legal or privacy issues to arise than target-based activities (e.g., execution of search or arrest warrants). Because any violations of an individual's constitutional or privacy rights could potentially result in liability for the agency and/or personal liability for the employee(s) involved, personnel should be careful to follow the general guidelines set forth in this memorandum. Participation in multimedia productions is entirely voluntary; ICE personnel may opt not to participate. The success of law enforcement work is paramount to ICE; thus, no multimedia production should ever impede an investigation or enforcement action or jeopardize the success of a prosecution.

All Special Agents in Charge (SACs), Field Office Directors (FODs), and Chief Counsels are asked to distribute this memorandum to their subordinates. Executive Associate Directors and the Assistant Director of the Office of Public Affairs (OPA) are asked to distribute this memorandum to any personnel who may participate in multimedia productions. This memorandum does not apply to ICE participation in news programming.

Discussion:

ICE has participated in a number of multimedia productions that highlight DHS' efforts to enforce the nation's immigration and customs laws. These include books, films, documentaries, docu-dramas, and reality television programs that provide the public with an up-close view of our officers' and agents' interactions with individuals they may encounter while conducting

investigations or carrying out other official duties.¹ Unlike news programming, multimedia productions are typically for entertainment purposes or are documentary productions that are aired as theatrical releases or on television in a reality series format or as a part of weekly entertainment programming. Also unlike news pieces, multimedia productions require that DHS and the network enter into a Multimedia Agreement; among other protections, this agreement allows DHS to review each episode before it airs to ensure that law enforcement sensitive and Privacy Act protected information is not released.

Multimedia productions showcase the agency's hard and dynamic work to keep the nation secure, but personnel who participate should remain mindful that any violations of an individual's constitutional or privacy rights could potentially result in liability for the agency and/or personal liability for the employee(s) involved. As a result, personnel who participate in such multimedia productions should:

- be aware of and take appropriate measures to guard against potential violations of the Privacy Act, the constitutional protections against unreasonable searches and seizures, and agency policy;
- abide by all laws, policies, procedures and ICE training regardless of the presence of media or others involved in multimedia productions; and
- not alter their conduct nor stray from standard operating procedures or the normal course of business when media or others involved in multimedia productions are present for the purpose of observing or filming their activities.

The following are acceptable ways of showcasing the agency's work:

- Projects involving reenactments of cases that have already been fully adjudicated in court and are closed;
- Projects tracking an activity rather than a specific individual; and/or
- Projects involving the observation of activities that take place at a port of entry, as long as ICE personnel obtain consent where necessary prior to the media observation.

Due to the heightened risk of constitutional and/or privacy violations and/or interfering with ICE operational activities, ICE does not authorize media or others involved in multimedia productions to be present in a variety of scenarios, including, but not limited to:

- The presentation of *Miranda* warnings;
- The execution of a search warrant at an individual's home;
- The execution of a fugitive operation to the extent that personally identifiable information not already in the public domain could/would be revealed to a third party;
- Personal searches beyond an immediate pat down, to include a strip search or x-ray of a person;

¹ This memorandum does not apply to news programming, and the term media as used within it does not refer to news outlets.

- Any activity that would reveal the identity of a witness, victim, or targeted suspect;² and
- Discussions in which Privacy Act information or other legally protected information, such as asylum, would be revealed (e.g., disclosures of information about an individual from his or her A-File or a government system such as TECS).

Every project is different and may raise unique issues. As such, when commencing a multimedia project that is outside the categories delineated above, OPA will coordinate with the local field responsible official (the SAC, FOD, or Chief Counsel), the Office of the Principal Legal Advisor (OPLA), and the Privacy and Records Office (Privacy) regarding the scope of the project, relevant constitutional and privacy laws, and avoiding exposure to liability. Moreover, OPA will receive concurrence from the local U.S. Attorney's Office before beginning a multimedia project that involves a matter that has not been fully adjudicated.

For any questions related to participation in a multimedia production, employees may contact OPLA, their local Public Affairs Officer, and/or Privacy.

² This does not prohibit ICE's participation in publicizing wanted ICE fugitives for law enforcement purposes; i.e., the capture and successful apprehension of such fugitives.