



# LOOMING GUN CONTROL

Through Executive Actions

In the many executive actions recently announced, the President is in the process of trying to halt the spread of unserialized firearms and trying to make it easier for people to flag family members using Extreme Risk Protection Orders. Based on these actions, it looks like more clarity on the application and use of stabilizing braces is imminent, but that may mean more restrictions than ever and a liberal application of the National Firearms Act (NFA). The efforts to find bipartisan agreement for gun control are slowly fizzling; we are seeing executive action being used as a work-around to passing legislation through congress. These executive actions from Biden are presented as a way reduce gun violence in this country directly, but the claims that any of these regulations can actually improve public safety are dubious at best. These new actions could include expanding Red Flag Laws nationwide, and many more are ways to take away guns from law-abiding gun owners. Is “reducing gun violence” the actual reason to enforce these new restrictions, and will they in the end, benefit us or cause more strife?

***“The Justice Department, within 40 days, will use a proposed rule to help stop the proliferation of ‘ghost guns’.”***

As Americans, we have always been able to build or assemble personal firearms and use them accordingly. Some states have regulated this further and there are many laws related to commercial manufacturing of firearms. Limitations on the personal assembly of unserialized firearms will likely limit or change what has always been legal previously. In fact, serial numbers on firearms were not federally required until the gun control act of 1968.

When we look at “who is building unserialized firearms and why?”, we see that it is primarily dedicated firearm enthusiasts – not criminals. In fact, it is often more expensive (as well as much more time consuming and requires more mechanical skill) to build a firearm rather than to buy a perfectly working, factory-assembled gun with a warranty and brand reputation. Many builders are simply “extreme customizers”, similar to the worlds of aftermarket automotive upgrades or custom gaming computers. Personal

building/customizing allows for users to achieve a specific look, color, or configuration that is not available in a factory-produced model. The legal concern is that none of these parts (including the 80% lower) are considered to be firearms, so ultimately firearms are being created without the ATF being able to track them through serial numbers or in exchanges between licensed dealers. Without trackability of the unserialized firearm, this interferes with gun tracing; a method which law enforcement uses to “reduce firearm-related violence” by identifying the serial numbers of the firearm and finding the origin of that firearm based on other records of the same serial number. We should note the entire premise of gun tracing is based on criminals leaving serialized firearms at the scene of the crime, and being able to compile a full chain of custody associated with that serial number. The reality is criminals often remove the serial numbers from firearms that were originally serialized, it takes little more than a metal file and mal intent. When a serial number is recovered, gun tracing frequently results in a serial number sitting in a database, but not solving additional crimes. The effect of rulemaking related to unserialized lowers could take several forms. Perhaps the parts will remain the same, but it will be illegal to ship entire parts kits together in the same box. Or maybe the marketing of parts kits or 80% lowers will become illegal, or be required to go through and FFL. Other parts needed to complete a build that have never been serialized may come under increased scrutiny. Any change in this process will definitely make things harder for those who enjoy building their own firearms. Will this new proposed rule make it harder for citizens to protect themselves? Or will it possibly make the world safer? Let us know what you think in the comment section below.

***“The Justice Department, within 60 days, will issue a proposed rule to make clear when a device marketed as a stabilizing brace effectively turns a pistol into a short barreled rifle subject to the requirements of the National Firearms Act.”***

This sounds familiar, doesn't it? This topic is similar to our recent discussion on The Bump Stock Controversy – regulating a type of stock based on how it may “re-design” a firearm into a different type of firearm that is federally restricted under the NFA. The “brace debate” has been ongoing even longer than the controversy of bump stocks. In summary, an AR-15 with a short barrel (under 16 in.) and a stock is a short-barreled rifle – a firearm that requires registration and a federal tax stamp. An AR-15 with a short barrel and no stock is legally considered a pistol. The “Sig Brace” was originally designed as a prosthetic aid to stabilize an AR-15 pistol by strapping the buffer tube to the arm of a one-handed shooter. It was not a stock, but many shooters began using it as such. Years ago, the ATF had issued a ruling that using the brace as against the shoulder, in fact designed it to be a stock. That that ruling was later rescinded. In 2020, a firearm manufacturer who designed a firearm around using this brace was accused of manufacturing illegal short-barreled-rifles. This brought this discussion back to the top of the pile. The whole debate over the Sig brace ultimately comes back to a lack of clarity in the definitions. “A proposed rule to make clear...” sounds like a good thing to resolve the confusion. Unfortunately, this may mean that a simple accessory, originally designed with helpful intentions, could turn a perfectly legal pistol into an illegal short-barreled-rifle. That would mean the penalties for using this cheap plastic accessory become steep, as it is now a federally restricted weapon, like an illegal machine gun. The Firearms Legal Protection team will continue to monitor this situation; we hope to provide an update in the future.

***“The Justice Department, within 60 days, will publish model ‘red flag’ legislation for states.”***

Red flag laws (extreme risk protection orders) have become a dangerous trend that is expanding across many states. If someone may be in crisis and considering harming themselves or others, family members can be the first ones to see warning signs of this. Extreme Risk Protection Orders allow a family member, relative or associate (it varies from state to state)

to intervene by petitioning a court order to have law enforcement remove guns from the individual's access. The Second Amendment states that "the right of the people to keep and bear Arms, shall not be infringed," which is exactly what this Red Flag Law is infringing upon. This also brings up a fourth amendment issue, related to "unlawful search and seizure". Seizing the property of individuals who have not been convicted of a crime violates the due process provision. Gun control advocates claim that this law does not violate the due process of law because those whose firearms have been taken can still appeal to courts to reclaim their property. This would still be depriving individuals of an established constitutional right that they are guaranteed. It is unlikely (but not impossible) that there will be an all-encompassing national red flag law. The federal government publishing model red flag legislation will make it easier for more states to adopt these extreme risk protection orders. This will give states a template for what to propose and how to write bills. It may even incentivize states to pass red flag laws by tying it to some sort of federal funding.

We recently discussed these topics in a webinar. Attorney Dean G. Greenblatt joined Firearms Legal Protection Vice President of Legal Operations Terry Johnson, Esq. to explain, and interpret what these executive actions could mean for everyday gun owners.

Consider how this will affect our day-to-day activities, limit what you can

*Click the video below to watch our webinar over Executive Actions*



**EXECUTIVE ACTIONS**

# LOOMING GUN CONTROL THROUGH EXECUTIVE ACTIONS



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