

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4615

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RUBEN IZAGUIRRE-DE LA CRUZ,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, Chief District Judge. (5:11-cr-00326-D-1)

Submitted: January 16, 2013

Decided: February 14, 2013

Before AGEE, KEENAN, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, Stephen C. Gordon, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. Thomas G. Walker, United States Attorney, Jennifer P. May-Parker, Kristine L. Fritz, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ruben Izaguirre-De La Cruz was indicted for possession of a firearm by an illegal alien, in violation of 18 U.S.C. § 922(g)(5) (2006), and illegal entry of an alien, in violation of 8 U.S.C. § 1325(a)(2) (2006). He moved to dismiss the first count, on the ground that § 922(g)(5) violates his Second Amendment rights, and the district court denied the motion, holding that an illegal alien's possession of a firearm falls outside of the Second Amendment's scope. He then pled guilty to the second count, was found guilty by jury of the first count, and was sentenced to sixteen months' imprisonment. He now appeals, contending that the Second Amendment protects the right of illegal aliens to possess firearms in the home for self-defense.

Whether Izaguirre-De La Cruz's conviction under § 922(g)(5) violates the Second Amendment presents a question of law that this court reviews de novo. See United States v. Moore, 666 F.3d 313, 316 (4th Cir. 2012). Section 922(g)(5) does not violate the Second Amendment, because possession of firearms by illegal aliens does not fall within the amendment's scope. United States v. Carpio-Leon, No. 11-5063, 2012 WL 6217606, at *2-*8 (4th Cir. Dec. 14, 2012); see also United States v. Chester, 628 F.3d 673, 680 (4th Cir. 2010) (holding that to be unconstitutional, the challenged law must burden

conduct falling within the Second Amendment's scope). Izaguirre-De La Cruz's Second Amendment challenge therefore fails.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED