

SUBJECT: INTERNAL GUIDANCE - RESPONDING TO FIRST AMENDMENT AUDITORS

This guidance is provided to inform all staff on best practices when encountering individuals commonly referred to as "First Amendment Auditors." These are individuals who intentionally record in and around public buildings and spaces, often with the goal of documenting interactions with public employees and officials, which they typically post online.

While these individuals assert their constitutional right to record in public spaces, their methods can sometimes be designed to provoke a reaction, which, if captured on video and edited, could lead to misunderstandings or negative publicity for our agency and its staff.

The goal of this guidance is to ensure staff safety and that they are prepared and professional.

UNDERSTANDING THE SITUATION:

Purpose: These auditors often film in public areas, including government buildings, lobbies, and sidewalks, to test and document public employees' understanding and respect for First Amendment rights, particularly the right to record.

Motivation: While they claim to ensure constitutional compliance, a primary goal is often to generate online content that gains viewership, particularly if a confrontational interaction occurs.

Legal Context: U.S. courts, through cases such as *Fields v. City of Philadelphia*, *Glik v. Cunniffe*, and *ACLU v. Alvarez*, have affirmed the public's right to record government officials and public employees performing their duties in public spaces, provided it does not interfere with official operations or violate other laws.

KEY GUIDANCE FOR STAFF:

Avoid Direct Engagement:

- If you encounter an individual filming in a public area, please avoid initiating contact or engaging in conversation with them. Their objective is often to elicit a verbal response that can be edited and posted online, potentially creating a negative narrative.
- Do not ask them to stop filming or demand to know their purpose if they are in a public space.

Maintain Professionalism and Silence:

- It can be challenging to be the subject of filming, especially if individuals are attempting to provoke a reaction. However, it is crucial to remain calm, professional, and non-confrontational.
- Practice silence in the face of attempts to provoke. A lack of reaction often defuses the situation and results in less compelling, and therefore less viral, online content.

Understand Legal Boundaries:

- Unless an individual is genuinely interfering with official duties, violating a specific law, or attempting to access clearly restricted areas, their actions of filming in public should be considered lawful.
- Staff should not attempt to seize or threaten to seize an individual's camera or phone. Such actions can lead to legal challenges and significant negative publicity.
- Ensure you are familiar with your unit's SOPs for required front-office documents. All other public records requests should be directed to FOIA.

Protect Restricted Areas:

- Ensure that areas not intended for public access (e.g., non-public offices, operational zones) are clearly marked with "Authorized Personnel Only" or "No Public Entrance" signage.
- Use physical barriers (closed doors, gates) where appropriate to delineate public from non-public spaces. Individuals filming in clearly restricted areas may be asked to leave.

Focus on Your Duties:

- Continue with your work and responsibilities as usual. Do not allow the presence of auditors to disrupt your duties or the services provided to the public.

Report and Document:

- Report to Forest Service Law Enforcement.
- If an individual's behavior escalates beyond filming and becomes genuinely disruptive, threatening, or appears to violate specific laws (e.g., trespassing in restricted areas after being asked to leave, harassment, property damage), report it to your supervisor, Forest Service Law Enforcement, or local Law Enforcement if needed.
- Document in writing the incident factually, noting time, location, and specific behaviors, without personal commentary or assumptions about intent.

By adhering to these guidelines, we can effectively manage these encounters, uphold our commitment to transparency and constitutional rights, and protect our agency and its dedicated employees from unnecessary complications.