

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>JOHN COPELAND, PEDRO PEREZ, AND NATIVE LEATHER, LTD.,</p> <p style="text-align:center">Plaintiffs,</p> <p style="text-align:center">v.</p> <p>CYRUS VANCE, JR., in his Official Capacity as the New York County District Attorney, CITY OF NEW YORK,</p> <p style="text-align:center">Defendants.</p>	<p>Case No.: 1:11-cv-03918-KBF-RLE</p>
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**NOTICE OF MOTION TO FILE AMICUS CURIAE
BRIEF**

The Legal Aid Society (“LAS”) respectfully moves, pursuant to the Court’s inherent authority, to file a brief as *amicus curiae* regarding whether defendant’s application of the “wrist-flick test” to common folding knives renders P.L. §§ 265.01(1) and 265.02(1) void for vagueness. A copy of the proposed brief and video submission is attached as Exhibit A to this Motion.

I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS

Federal district courts possess the inherent authority to accept *amicus* briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the court’ to assist in their

proceedings.”); *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *United States v. Davis*, 180 F. Supp. 2d 797, 800 (E.D. La. 2001) (noting that district courts have authority to permit the filing of *amicus* briefs). The role of *amici* is to assist the court “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Newark Branch, N.A.A. C.P. v. Town of Harrison, N.J.*, 940 F.2d 792, 808 (3d Cir. 1991). This authority supports the Court’s exercise of its discretion to accept LAS’s *amicus* brief.

II. THE PROPOSED LAS BRIEF PROVIDES SUPPLEMENTAL ANALYSIS OF DANY’S GRAVITY KNIFE PROSECUTION POLICY ON MATTERS RAISED BY THE PARTIES BUT NOT BRIEFED IN THEIR ENTIRETY

LAS has reviewed the briefs filed to date in this case in order to avoid unnecessary duplication of the parties’ arguments. This case challenges DANY’s enforcement of New York State’s gravity knife laws on the grounds DANY’s use of the wrist-flick test renders P.L. §§ 265.01(1) and 265.02(1) void for vagueness. This brief will supplement the plaintiff’s primary argument, that the wrist-flick test is subjective and therefore makes it impossible for ordinary New Yorkers to comply with the gravity knife statute. This brief will demonstrate the harms that result from a vague statute, namely harsh sentencing, unlimited prosecutorial discretion and discriminatory enforcement. *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Thornhill v. Alabama*, 310 U.S. 88 (1940). It will do so through the stories of indigent defendants ensnared by the law.

The Legal Aid Society (LAS) is the oldest and largest private non-profit legal services agency in the nation, dedicated since 1876 to providing quality legal representation

to low-income New Yorkers. It has served as New York’s primary public defender since 1965. It has represented thousands of individuals prosecuted by the New York County District Attorney’s Office (DANY) for alleged violations of Penal Law Sections 265.01(1) and 265.02(1) for possession of so-called “gravity knives.” It has a vital interest in the outcome of this litigation.

III. IF THE COURT ALLOWS LAS TO FILE ITS *AMICUS* BRIEF THE PARTIES SHOULD BE GIVEN AN OPPORTUNITY TO RESPOND

If the Court grants LAS’s Motion to participate as *amicus* and accepts its brief for filing, the parties should have an adequate opportunity to respond. LAS requests that the Court set May 24, 2016 as the due date for the parties’ responses to the *amicus* brief, with no Reply permitted.

Respectfully submitted, and DATED this 10th day of May, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2016, I filed the foregoing (1) Motion for Leave to File Amicus Brief (with the proposed *Amicus* Brief as an attached exhibit); and (2) Proposed Order Granting Leave to File *Amicus* Brief, using the Court's ECF system which will send notification of such filing to the following counsel of record:

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