IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KNIFE RIGHTS INC., *et al.*, Plaintiffs, v. PAMELA BONDI, *et al.*, Defendants.	Civil Action No. 4:24-cv-926-P

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

This case is Plaintiffs' second pre-enforcement facial challenge to the Federal Switchblade Act. Plaintiffs' prior challenge targeted 15 U.S.C. § 1242, which prohibits the distribution of switchblades in interstate commerce. Plaintiffs now challenge both this provision and 15 U.S.C. § 1243, which prohibits possession of switchblades in certain areas, including federal and tribal land. This new case should be dismissed for the same reason as before: Plaintiffs lack standing. Plaintiffs have failed to demonstrate a substantial likelihood of prosecution under either provision of the statute, given that there have been no recorded prosecutions under Section 1242 since 2010 and no recorded prosecutions under Section 1243 since at least 2004. Plaintiffs have also failed to grapple with recent Supreme Court precedent, which makes clear that the organizational plaintiff does not have standing simply because it has spent resources opposing the statute.

Even if Plaintiffs had standing, the case should be dismissed for failure to state a claim. Plaintiffs have not established that Section 1242's prohibition on the interstate sale of switchblades interferes with their ability to "keep and bear" arms, since they have not demonstrated that this provision interferes with their ability to acquire a switchblade from vendors available in their states. Nor have they shown that Section 1243's restriction on possessing switchblades in certain areas is unconstitutional in all of its applications. Plaintiffs' Motion for Summary Judgment should be denied, and Defendants' Motion to Dismiss should be granted.

ARGUMENT

I. Plaintiffs Lack Standing

Plaintiffs lack standing to challenge either Section 1242 or 1243. Despite their suggestion otherwise, Plaintiffs' burden to establish standing is "especially rigorous" here, since a decision on the merits would require the Court "to decide whether an action taken by one of the other two

branches of the Federal Government was unconstitutional." *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408)). Plaintiffs cannot meet that burden because they fail to establish that any of the Plaintiffs have suffered an injury that is "actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citation omitted). The individual and retail plaintiffs fail to show that they face a credible risk of prosecution under either provision. The organizational plaintiff likewise fails to show that any of its members face such a risk, or that it has suffered a cognizable injury on its own. The case should accordingly be dismissed for lack of jurisdiction. *See* Defs.' Mem. in Supp. of Mot. to Dismiss & Resp. to Pls.' Mot. for Summ. J. at 6-18, ECF No. 25 ("Defs.' Mem.").

A. The Individual and Retail Plaintiffs Lack Standing

Since none of the individual plaintiffs have faced prosecution under Sections 1242 or 1243, they must show that they face a substantial likelihood of enforcement in the future in order to establish standing. *See Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020). They have not done so. Once again, the government has come forward with evidence showing that there have been no prosecutions under Section 1242 since 2010 and no prosecutions under Section 1243 since at least 2004. *See* Decl. of Matthew Zabkiewicz ¶ 5, ECF No. 25-1 ("Zabkiewicz Decl."). And once again, Plaintiffs fail to provide their own evidence that rebuts the government's enforcement data or shows why this prosecutorial pattern is likely to change. As Judge O'Connor held less than a year ago, this absence of such evidence renders the individual plaintiffs' claims "a mere hypothetical dispute lacking the concreteness and imminence required by Article III." *Knife Rights v. Garland*, No. 4:23-cv-00547-O, 2024 WL 2819521, at *3 (N.D. Tex. 2024) (quoting *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 782 (5th Cir. 2024)). Plaintiffs fail to distinguish their new case from the last one.

To start, it makes no difference that this case includes a challenge to Section 1243. The government's data shows that Section 1243 has not been prosecuted since at least 2004, the farthest back the current database runs. *See* Zabkiewicz Decl. ¶ 5. Plaintiffs do not contradict this data, and they offer no evidence of their own that would suggest that Section 1243 is likely to be enforced against them for the first time in at least two decades. The individual plaintiffs' challenge to Section 1243 can thereby be readily dismissed. *See McCraw*, 90 F.4th at 782 (holding that plaintiffs lacked standing for a Due Process Clause challenge where "the available evidence suggests that Defendants have never enforced [the statute] against Plaintiffs (or anybody else)").[1]

Plaintiffs similarly fail to provide evidence that indicates a substantial likelihood of enforcement under Section 1242's interstate commerce ban. They attempt to conjure this evidence from the government's data, noting that there have been four recorded prosecutions under the provision between 2004 and 2010. But Plaintiffs cannot establish a substantial risk of enforcement simply by alluding to a small handful of prosecutions that took place more than a decade ago. They must instead provide some basis to conclude that they face a credible, individualized risk of being prosecuted under the statute. *See Paxton v. Restaino*, 683 F. Supp. 3d 565, 569 (N.D. Tex. 2023) (Pittman, J.), *aff'd sub nom. Paxton v. Dettelbach*, 105 F.4th 708 (5th Cir. 2024). As the Supreme Court has made clear, pre-enforcement review is severely limited and warranted only "under circumstances that render the threatened enforcement sufficiently imminent." *Susan B. Anthony List v. Driehaus,* 573 U.S. 149, 159 (2014). No such evidence is present in this case.

[1] While *McCraw* found that the plaintiffs had established standing for their First Amendment claims, the Fifth Circuit was clear that this finding was based on an exception for cases raising claims under the Free Speech Clause, where courts "may *assume* a substantial threat of future enforcement absent compelling contrary evidence." 90 F.4th at 782 (quoting *Barilla v. City of Houston*, 13 F.4th 427, 433 (5th Cir. 2021)). That assumption is inapplicable "in other constitutional contexts." *Id.* For this reason, Plaintiffs are mistaken in relying on cases like *Barilla* that involve the Free Speech Clause.

In the absence of prosecutorial data that would establish an individualized risk of enforcement, Plaintiffs highlight three sets of factual allegations, but none show that the individual plaintiffs are likely to be prosecuted. First, Plaintiffs provide a declaration from Johan Lumsden, a switchblade distributor who states that his home was searched in 2020 in connection with suspected violations of the Federal Switchblade Act. *See* Decl. of Johan Lumsden ¶¶ 5-9, ECF No. 29-2. But Mr. Lumsden is not a party to this case, nor was he ever prosecuted under the statute. *See id.* ¶¶ 1, 9. Instead, he indicates that the switchblades seized from his property were returned in 2023, *id.* ¶ 11—a step that is likely inconsistent with any prosecution regarding these switchblades. As a result, Mr. Lumsden's allegations regarding a raid that occurred more than four years ago are insufficient to establish that he faces a substantial likelihood of prosecution. They are likewise insufficient to show that the individual plaintiffs have a credible fear of prosecution themselves.

Second, Plaintiffs reference a 2007 prosecution of Spyderco, Inc., in which the company was charged with importing butterfly knives in violation of 18 U.S.C. § 1716(g)—a separate statutory provision from those at issue here. While Plaintiffs stress that a plea agreement required the company to take measures to avoid distributing switchblades in violation of the Federal Switchblade Act, that agreement is immaterial to this case. Spyderco is not a named plaintiff in this case, and its prosecution under a separate statute nearly two decades ago does not give the individual or retail plaintiffs a credible fear of prosecution under the Federal Switchblade Act. Nor would Plaintiffs acquire standing simply because retail plaintiffs may incorporate the provisions of Spyderco's plea agreement "out of fear that the U.S. Attorney will target them, as it did with Spyderco." Compl. ¶ 8, ECF No. 1. A generalized fear of prosecution is not transformed into an injury merely because Plaintiffs may modify their behavior in response. *See McCraw*, 90 F.4th at

782-83 (finding no standing for a Due Process Clause challenge even though plaintiffs alleged that they had restricted their activities in response to the statute).

Third, Plaintiffs reiterate that the U.S. Customs and Border Protection issued a March 2024 notice that advised travelers that taking a switchblade into the country is "prohibited" and may result in confiscation. *See* U.S. Customs and Border Protection, *Knowledge Article No. 1123* (Mar. 7, 2024), https://perma.cc/PPF4-9RBY. As Plaintiffs acknowledge, this notice concerns the prohibition against importing switchblades, which Plaintiffs do not challenge. Plaintiffs fail to show how this notice bears on their likelihood of being prosecuted under the contested provisions. They instead simply assert that "Defendants can change, and often do change, their focus in terms of enforcement, prosecutions, and other criminal mechanisms." Pls' Opp'n to Defs.' Mot to Dismiss & Reply at 19, ECF No. 29 ("Opp'n"). This speculation—like Plaintiffs' other speculative conclusions—amounts to "a general fear of prosecution," which "cannot substitute for the presence of an imminent, non-speculative irreparable injury." *Braidwood Mgmt., Inc. v. Equal Emp. Opportunity Comm'n*, 70 F.4th 914, 926 (5th Cir. 2023) (citation omitted).[2]

Without evidence to substantiate a credible fear of prosecution, Plaintiffs fall back on a series of non-sequiturs. They argue that the government's enforcement data may not capture "arrests, raids, charges, seizures, or pleas under the challenged provisions of the Federal Switchblade Act." Opp'n at 14 (citation omitted). But this point is entirely baseless, and Plaintiffs

[2] Plaintiffs argue that these sets of factual allegations collectively constitute the kind of "clear shot across the bow" that established a credible threat of enforcement in *Braidwood*, 70 F. 4th at 927, but that case is plainly distinguishable. There, an agency undertook an enforcement action against an employer with policies that "mirror[ed]" the policies at issue, in a "landmark case" that went to the Supreme Court. *Id.* Here, by contrast, Plaintiffs have not identified "a prior prosecution with an almost identical set of facts." *Id.* at 929 at n.27. Neither the Lumsden raid nor the customs notice concern prior prosecutions, and the prosecution against Spyderco was not brought under the statute that Plaintiffs challenge.

cannot meet their burden of establishing that they have standing by alluding to the absence of additional data. Nor can Plaintiffs meet their burden simply by referencing an absence of an official commitment from the Department of Justice that assures them they will not be prosecuted under the statute. Nor does it matter that the statute was amended in 2009 in order to add an additional exception to enforcement: that knives with "a spring, detent, or other mechanism designed to create a bias toward closure" are not subject to its provisions. Federal Switchblade Act, Pub. L. No. 111-83, title V, § 562, 123 Stat. 2142, 2183 (2009). A congressional amendment from more than fifteen years ago that limited the statute's scope does not make it substantially likely that these plaintiffs will face prosecution.

The individual plaintiffs therefore lack standing because they lack the credible fear of enforcement that is required to establish a cognizable injury. The retail plaintiffs—which are operated by two of the individual plaintiffs—lack standing for the same reason. In addition, as explained in an unrebutted portion of Defendants' opening brief, the retail plaintiffs further lack standing to assert injuries on behalf of their customers because they have failed to show a "close" relationship with the customers and that a "hindrance' prevents these third parties from protecting their own interests. *Def. Distributed v. U.S. Dep't of State*, 121 F. Supp. 3d 680, 697 (W.D. Tex. 2015) (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)), *aff'd*, 838 F.3d 451 (5th Cir. 2016).

B. The Organizational Plaintiff Lacks Standing

The remaining plaintiff—Knife Rights, Inc.—similarly lacks standing. Knife Rights lacks associational standing because it has failed to identify any "members [that] would otherwise have standing to sue in their own right." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (citation omitted). As explained above, the individual plaintiffs who are members of Knife Rights have not shown a credible fear of prosecution, nor has

Mr. Lumsden. Since "the only identified members" of the organization have not established an injury, Knife Rights does not have associational standing. *Children's Health Def. v. Food & Drug Admin.*, 650 F. Supp. 3d 547, 556 (W.D. Tex. 2023), *aff'd*, No. 23-50167, 2024 WL 244938 (5th Cir. Jan. 23, 2024).

Knife Rights also lacks organizational standing, since it has not shown that the organization itself has suffered a cognizable injury. To show such an injury, Knife Rights must establish that its "ability to pursue its mission is perceptibly impaired because it has diverted significant resources to counteract the defendant's conduct." *La. Fair Hous. Action Ctr., Inc. v. Azalea Garden Props., L.L.C.*, 82 F.4th 345, 351 (5th Cir. 2023) (cleaned up). In attempting to make this showing, Knife Rights asserts that it has been injured by "expending substantial and extraordinary organizational time, effort, money, and other resources to challenge the [Federal Switchblade Act] in court." Opp'n at 23-24 (citation omitted). But Knife Rights does not respond to recent Supreme Court precedent, which forecloses this kind of argument. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) ("[A]n organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action."). Since none of the Plaintiffs have standing, this case should be dismissed for the same reason it was dismissed before.

II. Plaintiffs Fail to State a Claim

Even if Plaintiffs had standing, the case should be dismissed for failure to state a claim. Under *New York State Rifle & Pistol Association v. Bruen*, the first step in evaluating Plaintiffs' Second Amendment claim is determining whether "the Second Amendment's plain text covers an individual's conduct." 597 U.S. 1, 24 (2022). It is only if the text applies that the analysis proceeds to the second step, in which the government must show that a regulation "is consistent with the

Nation's historical tradition of firearm regulation," *id.*, which requires "considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition," *United States v. Rahimi*, 602 U.S. 680, 692 (2024). As Defendants explained in their opening brief, Plaintiffs fail to state a claim under this framework. Two points are particularly salient: (1) Section 1242 does not implicate the text of the Second Amendment, since Plaintiffs have not established that the provision affects their ability to "keep and bear" arms, and (2) Plaintiffs' facial challenge against Section 1243 fails, since a longstanding historical tradition shows that the government can restrict weapons in sensitive places such as federal courthouses and military bases.

A. Plaintiffs Fail to Show that Section 1242 Regulates Conduct Protected by the Second Amendment

In evaluating Section 1242 under *Bruen*'s first step, the key textual question is whether the provision's ban on the interstate sale of switchblades implicates the right to "keep and bear" arms. The Fifth Circuit has held that the Second Amendment is implicated by measures regulating the sale of arms if those measures serve as an "outright ban" of the arm at issue, *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 590 n.2 (5th Cir. 2025), or if they are "so burdensome that they act as *de facto* prohibitions on acquisition" of the arm, *McRorey v. Garland*, 99 F.4th 831, 838 n.18 (5th Cir. 2024). Section 1242 is neither an outright nor a functional ban on switchblades. It is instead a restriction on the distribution of switchblades "in *interstate commerce*." 15 U.S.C. § 1242 (emphasis added).

Plaintiffs have not established that the provision prevents them from acquiring switchblades via intrastate distribution. To the contrary, Plaintiffs emphasize that more than 40 states allow people to lawfully purchase them, and they assert that switchblades are commonly owned and used. *See* Opp'n at 4, 36-37. Nor have Plaintiffs established that Section 1242 affects anyone's ability to acquire switchblades in the states in which they are banned. To the extent that

Plaintiffs wish to extend access to switchblades in those states, their issue is with the state laws, not with Section 1242. By failing to provide evidence that Section 1242 affects Plaintiffs' ability to acquire switchblades, they fail to state a claim against the provision.

B. Plaintiffs' Facial Challenge to Section 1243 Fails Because Several Applications of the Provision Are Clearly Constitutional

Even if the Court were to find that switchblades constitute "arms" under the Second Amendment, Plaintiffs would nonetheless fail to establish a successful facial challenge against 1243's restriction of switchblades in certain areas. Plaintiffs appear to agree that they have brought a facial challenge to Section 1243, since they "acknowledge they must show the [Federal Switchblade Act] is facially unconstitutional." Opp'n at 47. That acknowledgment accords with the relief that Plaintiffs seek: a universal injunction that would completely bar enforcement of the provision, as opposed to as-applied relief for particular plaintiffs in particular circumstances. *See id.* at 48 (arguing that "[a] nationwide injunction is the only relief that should be granted by this Court"). Plaintiffs have accordingly "chose[n] to litigate [this case] as [a] facial challenge[], and that decision comes at a cost." *Moody v. NetChoice*, LLC, 603 U.S. 707, 723 (2024). Specifically, Plaintiffs must "establish that no set of circumstances exists under which [Section 1243] would be valid." *Rahimi*, 602 U.S. at 693 (citation omitted). They have not done so here.

Plaintiffs do not rebut the point that historical practice shows that the government can regulate the possession of weapons in sensitive places, such as courthouses or military bases. *See* Defs.' Mem. at 35-38; *see also Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (noting that the opinion did not question "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings"). Nor do Plaintiffs contest that Section 1243 covers at least some sensitive places, since it restricts the possession of switchblades "within the special maritime and territorial jurisdiction of the United States," which courts have held to include federal

courthouses, military facilities, and hospitals administered by the Veterans Administration. *See, e.g., United States v. Dixon*, 185 F.3d 393, 396 n.1 (5th Cir. 1999); *United States v. Reff*, 479 F.3d 396 (5th Cir. 2007).

Instead, Plaintiffs argue that Section 1243 also covers areas that should not be considered sensitive places, while further arguing that "Plaintiffs' case is not about switchblades at federal courthouses, hospitals, or military bases." Opp'n at 47. In attempting to dodge the issue of restrictions in places like courthouses, Plaintiffs effectively concede their facial challenge to Section 1243, since such challenges fail if the government shows that a provision "is constitutional in some of its applications." *Rahimi*, 602 U.S. at 693. That is unquestionably the case here.

III. Any Injunction Should Not Extend Beyond the Plaintiffs

If the Court reaches the question of remedy, it should deny Plaintiffs' request for a nationwide injunction. As the Supreme Court has long recognized, "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (emphasis added). Plaintiffs do not show why a nationwide injunction is needed to provide complete relief to the named plaintiffs and Knife Rights' identified members. They instead argue that such an injunction is needed because plaintiff-specific relief "would permit irreparable harm on the rest of the public through the [Federal Switchblade Act's] unconstitutional enforcement." Opp'n at 49. But "the rest of the public" is not a party to this case, and Plaintiffs fail to show that their asserted injuries cannot be addressed by party-specific relief. Their request for a nationwide injunction should therefore be rejected.

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' Motion to Dismiss and deny Plaintiffs' Motion for Summary Judgment.

Dated: April 25, 2025

Respectfully submitted,

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