



## Do undocumented immigrants have constitutional rights?

Amy Sherman

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Dozens of immigrant advocate groups gathered at the Florida Capitol for a press conference on Tuesday, March 28, 2017 to oppose anti-immigrant bills lawmakers are considering this spring. (Miami Herald)

As the Florida Legislature considers legislation to increase penalties for undocumented immigrants who have committed certain crimes, legislators and activists have pondered this question: What are the constitutional rights of these immigrants?

HB 83 would increase penalties for certain violent offenses -- including sexual battery, aggravated assault with a deadly weapon, murder, and the use of a destructive device such as a bomb -- if the defendant was in the country illegally. The bill still has several hurdles before it reaches Gov. Rick Scott's desk.

The bill's sponsor, Rep. Dane Eagle, R-Cape Coral, argued at a March 27 House subcommittee hearing that the courts will ultimately have to rule on whether the legislation is constitutional.

Based on some court decisions, Eagle said it is "unclear if non-citizens can enjoy the same constitutional rights as citizens" although he said that everyone is entitled to constitutional protections for due process.

Francesca Menes, director of policy and advocacy for the Florida Immigrant Coalition, disagreed with Eagle.

"As an undocumented immigrant, you do have constitutional rights here in the United States," she said, "and that has been said over and over in the courts, that they do have constitutional rights."

We found that undocumented immigrants do have constitutional rights -- but not all of the rights of citizens. (We have previously fact-checked a claim about whether unlawful presence in the United States is not a crime, a claim we ruled Mostly True.)

### **Some rights, but not all**

A spokeswoman for the Florida Immigrant Coalition pointed to an article by an author of immigration books about constitutional protections for undocumented immigrants.

We interviewed several legal scholars who agreed that undocumented immigrants have many constitutional rights, such as freedom of speech and religion, and if arrested, a right to a Miranda warning.

"There is no question that all persons in the United States including unauthorized migrants enjoy the protections of the Constitution," said Gabriel (Jack) Chin, law professor at University of California-Davis. "There is no debate about that among legal scholars."

The Fifth Amendment, as well as the Fourteenth Amendment protects everyone from deprivation of life, liberty or property without due process of law, Chin said.

There have been several court decisions dating back more than a century that outline the rights of undocumented immigrants.

The U.S. Supreme Court ruled in *Zadvydas vs. Davis* (2001) that "once an alien enters the country, the legal circumstance changes, for the due process clause applies to all persons within the United States."

In a Texas case, *Plyler vs. Doe*, the U.S. Supreme Court ruled in 1982 that non-citizen children must get a free K-12 education.

But undocumented immigrants don't share all of the rights held by citizens -- for example, they can't vote in state and national elections.

And Fordham law professor Jennifer Gordon said that some undocumented immigrants get almost no due process in removal proceedings.

In 1996, Congress created expedited removal for undocumented immigrants without a hearing. Initially it only applied at the U.S. border. Then it was expanded to within 100 miles of a border for undocumented immigrants who had been in the country less than 14 days.

President Donald Trump announced in January that his administration will apply the program anywhere in the United States to undocumented immigrants present less than two years.

"In the past, the government has largely prevailed when such programs have been challenged," Gordon said. "However, the Trump administration is proposing to expand some of these

programs to include many more undocumented immigrants; it remains to be seen if the expansion will be upheld."

The U.S. Supreme Court is expected to rule by June on whether undocumented immigrants in custody for deportation proceedings have a bond right to a hearing if their cases haven't been dealt with in a timely manner. The ACLU filed the case on behalf of immigrants detained for more than six months.

While defendants in criminal proceedings have a Sixth Amendment right to a government-appointed attorney if they are poor, that right doesn't extend to immigration court, where the violations are considered civil and not criminal, said Cornell law professor Stephen W. Yale-Loehr.

"Yes, immigrants do have constitutional rights, but those rights are not equal to U.S. citizens," he said. "They have due process rights, but when it comes to immigration court proceedings, those rights are often watered down by courts."

Ilya Shapiro, senior fellow in constitutional studies at the Cato Institute, said that although undocumented immigrants have constitutional rights, the question with the Florida law is whether it "intrudes into the federal regulatory scheme."

When ruling on a case involving Arizona's immigration law, the U.S. Supreme Court ruled that states can't enhance penalties for immigration violations but can ask for immigration status or ask the federal government to verify a suspect's status.

"Now, if the bill punishes criminal felonies, not immigration infractions, giving harsher punishments to illegal aliens, then I think it would be vulnerable to an equal protection challenge under the Fourteenth Amendment," Shapiro said.

### **Our ruling**

Menes, speaking on behalf of the Florida Immigrant Coalition said, "As an undocumented immigrant, you do have constitutional rights here in the United States."

Undocumented immigrants have many constitutional rights such as freedom of speech and religion. But they don't share all the constitutional rights of citizens.

For example, some undocumented immigrants in removal proceedings have not gotten due process in court, and they don't have a right to a government-paid lawyer in immigration court.

We rate this claim Mostly True.