

Trading in Death

Profile Of A Rogue Gun Dealer:

TRADER SPORTS

San Leandro, California



BRADY CENTER TO PREVENT GUN VIOLENCE
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The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

Trading In Death – Profile Of A Rogue Gun Dealer: Trader Sports, San Leandro, California, was written by Daniel R. Vice. If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report is also available at www.bradycenter.org and www.gunlawsuits.org.



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EXECUTIVE SUMMARY

Trader Sports of San Leandro, California is one of the “worst of the worst” gun dealers in the nation. Law enforcement has traced thousands of crime guns to its store and it has been cited repeatedly for violations of federal law.¹ Trader Sports’ owner, Anthony Cucchiara, has been charged with breaking firearms laws regulating gun dealers for almost as long as those laws have existed, with violation citations beginning in 1970, two years after the federal Gun Control Act imposed legal requirements relating to gun sales and record keeping for licensed gun dealers.²

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) first attempted to revoke Cucchiara’s license in 1978 after years of warnings to correct hundreds of legal violations of the law.³ Based on Cucchiara’s repeated violations, ATF refused to renew his expiring license in 1978.⁴ ATF then spent years fighting off Cucchiara’s efforts to get his license back in the courts, successfully defending their actions all the way to the Supreme Court. Then **suddenly and inexplicably, in 1983, the federal government agreed to give him his license back on a promise to obey the law.** Since then, Cucchiara has sold thousands of guns traced to crimes.

After years of inspections revealing a multitude of continuing legal violations, ATF issued a notice of revocation of Trader Sports’ federal firearms license in 2004, **citing it for “thousands of violations” of federal law.**⁵ License revocations are a rare event. In 2003, for example, ATF inspectors found violations at 1,812 gun dealers, averaging over 80 violations per dealer.⁶ Yet ATF issued license revocation notices for only 54 dealers that year, due in part to weak federal gun laws generally requiring years of repeated violations before a license may be revoked.⁷ Despite ATF’s notice of license revocation, Trader Sports is still operating, due to special provisions in federal gun laws that allow it, and any other gun dealer, to stay open while appealing ATF’s notice of license revocation. Trader Sports’ license revocation is now scheduled to occur on June 1, 2006.⁸

Cucchiara has repeatedly sued the federal government in an attempt to evade having his license revoked, claiming in a federal lawsuit, for example, that the government was engaged in a conspiracy “to vex, annoy and harass [him] in his sporting goods business and individual capacity.”⁹ In the latest federal lawsuit brought by Trader Sports against ATF, the gun shop is challenging its license revocation as “an unfair campaign to intimidate firearm purchasers and remove the licenses of dealers based on hyper-technical and inadvertent violations of the federal Gun Control Act,” and has asked a federal court to postpone the revocation even longer.¹⁰ The U.S. District Court for the Northern District of California will decide whether to postpone revocation of the store’s federal firearms license at a hearing on May 25, 2006.

On March 30, 2006, the Brady Center to Prevent Gun Violence launched a multi-year Campaign Against Illegal Guns to strengthen law enforcement tools to crack down on corrupt gun dealers.¹¹ **Congress is currently considering legislation, H.R. 5092, that would gut ATF’s ability to revoke the licenses of dealers like Trader Sports.** Trader Sports has encouraged Congress to enact H.R. 5092, which could allow the gun shop to continue operating, despite revocation of its license, through years of litigation.¹² Yet, as the Department of Justice



states, “If a decision to revoke a license in this circumstance, on this record, does not justify denial of a stay [requested by Trader Sports to postpone its license revocation], the regulatory scheme will be rendered powerless to stop rogue licensees.”¹³ Congress should strengthen law enforcement’s ability to crack down on rogue dealers, rather than further weakening gun laws. Below are highlights of Trader Sports’ crime gun sales and legal violations:

- Trader Sports is the **second largest supplier of crime guns** of any retailer in the nation. In 2005, 447 crime guns were traced to Trader Sports. Only one other dealer, Badger Mountain of West Milwaukee, had more crime guns traced to it in 2005 than Trader Sports.¹⁴
- In 2005, law enforcement recovered crime guns sold by Trader Sports at an average rate of **more than one per day**.¹⁵
- Gun dealers like Trader Sports are responsible for most guns recovered in crimes. Just 1.2% of gun dealers account for 57% of all crime guns nationwide.¹⁶
- In 2000, Trader Sports supplied 46% of crime guns recovered in Oakland.¹⁷
- Trader Sports had trace requests amounting to approximately 12% of its sales figures from 2003-2005 – meaning an average of **one of every eight guns sold by Trader Sports was recovered in crime**. Gun retailers in California with similar sales volume had far fewer traces than Trader Sports.¹⁸
- In 2005, law enforcement recovered 279 crime guns in the San Francisco Bay area that had been supplied by Trader Sports. The recovery site of these firearms is shown on a map at Appendix A. In 2004, law enforcement recovered 290 crime guns in the Bay area sold by Trader Sports, and in 2003, law enforcement recovered 252 crime guns in the Bay area sold by Trader Sports.¹⁹
- From 2003-2005, 235 crime guns moved from Trader Sports to use in crime within three years of sale, a strong indicator that the guns were trafficked directly out of the store.²⁰
- In 2003, ATF cited Trader Sports for massive violations of federal law, including failing to account for at least 1,723 guns reported as acquired by Trader Sports but missing from its inventory.²¹
- ATF also, in 2003, uncovered numerous other violations of federal law by Trader Sports, including illegal sales of semi-automatic assault weapons with high-capacity magazines, selling guns to purchasers who identified themselves as under indictment for a felony or who failed to state on a federal firearms purchase form whether they were a fugitive from justice, and failing to properly respond to law enforcement attempts to trace crime guns that originated from the gun shop.²²



TRADING IN DEATH – PROFILE OF A ROGUE GUN DEALER: TRADER SPORTS, SAN LEANDRO, CALIFORNIA

Trader Sports, a gun dealer in San Leandro, California, is one of the “worst of the worst” gun dealers in America. In 2005, Trader Sports was the second largest supplier of crime guns of all gun retailers in the nation.²³ That year, 447 crime guns were traced to Trader Sports.²⁴

The Brady Center to Prevent Gun Violence has launched a multi-year Campaign Against Illegal Guns to strengthen law enforcement tools to crack down on gun dealers like Trader Sports.²⁵ Weak federal gun laws have severely hampered ATF’s ability to prosecute and revoke the licenses of rogue gun dealers, by requiring proof of repeated “willful” violations of the law over many years before ATF can shut down a corrupt dealer.²⁶ Congress is currently considering legislation, H.R. 5092, that would gut ATF’s ability to revoke the licenses of dealers like Trader Sports. Trader Sports has encouraged Congress to enact H.R. 5092, which could allow the gun shop to continue operating, despite revocation of its license, through years of litigation. Congress should reject the gun lobby’s efforts to protect rogue gun dealers like Trader Sports and instead strengthen law enforcement’s ability to shut down dealers who violate the law.

History of Anthony Cucchiara and Trader Sports’ Thousands of Violations of Federal Law



Trader Sports
President Anthony
Cucchiara

Anthony Cucchiara is the principal shareholder and president of Trader Sports, Inc., (doing business as “The Traders”).²⁷ The gun shop is located at 685 East 14th Street, San Leandro, California.²⁸

Anthony Cucchiara began operating as a gun dealer in 1958, as sole proprietor of “The Traders Sporting Goods.”²⁹ In 1968, Congress enacted the federal Gun Control Act, requiring licensed dealers to keep records of firearm transactions and authorizing federal officials to inspect dealers’ records and inventory.³⁰ Gun dealers are required to keep accurate firearms “acquisition and disposition” records, which track all firearms acquired and sold or disposed of by the dealer.³¹ Accurate records are necessary to allow law enforcement to trace firearms that have been recovered in crime from sale by the dealer to a retail purchaser.

By 1970, the federal government had found legal violations at Cucchiara’s gun shop and sent him “irregularities statements” reflecting, “in the aggregate, hundreds of violations of legal requirements, including repeated failure to record the acquisition and disposition of firearms and scores of sales of firearms to ineligible purchasers.”³²

“[I]t’s the mother and father, or people on welfare that aren’t keeping their guns locked...”

--Trader Sports President
Tony Cucchiara, explaining
why he thinks his store is
linked to high numbers of
crime gun sales³³



Cucchiara Loses His Federal Firearms License

In 1973, the federal government warned Cucchiara that, based on his repeated violations of federal law, any future violations would be considered “willful,” subjecting him to possible prosecution and revocation of his federal firearms license.³⁴ After this warning, a follow-up investigation of Cucchiara’s shop uncovered “additional sales to ineligible purchasers, unreported multiple handgun sales [sales of more than one handgun in a five-day period, and a recognized indicator of gun trafficking], repeated failure to record the acquisition and disposition of firearms and a loss without reasonable explanation of 200 firearms.”³⁵ When Cucchiara attempted to renew his federal firearms license despite these repeated violations of the law, on May 2, 1978, the government issued a Notice of Denial of his license renewal application.³⁶ Cucchiara requested and received a hearing on the denial on June 27, 1978.³⁷

On September 14, 1978, ATF Regional Regulatory Administrator Charles D. Foster issued a final Notice of Denial of Cucchiara’s license renewal application.³⁸ Cucchiara responded by seeking *de novo* review of ATF’s decision in federal district court.³⁹ *De novo* review requires a court to reconsider an administrative agency’s findings on a new evidentiary record, giving no weight to the findings of the agency.⁴⁰ On October 19, 1979, U.S. District Court Judge Samuel Conti rejected Cucchiara’s appeal, granting summary judgment to the government.⁴¹ The court ruled:

After a careful *de novo* review of the entire record, the court finds on the basis of the uncontroverted evidence that plaintiff, since at least 1972, has been fully aware of the legal obligations of federal firearms licensees; that **during the life of his license he failed on many scores of occasions to observe legal requirements**; that the nature and extent of his noncompliance with legal requirements, especially in the area of sales to ineligible purchasers where the public interest in strict, painstaking compliance is particularly great, **evince gross disregard of or indifference to legal requirements**; and the Secretary’s refusal to renew his license was therefore authorized....⁴²

Cucchiara asked the court to postpone its judgment pending appeal, but the court denied Cucchiara’s request.⁴³

Cucchiara Attempts To Evade Sanctions By Transferring Operations to a Friend

Faced with the loss of his federal firearms license due to hundreds of violations showing a “gross disregard of or indifference to legal requirements,” Cucchiara attempted to evade the government’s sanction by transferring operations of his store to “long time employee, Everett Studley.”⁴⁴ On December 3, 1979, Studley formed a corporation called Studley Arms and began selling firearms without a federal firearms license, taking over operations of Cucchiara’s gun shop.⁴⁵ On December 4, 1979, Studley belatedly applied for and obtained a one-year federal firearms license.⁴⁶ After a year, the federal government denied Studley’s renewal application and Studley responded by seeking a license instead in the name of his corporation, “Studley



Arms, Inc.”⁴⁷ On March 17, 1981, ATF issued a Notice of Denial to Studley Arms, Inc., refusing to issue a license to the corporation.⁴⁸ Studley filed an administrative appeal through ATF challenging that license revocation, and ATF ruled against Studley on June 25, 1981.⁴⁹

While attempting to transfer operations of his store to Studley, Cucchiara also appealed to the U.S. Court of Appeals for the Ninth Circuit, asking the court to overturn the federal district court’s decision refusing to reinstate his firearms license.⁵⁰ On July 30, 1981, the Ninth Circuit upheld the government’s refusal to renew Cucchiara’s license.⁵¹ In his appeal, instead of “disput[ing] the factual accuracy of the administrative record [describing his violations,] Cucchiara implicitly admit[ed] to hundreds of violations of the Bureau’s legal requirements, after multiple warnings.”⁵³ Yet

Trader Sports President Tony Cucchiara’s attempt to evade sanctions by transferring his shop to a friend after Cucchiara’s federal license was revoked was a “*subterfuge to allow Mr. Cucchiara to improperly continue in the firearm business....*”

-- U.S. District Court Judge Eugene Lynch⁵²

Cucchiara claimed that “he has made costly, good faith efforts to comply with all his obligations as a licensee ... (and) that his noncompliance was excusable, either because it was inevitable, due to the size and nature of his operation, or merely inadvertent.”⁵⁴ The court rejected Cucchiara’s attempt to explain away his repeated violations of the law, noting that he was warned in 1973 that his violations would subject him to sanctions, “[y]et, with this knowledge, he failed to abide by these requirements” of federal law.⁵⁵ Having lost in the Ninth Circuit, Cucchiara petitioned the U.S. Supreme Court to hear his case, but the Court refused to consider his appeal.⁵⁶

After Numerous Court Losses, Cucchiara Again Sues ATF, Alleging A Government Conspiracy To Violate His Civil Rights

Faced with ATF’s refusal to allow Cucchiara to continue operating and also its refusal to allow him to evade sanctions by transferring operations to Studley, Cucchiara and Studley filed federal lawsuits against ATF.⁵⁷ Studley’s suit asked the court to overturn ATF’s decision to reject firearms license applications for Studley and Studley Arms.⁵⁸ United States District Court Judge Eugene Lynch rejected Studley’s suit, holding:

Upon review of the record, this Court finds substantial, if not overwhelming, evidence that Mr. Studley was not acting as the sole proprietor, but rather as a **subterfuge to allow Mr. Cucchiara to improperly continue in the firearm business....** It is clear that BATF’s refusal to renew Mr. Studley’s license and its denial of the application of Studley Arms, Inc. were proper.⁵⁹

Cucchiara also filed suit, claiming civil rights violations based on allegations that government officials were engaged in a conspiracy “to vex, annoy and harass plaintiff Cucchiara in his sporting goods business and individual capacity.”⁶⁰ In response, ATF stated that it would allow Cucchiara to regain his license only if he:



concedes that his former Federal Firearms License was not renewed in 1979 because of inadequate and improper firearm records; and upon receipt of a Federal Firearms License after April 14, 1983, [agrees that] he will fully comply with all recordkeeping requirements imposed by law and regulation on such licensee.⁶¹

Both Cucchiara and Studley agreed to these conditions in writing, and in 1983, ATF issued federal firearms licenses to each in exchange for Cucchiara dropping his lawsuit.⁶²

Cucchiara Continues Supplying Hundreds Of Guns To Criminals

Following ATF's decision to reissue Cucchiara's federal firearms license in 1983, Trader Sports continued supplying hundreds of guns to criminals.⁶³ In a civil lawsuit brought by California municipalities against Trader Sports in 1999, a California Superior Court judge analyzed Trader Sports "high risk sales practices" and noted that "the California [crime gun] trace database shows that Traders had at least 710 gun traces between 1995 and 2001, or more than 100 per year."⁶⁴ The court also noted that:

The national ATF [crime gun] database shows that **Traders was linked to 927 national crime gun traces** between 1989 and 1996, or more than 115 per year. **The high numbers of traces linked to Traders in these databases "are overwhelming indicators of gun trafficking"** given that the majority of FFLs [federally licensed firearms dealers] have no gun traces associated with them and that numerous federal reports indicate that the distribution of traces is strikingly disproportionate; a small percentage of dealers, including Traders, account for the majority of traces.⁶⁵

Case Study – A Trader Sports Assault Weapon Kills A Man On His 29th Wedding Anniversary

In 1991, Trader Sports paid \$400,000 to settle a suit filed by the widow of a man killed with an assault rifle bought at the store. The suit, *Ellingsen v. Trader Sports* (No. 654015-1, Super. Ct., Alameda Co.), alleged that the gun store violated federal law by selling the assault weapon, along with three ammunition magazine clips and 100 rounds of ammunition to a 19-year-old who could not produce identification required by federal law, and used a "straw purchaser" to complete the federal form. Less than a month later, on December 3, 1988, the buyer fired the rifle on the Nimitz freeway in California to make the car in front of him go faster. Larry Ellingsen, returning with his wife, Sharon, from their 29th wedding anniversary celebration was killed instantly. Sharon Ellingsen's suit against Trader Sports charged that the gun store's illegal gun sale led directly to her husband's death.

Cucchiara's "Thousands of Violations" Of Federal Law

In 2000, ATF conducted a random inspection of Trader Sports, and on June 27, 2000, ATF reported its inspection results to the gun shop.⁶⁶ The inspection revealed numerous



violations of federal law.⁶⁷ According to ATF, Trader Sports' acquisition and disposition records did not account for the disposition of firearms it sold and did not properly document its electronic records.⁶⁸ Trader Sports also failed to properly report multiple handgun sales – sales of more than one handgun in a five-day period, and a recognized indicator of gun trafficking – as required by federal law.⁶⁹

In July and August 2002, ATF again inspected Trader Sports.⁷⁰ The inspection revealed numerous violations of federal law.⁷¹ According to ATF inspectors, yet again, Trader Sports' acquisition and disposition records did not account for the disposition of firearms it sold.⁷² Trader Sports also did not properly document its electronic acquisition and disposition records and failed to properly report multiple handgun sales as required by law.⁷³ On November 19, 2002, ATF warned Trader Sports of the consequences of continued illegal acts, stating:

[Y]ou are reminded that Federal laws and regulations which govern the firearms industry are specific. Your continued operation under your license is contingent upon compliance with all applicable laws and regulations.... This letter serves as a warning to you that these violations are now part of your record and will be considered, should there be other violations in the future, for possible adverse action against your license to operate.⁷⁴

On September 2, 2003, ATF conducted yet another inspection of Trader Sports, this time finding massive violations of federal law.⁷⁵ ATF found at least **1,723 firearms missing from Trader Sports' inventory** – not accounted for in either its physical inventory or its firearms disposition records.⁷⁶ An additional 141 guns were in Trader Sports' inventory but not accounted for in its acquisition records.⁷⁷

ATF also charged Trader Sports with violating federal law pertaining to “multiple sales,” which are sales of more than one handgun to a single buyer in a five-day period.⁷⁸ According to ATF, “multiple sales or purchases are a significant trafficking indicator” and “crime guns recovered with obliterated serial numbers [making them impossible to trace] are frequently purchased in multiple sales.”⁷⁹ ATF inspectors found that Trader Sports sold 39 handguns in multiple sale transactions without alerting ATF and local law enforcement as required by law.⁸⁰

Trader Sports also failed to respond to crime gun trace requests as required by federal law.⁸¹ For example, on September 27, 2002, Trader Sports received a trace request for a Mossberg 12 gauge shotgun and responded that it had no record of receipt or disposition for the shotgun, making it untraceable to a purchaser.⁸² Police had seized the shotgun from an accused heroin dealer in August 2002.⁸³ ATF inspectors searched Trader Sports' records in 2003 and found that the store had in fact acquired the shotgun on April 25, 2002, just months before it was recovered in crime.⁸⁴ Yet, Trader Sports evidently could not explain how a gun it acquired in April 2002 made its way to a crime scene in just a few months, apparently with no record of acquisition or sale or any theft report. Likewise, on May 3, 2004, Trader Sports received a trace request for a Bryco 9 mm caliber pistol,⁸⁵ a “junk gun” preferred by criminals. Trader Sports responded to the trace request, stating that the pistol was in fact still in its inventory.⁸⁶ Yet police had recovered the gun from a 14-year-old junior high school student who illegally



possessed it at a school.⁸⁷ Trader Sports' records confirmed that it acquired the pistol on February 23, 1996, yet it apparently had no record of sale and had not filed a theft report for the weapon.⁸⁸

ATF inspectors also found that Trader Sports improperly transferred semi-automatic assault weapons with large capacity ammunition feeding devices to law enforcement officers 110 times without the legally required certification that the weapons were for law enforcement use only.⁸⁹ According to ATF, "before transfer of these firearms, the licensee is required to obtain certain information from the purchaser, under penalty of perjury, and a certification from a supervisor in the law enforcement agency on agency letterhead, in order to ensure the weapons are for official law enforcement use only."⁹⁰ ATF inspectors found that Trader Sports did not do so in all 110 instances.⁹¹



Example of a Semi-Automatic Assault Rifle – ATF Charged Trader Sports With Illegally Selling Dozens Of Assault Weapons

Federally licensed gun dealers are required to complete federal forms for every gun sale (on an ATF Form 4473), including verifying the purchaser's identity and certifying that the dealer has initiated a background check of the purchaser.⁹² During the 2003 inspection of Trader Sports, ATF found 431 instances where the gun store "did not properly complete and maintain firearm transaction records."⁹³ For

example, between August 2002 and August 2003, Trader Sports failed to verify gun buyers' addresses by checking them against the buyer's identification, as required by law, more than 200 times.⁹⁴ Also, in 32 instances the store transferred guns to legal aliens without required documentation showing that they met legal residency requirements.⁹⁵ ATF also cited Trader Sports for proceeding with a gun sale even though the purchaser failed to state whether the intended recipient of the gun was a fugitive from justice and for **allowing a sale even though a buyer stated that he was under "indictment or information" for a felony.**⁹⁶

Based on ATF's inspectors finding massive violations of federal law, on July 29, 2004, ATF issued a Notice of Revocation of Trader Sports' federal firearms license.⁹⁷ A hearing appealing the notice of revocation was postponed after Trader Sports requested additional time to prepare for the hearing, and it was ultimately held on November 16-17, 2004.⁹⁸ ATF presented testimony from several witnesses, while Trader Sports declined to present any witnesses to testify at the hearing.⁹⁹ Both parties submitted evidence for consideration by ATF.¹⁰⁰ After considering all of the testimony and physical evidence, on December 23, 2005, ATF Director of Industry Operations Mary Lerch issued a Final Notice of Revocation of Trader Sports' License to Trader, with an effective revocation date of June 1, 2006.¹⁰¹

On February 22, 2006, Trader Sports requested that the effective date of the revocation be postponed while it pursued a lawsuit against ATF protesting the revocation in federal district court.¹⁰² ATF declined to stay the revocation date.¹⁰³ Trader Sports then petitioned the federal district court for a stay of the license revocation, and the court is scheduled to hear this motion on May 25, 2006.



ATF Reveals Trader Sports As One Of The Nation's Leading Suppliers of Crime Guns

In opposing Trader Sports' request to continue operating despite its "thousands of violations" of federal law, ATF presented the federal district court with evidence showing the overwhelming danger that Trader Sports poses to the public.¹⁰⁴ ATF evidence showed that Trader Sports is the **second largest supplier of crime guns** of any gun retailer in the nation.¹⁰⁵ In 2005, 447 crime guns were traced to Trader Sports.¹⁰⁶ Only one other dealer, Badger Mountain of West Milwaukee, had more crime guns traced to it in 2005 than Trader Sports.¹⁰⁷ In 2005, law enforcement recovered crime guns sold by Trader Sports at an average rate of more than one per day.¹⁰⁸ Trader Sports has supplied 46% of all of the crime guns recovered in the Oakland, California.¹⁰⁹ These figures necessarily understate Trader Sports' contributions to the crime gun market, since not all guns used in crime are recovered, and not all recovered guns are traced by ATF.

Additionally, ATF found that Trader Sports had trace requests amounting to approximately 12% of its sales figures from 2003-2005 – meaning an average of one of every eight guns sold by Trader Sports was recovered in crime.¹¹⁰ In comparison, two other California dealers with similar sales volume had far fewer traces.¹¹¹ In 2005, law enforcement recovered 279 crime guns in the San Francisco Bay area that had been supplied by Trader Sports.¹¹² The recovery site of these firearms is shown on a map at Appendix A. In 2004, law enforcement recovered 290 crime guns in the Bay area sold by Trader Sports, and 252 crime guns in 2003.¹¹³ From 2003-2005, 235 crime guns moved from Trader Sports to use in crime within three years of sale, a fast "time to crime" and a strong indicator that the guns were trafficked directly out of the store.¹¹⁴ From 2003-2005, Trader Sports was unable to successfully respond to 19 crime gun traces initiated by law enforcement, while the largest retailer in California had just one unsuccessful trace in that time.¹¹⁵

ATF crime gun data shows that:

- Trader Sports is the second largest supplier of crime guns of any gun retailer in the nation – only one other gun retailer in the nation has more crime gun traces than Trader Sports
- In 2005, an average of more than one gun traced to Trader Sports was recovered in crime every day of the year

Cucchiara Seeks Protection From Congress By Supporting H.R. 5092, A Gun Lobby Bill To Severely Weaken ATF

In court papers filed in his federal lawsuit, Cucchiara has claimed that ATF's attempt to revoke his license for repeated violations of federal law is "an unfair campaign to intimidate firearm purchasers and remove the licenses of dealers based on hyper-technical and inadvertent violations of the federal Gun Control Act..."¹¹⁶ He urges Congress to enact pending legislation, H.R. 5092, which would gut ATF's authority to revoke licenses from federal firearms dealers.¹¹⁷



Cucchiara points out that the legislation would “strip [ATF] of any discretion with respect to stays of license revocation,” allowing gun shops whose licenses have been revoked to stay in business through years of legal appeals.¹¹⁸

Federal law currently places severe restraints on ATF’s ability to prosecute gun dealers or traffickers or revoke licenses from dealers who break the law. Even though ATF inspections often reveal scores of illegal acts by gun dealers, ATF rarely is able to revoke a dealer’s federal firearms license. In 2003, ATF inspectors found violations at 1,812 gun dealers, averaging *over 80 violations per dealer*.¹¹⁹ Despite this large number of dealers with multiple violations, ATF issued license revocation notices for only 54 dealers that year.¹²⁰ In part, this is due to the overly burdensome requirement that ATF prove a dealer “willfully” violated the law, requiring proof that the dealer not only broke the law but also knew that his or her conduct was unlawful.¹²¹

H.R. 5092, currently advancing in Congress, would make it even more difficult to prosecute gun traffickers and rogue dealers or revoke dealer licenses, by requiring that ATF prove that a lawbreaker not only knew of the requirements of the law and broke the law, but also specifically intended to violate the law. H.R. 5092’s requirement that ATF prove a lawbreaker’s specific mental state and purpose would present a nearly insurmountable burden. This is a dangerous provision that is contrary to Supreme Court precedent and would cripple ATF’s ability to enforce firearms laws.¹²²

CONCLUSION

ATF data reveals that Trader Sports is one of the “worst of the worst” dealers in the nation, supplying more crime guns than all but one other gun retailer. Its guns are traced to crimes an average of more than once every day of the year. Weak federal gun laws make it extremely difficult for ATF to revoke gun dealer licenses. Worse yet, Congress is currently considering gun-lobby backed legislation, H.R. 5092, that would gut ATF’s power to revoke licenses of corrupt gun dealers and require ATF to allow dealers to continue operating after their licenses are revoked, through years of litigation.

The case of Trader Sports makes it clear that ATF’s ability to crack down on rogue gun dealers must be strengthened, not weakened. As the U.S. Department of Justice stated in response to Trader Sports’ court petition to continue selling guns, “If a decision to revoke a license in this circumstance, on this record, does not justify denial of a stay [requested by Trader Sports to postpone its license revocation], the regulatory scheme will be rendered powerless to stop rogue licensees.”



ENDNOTES

¹ U.S. Department of Justice, Memorandum of Points and Authorities in Opposition to Motion for Preliminary Injunction filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.), at 1 (“DOJ Memo.”).

² *Cucchiara v. Secretary of Treasury*, 652 F.2d 28, 29-30 (9th Cir. 1981); DOJ Memo., at 5-6.

³ *Id.*, at 5-6.

⁴ *Id.*

⁵ *Id.*, at 2.

⁶ United States Department of Justice, *Inspections of Firearms Dealers by [ATF]* vi (2004).

⁷ *Id.*; see also *Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1276 (11th Cir. 2005).

⁸ Trader Sports’ Reply Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction and for Stay of License Revocation Pending De Novo Judicial Review, or in the Alternative, for a Temporary Restraining Order and for Issuance of Order to Show Cause Re Preliminary Injunction, filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.) (“Trader’s Reply”), at 1.

⁹ Declaration of Anthony Cucchiara in Support of Motion for Preliminary Injunction and for Stay of License Revocation Pending De Novo Judicial Review, or in the Alternative, for a Temporary Restraining Order and for Issuance of Order to Show Cause Re Preliminary Injunction, filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.) (“Cucchiara Decl.”), at 3.

¹⁰ Trader’s Reply, at 1-2.

¹¹ For more on the Brady Center to Prevent Gun Violence Campaign Against Illegal Guns, see <http://www.bradycampaign.org/action/trafficking/>.

¹² Trader’s Reply, at 2.

¹³ DOJ Memo., at 25.

¹⁴ *Id.*, at 23; see Declaration of Sania Franken in Opposition to Motion for Preliminary Injunction filed in *Trader Sports, Inc. v. Gonzales*, No. C 06-001136 VRW (N.D. Cal.) (“Franken Decl.”), at Exhibit A.

¹⁵ *Id.*

¹⁶ ATF, *Commerce in Firearms in the United States* (2000), at 23.

¹⁷ ATF, *Crime Gun Trace Reports (2000) Oakland* (July 2002), at 6.

¹⁸ Franken Decl., Exh. B. Trader Sports sold 11,364 firearms from 2003-2005 and had 1,424 crime gun traces. In comparison, retailer Martin Redding sold 9,963 firearms but had only 408 crime gun traces and retailer Second Amendment sold 8,616 firearms but had only 10 crime gun traces.

¹⁹ *Id.*, at ¶ 10.

²⁰ *Id.*, at ¶ 8.

²¹ DOJ Memo., at 8-9.

²² *Id.*

²³ Franken Decl., Exh. A.

²⁴ *Id.*

²⁵ For more on the Brady Center to Prevent Gun Violence Campaign Against Illegal Guns, see <http://www.bradycampaign.org/action/trafficking/>.

²⁶ See, e.g., *Willingham Sports, Inc. v. ATF*, 415 F.3d 1274, 1276 (11th Cir. 2005).



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- ²⁷ Cucchiara Decl., at ¶ 1.
- ²⁸ *Id.*, at ¶ 2.
- ²⁹ *Id.*, at ¶ 3.
- ³⁰ 18 U.S.C. § 921-924.
- ³¹ 18 U.S.C. § 923(g).
- ³² *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28, 29-30 (9th Cir. 1981).
- ³³ June 27, 2001, Videotaped Deposition of Anthony Cucchiara taken in *People v. Arcadia Machine & Tool, Inc.*, No. 4095 (Cal. Super. Ct.), at 195.
- ³⁴ *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28, 29-30 (9th Cir. 1981).
- ³⁵ *Id.*; DOJ Memo., at 6.
- ³⁶ DOJ Memo., at 6.
- ³⁷ *Id.*
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ *See, e.g., Marshall v. Marshall*, 126 S.Ct. 1735, 1743 (2006).
- ⁴¹ DOJ Memo., at 6.
- ⁴² *Id.*
- ⁴³ *Id.*
- ⁴⁴ *Id.*
- ⁴⁵ *Id.*
- ⁴⁶ *Id.*, at 7.
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28 (9th Cir. 1981).
- ⁵¹ *Id.*
- ⁵² DOJ Memo., at 7.
- ⁵³ *Cucchiara v. Secretary of Treasury*, 652 F. 2d 28, 29-30 (9th Cir. 1981).
- ⁵⁴ *Id.*
- ⁵⁵ *Id.*
- ⁵⁶ *Cucchiara v. Secretary of Treasury*, 455 U.S. 948 (1982).
- ⁵⁷ DOJ Memo., at 7.
- ⁵⁸ *Id.*
- ⁵⁹ *Id.*
- ⁶⁰ Cucchiara Decl., at ¶ 5.



⁶¹ DOJ Memo., at 7.

⁶² *Id.*

⁶³ *See People v. Arcadia Machine & Tool, Inc.*, 2003 WL 21184117 (Cal. Super. Ct., April 10, 2003).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ DOJ Memo., at 8.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*, at 15-16.

⁷⁵ *Id.*, at 8.

⁷⁶ *Id.*, at 9.

⁷⁷ *Id.*, at 9 n.4.

⁷⁸ *Id.*, at 10.

⁷⁹ ATF, *Commerce in Firearms in the United States* (2000), at 22 n.37.

⁸⁰ DOJ Memo., at 10.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*, at 9.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 18 U.S.C. § 923(g); 27 C.F.R. § 478.124.

⁹³ DOJ Memo., at 9.

⁹⁴ *Id.*

⁹⁵ *Id.*



⁹⁶ DOJ Memo., at 9-10.

⁹⁷ *Id.*, at 10.

⁹⁸ *Id.*, at 11.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*, at 22-25.

¹⁰⁵ Franken Decl., Exh. A.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ ATF, *Crime Gun Trace Reports (2000) Oakland* (July 2002), at 6.

¹¹⁰ Franken Decl., Exh. B.

¹¹¹ *Id.*, at ¶ 6 and Exh. B. Trader Sports sold 11,364 firearms from 2003-2005 and had 1,424 crime gun traces. In comparison, retailer Martin Redding sold 9,963 firearms but had only 408 crime gun traces and retailer Second Amendment sold 8,616 firearms but had only 10 crime gun traces.

¹¹² Franken Decl., at ¶ 10.

¹¹³ *Id.*

¹¹⁴ *Id.*, at ¶ 8.

¹¹⁵ DOJ Memo., at 24.

¹¹⁶ Trader's Reply, at 1-2.

¹¹⁷ *Id.*

¹¹⁸ *Id.*, at 2.

¹¹⁹ United States Department of Justice, *Inspections of Firearms Dealers by [ATF]* vi (2004).

¹²⁰ *Id.*

¹²¹ *See Bryan v. U.S.*, 524 U.S. 184 (1998).

¹²² In *Bryan v. U.S.*, 524 U.S. 184, 195 n.23 (1998), the Supreme Court stated that a change in federal law in 1986 imposing a "willful" standard for gun law violations was "to protect law-abiding citizens who might inadvertently violate the law." It does not require that ATF show specific intent to break the law, as H.R. 5092 mandates.

¹²³ Franken Decl., Exh. D-1.

