

Posted 1/4/20

## LOOPHOLES ARE LETHAL (PART II)

*Who can buy a gun? Indeed, just what is a gun? Um, let's pretend!*



*For Police Issues by Julius (Jay) Wachtel. [Part I](#) began with the bitter laments of Houston Police Chief Art Acevedo, who denounced politicians of the Red persuasion for assiduously protecting a loophole that allows domestic abusers – including an eventual cop-killer – to skirt Federal firearms regulations.*

Sometimes, though, the aggrieved party is also Red-tinged. Like, say, Florida Governor Ron DeSantis. Here's [what he said](#) two days after a foreign military student [unleashed a barrage](#) of handgun fire at a Pensacola naval station, killing three airmen and wounding eight: "That's a federal loophole that he took advantage of. I'm a big supporter of the Second Amendment, but the Second Amendment applies so that we the American people can keep and bear arms. It does not apply to Saudi Arabians."

DeSantis sports an "A" rating from the NRA, [which endorsed him](#) in the Governor's race. He's also a former Republican member of the House, thus presumably no fan of gun control. Yet it was precisely the loosening of such laws – done at the behest of his former colleagues, no less – that would one day let a Saudi trainee legally [waltz into a gun store and buy](#) the lethal .45 caliber Glock he used in the massacre.

In June 1968 "The Omnibus Crime Control and Safe Streets Act" was passed. Among its provisions was a law ([Title VII, sec. 1202\[a\]\[5\]](#)) prohibiting illegal aliens, meaning persons unlawfully in the U.S., from acquiring or possessing firearms. Several months later, the [1968 Gun Control Act](#) would go on to forbid gun dealers and private

individuals from transferring handguns to non-residents, meaning persons who lived in other states ([18 USC sec. 922\[b\]\[3\]](#). Long guns can go to residents of adjoining, “contiguous” States.) Lawfully present non-immigrant aliens (i.e., visitors) weren’t mentioned. To keep them from being excluded as potential gun customers, [a regulation was then enacted](#) stipulating that those who had been present in the same state for ninety consecutive days were “residents” for the purpose of buying a gun.

Then something really bad took place. On February 23, 1997 [a Palestinian visitor opened fire](#) on the observation deck of the Empire State Building, killing one and wounding six before committing suicide. Ali Hassan Abu Kamal had been in the U.S. about two months. He had spent all his time in New York except for a brief detour to Florida, [a gun-friendly state notorious for helping](#) the Big Apple’s residents circumvent their state’s restrictive firearms laws. Listing a motel room as his residence, Abu Kamal quickly secured a Florida I.D. card, then promptly used the document to buy a Beretta pistol in a Florida store.

Alas, at the time the only required “proof” that an alien had lived in a State for ninety days was their word. In reaction to the shooting, ATF promptly implemented [a regulatory fix](#) requiring that aliens buying guns provide documentary proof of their ninety-day tenure using utility bills, etc. A few months later [Federal law was amended](#) (July 21, 1998, pg. 16,493) to specify that aliens who were *not* “representatives of foreign governments” or “foreign law enforcement officers” could only acquire guns if they had been “admitted to the United States for lawful hunting or sporting purposes” or if they presented “a hunting license or permit lawfully issued in the United States” ([18 USC 922\[d\]\[5\] and \[y\]\[2\]](#)). The regulation imposing a ninety-day residence rule remained in effect.)

Considering what had happened, allowing *any* non-immigrants to acquire guns for *any* reason might seem excessively obliging. But legislators on the “Red” side of the aisle were concerned about barring potential customers from the gun marketplace. Here’s how the bill’s “Blue” author, Senator Dick Durbin (D-Ill) balanced it all out:

We tried to imagine the exceptions of those coming...on nonimmigrant visas who might need to own a gun for very real and legal purposes. Here are the exceptions...if you are someone who has come to the United States for lawful hunting...that person is exempt. That person may purchase a gun while here for that purpose....

Senator Larry Craig (R-Idaho) was pleased by the accommodation:

...I appreciate the willingness of the Senator from Illinois to modify his amendment. I think it is necessary and appropriate, and certainly the public understands that hunting is a lawful right and opportunity in this country. Certainly, foreign citizens that are here and go through the legal and necessary steps should be allowed that opportunity and to acquire a gun for that purpose while here is necessary and fitting.

In time, memory of the Empire State tragedy faded. In June 2012, a few months before Governor DeSantis was first elected to the House, Attorney General Eric Holder (he, of the very “Blue” persuasion) [abolished the ninety-day residence test](#) for legal aliens who wished to buy guns. Henceforth, “an alien lawfully present in the United States acquiring a firearm will be subject to the same residency and proof of residency requirements that apply to U.S. citizens.” His reasoning, “that the State of residence requirement...cannot [legally] have two different constructions—one that applies to U.S. citizens and another that applies to lawfully present aliens” supposedly reflected the best legal judgment. That it might have also signaled political concerns – it was, after all, an election year – we’ll leave for others to assess.

And that wasn’t the end of it. Holder’s move was followed by an [ATF ruling](#) that a hunting license “does not have to be from the State where the nonimmigrant alien is purchasing the firearm.” Ergo, another loophole. It seems that Governor DeSantis was wrong. The Second Amendment indeed applies to everyone, legal aliens included. (For another example of the unintended consequences of liberalizing gun acquisition by visitors to the U.S., click [here](#).)

For another, even more tangible of how loopholes reproduce let’s turn to...ghosts. Guns, that is. Assembled from parts available online and the secondary market, so-called “ghost guns” cannot be readily traced. Increasingly common – [as many as thirty percent](#) of firearms seized by ATF in California are reportedly “ghosts” – they are of special appeal to criminals and those who want weapons such as assault-style rifles and machineguns that may be illegal under State or Federal law.

How did the problem of ghost guns come about? Blame a loophole. According to [ATF and Federal law](#), the core of a firearm is its “frame or receiver.” Exactly what these are was left for a regulation to specify. Here’s how [27 CFR 478.11](#) responded to the challenge:

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon....

Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Apparently, these definitions were too broad to satisfy the politicians. Perhaps they would have discouraged hobbyists and tinkerers. So ATF stepped in. Over time it settled on what's been called the “[eighty-percent rule](#),” meaning eight-tenths of the way to a fully operational firearm. An ATF website [graphically suggests](#) what it takes to hit that threshold. We filmed two pictures. On the left, lacking “holes or dimples for the selector, trigger, or hammer pins,” is a non-gun. On the right is a “partially machined” version, which ATF classifies as a firearm.



Hobbyists and felons can legally buy “blanks” such as the one on the left online and by mail-order, no problem. These items aren't subject to the controls imposed by Federal law until they've been tweaked. Let's be honest and call this for what it is: a purposely crafted loophole. Alas, it's [enabling urban gangs](#) to build up their arsenals of pistols and rifles in California, a state with some of the strictest gun control laws in the nation. And the consequences have been all too predictable. Consider, for example, [the gunning down earlier this year](#) of a California Highway Patrol officer (two colleagues were wounded) by a convicted felon using an AR-15 style rifle that was built from a legal blank and legally-available parts.

Remember those loopholes from [Part I](#)? Say, about domestic abusers? In our polarized, politically-fraught land, when it comes to guns, pretending to regulate is the over-arching rule. Houston Police Chief Art Acevedo, Florida Governor DeSantis, and friends and family members of the late CHP officer Andre Moye would likely agree.