

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

KILOTON TACTICAL, LLC, ERIC
HANLEY, and FIREARMS FOR LIBERTY
("FFL") COALITION,

Plaintiffs,

v.

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, UNITED
STATES DEPARTMENT OF JUSTICE;
STEVEN M. DETTELBAACH in his official
capacity as THE DIRECTOR OF ATF, and
AARON R. GERBER, in his official capacity as
THE DIRECTOR OF INDUSTRY OPERATIONS
FOR THE TAMPA FIELD DIVISION OF
THE ATF,

Defendants.

Case No. _____

DECLARATION OF KEVIN SMITH

1. My name is Kevin Smith. I am an adult, a U.S. citizen, and a resident of Florida. I live in Walton County, Florida.

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. The exhibits I reference in this Declaration are true and correct copies.

4. I am the owner of Kiloton Tactical, LLC ("Kiloton"), a Florida limited liability company which holds an active Type 07 Manufacturer Federal Firearms Licenses ("FFL") issued in 2016,

FFL# 1-59-131-07-3G-50159. Kilton is located and has had its principal place of business in Defuniak Springs, Florida since its licensure in 2016.

5. It is my understanding that, except for perhaps one home-based FFL, Kilton is the only licensed “Type 07” firearm manufacturer in Walton County, Florida.

6. I believe that there are a few other licensed firearm dealers in the vicinity of Kilton, but these generally are smaller mom and pop stores, or home-based FFLs, and none offer the selection of firearms or variety of services that Kilton offers.

7. The closest similar gun stores to Kilton are located at least thirty minutes to one hour away, in the city of Defuniak Springs, but do not offer comprehensive gunsmithing services, do not have manufacturing abilities, and/or they generally do not have a shooting range of our caliber with on-site instruction available.

8. Prior to Kilton, I have held several FFLs in the past, at different locations and for different entities, having operated two retail locations in New Mexico and two in Florida (including the current location) (including a Type 01 “dealer’s” license during 2010-2011; Type 01 during 2011-2012; Type 01 during 2012-2017).

9. Prior to the ATF compliance inspection of Kilton at issue here, only one of my licenses ever has been subject to an ATF inspection, and that occurred in 2015. No violations were reported during that 2015 inspection.

10. An ATF employee showed up at Kilton to conduct a warrantless compliance inspection, beginning on May 24, 2022.

11. ATF Industry Operations Inspector (“IOI”) Nicholas Speranza, Jr. handled this inspection, which lasted from May 24, 2022 until June 9, 2022 – more than two weeks.

12. Based on IOI Speranza's statements and demeanor during his extended inspection of Kilton, it appeared to me that he was there for one reason – to find any justification he could to shut down my business.

13. Nevertheless, I remained professional and courteous throughout the process, answering Mr. Speranza's questions and attempting to provide him everything he requested.

14. However, IOI Speranza's agenda was clear, not only from the way he treated me during his inspection, but also from the way he treated various of my customers who visited the premises during the inspection.

15. For example, a regular customer who collects antique guns and civil war memorabilia came in during the inspection. This customer had purchased numerous firearms over the years from Kilton, and IOI Speranza apparently recognized his name from having reviewed my paperwork. IOI Speranza disdainfully referred to this gentleman as a "frequent flyer," seemingly contemptuous of those with a love of firearms. I asked IOI Speranza if he suspected my customer of wrongdoing, at which point he simply brushed me off and kept reviewing files.

16. On another occasion during IOI Speranza's inspection, a father and mother who I know and who previously have been customers came in to purchase a handgun as a gift for their adult daughter, who was also with them. All three of them are Florida residents.

17. Because, as they explained, the firearm purchase for their daughter would be a bona fide gift, there is no prohibition under federal or state law.

18. Thus, I began to show them various firearms. IOI Speranza, who apparently was listening to our conversation, approached us and stated something to the family to the effect of "you can't buy that gun for her." He was speaking to my customers, and by "her" he meant their daughter.

19. The father disagreed with IOI Speranza's claim, attempting to explain that it was not illegal for him to purchase firearm as a gift for his daughter. IOI Speranza then loudly and forcefully stated something to the effect of "no, you most certainly cannot. That is a straw sale and it is illegal."

20. I tried to explain that it was not a straw purchase and that bona fide gifts are legal under both federal and law. However, IOI Speranza then turned me and forcefully instructed me not to complete the transaction.

21. Although we all understood that this transaction is perfectly legal under both state and federal law, IOI Speranza falsely accused this family of attempting to commit a "straw purchase," a felony offense under federal law.

22. Thus, even though everyone's actions (except IOI Speranza's) were perfectly lawful, the family ultimately left the store without making a purchase, not only depriving me of a lawful sale, but also depriving them of a firearm and intentionally and unlawfully infringing their Second Amendment rights.

23. This sort of process repeated itself over the days and weeks of IOI Speranza's inspection. Each time a customer came in, IOI Speranza would eavesdrop on the conversation, and often chime in, offering his version of the law with respect to various transactions, apparently attempting to block every firearm sale he could, and driving off numerous law-abiding customers in the process, causing Kilton a significant loss in sales and negatively impacting Kilton's public goodwill.

24. In fact, IOI Speranza was openly critical of the fact that Kilton has been a successful business, stating disapprovingly something to the effect of "you've sure had a lot of transactions," as if that were some bad thing, or reason for him to suspect me of wrongdoing.

25. Although IOI Speranza's inspection of Kilton took place over a period of more than two weeks, IOI Speranza was not physically present at Kilton during all of that time. Rather, there were at least two periods where IOI Speranza left and did not return for several days.

26. Prior to the first of his absences, IOI Speranza instructed me to gather all of my ATF Forms 4473 together for him to inspect. (The Form 4473 is the record that a firearm purchaser completes, and includes the transferee's personal information – name, address, physical characteristics – along with his answers to questions about whether he is a prohibited person. The Form 4473 also contains information about the firearm(s) to be transferred, including make, model, and serial number.)

27. After I gathered the Kilton Forms 4473 for IOI Speranza purportedly to "inspect" or "examine" (under the statute), he instructed me also to print him a copy of the Kilton "bound book," the electronic record of all acquisition and dispositions ("A&D").

28. After I provided IOI Speranza with both sets of documents (original 4473s and a complete copy of the A&D book), IOI Speranza stated that he was taking my records and leaving the store.

29. Knowing full well that an ATF IOI may not seize records from an FFL (certainly not originals, and certainly not without a warrant), I immediately objected, telling IOI Speranza that he could not take my records and leave, and that he had no authority to do so.

30. IOI Speranza responded with something to the effect of "yes, I do," claiming that he does, in fact, have such authority.

31. IOI Speranza left with Kilton's records, and did not return for approximately one week.

32. During this time, Kilton was not in possession of the records that federal law requires a "licensed dealer" to maintain ... at his place of business," and which the law further instructs I

“shall not be required to submit ... information with respect to such records and the contents thereof....”

33. IOI Speranza did not provide me with a receipt for the records that he seized under color of law, nor did he provide me copies of the seized records. IOI Speranza did not provide me with any documents, signed or otherwise, stating that he had seized my records, should another law enforcement agency arrive with an actual search warrant seeking to obtain part or all of the records which IOI Speranza already had seized.

34. I do not know what IOI Speranza and/or ATF did with my original records while they were in ATF possession.

35. I have not undertaken to review all of the original records that IOI Speranza eventually returned to me. Even if I did, there would be no way for me to know for certain if everything was returned, if anything was added, or if any of my records had been altered in some way or even destroyed.

36. Additionally, during his analysis of my records, IOI Speranza more than once would object that a particular firearm’s “type” was listed as a “handgun” in my acquisition and disposition records (“A&D”), instructing me to change the description to “pistol,” etc. in my A&D book. IOI Speranza commanded that I change every such “handgun” entry in my records, including not only in my electronic A&D book, but also in my old paper A&D books which had been transferred to electronic form.

37. IOI Speranza commanded and required that I make these changes to my records – he did not ask, and I was not given an option. Yet I now understand that this instruction conflicts with the ATF’s own Industry Operations Manual which acknowledges that a firearm’s “‘type’ is not defined under Federal law,” that a licensee has discretion when recording a firearm’s “type,” and

that IOI's should only recommend best practices for listing various "types" but "IOIs should not cite a violation."

38. During the last day of his inspection, apparently having found a few paperwork errors in all of the records he had reviewed, IOI Speranza appeared gleeful at the prospect of ATF revoking Kilton's license and shutting down my business.

39. IOI Speranza stated something to me to the effect that "you're definitely getting shut down."

40. In fact, IOI Speranza stated his opinion that there was no way Kilton would *not* be shut down after his inspection.

41. IOI Speranza then noted that, in order for Kilton to keep its license, he would have to prepare a "10 page report" and meet with his area supervisor on Kilton's behalf – something he said he would not do.

42. As I expressed my disbelief that I could be shut down, losing my license and fifteen years of hard work in the process, based on the alleged recordkeeping errors that he claimed to have found, IOI Speranza smiled, laughed, and walked out the door.

43. After the inspection, on June 9, 2022, IOI Speranza issued Kilton a "Report of Violations." Compl. Ex. 11.

44. On April 26, 2023, I filed a timely application with ATF to renew my Kilton license.

45. Over a year after the May 2022 compliance inspection, on July 10, 2023, ATF issued a "Notice to Deny Application for License." On that same day, the ATF sent an "EXPLANATION LETTER RE: NOTICE OF DENIAL OF RENEWAL APPLICATION" alleging that the ATF "is contemplating denying your renewal application filed on April 26, 2023 for your Federal firearms license and has decided to initiate the denial/revocation process." Exhibit 2.

46. This notice was signed by Aaron R. Gerber who is the Director, Industry Operations, Tampa Field Division.

47. After I received that notice, on or about July 20, 2023, I submitted a request for a hearing with ATF.

48. I have reviewed the allegations in ATF's Notice of Denial of my license, and I believe there are a number of problems with what ATF alleges I have done incorrectly.

49. First, ATF alleges five violations for supposed failures to run a background check after more than 30 days had elapsed since an approved background check had been completed on the purchaser. Exhibit 1 at 1-2.

50. This is not to say that Kilton did not run background checks on these individuals, only that the date on which the original background checks occurred was over 30 days prior to the date of the transfer.

51. In fact, Kilton did perform background checks on these individuals, but then kept their firearms to perform additional custom gunsmithing on the firearms. For example, some of our customers request Kilton perform various services on their firearms, including installing custom triggers or fitting scopes to the firearms.

52. Since the gunsmithing would take more than one night, the firearms needed to be in Kilton's books under ATF regulations, because Kilton retained possession of the firearms.

53. Then when the gunsmithing services on the firearms were completed, they were returned to their owners without a need for an additional background check, because that individual had already gone through a background check – again, according to ATF's own regulations.

54. ATF's own website confirms this, stating that a licensed gunsmith need not conduct a background check when merely returning a repaired or customized firearm to the person from whom it was received. This is the same situation for which ATF now alleges a violation. *See*

<https://www.atf.gov/firearms/qa/does-licensed-gunsmith-have-conduct-nics-background-check-returning-repaired-or>.

55. Second, ATF has alleged that Kilton failed to make multiple sales reports on some occasions, after selling more than one handgun to a customer within a certain period of time.

56. Truth be told, IOI Speranza initially claimed I had failed to submit multiple sale forms in several *additional* instances. Yet in each of those instances, I was able to produce and provide him with a copy of my digital records of having sent ATF the very same reports IOI Speranza claimed I had never sent.

57. In response, IOI Speranza acknowledged that ATF's records of reports of multiple sales are often wrong and that ATF routinely does not bother with properly recording and documenting multiple sales reports received from FFLs.

58. Third, ATF alleges that Kilton falsified records of a background check, because the paperwork for two transactions contain the same background check number.

59. ATF does not allege that no background check occurred. Nor could it. I always perform a background check, when required, on my customers. Indeed, Kilton's receipts for the purchases in question show that there was a \$5 charge associated with the background check, and both purchasers were present in the store for their background checks and witnessed the process, including their approval.

60. Finally, I am a member of The FFL Coalition, an association of federal firearms licensees around the country who are subject to the ATF "zero tolerance" policy that is being challenged in this case, and that has led directly to ATF's notice to revoke my license here.

61. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2023



KEVIN SMITH