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

KNIFE RIGHTS, INC., et al., Plaintiffs, vs. MERRICK B. GARLAND, Attorney General of the United States, et al. Defendants.	Case No. 4:24-CV-926 U.S. District Judge Mark Pittman

PLAINTIFFS' KNIFE RIGHTS, INC., ET AL., NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

NOTICE OF MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that on December 6, 2024, Plaintiffs Knife Rights, Inc., *et al*. (collectively, Plaintiffs) move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, the Northern District of Texas Local Civil Rule 56.1-56.7, and this Court's Orders Entering Agreed Briefing Schedule (ECF No. 15), against Defendants Merrick Garland, United States Department of Justice, *et al*. (collectively, "Defendants") on the 42 U.S.C. section 1983/Second Amendment claim in Plaintiffs Complaint. ECF No. 1. There are no genuine issues of material fact as to such claim and Plaintiffs are entitled to judgment as a matter of law.

COUNT

The Complaint's claim for relief arises under 42 U.S.C. section 1983 for the deprivation of, and undue burden on, Plaintiffs' civil rights under the Second Amendment. Specifically, the Complaint's claim for relief (COUNT 1) alleges that the Federal Switchblade Act, 15 U.S.C. §§ 1241-1244, enacted in 1958 as Pub. Law 85-623, violates the Second Amendment of the United States Constitution. The Act, as alleged, prohibits the introduction, manufacture for introduction, transportation, or distribution into interstate commerce any switchblade knife (as defined). 15 U.S.C. §§ 1241(b), 1242. Furthermore, "[w]hoever, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), manufactures, sells, or possesses any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both." *Id.*; 15 U.S.C. § 1243. The Act defines the term "switchblade knife" to mean "any knife having a blade which opens automatically – (1) by hand pressure applied to a button or other devise in the handle of the knife, or (2) by operation of inertia, gravity, or both." 15 U.S.C. § 1241(b).

Defendants' enforcement of the Federal Switchblade Act provisions identified above unconstitutionally infringes on, and unduly burdens, the fundamental right of Plaintiffs and other similarly situated individuals who reside in Texas and other States within the United States to keep and bear constitutionally protected arms in common use — including automatic opening knives or

switchblades (as defined) — in violation of the Second Amendment. U.S. CONST. amend. II.

Plaintiffs are among "the people" whom the Second Amendment protects, and they have the presumptive right to bear arms. Automatically opening knives ("switchblades") are "arms" under the Second Amendment's plain text. By infringing on Plaintiffs' right, the challenged provisions of the Federal Switchblade Act contradict the plain text of the Second Amendment. Thus, the burden is on Defendants to identify a well-established historically relevant analogous laws or regulations that justify the Knife Ban. Defendants cannot meet their heavy burden. The above issues are legal questions that can and should be resolved by summary judgment.

Plaintiffs submit that the matters required under Rule 56.3 are also set forth in Plaintiffs' Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment filed concurrently with the present motion in accordance with Local Rules 7.1 and 56.5. In support of this motion, Plaintiffs rely on: (i) Plaintiffs' Notice of Motion and Motion for Summary Judgment; (ii) Plaintiffs' Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment; (iii) Appendix of Evidence and Declarations; (iv) Plaintiffs' Complaint (ECF No. 1); and (v) any further evidence or argument advanced at or prior to resolution of this motion.

Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and dismiss the entirety of this case.

December 6, 2023

Respectfully submitted,

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PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Undoubtedly, automatically opening knives are "arms" in common use and protected under the plain text of the Second Amendment. The "Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2021) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008)). Indeed, the Supreme Court in *Bruen* made clear that the Second Amendment protects the right to acquire, possess, and carry arms for self-defense and all other lawful purposes — inside *and* outside the home. *Bruen*, 597 U.S. at 28.

To be clear, "[t]he constitutional right to bear arms in public for self-defense is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Bruen*, 597 U.S. at 69 (quoting *McDonald v. Chicago*, 561 U. S. 742, 780 (2010) [plurality opinion]). "The very enumeration of the [Second Amendment] right takes out of the hands of government"— including Defendants — "the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. at 635 (emphasis in original).

Despite Supreme Court precedent, the Federal Switchblade Act, 15 U.S.C. §§ 1241-1245, enacted in 1958 as Pub. Law 85-623 ("FSA" or "Federal Knife Ban"), prohibits the introduction, manufacture for introduction, transportation, or distribution into interstate commerce any switchblade knife (as defined). 15 U.S.C. §§ 1241(b), 1242; *See also* Appendix in Support of Plaintiffs' Motion for Summary Judgment ("Appendix"), KR2-4. The FSA also imposes a fine and possible imprisonment on "[w]hoever … manufactures, sells, or possesses any switchblade knife." *Id*.; 15 U.S.C. §§ 1243. The fine is a maximum of $2,000.00, and the imprisonment threat is "not more than five years, or both." *Id*.

The FSA defines "switchblade knife" to mean "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." *Id.*; 15 U.S.C. § 1241(b).[1] In enacting the Federal Knife Ban, Congress used its power to regulate commerce through the Commerce Clause of the U.S. Constitution to limit the sales of so-called switchblades.

Defendants' enforcement of the Federal Knife Ban unconstitutionally infringes on the fundamental right to keep and bear constitutionally protected arms in common use — specifically automatically opening knives or switchblades (as defined) through its restriction on interstate commerce. This fundamental right is held by Plaintiffs and other similarly situated individuals residing in Texas and other States.

There is no dispute that automatically opening folding knives, or switchblades, are in common use. And no dispute exists that automatically opening folding knives are *not both* "dangerous" and "unusual" arms that fall outside of the Second Amendment's protection. Defendants acknowledged these undisputed facts long ago (1958), and the acknowledgement remains true today. See below at p. 15-23.

Under the standard established in *Heller* and reaffirmed in *Bruen*, arms cannot be banned unless the government shows the arm in question is *both* dangerous *and* unusual. The legislative history of the Federal Knife Ban, and Defendants' official positions regarding the ban in 1958 concede this fact. As such, Plaintiffs respectfully request that this Court grant Plaintiffs' motion for summary judgment, invalidate the FSA as unconstitutional under the Second Amendment, and

[1] Defendants call these knives in common use "switchblades" (15 U.S.C. § 1241(b)) to conjure up negative connotations and Hollywood imagery of gangs in the 1950's movies, but the term switchblade is Defendants' pejorative term for "automatically opening knives." Automatically opening knives can range from the iconic Italian knives of the postwar era to modern knives using advanced materials and internal mechanisms. Regardless, the defining features have always been the same, and remain the same today: the blade, manufactured to open and be kept under tension in the handle, deploys at the press of a button or handle, or mechanism. *Id*.

permanently enjoin its enforcement. [2]

II. LEGAL STANDARDS

Plaintiffs move for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Summary judgment is appropriate when the pleadings and evidence demonstrate that no genuine issue exists as to any material fact and that the moving parties are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once a movant who does not have the burden of proof at trial makes a properly supported motion, the burden shifts to the nonmovant to show that a summary judgment should not be granted. *Id.* at 321–325. Unsubstantiated assertions "'are not competent summary judgment evidence.'" *Celotex,* 477 U.S. at 324. "A party opposing such a summary judgment motion … must set forth and support by evidence specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255–257(1986). Summary judgment is not a "disfavored procedural shortcut, but rather an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex*, 477 U.S. at 327; *Ragas v. Tennessee Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

Here, the threshold legal question is whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 17. "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id*. Second, courts ask whether a given arms restriction or prohibition is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24, 33-34. The government

[2] To be clear, Plaintiffs do not challenge the Federal Knife Ban regulations on importation of "switchblade" knives into the United States from foreign jurisdictions. See 15 U.S.C. 1241; Code of Federal Regulations Title 19, Ch. 1, Part 12, sections 12.95-12.103.

bears the burden of demonstrating a tradition of firearms regulations supporting the challenged law. *Id.* Courts must also hold the government "to its heavy burden." *United States v. Daniels*, 77 F.4th 337, 342 (5th Cir. 2023).

Further, the text and history analysis in *Bruen* presents legal questions. See *Teter v. Lopez*, 76 F.4th 938, 946 (9th Cir. 2023), rehearing en banc granted by *Teter v. Lopez*, 9th Cir. (Hawai'i), Feb. 22, 2024 (citing Fed. R. Evid. 201 and other cases, court denied request for remand to conduct further factual development because "the historical research required under *Bruen* involves 'legislative facts,' those 'which have relevance to legal reasoning' … rather than adjudicative facts, which are simply the facts of the particular case; and because the record did "not require further development of adjudicative facts to apply *Bruen's* standard," it did not trigger the need for a remand).

III. STATEMENT OF FACTS

As stated above, the Federal Switchblade Act defines a "switchblade knife" to mean 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. Appendix, KR 2-4; 15 U.S.C. 1241(b). The term "interstate commerce" means "commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof." *Id.*; 15 U.S.C. § 1241(a). Under the challenged Federal Knife Ban, "[w]hoever 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." *Id.*; 15 U.S.C. § 1242.

Furthermore, "[w]hoever, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial

jurisdiction of the United States (as defined in section 7 of title 18), manufactures, sells, or possesses any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both." *Id.*; 15 U.S.C. § 1243. The Federal Knife Ban contains extremely limited exceptions. The ban does not apply to:

> (1) any *common carrier or contract carrier*, with respect to any switchblade knife shipped, transported, or delivered for shipment in interstate commerce in the ordinary course of business,
>
> (2) the manufacture, sale, transportation, distribution, possession, or introduction into interstate commerce, of switchblade knives pursuant to *contract with the Armed Forces*,
>
> (3) the *Armed Forces or any member or employee thereof* acting in the performance of his duty,
>
> (4) the possession, and transportation upon his person, of any switchblade knife with a blade three inches or less in length *by any individual who has only one arm*, or
>
> (5) a *knife* that contains a spring, detent, or other mechanism *designed to create a bias toward closure* of the blade and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife.

See 15 U.S.C. § 1244(1)-(5) (emphasis added).

Thus, the Federal Knife Ban unconstitutionally infringes on the fundamental right to manufacture for sale, sell, transport, distribution, purchase, transfer, possess, and carry any switchblade knife (as defined) between any of the 50 states, Washington D.C., and any U.S. territory, despite that automatically opening knives are in common use and protected by the Second Amendment.

Automatically opening knives are "arms" under the Second Amendment's plain text. *Bruen*, 597 U.S. at 28. In *Heller*, the Supreme Court made clear that "'[t]he 18th-century meaning' of the term 'arms' is 'no different from the meaning today.'" *Id.* 554 U.S. at 581. In the 18th century and now, the term "arms" generally referred to "'[w]eapons of offence, or armour of defence.'" *Id.* (quoting 1 Dictionary of the English Language 107 (4th ed.) (reprinted 1978)). *Id.*

Simply, "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding. *Id*.

Similarly, like firearms in *Heller*, knives facially are "arms" within the meaning of the Second Amendment as they unquestionable are instruments that constitute bearable arms. As with firearms, knives fit the definition of weapons of offense or armor of defense. Further, other sources confirm that, at the time of the adoption of the Second Amendment, the term "arms" was understood as generally encompassing knives. *See* 1 Malachy Postlethwayt, *The Universal Dictionary of Trade and Commerce* (4th ed. 1774) (including among "arms" fascines, halberds, javelins, pikes, and swords). And bladed arms ranging from small "pocket" knives, to daggers, and even swords were regularly carried long before this Country's founding and to the present. Appendix, KR 224. Because the Second Amendment encompasses "arms," and because "arms" includes knives, and, by definition, automatically opening knives, or switchblades, the Second Amendment presumptively guarantees "keeping and bearing" such "arms" for self-defense and for any other lawful reason. *See Bruen*, 597 U.S. at 32-33. And in the factual context of this case, Plaintiffs also desire to keep and bear these arms for self-defense and other lawful purposes. See Appendix, KR 5-59. (**Exs. B, C**, **D**, **E**, **F**, and **G**). As such, there should be no dispute that switchblade knives facially constitute "arms" under the plain text of the Second Amendment.

Automatically opening knives were first produced in the 1700s. Appendix, KR 83, 179. By the mid-nineteenth century, factory production of automatically opening knives made them affordable to everyday customers. Appendix, KR179. "George Schrade was one of the most prolific and influential inventors in American cutlery history. In 1892-93, he introduced his Press-Button knife. It was the first switchblade suited to mass production methods, although automatic opening knives made by hand had been around for more than a century." Appendix, KR 152. Thus,

as shown below, automatically opening knives are in common use and not *both* "dangerous and unusual." *Infra* p. 18, 22, and 25-26.

Nonetheless, the Federal Knife Ban remains "on the books" with the threat of substantial fines, imprisonment, or both. The law unconstitutionally infringes on the Second Amendment fundamental right to manufacture, sell, trade, possess, distribute, transport, possess, or carry any switchblade knife (as defined) between any of the 50 states, Washington D.C., and any U.S. territory because switchblade knives are in common use and are not *both* dangerous and unusual.

IV. PLAINTIFFS HAVE STANDING TO CHALLENGE THE FEDERAL KNIFE BAN

As a threshold issue, "[t]o satisfy Article III standing, a plaintiff must show: (1) an injury in fact that is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) a causal connection between the injury and the challenged action of the defendant; and (3) that is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (cleaned up) (abrogated on other grounds).

Here, Plaintiffs' forced dispossession of their automatically opening knives, plus their inability to acquire, use, carry, sell, distribute, and possess them for self-defense and other lawful purposes and that but for the Federal Knife Ban, Plaintiffs would immediately so acquire them, constitutes a present injury creating Article III standing to seek the relief sought in the operative complaint. (ECF No. 1 (Complaint at ¶¶ 3-13). Based on those allegations (supported by declarations, as shown below), as law-abiding citizens, residents and retailers of Texas and other States, and as members of Plaintiff Knife Rights, Plaintiffs are completely unable to acquire the arms they allege are protected by the Second Amendment, which places this case within the parameters of *Jackson* and the Article III standing requirements. Further, the Second Amendment

protects "the ability to acquire arms" under *Teixeira v. County of Alameda*, 873 F.3d 670, 677-678 (9th Cir. 2017) (en banc) (addressing derivative standing requirements).

In this case, the Complaint alleges: (a) Plaintiff Knife Rights' standing and concrete injuries (*id*. at ¶¶ 23-35); (b) Plaintiffs Arnold and RGA Auction Services, dba Firearm Solutions' standing and concrete injuries (*id*. at ¶¶ 36-45); (c) Plaintiffs Folloder and MOD Specialties' standing and concrete injuries (*id*. at ¶¶ 46-60); (d) Plaintiffs Evan Kaufmann's and Adam Warden's standing and concrete injuries (*id*. at ¶¶ 61-72 [Kaufmann] and ¶¶ 73-83 [Warden]); and (e) Plaintiff Rodney Shedd, a member of the Muscogee Nation Tribe, and his standing and concrete injuries (*id*. at ¶¶ 84-92). Additionally, the Complaint further alleges standing and concrete injury as applied to the named retail Plaintiffs (*id*. at ¶¶ 93-95). *See also* Complaint at ¶¶ 104-118 (including allegations of concrete injury to Johan Lumsden through enforcement of the Federal Knife Ban, a current member of Plaintiff Knife Rights, and his company [Roadside Imports, LLC]): see also Appendix, KR 34-42.

The Complaint's exhaustive standing allegations for all the named Plaintiffs are supported by the following declarations submitted concurrently with, and in support of, Plaintiffs' summary judgment motion: (i) Declaration of Russell Arnold; (ii) Declaration of Jeffrey Folloder; (iii) Declaration of Doug Ritter; (iv) Declaration of Evan Kaufmann; (v) Declaration of Adam Warden; and (vi) Declaration of Rodney Shedd. *See* Appendix, KR 5-59. (**Exs. B, C**, **D**, **E**, **F**, and **G**).

The remaining elements of standing are not seriously disputed. Plaintiffs' injuries, as alleged, and supported by sworn testimony, are directly traceable to Defendants, who are the officials responsible for enforcement of the Federal Knife Ban. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560. And Plaintiffs' injuries would be redressed by the remedy that this Court could provide, namely, a permanent injunction against enforcement of the FSA, as requested. *Id*. at 561. In short,

Plaintiffs have met their burden to show Article III standing to challenge the Federal Knife Ban in this case.

V. SUBSTANTIVE SECOND AMENDMENT ARGUMENT

A. Automatically Opening Knives Are Arms Protected By The "Plain Text" Of The Second Amendment.

According to the constitutional framework established in *Heller*, and recently affirmed in *Bruen*, the first step in determining the validity of a Second Amendment challenge to an arms ban is to determine whether the conduct that Plaintiffs wish to vindicate is protected by the Second Amendment's plain text.

The Second Amendment of the United States Constitution reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." This text controls, and not any interest-balancing policy or means-end scrutiny arguments that may be advanced by Defendants because:

> "[W]hile judicial deference to legislative interest balancing is understandable — and, elsewhere, appropriate — it is not deference that the Constitution demands here. *The Second Amendment 'is the very product* of an interest balancing by the people,' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense. *Heller*, 554 U.S. at 635, 128 S.Ct. 2783. It is this balance—struck by the traditions of the American people—that demands our unqualified deference."

Bruen, 597 U.S. at 26 (original emphasis).

Pursuant to *Bruen*, rather than a two-step interest-balancing (means-end approach), courts must "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Bruen, 597 U.S.* at 26. Stated another way, courts must first interpret the Second Amendment's text, as informed by history. When the plain text of the Second Amendment covers an individual's conduct, the Constitution presumptively protects that conduct. *Id.* at 22-24. "In other words, it identifies a presumption in favor of Second Amendment protection,

which the State bears the initial burden of rebutting." *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 257 n.73 (2d Cir. 2015). The burden is then placed on the government to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearms regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Bruen*, 597 U.S. at 17, 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961)). If the government cannot meet its burden, the law or regulation is unconstitutional—full stop. No interest-balancing, means-end/scrutiny analysis can be conducted. *Bruen*, 597 U.S. at 19-20, 22-24. "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Heller*, 554 U.S. at 634.

First, Plaintiffs are "ordinary, law-abiding, adult citizen[][s], and therefore, are unequivocally "part of 'the people' whom the Second Amendment protects." *Bruen*, 597 U.S. at 31-32 (quoting *Heller*, 554 U.S. at 580). *See also* Appendix, KR 5-59. (**Exs. B, C**, **D**, **E**, **F**, and **G**).

Second, the actions in question — the ability to freely manufacture for sale, sell, distribute, transport, purchase, possess, and carry bladed arms in common use through interstate commerce and possess these arms on federal lands and "Indian Country" unquestionably falls within the plain text of the Second Amendment protecting the right to "keep and bear arms." *See Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017). Among these rights is "the ability to acquire arms." *Id*. at 677-78 (citing to *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)).

Third, the knives regulated by the Federal Knife Ban indisputably are a type of "arms" covered by the plain text of the Second Amendment. The Second Amendment extends to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding. *Heller* acknowledged this threshold point (554 U.S. at 582), as did *Bruen*, 597 U.S. at

28. *See also United States v. Daniels*, 77 F.4th at 341-342 (citing *Bruen*, 597 U.S. at 28, and pointing out that "the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated"). "[B]earable arms" includes all arms "commonly possessed by law-abiding citizens for lawful purposes." *Fyock v. City of Sunnyvale*, 779 F.3d 991, 998 (9th Cir. 2015). And see *Teter*, 76 F.4th at 938, rehearing en banc granted (striking down Hawaii's ban on butterfly knives as unconstitutional under *Bruen*). *See also Caetano v. Massachusetts*, 577 U.S. 411 (2016) (unanimously vacating a lower court decision upholding a conviction based on Massachusetts' ban on stun guns).

Automatically opening knives, or "switchblades," are categorically "jackknives."[3] In more modern terms, all automatically opening knives are pocket knives. Merriam-Webster dictionary defines "pocketknife" as "a knife that has one or more blades that fold into the handle and that can be carried in the pocket." Appendix, *KR* 161. In the United States, "knives have played an important role in American life, both as tools and as weapons. The folding pocketknife, in particular, since the early 18th century has been commonly carried in America and used primarily for work, but also for fighting." *State v. Delgado*, 298 Or. 395, 403 (Or. 1984); *see also* Appendix, KR 216-217. "[T]hey were apparently used by a great majority of soldiers to serve their numerous personal needs." Appendix, KR 225.

Knives in general are indisputably "bearable arms" commonly possessed for "lawful purposes." *See Heller*, 554 U.S. at 625. As such, automatically opening folding knives are necessarily "bearable arms." *Bruen* acknowledges the fact that knives are protected arms noting

[3] A "jackknife" is "a knife with the blade pivoted to fold into a recess in the handle." https://www.thefreedictionary.com/jackknife. Such a knife is also sometimes referred to as a "penknife," which is simply "any knife with the blade folding into the handle, some very large." *Mackall v. State*, 283 Md. 100, 387 A.2d 762, 769 n.13 (1978).

that "[i]n the medieval period, '[a]lmost everyone carried a knife or a dagger in his belt.'" *Bruen*, 597 U.S. at 41, quoting H. Peterson, *Daggers and Fighting Knives of the Western World* 12 (2001). "While these knives were used by knights in warfare, '[c]ivilians wore them for self-protection,' among other things." *Ibid. See also Heller*, 554 U.S. at 590. In early colonial America, "edged weapons were also absolutely necessary." Appendix, KR 231. At the time of the Second Amendment's ratification, every state required ordinary citizens to own some type of edged weapon as part of the militia service laws. *Id*. at 196; *see also* Appendix, KR 283-285.

Courts have also generally ruled that knives are arms protected by the Second Amendment. See *State v. Deciccio*, 315 Conn. 79, 128, 122, 105 A.3d 165 (2014). (holding dirk knives were "'arms' within the meaning of the second amendment.") ("[T]heir more limited lethality relative to other weapons that, under *Heller*, fall squarely within the protection of the second amendment—e.g., handguns —provides strong support for the conclusion that dirk knives also are entitled to protected status.; *State v. Delgado*, 298 Or. 395 (Or. 1984) (Oregon Supreme Court held that Oregon's ban on the possession of switchblades violated the Oregon Constitution's right to arms and that a switchblade is constitutionally protected based on historical predecessors); *State v. Herrmann*, 366 Wis. 2d 312, 325, 873 N.W.2d 257, 263 (2015) (Wisconsin Court of Appeals overturned a conviction for possession of a switchblade as unconstitutional.) ("Whether knives are typically used for self-defense or home security as a general matter is beside the point. In this case, it is undisputed that Herrmann possessed his switchblade inside his home for his protection."); *State v. Montalvo*, 229 N.J. 300, 162 A.3d 270 (2017) (New Jersey Supreme Court held that machete-type knives are protected by the Second Amendment); See also *State v. Griffin*, 2011 Del Super LEXIS 193, *26 n.62, 2011 WL 2083893 (Del Super Ct., May 16, 2011) ("a knife, even if a 'steak' knife, appears to be a 'bearable arm' that could be utilized for offensive or defensive

purposes.") *reversed and remanded on other grounds*, *Griffin v. State*, 47 A.3d 487 (Del. 2012); See *City of Akron v. Rasdan*, 105 Ohio App.3d 164, 663 N.E.2d 947 (Ohio Ct. App., 1995) (holding the "right to keep and bear arms" under the Ohio Constitution extends to knives).

Most recently, the Supreme Judicial Court of Massachusetts held that "switchblades" are "arms" under the plain text of the Second Amendment; that the commonwealth failed to demonstrate a historical tradition justifying the regulation of switchblades knives; switchblades meet the "common use" test under *Bruen*; and switchblades are not "dangerous and usual" weapons. *Commonwealth v. Canjura*, 494 Mass. 508, 240 N.E.3d 213 (2024).

In deciding the threshold question of whether "switchblades" fall under the plain text definition of "arms" under the Second Amendment, the Massachusetts Supreme Court stated:

> "In evaluating whether switchblades are "arms" entitled to Second Amendment protection, we are guided by the Supreme Court's decision in *Heller*. There, the Supreme Court analyzed the plain meaning of the term "arms," observing its "[Eighteenth Century] meaning is no different from the meaning today." *Id*. at 581, 128 S.Ct. 2783. The *Heller* Court provided two Eighteenth Century definitions of the term: "[w]eapons of offence, or armour of defence," as defined in the 1773 edition of Samuel Johnson's dictionary, and "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another," as defined in Timothy Cunningham's 1771 legal dictionary. *Id*. The parties do not dispute switchblades fit these dictionary definitions of "arms;" like handguns, a person can carry a switchblade for offensive or defensive purposes in case of confrontation. …"

Commonwealth v. Canjura, 494 Mass. at 512, 240 N.E.3d at 218.

Additionally, the Massachusetts Supreme Court found that:

> "In the colonial and Revolutionary War era, colonists typically owned or were equipped with hatchets, swords, and knives to use in their defense. *See State v. DeCiccio*, 315 Conn. 79, 117 n.27, 105 A.3d 165 (2014). Although swords and daggers were the most common bladed weapons, Seventeenth and Eighteenth Century Americans also carried smaller knives with three-to-four-inch blades that were used for self-defense, hunting, and trapping. *See Delgado*, 298 Or. at 401-402, 692 P.2d 610. Of the many varieties of knives, the folding pocketknife played an important role, both as a tool and a weapon. *See id*. at 403, 692 P.2d 610. Indeed, as "America developed and its frontiers moved inland," the folding knife increased in popularity enough that it became an "almost universal" accessory. *Neumann*,

> supra at 231. 'By the early 1700s, when the eastern seaboard had become a highly settled area with large towns and cities and relatively good roads, men normally carried a folding pocket knife.'" *Delgado, supra* at 402, 692 P.2d 610.

Commonwealth v. Canjura, 494 Mass. at 512–13, 240 N.E.3d at 218–19.

Accordingly, because knives, including automatically opening knives, are unquestionably "arms" protected by the Second Amendment's plain text, the actions in question—Plaintiffs and other similarly situated law-abiding citizens seeking to acquire, sell, transfer, possess, and carry these knives through interstate commerce—is also covered by the Second Amendment's plain text. Defendants bear the heavy burden of justifying the Federal Knife Ban as consistent with the Nation's historical tradition of regulating such arms. *Bruen*, 597 U.S. at 17.

B. Defendants' Cannot Justify The Federal Knife Ban: Automatically Opening Knives Are In Common Use And Not Both Dangerous and Unusual.

Defendants cannot meet the heavy burden of justifying the Federal Knife Ban as consistent with the Nation's historical tradition of regulating such arms. Notably, the decision in *Heller* established the relevant contours of this tradition: Bearable arms are presumptively protected by the Second Amendment and cannot be banned unless they are *both* dangerous *and* unusual. *Bruen*, 597 U.S. at 21. And the Supreme Court spelled out that this was a historical matter. *Ibid.* For example, when it discussed the State's argument as to colonial-era bans on the offense of affray (carrying of firearms to "terrorize the people"), the Supreme Court in *Bruen* stated:

> "At most, respondents can show that colonial legislatures sometimes prohibited the carrying of "dangerous and unusual weapons"—a fact we already acknowledged in *Heller*. […] Drawing from this historical tradition, we explained there that the Second Amendment protects only the carrying of weapons that are those 'in common use at the time,' as opposed to those that "are highly unusual in society at large." […] Whatever the likelihood that handguns were considered 'dangerous and unusual' during the colonial period, they are indisputably in 'common use' for self-defense today. They are, in fact, "the quintessential self-defense weapon." […] Thus, even if these colonial laws prohibited the carrying of handguns because they were considered 'dangerous and unusual weapons' in the 1690s,

> they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today."

Bruen, 597 U.S. at 47 (citing *Heller*, 554 U.S. at 627, 629).

Thus, *Bruen* is clear: To prevail under a "historical tradition" analysis, Defendants have the heavy burden to justify the challenged Federal Switchblade Act by offering appropriate historical analogues from the relevant time period, *i.e.*, the Founding era. "Much like we use history to determine which modern "arms" are protected by the Second Amendment, so too does history guide our consideration of modern regulations that were unimaginable at the founding." Id. 597 U.S. at 28.

In *Bruen*, when considering the appropriate historical analogues from the relevant period, the Supreme Court found that respondents in that case offered historical evidence in their attempt to justify their prohibitions on the carrying of firearms in public. Specifically, they offered five categories of historical sources: "(1) medieval to early modern England; (2) the American Colonies and the early Republic; (3) antebellum America; (4) Reconstruction; and (5) the late-19th and early-20th centuries." *Id*. 597 U.S. at 34-35. However, when considering the historical evidence presented, the Supreme Court in *Bruen* made a fundamental distinction regarding what evidence was to be considered. The Court in *Bruen* also noted that "not all history is created equal. 'Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*.' […] The Second Amendment was adopted in 1791" *Id.* at 34 (citing *Heller*, 554 U.S. at 634-35 (emphasis original). Thus, the Court cautioned against "giving post enactment history more weight than it can rightly bear." *Bruen*, 597 U.S. at 35. And "to the extent later history contradicts what the text says, the text controls." *Id.* at 36 (citation omitted). In examining the relevant history that was offered, the Supreme Court in *Bruen* noted that "[a]s we recognized in *Heller* itself, because post-Civil War discussions of the right to keep and bear arms 'took place

75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.'" *Ibid*. (citing *Heller*, 554 U.S. at 614).

Bruen also made clear that 20th-century historical evidence was not to be considered. *Id.* at 66, n.28 ("We will not address any of the 20th-century historical evidence brought to bear by respondents or their *amici*. As with their late-19th-century evidence, the 20th-century evidence presented by respondents and their *amici* does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.")

In sum, under *Bruen,* some evidence *cannot* be appropriate historical analogues, such as late 19th-century and 20th-century laws or those rooted in racism, laws that have been overturned (such as total handgun bans), and laws that are *inconsistent* with the original meaning of the constitutional text. *Bruen,* 597 U.S. 36 ("post-ratification adoption or acceptance of laws that are inconsistent with the original meaning of the constitutional text obviously cannot overcome or alter that text.") (citing *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1274 n.6 (D.C. Cir. 2011) (Kavanaugh, J., dissenting)). These sources of evidence must be disregarded.

Given that the Second Amendment's plain text presumptively covers all bearable arms, and since the arms in question are in common use despite the Federal Knife Ban, Defendants cannot justify their ban under the Second Amendment's text and this Nation's history as interpreted in *Heller* and *Bruen*. *See Bruen*, 597 U.S. at 47 (discounting relevance of colonial laws because "even if these colonial laws prohibited the carrying of handguns because they were considered 'dangerous and unusual weapons' in the 1690s, they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today").

Here, however, the Supreme Court in *Heller* has already conducted the historical analysis. *Heller* decided the underlying historical principle: only dangerous *and* unusual arms can be

banned. This Court need only apply that historical principle to the facts in this case, just as done in *Heller* and *Bruen*. There is no need for any further historical analysis. Any attempt by Defendants to engage in such analysis would be asking "to repudiate the [Supreme] Court's historical analysis," which this Court "can't do." *Moore v. Madigan*, 702 F.3d 933, 935 (7th Cir. 2012).

In *Caetano*, Justice Alito issued a concurring opinion, joined by Justice Thomas, explaining that, in determining whether an arm is protected under the Second Amendment, "the pertinent Second Amendment inquiry is whether stun guns are commonly possessed by law-abiding citizens for lawful purposes today." *Caetano v. Massachusetts*, 577 U.S. 411 at 420. As Justice Alito explained, "[t]he more relevant statistic is that hundreds of thousands of Tasers and stun guns have been sold to private citizens, who it appears may lawfully possess them in 45 States." *Id*. (quoting *People v. Yanna*, 297 Mich. App. 137, 144, 824 N. W. 2d 241, 245 (2012) (holding Michigan stun gun ban unconstitutional) (cleaned up). Notably, the arm does not have to be used for self-defense. When an arm is possessed by thousands for lawful purposes, it is "in common use" and it is protected — full stop. Further, if an arm is in common use, it necessarily cannot be *both* "dangerous and unusual." It also follows that even arms not "in common use," cannot be banned so long as they are no more dangerous than other arms that are in common use. In any event, even if the question of what types of arms may be banned were an open one, Defendants have not, and cannot, historically support the Federal Knife Ban at issue here.

1. Automatically Opening Knives Are "In Common Use."

In *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court struck bans on handguns, "the most popular weapon chosen by Americans for self-defense in the home." *Heller*, 554 U.S. at 629. A detailed examination of their commonality was unnecessary. Nonetheless, here,

the Federal Knife Ban on automatically opening knives is unconstitutional because these knives are "in common use" under any reasonably applied metric.

Heller noted that the Second Amendment's protection of arms in common use "is fairly supported by the *historical tradition* of prohibiting the carrying of 'dangerous and unusual weapons.'" 554 U.S. at 627 (emphasis added). Indeed, a weapon that is "unusual" is the antithesis of a weapon that is "common"—so an arm "in common use" cannot also be "dangerous and unusual." In short, a "weapon may not be banned unless it is *both* dangerous *and* unusual." *Caetano*, 136 S. Ct. at 1031 (Alito, J., concurring) (emphasis in original). This analysis was correctly applied in 2024 by the Massachusetts Supreme Court in *Commonwealth v. Canjura*. *Commonwealth v. Canjura*, 494 Mass. 508, 525-527, 240 N.E.3d 213, 220-217 (2024). Thus, whether automatically opening knives are "dangerous and unusual" is an element that Defendants bear the burden of proof under the *second* legal inquiry of the *Bruen* analysis. Defendants cannot meet their heavy burden.

First, Defendants cannot credibly assert that automatically folding knives are "dangerous and unusual" or uncommon simply because they prohibited the interstate commerce of these knives since 1958. In other words, the Federal Knife Ban cannot be its own evidence that the knives are not in common use. "The more relevant statistic" is that millions of these knives "have been sold to private citizens" who "may lawfully possess them in 45 States." See *Caetano*, 136 S.Ct. 1027, 1032 (2016).

Second, since a folding knife *of any kind* is only functional when fully opened, any argument that one method of opening a knife with one hand somehow increases its "dangerousness" is ludicrous. Appendix, KR 30-32; 687-690; 826-827. Whether a folding knife is opened manually or automatically, it is only useful for any purpose once it is fully opened. Thus,

bans on knives that open in a convenient way (*e.g.*, switchblades, gravity knives, and butterfly knives) are unconstitutional. Appendix, KR 172.

Third, the court in *Teter v. Lopez*, 76 F.4th at 949-950, rehearing en banc granted, held the record in that case (involving butterfly knives) showed the State of Hawai'i had failed to present evidence sufficient to create a genuine factual dispute over whether butterfly knives were "dangerous and unusual." *Id*. at 950. The court noted that in determining whether a weapon is both dangerous and unusual, "'we consider whether the weapon has uniquely dangerous propensities and whether the weapon is commonly possessed by law-abiding citizens for lawful purposes." *Teter*, at 950 (citing *Fyock v. Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015).

Here, like the butterfly knife, the automatically opening knife (switchblade) is simply a variation of the folding pocket knife.[4] Like the butterfly knife, it does not possess any "uniquely dangerous propensities." In fact, in April 12, 1957, William P. Rogers, then Deputy Attorney General, submitted a letter on behalf of the Department of Justice stating the Department was "unable to recommend enactment of this legislation," stating:

> "As you know, Federal law now prohibits the interstate transportation of certain inherently dangerous articles such as dynamite and nitroglycerin on carriers also transporting passengers. The instant measures would extend the doctrine upon which such prohibitions are based by prohibiting the transportation of a single item which is *not inherently dangerous* but requires the introduction of a wrongful human element to make it so. 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."

See Appendix, KR 598 (emphasis added).

The Secretary of Commerce *affirmed* the Department of Justice's position, adding:

[4] Butterfly knives or "balisongs" also fall under the FSA's definition of switchblade.

> "While this proposed legislation recognizes that *there are legitimate uses that* have need for switchblade knives, the exemptions would appear to assume that the most significant of those uses lie in Government activities. To us, this 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. Again, we feel that the problem of enforcement posed by the many exemptions would be huge under the proposed legislation. For these reasons, the Department of Commerce feels it cannot support enactment of H. R. 7258."

Id., at, KR 598-599 (emphasis added).

Thus, according to the official position of the Department of Justice in 1958, switchblades are not "inherently dangerous." Appendix, KR 598-599. Any claim by the Department of Justice to the contrary *today* would not only be inconsistent, but dubious at best. Defendants cannot meet their burden.

Finally, it is indisputable that handguns (or any firearm) are more dangerous than any knife. The simple fact that a firearm can project lethal force over distance makes them more dangerous than any folding pocket knife. Yet the relative dangerousness of handguns (including significant use by criminals) is *insufficient* to justify any prohibition on these arms *as a matter of law* under both *Heller* and *Bruen*. Folding pocket knives—including automatically opening knives—are a less lethal/dangerous arm, and thus, cannot be held to be uniquely both "dangerous *and* unusual" to justify any kind of ban. According to binding Supreme Court precedent in *Heller* and *Bruen*, if an arm not *both* dangerous *and* unusual—and thus, is in common use—*it cannot be banned* as a matter of law. *See also Commonwealth v. Canjura, 494 Mass. 508, 222.* Yet federal law prohibits interstate commerce of these common folding knives in violation of the Second Amendment rights of Plaintiffs and other similarly situated citizens.

(i) Total Number Establishes Common Use.

In establishing whether an arm is "in common use," "[s]ome courts have taken the view

that the total number of a particular weapon is the relevant inquiry." *Hollis v. Lynch*, 827 F.3d 436, 449 (5th Cir. 2016); *see also Commonwealth v. Canjura, 494 Mass. 508, 515-517.* Using that metric, the legislative history of the Federal Knife Ban establishes that automatically opening folding knives were in common use when the ban went into effect. Appendix, KR 371. In fact, the Federal Knife Ban was enacted for the very reason that automatically opening folding knives were in common use. *Id*. According to Senate Report No. 1980, "In the United States, 2 manufacturers have a combined production of *over 1 million switchblade knives a year*." *See* Appendix, KR 593; *see also* Appendix, KR 371. Thus, this report concedes that in 1958, *the United States produced more than one million automatically opening knives per year*. *Id*.

Thus, the question of whether automatically opening folding knives are in common use *has already been answered*; this same report states elsewhere that, "It is estimated that the total traffic in this country in switchblade knives exceeds 1,200,000 *per year*." *Id*. (emphasis added); *See also* Appendix, KR 627. "In the area of Fort Bliss, Tex., alone, there are more than 20 establishments selling these knives." Appendix, KR 372. The Senate report acknowledges at the time that just mail-order services and magazines were "sending out about "3,000 or 4,000 of these knives out each month." Appendix, KR 495.

Thus, the legislative history of the Federal Switchblade Act operates as Defendant's *admission* to the commonality of automatically opening knives. The very purpose of the FSA was to reduce the number of "switchblades" that were in circulation in the United States because, according to the Subcommittee, *they were too common*.

By the 1890s, automatically opening knives were in mass production and "fast becoming the most useful cutting tool one could carry and gaining in popularity and public acceptance." Appendix, KR 666. "Over a 50-year period from the mid-1890s to the mid-1940s, there had been

approximately 20 different companies who had manufactured switchblades knives in this country." *Id*. "There were switchblades specifically designed for hunters, fishermen, soldiers, farmers, veterinarians, mechanics, office workers, seamstresses, high school girls, Boy Scouts, and also for Girl Scouts." *Id*. "After World War 2, the popularity of the switchblades exploded. Department stores such as Macy's were selling them. Every kid and young man wanted one if they didn't already have one." Appendix, KR 672. Since the Federal Act in 1958, "the Italian switchblade stiletto has had a renaissance and is nearly as popular today [in the U.S.] as it first was in the 1950s." Appendix, KR 673. By comparison, the commonality of automatically opening knives in 1958 dwarfs the number used to establish the commonality of tasers and stun guns in *Caetano*.[5] See *Caetano*, 577 U.S. at 420.

"By the nineteenth century, the design of the knife changed, offering a more pocket-friendly style that gained widespread popularity in Europe. Over time, several variations of the switchblade were created by French, Spanish, Italian, and American Knifemakers, each offering their own unique variations on how the blade would be exposed." Appendix, KR 239.

> With the arrival of the Industrial Revolution, switchblades began to be mass produced and sold at lower costs, therefore making them more readily available. In the early 1900s, George Schrade, Founder of Geo. Schrade Knife Co., dominated the American switchblade market, with his automatic version of jackknives and pocketknives. When the mid-1900s rolled in, these knives were mass produced by various companies worldwide, and advertised as "compact, versatile multi-purpose tools.
> Appendix, KR 239.

Today, automatically opening knives are just as popular, if not more popular, than in the early 1900s. They are useful tools for everyday carry, recreation, hunting, utility, and self-defense.

[5] The Court in *Caetano* did not draw unnecessary distinctions between stun guns and tasers. Nor is there any constitutionally legitimate reason to separately categorize manually opened folding pocket knives and automatically opening pocket knives. Constitutionally, they are identical.

Appendix, KR 53; 93; 133; 174-175; 205; 798; 804; 826-827; and 833-834 This fact was acknowledged by *both* the Department of Justice and the Secretary of Commerce in 1958. Appendix, KR 597-599; 601 And reviewing just three of the largest online knife retailers in the U.S. (Bladehq.com, Knifeworks.com, and Knifecenter.com), thousands of different models of automatically opening knives exist for sale for lawful use.[6]

With this standard in mind, the Federal Knife Ban cannot be justified. Automatically opening knives were indisputably in common use at the time of the enactment of the Federal Knife Ban and continue to be in common use today. Indeed, these banned "switchblades" are in common use in all respects: they are in common use by sheer number; they are in common use categorically and functionally; and they are in common use jurisdictionally.

(ii) Categorical Commonality Is Also Satisfied.

An arm "in common use" can also be proven by categorical commonality. *Heller*, 554 U.S. at 624, 627 (emphasis added). Under *Heller*, the arm must be among "the *sorts* of weapons" or "of the *kind*" that are "in common use at the time." *Id*. In other words, if an arm is categorically analogous or similar enough to a protected arm lawful to be sold to and possessed by private citizens in the majority of states, the arm is in common use.

In this instance, automatically opening folding knives have no practical or constitutional distinction from other folding pocket knives in that they have a blade, a handle or grip, and the blade rests within the handle or grip of the knife when closed or collapsed, and when open or extended is "fixed" into a usable position (*e.g.*, assisted opening knives, manually opening knives). These knives are indistinguishable in their function and use. Appendix, KR 30-32; 680-681; 684-

[6] See https://www.bladehq.com/cat--Automatic-Knives--40; https://www.bladehq.com/cat--Out-The-Front-Automatics--41;https://knifeworks.com/automatic-knives/; https://www.knifecenter.com/shop/automatic-knives.

690; 788; 803-804; 826-827; and 833-834. They all operate as *pocket knives* that can be opened with one hand. *Id*.; Appendix, KR 692 (article — "The Toy That Kills"—largely credited for initiating the demonization of "switchblades" in the 1950s, acknowledges that "switchblades" are "a pocketknife."); Appendix, KR 31; also available at: https://kniferights.org/Folding_Knife_Comparison. In fact, many models of folding knives are available in various versions so the user can choose their preferred method of opening. Appendix, KR 688-689; 781-784; *See also State v. Delgado*, 298 Or. 395, 403 (1984) ("The only difference is the presence of the spring-operated mechanism that opens the knife. We are unconvinced by the state's argument that the switchblade is so 'substantially different from its historical antecedent' (the jackknife) that it could not have been within the contemplation of the constitutional drafters.")

Today, automatically opening knives fall under the category of folding pocket knives—an arm possessed in millions of households in the United States. Appendix, *KR* 53; 93; 133; 174-175; 205; 597-599; 601; 798; 804; 826-827; and 833-834; *see also* Appendix, KR 658-673. According to estimates from American Knife & Tool Institute, as many as 35,695,000 U.S. households own an outdoor or pocket knife. Appendix, *KR* 777. Moreover, assisted opening and one-hand opening knives—which are functionally identical to automatically opening knives—are approximately 80% of all knives sold in the United States.[7] *Id*. Because automatically folding knives are categorically *folding pocket knives;* and folding knives are legal in all 50 states, they are all categorically in common use.

[7] The distinction between assisted opening folding knives and automatically opening folding knives is so miniscule, Congress had to amend the FSA in 2009 with a fifth "exception" to make it clear that one-hand opening and assisted opening knives were not considered "switchblades" pursuant to the FSA because United States Customs and Border Protection attempted to regulate these knives as "switchblades." Appendix, KR 684-685; 713-775.

(iii) Automatically Opening Knives Are Common Jurisdictionally.

An automatically opening knife cannot be both "dangerous and unusual," if it is lawful to possess and use in a majority of the United States. Again, in the vast majority of states, an automatically opening knife is *entirely legal* to manufacture, sell, purchase, transfer, possess, and carry. Appendix, KR 155-158. "Today, only seven States and the District of Columbia categorically ban switchblades or other automatic knifes, and only two States impose blade length restrictions of less than two inches." *Commonwealth v. Camjura*, 494 Mass. 508, 516. Thus, automatically opening knives are also in common use *jurisdictionally*.

Specifically, as of September 2023, at least 45 states allow the sale, purchase, transfer, acquisition, and possession of automatically opening knives that are prohibited by the Federal Knife Ban; and at least 36 states permit the public carry of said knives in some manner. Appendix, KR 155-158. Moreover, since 2010, nineteen states have repealed bans/restrictions on automatically opening knives. *Id*. "From these facts, we can reasonably infer that switchblades are weapons in common use today by law-abiding citizens for lawful purposes; more specifically, we can infer they are 'widely owned and accepted as a legitimate means of self-defense across the country." *Commonwealth v. Camjura*, 494 Mass. 508, 516 (citing *Caetano*, 557 U.S. at 420, 136 S..Ct. 1027 (Alito, J., concurring) (highlighting general acceptance of stun guns as legitimate means of self-defense)).Thus, as these knives are in common use jurisdictionally, they cannot be considered "dangerous and usual" justifying the Federal Knife Ban.

VI. THE KNIFE BAN CANNOT BE JUSTIFIED.

As stated above, the historical analysis has been conducted by the Supreme Court in *Heller*: only dangerous *and* unusual arms can be categorically banned. This Court need only apply that historical principle to the facts in this case, just as done in *Heller* and *Bruen*. There is no need for

any further historical analysis. Any attempt by Defendants to engage in such analysis would be asking "to repudiate the [Supreme] Court's historical analysis," which this Court "can't do." *Moore v. Madigan*, 702 F.3d 933, 935 (7th Cir. 2012). And even if the question of what types of arms may be banned were an open one, Defendants cannot historically support the ban at issue here.

In fact, the challenged Federal Knife Ban has *no historical pedigree*, nor justification in this Nation's history and tradition of arms regulation. At the outset, the Federal Knife Ban goes far beyond any interstate commerce regulation of firearms. Just as the federal government has no authority to prohibit interstate commerce of firearms, they have no power to prohibit interstate commerce of knives.

The Massachusetts Supreme Court has already determined that there is no historical justification of a ban on switchblades under *Bruen*. See *Commonwealth v. Canjura*, 494 Mass. at 508, 240 N.E.3d at 218. The only other court to consider the historical justification of a "switchblade" ban post-*Bruen* also rightly concluded that the state failed to meet its burden justifying the prohibition under *Bruen*. *See Knife Rights Inc., v. Bonta*, No. 3:23-CV-00474-JES-DDL, 2024 WL 4224809, at *9 (S.D.. Cal. Aug. 23, 2024) (appeal pending).[8]

Indeed, the Federal Knife Ban was the first of its kind and dates only to August 12, 1958. Not only was this significantly past the relevant founding era in which Defendants must provide analogous regulations to justify the ban; it is also many decades after automatically opening knives were introduced into the United States and chosen by the people as a common arm. There is no question that such a ban is well beyond the time period in which this Court may consider when

[8] While the Court erroneously held that automatically opening knives are not "arms" under the plain text of the Second Amendment. Nevertheless, the Court went on to analyze the historical justification under the *Bruen* standard and held that the State of California failed to meet its burden. *Id*.

evaluating any relevant historical analogues argued by Defendant.

In contrast, folding knives have long been in common use as "most colonist carried knives for their daily needs—utilizing both fixed and folding blades." Appendix, KR 224. In the United States, "[i]t is clear, then, knives have played an important role in American life, both as tools and as weapons. The folding pocketknife, in particular, since the early 18th Century has been commonly carried by men in America and used primarily for work, but also for fighting." *See State v. Delgado*, 298 Or. 395, 403 (Or. 1984); *see also* Appendix, KR 174-175. At the time of the Revolutionary War, they were apparently used by a great majority of soldiers to serve their numerous personal needs." Appendix, KR 225.

Moreover, American bans on possession or sale to legal adults of particular arms from 1607 through 1899 are exceedingly rare. Appendix, KR 988-989.

> "There were no prohibitions on any particular type of arm, ammunition, or accessory in any English colony that later became an American State. The only restriction in the English colonies involving specific arms was a handgun and knife carry restriction enacted in Quaker-owned East New Jersey in 1686…. The 1684 East Jersey restriction on carry was in force at most eight years, and was not carried forward when East Jersey merged with West Jersey in 1702. That law imposed no restriction on the possession or sale of any arms."

Appendix, KR 853.

At the time of the founding, the preferred means of addressing the general threat of violence was to *require* law-abiding citizens to be armed. As *Heller* observed, "Many colonial statutes required individual arms-bearing for public-safety reasons. Colonies required arms carrying to attend church, public assemblies, travel, and work in the field." Appendix, KR 859. The statutes that required the keeping of arms—by all militia and some non-militia—indicate some of the types of arms that were so common during the colonial period that it was practical to mandate ownership. These mandates regularly included bladed weapons/knives. Appendix, KR 859-867.

In fact, firearms *and* cutting weapons were ubiquitous in the colonial era, and a wide variety

existed of each. Yet they were not banned. The historical record up to 1800 provides no support for general prohibitions on any type of arms or armor. Appendix, KR 1012-1067. In fact, during the colonial era, there were *no bans on knives of any kind*. *Id*.

The first ban on the sale, possession, and carry of any kind of knife was enacted in 1837. An 1837 Georgia statute made it illegal for anyone "to sell, or to offer to sell, or to keep or to have about their persons, or elsewhere" any: "Bowie or any other kinds of knives, manufactured and sold for the purpose of wearing or carrying the same as arms of offence or defence; pistols, dirks, sword-canes, spears, &c., shall also be contemplated in this act, save such pistols as are known and used as horseman's pistols. Appendix, KR 905-906; 1019. While already beyond the relevant founding era, this ban was also later invalidated as unconstitutional in 1846 by the Georgia Supreme Court with regard to the sales ban, possession ban, and open carry ban, and thus, provides no justification for Defendants in this case. See *Nunn v. State, 1 Ga. 243 (1846);* see also Appendix, *KR* 905-906; 1019. *Heller* "extolled *Nunn* because the "opinion perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause." *Heller*, 554 U.S. at 612; Appendix, KR 905-906. As such, it provides no justification for the Federal Knife Ban.

In 1838, Tennessee followed Georgia by enacting a ban on the sale or transfer of "any Bowie knife or knives, or Arkansas tooth picks, or any knife or weapon that shall in form, shape or size resemble a Bowie Knife or any Arkansas tooth pick. Appendix, KR 1021; see also *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840). Notably, this early knife ban did not attempt to prohibit any kind of folding knife or pocket knife. Nor did it prohibit any knife based on the manner in which it is opened or drawn. Both the 1837 Georgia statute and the 1838 Tennessee statute were *outlier* restrictions on large, fixed-blade knives. Other than these two statutes (one of which was

invalidated), bans on the sale or possession of arms for adults were *non-existent* until after the end of the Civil War approximately 30 years later. Appendix, KR 1020-1067.

The 1838 Tennessee singular statutory ban on the sale of bowie knives is patently insufficient to justify the challenged Federal Knife Ban in this case. As such, Defendant may attempt to bolster this lack of historical justification by referencing a 1838 Mississippi law allegedly banning "the odious and savage practice of wearing dirks and bowie-knives or pistols." Appendix, KR 1020. However, the law referenced *does not ban any activity whatsoever*. In fact, it merely grants the Mayor and Alderman "the power" to pass "necessary by-laws for the good order and government of said town, not inconsistent with the constitution and laws in this state and the United States. …" See Act of Feb. 15, 1839, ch. 168, § 5, 1839 Miss. Laws 384, 385; Act of Feb. 18, 1840, ch. 11, § 5, 1840 Miss. Laws 181; *see also* Appendix, KR 1020. There is no evidence that any such law regulating any kind of knife *was ever passed*. Defendants cannot justify the prohibitions enforced by the FSA by relying on a law never passed.

Moreover, Defendant may also rely on early *tax* laws to justify the Federal Knife Ban in this case. These also provide no justification for the challenged prohibitions. There was an 1837 Alabama tax law that imposed a tax on the selling, giving, or disposing of any "bowie knife or Arkansas toothpick." Appendix, KR 1019. However, this is far from an outright ban on all interstate commerce and possession in all federal lands and "Indian Country" within the United States and the tax was later reduced in 1851. *Id*. The same is true for another tax law in the Florida Territory in 1838. Moreover, the FSA does not impose a tax on the sale of automatically opening knives. It bans all interstate commerce and possession of automatically opening knives on all "Indian country" and federal land.

Defendant may also rely on the few restrictions placed on *legal minors* with regard to the sale of bowie knives and certain daggers. Again, these restrictions provide no justification for the current Federal Knife Ban. In 1856, Tennessee passed a law prohibiting merchants from selling minors any pistols, Bowie knives, "dirks," and other knives to legal minors. Act of Feb. 26, 1856, ch. 81 § 2, 1855-1856 Tenn. Acts 92, 932; see Appendix, KR 1027. However, this was a restriction on *legal minors*. Any legal adult remained free to purchase, acquire, transfer, possess, and carry any kind of knife under this law. Moreover, the 1856 Tennessee law had an exception if the sale or transfer of the knife was for hunting. *Id*.

Similarly, an 1859 Kentucky law that Defendant may allege prohibited the sale of such weapons to minors is actually a *concealed carry* restriction with a strong racist application. The full text states, "if any person, other than the parent or guardian, shall sell, give, or loan, any pistol, dirk, bowie-knife, brass-knucks, slung-shot, colt, cane-gun, or other deadly weapon, *which is carried concealed,* to any minor, or slave, or free negro, shall be fined fifty dollars." Act of Jan. 12, 1860, Ch. 33, section 23, 1 Ky. Acts 245. Aside from the law being unconstitutional on its face, it is not an outright ban on the sale, transfer, acquisition, possession, or even open carry of certain knives.

There are three other bans on the sale to *minors* that restrict certain knives during the 1800s. Mississippi passed one in 1878 *(Act of Feb. 28, 1878, ch. 96, §§ 1–2, 1878 Miss. Laws 175, 175)*; Kansas passed one in 1883 (*Act of Mar. 5, 1883, ch. 105, § 1, 1883 Kan. 159, 159)*; and Illinois passed one in 1881 (*Act of Apr. 16, 1881, § 2, 1881 Ill. Laws 73, 73)*. See Appendix, KR 1053, 1057. Unquestionably, these do not provide any analogous historical support that the *federal government* can impose an outright ban on all interstate commerce and possession of a certain arm.

These are restrictions on legal minors, and not the entirety of the U.S. adult population; and the laws come far too late after the relevant time period to be given any weight by this Court.[9]

Because no justification exists for the present Federal Knife Ban through sales prohibitions, tax restrictions, or restrictions on sales to legal minors, Defendant will likely also rely on the decision in *Oregon Firearms Federation v. Kotek*, which claimed that "fourteen states banned *concealed carry* of bowie knives between 1850 and 1875," and between 1875 and 1900 "twenty-two states had laws prohibiting the concealed carry of Bowie knives." *Id.*, 682 F. Supp. 3d 874, 908 (D. Or. 2023). But this also fails to meet the standard required under *Bruen*.

First, these are *state laws* prohibiting the manner of *carrying* certain bladed arms in public. There are no restrictions on the sale, transfer, acquisition, possession, or open carrying of these knives. Second, as made clear in *Heller* and *Bruen*, the time period in which these prohibitions were enacted provides little guidance as to the original interpretation of the Second Amendment at the founding, especially when these late restrictions are contradicted by the Founding era. *Bruen*, 597 U.S. at 66 ("[L]ate-19th-century evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence."); see also *id.*, 597 U.S. at 36 ("[T]o the extent later history contradicts what the text says, the text controls.").

Moreover, as to identifying historical analogues to justify *federal law or regulations*, the *only* relevant time period to be considered is the Founding era because the discussion of the 14th Amendment ratification in *Bruen* is only relevant to the states. This fact is even more applicable if Defendant relies upon the restrictions placed specifically on switchblades in the 1950s. In fact,

[9] The same is true for the 1881 Arkansas ban. Being so late after the most relevant founding era, it provides little support or justification for Defendant's Federal Knife Ban.

Bruen refused to consider laws enacted this far from the Founding era as any historical evidence. *Bruen*, 597 U.S. at 66, n.28.

In fact, the first state to enact any kind of prohibition on automatically opening knives, or "switchblades," occurred in 1954 in New York, merely 4 years before the Federal Knife Ban's enactment. Appendix, KR 608. From 1954 to 1958, approximately nine states enacted prohibitions on switchblades. *Id*. Any others came after enactment of the Federal Knife Ban. As such, prohibitions on automatically opening knives, or any knife in general, have no established relevant historical pedigree that could justify the Federal Knife Ban.

Most notably, the prohibitory laws for these various knives are fewer than the number of bans on carrying handguns. Appendix, KR 988-989. In fact, the jurisdictions that entirely banned the carry of Bowie knives, daggers, or other such arms are almost entirely the same as those that banned handgun carry. *Id*; *see also* Appendix, KR 1012-1067. However, *Heller* held that these laws *did not establish* a historical tradition to justify a ban on handguns. *Heller*, 554 U.S. 570. Nor did these restrictions on the mode of carry of certain arms justify a ban on the carry of handguns. *Bruen*, 597 U.S. 1. This same reasoning necessarily shows the unconstitutionality of prohibiting the interstate commerce of other Second Amendment protected arms — in this case, automatically opening knives.

VII. CONCLUSION

Based on the foregoing, Plaintiffs request that this Court issue an order finding the Federal Switchblade Act, 15 U.S.C. §§ 1241-1244, enacted in 1958 as Pub. Law 85-623, unconstitutional.[10] Plaintiffs also request that the challenged aspects of the law be permanently enjoined.

[10] Again, Plaintiffs do not challenge any importation regulations of the FSA, nor request any relief with regard to this aspect of the FSA.

December 6, 2024

Respectfully submitted,

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