

Legal Sidebar

New Circuit Split: Seventh Circuit Rules that Unlawfully Present Aliens with “Extensive Ties” to the United States Have Second Amendment Rights

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This summer, in [United States v. Meza-Rodriguez](#), the Seventh Circuit created a circuit split by holding that the [Second Amendment](#), which provides that “the right of the people to keep and bear Arms, shall not be infringed,” protects illegal aliens with “extensive ties” to the United States. The ramifications of the Seventh Circuit’s determination, however, remain unclear: Despite the court’s conclusion, the Seventh Circuit upheld a law prohibiting illegal aliens from possessing firearms and ammunition on the grounds that the law does not unnecessarily burden Second Amendment rights given unique issues presented by illegal aliens. Accordingly, how the Second Amendment could operate to protect the rights of illegal immigrants “to keep and bear arms” remains unclear.

In *Meza-Rodriguez*, Mariano Meza-Rodriguez was arrested when officers responded to a bar fight in Milwaukee, Wisconsin. Officers then discovered that Meza-Rodriguez—a Mexican citizen brought into the United States by his parents as a young child—was carrying a .22 caliber cartridge. Because [18 U.S.C. § 922\(g\)\(5\)](#) prohibits illegal aliens from possessing firearms and ammunition, Meza-Rodriguez was charged with, and convicted of, violating § 922(g)(5). Meza-Rodriguez appealed, arguing that he has a Second Amendment right to keep and bear arms and that § 922(g)(5) unconstitutionally burdens that right.

In its decision, the Seventh Circuit first considered whether Meza-Rodriguez, as an illegal alien, is protected by the Second Amendment, and concluded that he is. The court focused on the language of the Second Amendment, which confers a right onto “the people”—a term of art—and analyzed whether Meza-Rodriguez is one of those “people.” The court noted, on one hand, that the Supreme Court’s decision in [District of Columbia v. Heller](#) links Second Amendment rights to law-abiding citizens, which, as someone who entered the country illegally, Meza-Rodriguez technically is not. On the other hand, though, the court concluded that the Supreme Court was not defining “the people” when making that connection in *Heller*. Accordingly, the Seventh Circuit relied on a Supreme Court ruling from 1990, [United States v. Verdugo-Urquidez](#), which opined that “the people,” for the purposes of protection under the First, Second, and Fourth Amendments, “refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” In the Seventh Circuit’s opinion, Meza-Rodriguez met that standard because of his “extensive ties” with the United States, including his 20-year residency beginning as a child, attendance at Milwaukee public schools, and close family relationships.

Despite concluding that the Second Amendment protects Meza-Rodriguez, the Seventh Circuit held nevertheless that § 922(g)(5), which prohibits illegal aliens from possessing firearms, was a lawful limit on that right. The court noted that the legislative history behind § 922(g) reveals that it was enacted to prevent “risky people” from obtaining guns. And illegal aliens present unique risks because, the court said, they often live “outside the formal system of registration, employment, and identification,” and thus are better able to evade detection by law enforcement.

One of the judges on the 3-judge panel authored a concurring opinion, agreeing with the ultimate outcome—that § 922(g) does not violate the Second Amendment—but expressing doubt that the Second Amendment encompasses illegal aliens.

Three other federal appellate courts—the [Fourth](#), [Fifth](#), and [Eighth](#) Circuits—have reached the opposition conclusion. The Seventh Circuit’s opinion, holding that Second Amendment rights attach to illegal aliens with a “substantial connection” to the United States, has therefore created a circuit split. Notwithstanding the circuit split, the Seventh Circuit’s decision does not disturb the status quo: An individual right under the Second Amendment for illegal aliens to possess a firearm has little meaning, in practice, if § 922(g)(5) forbids them from possessing firearms and ammunition. Meza-Rodriguez has [asked the Supreme Court to review](#) the case. But because all the courts agree that § 922(g)(5) is constitutional, the Court may not feel compelled, at this point, to resolve the broader question of whether the protections of the Second Amendment encompass illegal aliens.

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