

# my Statesman

## **Immigrants in U.S. without authorization aren't criminals**

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As Florida House members debated increasing penalties for certain violent crimes committed by unauthorized immigrants, participants noted a fundamental but oft overlooked issue: If you are in the U.S. illegally, does your mere presence in the country mean you've committed a crime?

Ingrid M. Delgado of the Florida Conference of Catholic Bishops asserted the opposite in March testimony against Florida's House Bill 83, which would heighten the penalties for certain violent offenses if the defendant is in the country illegally.

"Unlawful presence," Delgado said, "is not a crime. It is a civil violation."

Minutes later, Republican state Rep. Jennifer Sullivan countered: "I feel like in the midst of this, something has gotten lost that is a crucial main point — and that is the fact that we're talking about people who are here illegally. That means that, legally, they are breaking the law."

Those moments led PolitiFact Florida to gauge whether undocumented immigrants commit a crime by just being in the country.

Most of the time, we learned, unlawful presence isn't a crime.

To our inquiry, Michele M. Taylor of the Florida Conference of Catholic Bishops pointed to the majority opinion in the 2012 U.S. Supreme Court case *Arizona v. United States*. The court found that "as a general rule, it is not a crime for a removable alien to remain present in the United States."

Experts agreed.

Unlawful presence is neither a felony nor a misdemeanor, said Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute. Rather, Shapiro said, it's a civil infraction that results in removal and a bar on re-entry for a period of time.

“Not everything that’s illegal — meaning against the law or violating the law — is a crime,” Shapiro said. “There are civil violations, like when you get a parking ticket. ‘Unlawful presence’ is one of these. You don’t go to jail or receive any other criminal punishment for being in the country illegally — you get deported.”

That said, it’s important to distinguish between “unlawful presence” and “unlawful entry,” said Kermit Roosevelt, a University of Pennsylvania law professor.

Improper entry by an alien is a criminal misdemeanor, Roosevelt noted.

This distinction can make the use of these terms tricky.

For instance, an undocumented immigrant who entered the U.S. improperly would have committed a crime. However, once that person is here, the act of being here unlawfully isn’t by itself a crime.

Gabriel “Jack” Chin, a professor and director of clinical legal education at the University of California-Davis law school, said, “It is a crime to cross the border other than as designated by immigration officials.”

Another example of illegal entry would be if an individual is found here after having previously been deported.

Taylor said, “Unlawful re-entry after a deportation order can be a federal crime, depending on circumstances.”

Mark Krikorian of the Center for Immigration Studies, which generally opposes loosening immigration laws, said that while illegal presence isn’t a crime, it’s easy for such individuals to run into criminal problems, for instance by filling out an employment eligibility form to get a job when they’re not eligible to work.

### **Our ruling**

Delgado said: “Unlawful presence (in the U.S.) is not a crime.”

The simple act of being in the U.S. illegally is not, by itself, a crime. But it’s worth noting that someone unlawfully present in the country might have committed a crime by entering in an illegal manner or because he or she was deported before.

We rate this claim Mostly True.