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July 20, 2015

**Via ECF**

Ms. Catherine O'Hagan Wolfe,  
Clerk of Court  
United States Court of Appeals  
For the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: Knife Rights Inc., et al. v. Cyrus Vance, Jr.  
Docket Number 13-4840-cv  
Argued: January 13, 2015**

**Notice of Supplemental Authority Pursuant to Fed. R. App. P. 28(i)**

Dear Ms. O'Hagan Wolfe:

Plaintiffs hereby provide Notice of Supplemental Authority in the referenced matter. On June 26, 2015, the Supreme Court of the United States decided *Johnson v. United States*, 13-2170, striking down a criminal statute as void for vagueness even where as alleged here, some conduct is clearly covered by the statute.

The Court, in *Johnson*, squarely holds that to survive a vagueness challenge, the operation of a law must be clear in *all* of its applications. The fact that it may operate in a clear manner in some applications does not render it constitutional if there are other applications where the law's operation is unclear:

In all events, although statements in some of our opinions could be read to suggest otherwise, our *holdings* squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp.

*Id* at 11.

The Court further draws the clear distinction between “close cases” (as the Manhattan District Attorney describes them in his brief), “where a man’s fate depends on his estimating rightly -- some matter of degree,” *Nash v. United States* 229 U.S. 373, 377 (1913), and cases where, as here, the defendant is simply unable to determine his criminal liability at all because of a law’s vagueness. *Johnson* plainly illustrates this distinction.

Like *Johnson*, this matter, is about the impossibility of determining liability in many instances -- not “estimating rightly” in “close-cases”. Under *Johnson*, defendants’ application of New York’s statute is not saved because it may be easy to tell that *some* knives fall within the government’s interpretation of the term “gravity knife.” This lawsuit is not about the clear cases. It is about the many unclear cases resulting in the arrest and prosecution of individuals and businesses like Plaintiffs for whom it is impossible to determine if they are within the law under Defendants’ unconstitutionally vague application thereof.

Respectfully submitted,

/s/ Daniel L. Schmutter  
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Counsel for Appellants

The body of this letter contains 315 words.

DLS/sr

cc: Counsel of record via ECF