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April 18, 2018

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: Copeland, et al. v. Vance
Docket Number 17-474-cv
Argued: January 18, 2018

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

Dear Ms. O'Hagan Wolfe:

Plaintiffs hereby provide Notice of Supplemental Authority. On April 17, 2018, the United States Supreme Court decided *Sessions v. Dimaya*, 15-1498, striking down a statute as void for vagueness even where, as alleged here, some conduct is clearly covered by the statute.

The Court followed its prior holding in *Johnson v. United States*, 135 S. Ct. 2551 (2015), that to survive a vagueness challenge, a law's operation must be clear in *all* its applications. 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.

The Court was concerned that the "residual clause" of the subject statute requires a person to make a largely impossible prediction, just like in the within case it is impossible for a person to predict the results of the Wrist Flick Test when applied by an unknown third person to a particular Common Folding Knife.

The problem is nowhere illustrated better in the within case than the testimony of ADA Rather in which he testified that a person could enter a store, test a knife with the Wrist flick Test, fail to open it twice, and validly conclude it is not a gravity knife. That same person could then purchase the knife, walk out of the store, and if two steps out the door he encountered a police

officer who could flick the knife open, that same knife would suddenly be a gravity knife, subjecting the person to arrest and prosecution.

In *Dimaya*, the Court noted that:

> "The residual clause," Johnson summarized, "offer[ed] no reliable way" to discern what the ordinary version of any offense looked like. *Ibid.* And without that, no one could tell how much risk the offense generally posed.

Id. at 8.

Similarly, there is no reliable way for a person to discern whether, at some time in the future, some unknown police officer will be able to open a particular Common Folding Knife using the Wrist Flick Test. Thus, the Gravity Knife Law is void for vagueness as applied to Common Folding Knives.

Respectfully submitted,

/s/ Daniel L. Schmutter
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Counsel for Appellants

The body of this letter contains 348 words.

DLS/sr
cc: Counsel of record via ECF