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CYRUS R. VANCE, JR.
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Via ECF

Ms. Catherine O'Hagan Wolfe
Clerk of the Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshal United States Court House
40 Foley Square
New York, N.Y. 10007

Re: Knife Rights Inc., *et. al.* v. Cyrus R. Vance, Jr., *et. al.*
Docket No. 13-4840-cv
Argued January 13, 2015

Dear Ms. O'Hagan Wolfe:

Defendant, District Attorney Cyrus R. Vance Jr., writes in response to plaintiffs' July 20, 2015 Notice of Supplemental Authority, bringing to the Court's attention the case of Johnson v United States, 135 S. Ct. 2551, 2015 WL 2473450 (June 26, 2015).

Johnson held that the "residual clause" of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B), which defines a "violent felony" to include an offense "involv[ing] conduct that presents a serious potential risk of physical injury to another" is unconstitutionally vague because it requires a court to apply the statutory language "to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements," 135 S. Ct. at 2557, and it "leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony," *id.* at 2558. The Court emphasized that the residual clause applies not to particular facts of a case, but rather to a "categor[y]" of actions. *id.* at 9562, and stated that "[a]s a general matter, we do not doubt the constitutionality of laws that call for the application of a qualitative standard such as 'substantial risk' to real-world conduct; 'the law is full of instances where a man's fate depends on his estimating rightly . . . some matter of degree...' *Nash v. United States*, 229 U. S. 373, 377 (1913)." 135 S. Ct. at 2561.

Enforcement of New York's statutory prohibition against gravity knives requires application of the statutory language, not to a category of conduct or to an

idealized "ordinary" case, but rather to the functioning of a *particular* knife at a *particular* time. Interpretation of that prohibition is therefore unlike the interpretation of ACCA, but is an example of "the application of a qualitative standard . . . to real-world conduct."

Contrary to the representation in the Plaintiffs' letter, *Johnson* did not "squarely hold[]"that to survive a vagueness challenge a statute "must be clear in *all* of its applications." It said nothing of the sort.

Respectfully submitted

Benjamin Rosenberg
Counsel for Appellee Vance

The body of this letter contains 331 words.

cc: All Parties via ECF