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US Customs and Border Protection, Office of International Trade, Regulations and Rulings
Attn: Intellectual Property and Restricted Merchandise Branch
Mint Annex
799 9th Street, N.W.
Washington, DC 20229

Re: 19 CFR Part 177, Proposed Revocation of Ruling Letters and Revocation of Treatment
Relating to the Admissibility of Certain Knives with Spring-Assisted Opening
Mechanisms

Dear Sir:

Please be advised that our office represents Knife Rights, Inc., a non-profit 501(c)(4) member organization representing 35.6 million pocket-knife owning Americans. Please accept this letter as an **OBJECTION** to, and **COMMENT** on, the above-captioned proposed revocation and rule change.

ISSUE

Whether United States Customs and Border Protection (hereinafter CBP) should reverse prior Rulings embodied in HQ 116315, HQ W116730, HQ HO 16666, HQ HO32255 (and as embodied in substantially identical transactions), and thus modify the regulations to include a broad reach of useful, constructive and peacefully possessed pocket knives¹ as switchblades.

¹ In its new Ruling Letter HQ HO43122, CBP uses the phrase "release-assisted" knives. Release-assisted knives are knives in which the blade is opened by the user applying some initial pressure to the blade, and after a certain point, a spring assists the blade in opening the rest of the way. However, CBP's ruling would also apply to any knife that opens with one hand, including manual knives in which the blade is opened by applying constant pressure against some portion of the blade (usually a stud or hole in the blade). The manually opening knife blade is typically designed so that the pressure may be applied to it with the thumb of the same hand that is holding the knife. With a manual knife, if the user stops applying pressure, the blade stops moving when the pressure is removed. In this letter, both types of these knives will be referred to as "one-handed openers."

FACTS

Every day millions of United States Citizens peacefully carry and use folding pocket knives. Increasingly, a great number of those knives may be opened one-handed, thanks to applied technology that permits people to access and open a folded pocket knife without the need to use both hands. These "one-handed openers" are useful to people like a busy tradesman standing on a ladder, who must steady himself, but still access and open his knife, and trim an object with his pocket knife. A telephone lineman or cable repairman, perched high on a pole and performing his assigned duties, is in a similar situation. A farmer or rancher may need to secure an animal with one hand, while producing a folded pocket knife with which to clean, scrape or trim, with the other. In offices and warehouses all over the U.S., workers must open boxes. The convenience and utility of the one-handed opener means keeping a constant grip on the box to be opened.

In a more extreme example, professional lobstermen and fishermen (one of the most dangerous occupations) daily face the possibility of being pulled overboard by an errant rope attached to a lobster pot. Only a fast-opening knife will save their lives in such an emergency, by allowing them to swiftly acquire, open and cut with a knife using a single hand.

A boater may be holding onto a boom for safety, while producing, opening and using a pocket knife to loosen a knot, trim a line or perform some other task. Skydivers certainly require a knife that can be opened with one hand in order to quickly cut away tangled lines or debris in their parachutes. One hand is still required to control their parachute's descent, or support the parachutist if stuck in a tree. Balloon pilots must also keep one hand on their craft while opening and using a knife to cut away any debris they encounter.

Since folding knives are more compact and fundamentally safer than fixed (sheath) knives, they may be preferred by any of the above persons. For example, if the tradesman or lineman falls from his perch, the sheath knife blade may pierce the sheath and injure him. The protective body of the folding pocket knife would prevent such an injury.

However, the proposed CBP ruling would deny access to all of the one-handed opening knives counted upon by the above (and many other) individuals, and also potentially expose them to serious criminal charges. The CBP believes the one-handed opening knives present a special danger as "switchblades," and misguidedly quotes Senate reports from the 1958 switchblade law to justify its position:

"The switchblade knife is, by design and use, almost exclusively the weapon of the thug and the delinquent. Such knives are not particularly adapted to the requirements of the hunter or fisherman, and sportsmen generally do not employ them."²

² This language was originally included the report of the Senate Committee on Interstate and Foreign Commerce which recommended passage of the Switchblade Knife Act, 15 U.S.C. 1241, et seq.

S.Rep. No. 1980, 85th Cong., 2d Sess., reprinted in 2 U.S. Code Cong. &Ad. News 1958, at 3435-37.

Currently, one-handed opening knives are lawful to manufacture, import, sell and possess for all such legitimate tasks, and counsel is aware of no widespread misuse of such knives. No evidence has been provided that these knives contain any greater potential for misuse than any other knife. If CBP intends to put forth the proposition that one-handed opening knives are criminally misused more often than other folding pocket knives, then it should provide some evidence of this assertion. In fact, according to the FBI's United States Crime Statistics in 2007, (See http://www.fbi.gov/ucr/cius2007/offenses/expanded_information/index.html) knives were used less often than firearms, fists, or any other weapons in aggravated assaults and robberies.

THERE IS NO RATIONAL BASIS TO DENY AN EXTENTION OF THE 30 DAY COMMENT PERIOD

Knife Rights, Inc. again requests an extension of the 30 day comment period, and objects to CBP's previous denial of that request. The subject involved is important; it affects millions, and paves the way for thousands of potential criminal prosecutions and asset seizures. This is simply too important a subject to limit the comment period to 30 days. Moreover, CBP is not prejudiced by extending the comment period. It had months to research, design and prepare its ruling. Permitting only 30 days for responses is fundamentally unfair to manufacturers, importers, distributors, and end users of the effected knives. There is simply no rational basis to unduly limit the comment period.

Transparency and Open Government are highly valued by the present administration. In the President's Memorandum for the Heads of Executive Departments and Agencies on Transparency and Open Government, the President promotes a system of transparency, public participation and collaboration.

(See http://www.whitehouse.gov:80/the_press_office/TransparencyandOpenGovernment.) Since "knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge", the President has concluded that "[e]xecutive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information."

Here, manufacturers, importers, distributors and the public are requesting the ability to participate by requesting that the comment period be extended by 120 days. (See Knife Rights Inc.'s prior request for extension, dated June 5, 2009.) If "Transparency" and "Collaboration" in governmental actions is truly valued, then this rule change will not be rushed through without providing the public sufficient time to study, address, and respond to the issue.

HISTORY OF THE SWITCHBLADE ACT

Switchblade knives in the hands of criminals are of course potentially dangerous weapons. However, since they serve useful and even essential purposes in the hands of persons such as sportsmen, shipping clerks, and others engaged in lawful pursuits, the committee may deem it preferable that they be regulated at the State rather than the Federal level.

- William P. Harris, Deputy Attorney General for the United States Department of Justice. Letter to the Chair of the House Committee considering the 1958 Switchblade Law, Appendix to the Committee Report.

Historically, switchblades have been officially recognized by the government as having sporting applications. The quote cited above came about in response to Congressional proposals to enact Federal restrictions on switchblades in the late 1950's. Rightly, the United States Department of Justice opposed this law because their Agency recognized the lawful uses of switchblades. Additionally, the United States Department of Commerce opposed the law and stated as follows:

To us, this (switchblade law) ignores the needs of those who derive and augment their livelihood from the 'outdoor' pursuits of hunting, fishing, trapping, and of the country's sportsmen, and many others. In our opinion, there are sufficient of these that their needs must be considered.

- Sinclair Weeks, Secretary of the United States Department of Commerce. Letter to the Chair of the House Committee considering the 1958 Switchblade Law, Appendix to the Committee Report.

Even though both the United States Department of Justice and the United States Department of Commerce opposed the law, irrational fears of criminal activity, fed by popular culture and movies such as *The Wild One* (1954), *Rebel Without a Cause*, (1955), *High School Confidential* (1955), and plays such as *West Side Story* (1957), and *12 Angry Men* (1957), still won the day in the legislature and the law was passed. In doing so, a useful and valuable tool for the tradesman, outdoorsman and handyman alike was unjustly defamed and stigmatized.

It is clear that one-handed opening knives present great benefits to tradesmen such as carpenters, drywallers, electricians, plumbers, and others, who must likely hold something steady with one hand while reaching for, opening, and cutting, trimming or scraping the object with the knife they produce with their free hand. This benefit becomes more acute when the tradesmen must remain steady on a ladder or other high perch.

It is equally obvious that a one-handed opening knife can be used to skin a deer, to clean a fish, to cut a stern line, to chop bait or any other general sporting tasks as called for by an outdoorsman. The special advantages with a one-handed opener, however, are that the sporting

knife tasks can be accomplished with only the necessity of using one hand (same as with a fixed blade), yet the ability to have the convenience and the safety of a folding/pocket knife. For example, falling from a tree stand with a fixed blade knife could cause the blade to penetrate the sheath and injure its owner. The folding knife poses no such danger and offers the convenience of the sheath knife, combined with the safety of the folding knife.

How many countless times has a fisherman made an intricate knot with his monofilament line while holding his fishing rod and reel with one hand and needed a knife to cut away the excess? Again, the one-handed opening knife allows for operation without losing one's grip on the fishing pole, the line, or the knot. How many times has a boater needed to both hold a line and cut it without letting go? Accomplishing this task with a one-handed opening knife is easily, safely, and efficiently done.

Sporting activities are not limited to only hunting and fishing. How many outdoor emergencies can one imagine in which having the availability of a folding/pocket knife that can open with one hand, can mean the difference between life and death? Skydivers, hang gliders, balloonists and other aerial sportsmen have a need to both control their device of flight and access a folding/pocket knife with one hand. Mountain climbers also clearly need one hand access to a folding/pocket knife when pursuing their sport.

Having a folding knife protects the safety of its owner because when closed, the knife blade is safely tucked away within its handle. An exposed blade is never present unless the owner has consciously opened the knife. It is for this reason that the United States Government issued switchblades to American paratroopers during World War II. They were issued "Presto" switchblades made by the Schrade Cutlery Company. The United States Armed Forces still issue and utilize switchblades and one-hand openers for many of the same practical reasons that make one-handed opening knives an appropriate choice for tradesmen and outdoorsmen.

LAW

15 U.S.C. 1241 defines "switchblade knife" as "any knife having a blade which opens automatically-

- (1) by hand pressure applied to a button or other device in the handle of the knife, or
- (2) by operation of inertia, gravity, or both.

15 U.S.C. 1242 provides that "Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

15 U.S.C.1244 provides exemptions for possession by members of the armed forces, for possession by persons with only one arm, for manufacturers and distributors pursuant to armed forces contracts, and for common and contract carriers, in the ordinary course of business.

19 C.F.R. 12.95 defines switchblades as

(a) Switchblade knife. "Switchblade knife" means any imported knife, or components thereof, or any class of imported knife, including "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

19 C.F.R. 12.95 also defines Utilitarian use as

(c) Utilitarian use. "Utilitarian use" includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

18 U.S.C. 1716 provides that switchblades, as defined under 15 U.S.C. 1241, shall not be carried by the mails, unless they are mailed to procurement officers for the federal or state governments who procure the knives in connection with the activities of their respective organizations (the Armed Forces, Federal Government, National Guard, and State and political subdivisions thereof), and to manufacturers of such knives or bona fide dealers of such knives in connection with orders from governmental entities.

ANALYSIS

The knives addressed in Ruling Letters HQ 116315, HQW116730, HQ HO16666, HQ HO32255, and knives substantially identical thereto are not switchblade knives within the meaning of 15 U.S.C. 1241 and/or 19 C.F.R. 12.95(a)(1), and, for the reasons below, should not be treated as switchblades by the CBP.

a. The CBP acted arbitrarily and capriciously by failing to consider 18 U.S.C. 1716 in its decision.

18 U.S.C. 1716, which applies to the constitutionally created United States Postal Service, specifically addresses the ability of the Postal Service to handle and deliver switchblade knives. This statute (not a regulation, not an opinion) allows the Post Office to deliver switchblades to government agencies, to manufacturers of such knives, and to dealers thereof. Otherwise, the United States post office would be dealing in contraband. Thus, there is legitimate, lawful traffic in switchblade knives among the government users, the dealers and the manufacturers, which is specifically permitted under federal law. And, it should be emphasized, that this legitimate traffic among dealers, manufacturers and end users is in switchblades themselves - not merely other knives such as one-handed opening knives, that are not encompassed by the plain wording of the statute.

In their ruling, the CBP has utterly failed to address this statute, to comment upon it, or to consider how their new ruling would impact, and potentially conflict with, this statutory authorization.

b. Rulemaking Authority of the CBP.

The CBP claims the ability to write this regulation under the auspices of 19 USC 1625, as amended by Pub. L. 103-182. Both of these laws provide that interpretive rulings are to be published in the Customs Bulletin, provides for a comment period and provides for public comment. However, they do not, in their plain language, authorize CBP to make a rule in the Code of Federal Regulations.

19 USC 1624 (not 1625) provides the Secretary of the Treasury with the authority to "make such rules and regulations as may be necessary to carry out the provisions of this chapter." [Emphasis added.] However, 15 U.S.C 1241 (the Switchblade Laws) et seq. are not located in Chapter 4 of the Tariff Act of 1930. They are not even in the same Title. In conclusion, CBP has utterly failed to identify the foundation upon which it allegedly has the authority to write such a prohibition into the Code of Federal Regulations.³

c. The CBP is usurping the role of Congress: The statute is unambiguous and there is no room for the CBP to "interpret" it by changing the clear criteria already laid down by Congress, who has clearly spoken on the matter.

An administrative rule interpreting an ambiguous statute may receive substantial deference, Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U. S. 837, 842-845, but only "when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was

³ It is also noteworthy that 19 USC 2071, which establishes the United States Customs Service and Commissioner of Customs, does not authorize regulation and/or rule making power for this Commissioner. Likewise, 19 USC 2072, which establishes the Office of International Trade within the Customs Service, does not authorize rule-making power for this Office.

promulgated in the exercise of that authority," United States v. Mead Corp., 533 U. S. 218, 226-227. Further, deference to an agency's ability to interpret rules is based upon the agency's experience and expertise in its particular field. See Alberto O. Gonzales, Attorney General v. Oregon, 04-623 (2006); Auer v. Robbins, 519 U.S. 452 (1997). Otherwise, the interpretation is "entitled to respect" only to the extent it has the "power to persuade." Skidmore v. Swift & Co., 323 U. S. 134, 140. Pp. 8-9; Alberto O. Gonzales, Attorney General v. Oregon, 04-623 (2006).

Finally, if the intent of Congress is clear, and there is no "gap" to fill in the statute, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. Chevron U.S.A., Inc. v. National Resources Defense Council, 467 U.S. 837, 842 (1984).

15 U.S.C. 1241 defines a switchblade by how it is opened. The primary definitional element of a switchblade knife is that it must open by either (1) means of a button or device in the handle of the knife, or (2) by operation of inertia, gravity, or both. In other words, there must be a button or device in the handle that opens the knife, or the knife must open by means of gravity or inertia. **Knives that open otherwise are not included in the above definition.**

In HQ116315 et al, the CBP already recognized that this definitional element is not met by the one-handed opening knives described in the subject letters. None of the knives specified in the four Ruling Letters opens by means of a button in the handle, or by inertia or gravity. Thus, the key definitional element of the statute is simply not met. Rather, the knives in the Ruling Letters operate, as described by their individual makers, by other means, such as pressure applied to a stud located on the blade, etc. Thus, they do not open in the manner proscribed by the statute and are therefore not prohibited.

Here, the proposed CBP revocation of its previous rulings would not simply "fill a gap" in the existing law, but it would completely redefine the elements of the "Switchblade Act," by adding elements that are not currently present and ignoring certain elements that are required. The CBP's proposed ruling would have the effect of adding an entirely new element to the switchblade statute, and it would essentially rewrite the definition of switchblade to read:

any knife having a blade which opens automatically-

- (1) by hand pressure applied to a button or other device in the handle of the knife, or
- (2) by operation of inertia, gravity, or both, **OR**
- (3) any knife that can be opened by using only one hand.**

This is not an interpretation of an existing statute. It is not the filling in of a gap in an unclear or incomplete statute. This is an amendment of the statute which provides a whole new set of elements of an offense. It does not comport with the Congressional mandate. Congress never passed a law that prohibited a knife that opens by assistance from a spring. Congress never passed so broad a law which prohibited: "any knife that can be opened using only one hand." The CBP is exceeding its authority by legislating and acting as both Congress and the President in creating this new law.

Congress was concerned with one type of knife and acted to ban that knife, while not affecting other knives that have legitimate uses. Thus, it narrowly defined the elements of the type of knife it sought to ban. It required a button in the handle, or gravity/inertia to open the blade. Congress did not ban knives which contained springs. It could have, but did not. Congress did not broadly ban any knife that may be opened with only one hand. It could have, but did not. The definition is not nearly that broad.

The CBP, in arguing its case that one-handed openers are switchblades, recites at length, language from Taylor v. McManus, 661 F. Supp. 11, 14-15 (E.D. Tenn. 1986), which discusses the switchblade as a weapon that "is ready for instant use", and "ready for instant violence," as though both terms had the same evil connotation. However, it is a fallacious argument to conclude that a speedy, one handed knife is, *ipso facto*, an unlawful weapon, and destined to be used for violence. In fact, CBP has provided no factual basis to conclude that a one-handed opening knife is any more likely to be criminally misused than any other object, let alone any other type of pocket knife. Further, the CBP fails to address the valid reasons for having a knife that opens quickly, including the plummeting parachutist, the entangled and overboard fisherman, and the busy tradesman. The CBP also fails to address the legitimate reasons for one-handed convenience, such as those working on a ladder or other unstable perch, working in a moving vehicle which requires a hand for stability, those who must hold something still while grasping for their knives, etc. Just because a knife is readily available does not make its intended use violent.

On the other hand, almost anything may be used as a weapon. Even a rolled-up newspaper may be used to strike out and break a nose or cause other injury. This does not lessen or negate the paper's utility and certainly does not amount to a reason to abridge the freedom of the press. The fact that a knife may be accessed more quickly does not de-legitimize its manifold useful reasons for existence. "All knives can potentially be used as weapons; likewise the blades of all knives have some utility." CBP Ruling Letter HQ W479898, June 29, 2007.

CBP has previously correctly recognized that knives which open with only one hand have all the legitimate purposes as fixed or other folding knives, (such as trades-work, hobby-craft, hunting/fishing, and other customary household uses). It should not now try to legislate such a class of knife into a statute in which it does not belong.

d. CBP's proposed ruling would include knives that are not "release-assist" knives.

While CBPs proposed Ruling Letters, HQ HO43122, HQ HO43124, HQ HO43126 and HQ HO43127 address "release-assist" knives, (knives with springs), in these letters CBP relies heavily on the argument that any involvement by inertia that assists in opening a knife would include that knife as a switchblade. Further, CBP argues that major determinative factors regarding switchblades are whether a knife may be "ready for instant use," like the Balisong knives (which include no spring), but have been held to be switchblades, and the potential concealability of a knife. The upshot of this logic would lead to the obvious conclusion that any knife that can be opened with only one hand, even if it has no spring, would qualify as a

switchblade. Thus, CBP's ruling will (either now or later), be interpreted to include many other innocently imported and possessed knives that open with one hand, but utilize no spring. Many knives are produced today that have some sort of thumb stud or hole in the blade that allows quick opening with one hand, without the need for a spring. (Those knives are referred to in this letter as manually operated one-hand openers.) All of these knives would instantly become "switchblades" as well.

e. CBP's proposed ruling is unsupported by substantial evidence.

Here, CBP argues that the knives in question open by inertia, thus bringing them within the ambit of the statute. However, this is simply wrong. The knives in question require manual pressure to be applied to the blade (in one direction or another), before any movement may take place. Further, it is either the physical force of a human hand or the mechanical tension of a spring which exerts a positive force on the blade that completes the opening cycle, not inertia (or gravity). As referenced in Ruling Letter W116730, Columbia River's Outburst design is engineered with a purpose to avoid accidental opening by inertia or other means until the blade is opened to a 30-degree angle. Thus, the same spring tension of that design that helps to open the blade upon command also keeps the blade firmly in place until that tension is purposely overcome by the user. Similarly, United Cutlery's Tailwind design requires a manual opening of 30 degrees before the blade is assisted in its travel. Therefore, it simply cannot be said that inertia is responsible for opening the blades of the knives involved in the proposed ruling.

Moreover, deference to an agency's ability to interpret rules is based upon the agency's experience and expertise in its particular field. See Alberto O. Gonzales, Attorney General v. Oregon, 04-623 (2006); Auer v. Robbins, 519 U.S. 452 (1997).

Here, it appears that CBP currently lacks the understanding and expertise required to properly address the issues involved. The fact that it has changed its ruling after four years and several crucial Ruling Letters (which allowed millions of supposedly illegal knives to be imported into the United States) illustrates this. Further, it is counsel's understanding that the responsibility for administrative oversight of this issue has been changed within the last year from one group within Customs to a different group, that has not previously addressed such issues. For the above reasons, this proposed ruling indicates insufficient expertise, which, in turn, leads to the conclusion that it should not be enacted.

f. The CBP's ruling will likely have impact beyond the scope of any rulemaking authority it may have, by de facto criminalizing the possession of certain knives, which goes well beyond any statutory jurisdiction it may have to regulate importation.

Even if it is assumed that CBP has rulemaking authority in so far as the importation of items such as knives into the United States, it has no authority to prohibit (and hence criminalize) the possession of knives by individuals in the United States. An agency can only make rules within its area of delegated expertise. The area of CBP's expertise is importation, not weapons.

Thus, even if it has rulemaking authority, that authority only extends to what may and what may not be lawfully imported -- **not** what may be lawfully possessed.

However, it is clear that courts may use regulatory language from an agency in their interpretation of statutes, because they "owe some degree of deference" to an agency's "reasonable interpretation" of a statute for which it is responsible. See, for instance, National Assn. of Home Builders v. Defenders of Wildlife, No. 06-340 (2007). Moreover, CBP has the power, under 19 C.F.R. 103, to report violations of the Switchblade Act to the United States Attorney for prosecution. CBP seeks to "interpret" one-handed opening knives as switchblade knives. Thus, it is readily conceivable that a citizen, using a one-handed opening knife, may be arrested for possession (or interstate transportation) of a switchblade, and that a court could use the CBP's language to interpret the definition of one-handed opening knives as switchblades and hence find the end user (not an importer), guilty of possession of a switchblade under 15 U.S.C. 1241 et seq.

Thus, by redefining the elements of what comprises a switchblade knife, the CBP will cause criminal prosecutions under 15 U.S.C. 1241 et seq - which it does not have the power to do under its narrower regulatory importation authority.

g. The legal principles which guide our laws lead to the conclusion that "one-handed opening" knives may not be redefined as "switchblades," because it would create confusion and mislead citizens who have no wrongful intentions.

Under the "Rule of Lenity," any ambiguity in criminal statutes is strictly construed against the statutes' maker and in favor of the defendant because it is the maker of the statutes (Congress) that has the opportunity to set the terms of the statute. See United States v. Schneider, 14 F.3d 876 (3rd. Cir. 1994). See also United States v. Thompson/Center Arms Co., 504 U.S. 505 (1992), where the Rule of Lenity was applied to an ambiguous tax statute that carried criminal penalties. It is also axiomatic that, in order to be convicted of a crime, a defendant must be found guilty of each and every element of the offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970). Thus, the elements define the offense.

Here, the proposed CBP revocation of its previous rulings would certainly create an ambiguity in the law by adding elements of an offense (as described above) that are not apparent on the face of the statute itself. Many concerned citizens are able to research and find federal statutes. However, many have never heard of the Code of Federal Regulations and would have no indication that they would need to look there, and may have no idea how to do so. When it was noted by the Supreme Court in United States v. Hodson, 19 L.Ed. 937 (1870) (as well as many other cases before and since) that "Every one is presumed to know the law," there was no Code of Federal Regulations spanning some 80,700 pages in 2008.

The purpose of criminal statutes is to give **Notice** to the citizen as to what conduct is prohibited. By prohibiting the importation of any knife that opens with one hand, (regardless of the means of the opening mechanism), and thus muddying the statutory definition of what constitutes a switchblade, the CBP would so far stray from the definition embodied in 15 U.S.C. 1241 that persons with innocent intent could not glean, from the elements of that statute, what

knives are prohibited to possess, and could be prosecuted for possession of one-handed opening knives. There is no mention of one-handed opening ability in the statute. The only elements of which the statute provides notice are a button (or other device) in the handle and gravity/inertia. Thus, the public would be ignorant of what types of knives are prohibited and would be surprised to learn that "switchblades" do not require a "switch."

h. One-handed opening knives do not open "automatically."

In its proposed ruling, the CBP relies, in part, on the definition of "automatic" to imply that one-handed opening knives are switchblades. However, the first definition of automatic: (A largely or wholly involuntary ... reflex") does not comport with one-handed opening knives, because they cannot be opened without force being applied to some part of the blade itself. This first act is a conscious act, rather than an involuntary act. The second definition of "automatic" (Acting or done spontaneously or unconsciously), likewise does not work in this case. With the design of assisted-opening knives, a conscious movement is required upon the blade to begin the opening process, until an assist spring then completes the process. In the case of many other one-handed openers, the design requires constant manual pressure to be applied on the blade to open it fully. The third definition (done or produced by machine) clearly does not apply.

But the definition that most clearly shows the one-handed opening knife is not automatic is the phrase "having a self-acting or self-regulating mechanism," such as an automatic transmission.⁴ The mechanism of the one-handed opening knife is deliberately designed to require conscious movement against the blade from the user to begin (and sometimes complete – depending on the design) the opening process. Thus, the knife does not open automatically by means of inertia. Further, as mentioned in Ruling Letter W116730, Columbia River's Outburst design is engineered with a purpose to avoid accidental opening by inertia or other means until the blade is opened to a 30-degree angle.

The assisted opening class of one-handed opening knives can more properly be described as "semi-automatic." According to Webster's Ninth New Collegiate Dictionary (1985), semiautomatic is defined as "not fully automatic," and "Operated partly automatically and partly by hand." Unlike pressing a button that is remote from the blade, deliberate human action of putting pressure somewhere on the blade itself and starting to move the blade is required to initiate the opening sequence of the knife. Only once a certain amount of force is applied will the knife open the rest of the way on its own. This is more akin to a "semi-automatic transmission," which requires no clutch to unlock the transmission, but still requires a human hand to shift a lever to increase or decrease the gear. Otherwise, the car will remain in the lower gear, despite increased engine revolutions. Or, to a semi-automatic firearm, which requires no cycling of a lever or bolt, but still requires the trigger to be pulled, released, and re-pulled before each round may be discharged. As for other knives that open with only one hand, but have no assisting mechanism, the knife is opened completely manually.

⁴ The automatic transmission which shifts a car into a higher gear is activated without any direct input on it by the human driver. The transmission senses the engine's speed and other operating parameters, and, on its own initiative, moves the car into a higher or lower gear. The human has no contact with the transmission.

Again, "Automatically" is an element of the definition in the statute, and unless the knife opens "automatically," it does not meet the criteria of the statute. These knives open "semi-automatically" in the case of assisted openers, and open completely manually in the case of non-assisted one-hand opening knives, neither of which is the same thing as automatic.

i. Public Policy and Utility.

"All knives can potentially be used as weapons; likewise the blades of all knives have some utility." HQ W479898, June 29, 2007. The CBP was correct in its analysis that the one-handed opening knives in question with blades designed for utilitarian tasks should not be considered switchblades. Each is suitable for various legitimate tasks, such as trades-work, hobby-craft, hunting/fishing, or customary household uses. Yet blade shape alone does not answer the question of whether a knife is useful. Any one-handed opener may be suitable for use when only one hand is available, such as work on a ladder, boat or unstable platform, or use by a disabled user.

If Congress' concern was to ban knives whose only use is as a weapon, the normal one-handed opening knife does not qualify. A one-handed opener is not designed primarily as a weapon, and it is suitable for most normal tasks, such as cutting food, rope, wood or other materials, scraping, boring a hole, and performing all the other normal utility functions a knife is called-upon to do. A one-handed-opener may even have a serrated blade, suitable for sawing tree branches or cutting more difficult substances. Again, millions of these knives are in use every day by honest, peaceful Americans, and CBP has provided absolutely no evidence to support a claim that they are misused as unlawful weapons.

Overall, it is unwise and inappropriate to ban an entire class of extremely useful objects merely because of an unproven and unevidenced fear that they may be misused. Such reasoning amounts to little more than speculative fears, and disserves the many American citizens who routinely carry and rely upon the safety, efficiency and convenience provided by one-handed opening knives.

CONCLUSION

As "one-handed opening" knives (be they assisted or manually operated) do not meet the statutory elements of opening by means of a button in the handle or by gravity/inertia, they should not be found to be "switchblades," especially when there is no "switch."

Thank you for your attention to this letter. Should you have any questions, please feel free to contact our office.

Sincerely,
EVAN F. NAPPEN ATTORNEY AT LAW, P.C.

Evan F. Nappen /s/

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For the Firm

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Richard V. Gilbert /s/

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