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

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

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs' hereby respond to Defendant's Motion to Dismiss and request that it be denied for the reasons set forth in the accompanying brief, which contains the materials required by Local Civil Rules 56.4 and 56.5.

January 31, 2025

Respectfully submitted,

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PLAINTIFFS' REPLY IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGEMENT

Plaintiffs' hereby reply in further support of Plaintiffs' Motion for Summary Judgment and request that it be granted for the reasons set forth in the accompanying brief, which contains the materials required by Local Civil Rules 56.4 and 56.5.

January 31, 2025

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MERRICK B. GARLAND, Attorney General of the United States, et al.

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U.S. District Judge Mark T. Pittman

PLAINTIFFS' CONSOLIDATED BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND REPLY IN FURTHER SUPPORT OF PLAINTIFFS' SUMMARY JUDGMENT MOTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Federal Switchblade Act of 1958 makes it a crime for "whoever" to manufacture, transport, or distribute in interstate commerce an automatically opening knife, or "switchblade knife," and the crime is punishable by a fine of not more than $2,000 or up to five years imprisonment, or both. 15 U.S.C. § 1242; and *Id*. § 1241. Moreover, the Act makes it a crime – with the same criminal penalties – for "whoever" to manufacture, sell, or possess any switchblade knife within any territory of the United States or within any Indian country as defined. 15 U.S.C. §§ 1243; see also 18 U.S.C. 7, 1151.[1] The Act contains extremely limited exceptions to the applicability of Sections 1242 and 1243, none are applicable, and Defendants do not assert the applicability of any such exceptions. 15 U.S.C. § 1244(1)-(5); ECF No. 25. Instead, Defendants argue that Plaintiffs—all of them—lack standing to challenge the constitutionality of Sections 1242, 1243, and 1244 of the Federal Switchblade Act ("Act" or "FSA"). Under Defendants' standing argument, the disputed prong is that Plaintiffs have supposedly not sustained "injury," in that the Complaint and the supporting sworn declarations do not allege and prove any credible threat of future enforcement of the Act. Not so.

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[1] The federal government owns roughly 640 million acres, about 28% of the 2.27 billion acres of land in the United States, plus an additional approximately 662 million acres of maritime areas. See John W. Dillon Declaration (Dillon Dec.), filed concurrently herewith, as **Ex. A** (Congressional Research Service, *Federal Land Ownership: Overview and Data*, Updated Feb. 21, 2020, at 1, 5 n.24).

Additionally, approximately 56 million acres of land are held in trust by the United States for various Native American tribes and individuals. Dillon Dec. **Ex. B**, at 1 (U.S. Dept. of the Interior, Natural Resources Revenue Data, *Native American Ownership and Governance, et al.*)

See also **Exhibit A** to the Complaint, containing a map depicting the *extensive* areas within the U.S. that are controlled, maintained, and owned by the federal government, including the Bureau of Indian Affairs.

Plaintiffs have pled and proven the facts necessary to establish the "injury" component of Article III standing; and the challenged law unquestionably prohibits conduct protected by the plain text of the Second Amendment. Moreover, Defendants have not demonstrated that its switchblade knife ban is consistent with this Nation's historically analogous arms laws to justify the present-day ban.[2]

And specifically, as to Defendants' motion to dismiss the Complaint, the motion is predicated entirely on claims that Plaintiffs lack Article III standing because they "have not shown that there is a substantial likelihood that they will face prosecution under either Section 1242 or 1243." ECF No. 25 at 18-19. At the same time, Defendants concede that prosecutions have taken place under the Federal Switchblade Act (see ECF No. 25-1 [Zabkiewicz Dec.]); fail to show the extent of any criminal charges, indictments, pleas, plea bargains, or other enforcement tools; and do not affirmatively declare that the Federal Switchblade Act will not be enforced, now and in the future, or that they would not prosecute Plaintiffs for their conduct as alleged in the Complaint and as shown in sworn testimony.

The Complaint includes factual allegations showing an intent to act in direct conflict with the FSA by manufacturing, transporting, distributing, selling, or possessing, automatically opening knives, or switchblades—all of which is proscribed by the FSA with criminal fines, imprisonment, or both. *See* 15 U.S.C. §§ 1242, 1243. *See also* ECF No. 1 at 2-5, 8-32; and ECF No. 18 at 11-64 (Exs. B-G).

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[2] At the same time, however, Defendants argue vigorously that the FSA is constitutional under the Second Amendment. But the Act is either dead and not enforced, and therefore, there is no need to defend it. Or the FSA is in effect, active, enforceable with severe criminal penalties (see ECF No. 1 at 2-5), and "worthy" of Defendants' defense of the law. Defendants *cannot* have it both ways.

Moreover, the Complaint sufficiently alleges Plaintiffs are prohibited from *possessing* switchblade knives within "Indian country" and within any federal land as defined. 15 U.S.C. § 1243. And at least one Plaintiff (Rodney Shedd) has been forced to abandon his lawfully owned "switchblade" to comply with section 1243. See ECF No. 1 at 28-31, ¶¶ 84-88; ECF No. 18, App. Part 1, Ex. G (Shedd Dec. at 62-63, ¶¶ 2-6). Plaintiffs have also sufficiently alleged and shown the injury is related to Defendants' credible threat of enforcing the FSA because it is enforced, and has been enforced, against Plaintiff Knife Rights' members, including Mr. Shedd. And there is no dispute Plaintiffs' injuries will be remedied with the requested relief, namely, issuance of a permanent nationwide injunction against the challenged FSA provisions (15 U.S.C. §§ 1242, 1243, 1244). *Id*. Thus, Defendants' motion to dismiss should be denied.

As to Plaintiffs' motion for summary judgment, first, Defendants ignore Section 1243 and then assert that Sections 1242 does not regulate conduct protected by the Second Amendment. This is incorrect at multiple levels. In sum, the Second Amendment's plain text controls and prohibits the "infringement" of "the right of the people to keep and bear arms." U.S. Const. amend. II. Plaintiffs easily fall within "the people," a switchblade knife facially constitutes "arms" within the meaning of the Second Amendment, and their conduct (seeking to manufacture, transport, or distribute in interstate commerce and to sell or possess any switchblade knife within any U.S. land and within Indian country, as broadly defined, is fully protected by the Second Amendment.

Second, Defendants wrongly argue that the purported "dangerous and unusual" nature of switchblade knives means that they are not "arms" within the meaning of the Second Amendment. ECF No. 25 at 33. Defendants also attempt to wrongly shift the burden of proof to Plaintiffs in arguing that Plaintiff must show

that the switchblade knife "is not dangerous and unusual, such that it comes within the ambit of the Second Amendment's reference to 'arms.'" *Id*. Defendants misapply the *Heller/Bruen* standard and burden of proof. In *District of Colombia v. Heller*, 554 U.S. 570 (2008), the Court made clear that the relevance of a weapon's "dangerous and unusual character lies in the "*historical tradition* of prohibiting the carrying of dangerous and unusual weapons." *Id*. at 627 (emphasis added). The *Heller* Court did not hold that dangerous and unusual weapons are not "arms" under the Second Amendment. Accordingly, Defendants—and not Plaintiffs—bear the burden to prove whether a switchblade knife is "dangerous and unusual" under the *second* prong of the *Heller/Bruen* analysis; and they fail to meet their burden. In any case, the record provided by Plaintiffs demonstrates that a switchblade knife is commonly owned, and therefore, not a "dangerous and unusual" bladed weapon.

Defendants also wrongly apply the incorrect standard and burden on Plaintiffs, arguing that Plaintiffs have not shown the other side of the coin, namely, that a switchblade knife is commonly used "for self-defense"—a standard and burden wrongly engrafted onto the Second Amendment and not supported by Supreme Court precedent. *Heller*, 554 U.S. at 581-582, 627; and *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17, 24 (2022).

Finally, Defendants have not demonstrated that its switchblade knife ban is consistent with this Nation's *historical tradition* of regulating arms that would justify the FSA under the *Heller* standard, affirmed in *Bruen*, 597 U.S. at 17, 24. Defendants offer patently insufficient evidence of any historical analogous laws or regulations that justify the near-total-switchblade knife ban under the FSA. Instead, they rely on a handful of outlier laws or regulations, many of which are premised on racist and outright unconstitutional regulations. In fact, Defendants seek to continue these racist laws by defending the switchblade knife ban within

"Indian Country," a law that continues to perpetuate the dispossession of weapons by Indians and others traversing Indian country (roughly 56 million acres). And despite Defendants' claims, all federal lands (all 640 million+ acres) are not "sensitive places" in which arms can be prohibited. And the few remaining regulations Defendants rely on are not analogous—as they are restrictions on exports, *international* trade, and the transportation of explosives (gunpowder) — none of which are applicable or analogous to Defendants' switchblade knife ban.

Accordingly, this Court should deny Defendants' motion to dismiss, grant Plaintiffs' summary judgment motion, and issue a permanent nationwide injunction against enforcement of Sections 1241, 1242, 1243, and 1244 of the FSA.

II. STANDARDS OF REVIEW

A. Review Standard for Motions to Dismiss

"The test for determining the sufficiency of a complaint under motions to dismiss was set forth by the Supreme Court as follows: '[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001), citing *Conley v. Gibson,* 355 U.S. 41, 45–46 (1957) and *Grisham v. United States,* 103 F.3d 24, 25–26 (5th Cir. 1997).

Further, "'the plaintiff's complaint is to be construed in a light most favorable to the plaintiff, and the allegations contained therein are to be taken as true." *Oppenheimer v. Prudential Securities Inc.,* 94 F.3d 189, 194 (5th Cir.1996). "This is consistent with the well-established policy that the plaintiff be given every opportunity to state a claim." *Hitt v. City of Pasadena,* 561 F.2d 606, 608. The motion to dismiss "admits the facts alleged in the complaint, but challenges

plaintiff's rights to relief based upon those facts." *Tel–Phonic Servs., Inc. v. TBS Int'l, Inc.,* 975 F.2d 1134, 1137 (5th Cir.1992). A plaintiff need only allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). The plausibility test also applies to Rule 12(b)(6) motions. See *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 742 (5th Cir. 2008).

Further, a court can and should grant leave to amend unless the pleading could not possibly be cured by the allegation of other or additional facts. Indeed, FRCP Rule 15(a) "requires a trial court 'to grant leave to amend 'freely,' and the language of this rule 'evinces a bias in favor of granting leave to amend.' " *Lyn–Lea Travel Corp. v. Am. Airlines,* 283 F.3d 282, 2862 (5th Cir.2002) (quoting *Chitimacha Tribe of La. v. Harry L. Laws Co., Inc.,* 690 F.2d 1157, 1162 (5th Cir.1982)). A district court must possess a "substantial reason" to deny a request for leave to amend. *Id.* (citation omitted).

Here, the Complaint, pages 2 through 5, summarizes the facts supporting Plaintiffs' standing allegations; and it devotes approximately 24 pages to the facts supporting standing for:

(a) Plaintiff Knife Rights (ECF No. 1 at 9-15, ¶¶ 23-35);

(b) Johan Lumsden, a current member of Knife Rights, whose home and business were raided for alleged violations of the FSA (*Id.* at 3, ¶ 4; at 6, ¶ 13; at 35-36, ¶¶ 106-108);

(c) Plaintiffs Russell Gordon Arnold, individually, as owner and operator of Plaintiff RGA Auction Services LLC, dba Firearm Solutions (Firearm Solutions), and as a member of Knife Rights; and Plaintiff Jeffery E. Folloder, individually, as owner and operator of MOD Specialties, and as a member of Knife Rights (*Id.* at 15-23, ¶¶ 36-60);

(d) Firearm Solutions and MOD Specialties, as Plaintiff retailers and federally licensed firearms dealers (*Id.* at 15-23, ¶¶ 37-45 (Firearms Solutions); and ¶¶ 47-60 (MOD Specialties); *see also* ¶¶ 93-95 (additional retailer standing allegations);

(e) Evan Kaufmann, Individual Plaintiff and member of Knife Rights (*Id.* at 23-26, ¶¶ 61-72);

(f) Adam Warden, Individual Plaintiff and member of Knife Rights (*Id.* at 26-29, ¶¶ 73-83); and

(g) Rodney Shedd, Individual Plaintiff and member of both the Muscogee Nation Tribe and Knife Rights (*Id.* at 29-32, ¶¶ 84-92).

The Complaint's exhaustive standing allegations for all the named Plaintiffs, in turn, are substantiated by the declarations submitted in support of Plaintiffs' summary judgment motion. They comprise the Declarations of Russell Gordon Arnold, Jeffrey E. Folloder, Doug Ritter, Evan Kaufmann, Adam Warden, and Rodney Shedd. *See* ECF No. 18 at 11-64 (Exs. B-G) Plaintiffs have met their burden to show Article III standing.

B. Review Standard for Summary Judgment Motion

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 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.

C. *Heller/Bruen* Framework for Second Amendment Challenges.

This case presents threshold legal issues to be analyzed in the context of the *Heller/Bruen* standard. *Bruen* abrogated the two-step means-end scrutiny approach adopted by some lower courts to analyze Second Amendment challenges, holding that the test was "one step too many." *Bruen*, 597 U.S. at 17-19. Instead, *Bruen* held:

> "In keeping with *Heller,* we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the

> government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Bruen*, 596 U.S. at 17, citing *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961)

Id. at 17.

Applying this standard, the first legal question in *Bruen* was "whether the plain text of the Second Amendment protects [plaintiffs] proposed course of conduct—and in that case, it was carrying handguns publicly for self-defense. *Id*. at 32. In analyzing this question, *Bruen* analyzed only the "Second Amendment's text," applying ordinary interpretive principles. *Id*. at 32-33. The second legal question analyzed in *Bruen* was whether New York had met its burden to prove its "proper cause requirement is "consistent with this Nation's historical tradition of firearm regulation." *Id*. at 33-34. To answer this question, *Bruen* found that the most analogous historical sources from which to derive a comparable historical analogue are those close in time to 1791 (Second Amendment ratification) and 1868 (Fourteenth Amendment ratification). *Id*. at 36-38. The above represents the framework required to be followed for Second Amendment challenges, despite Defendants disingenuous attempts to engraft requirements that far exceed this framework. But first, Plaintiffs, again, show they have met the requirements for Article III standing. *See* ECF No. 1 at 9-33 (Complaint) and the supporting declarations and evidence. ECF No. 18 at 11-64 (Exs. B-G).

D. *Knife Rights, Inc. v. Garland* is Not Controlling, Nor is it the Same as this Case.

Plaintiffs reserve a few words to address *Knife Rights, Inc. v. Garland*, No. 4:23-cv-00547-0, 2024 WL 2819521 (N.D. Tex. June 3, 2024), District Judge Reed

O'Connor, presiding. Defendants infer that the same plaintiffs have brought essentially the same case, which is not so.

First, the district court in *Knife Rights* dismissed on standing grounds "without prejudice." *Id*. at *6. Second, the two cases are not the same. Without conceding the point, even Defendants point out that *Knife Rights* was a Second Amendment challenge "against Section 1242" (ECF No. 25 at 16); and this case, in contrast, is undoubtably a Second Amendment challenge to Sections 1242, 1243, and 1244 of the FSA. ECF No. 1 at 2-9, ¶¶ 1-9. Third, this case includes different and additional Plaintiffs (Evan Kaufmann, Adam Warden, and Rodney Shedd—all Individual Plaintiffs and members of Knife Rights). See ECF No. 1 at 23-26, ¶¶ 61-72 (Kaufmann); 26-29, ¶¶ 73-83 (Warden); and 29-32, ¶¶ 84-92 (Shedd).

As instructed by *Knife Rights*, the Complaint in this case is also different, with additional facts supporting the standing of the Individual Plaintiffs (Russell Arnold, Jeffery Folloder, Evan Kaufmann, Adam Warden, and Rodney Shedd), the Organization Plaintiff Knife Rights and its members, and the Retailer Plaintiffs Firearm Solutions and MOD Specialties. *See* ECF No. 1 at 9-33, ¶¶ 23-95. The facts supporting standing for all Plaintiffs, and each of them, are then substantiated in sworn declarations and evidence. *See* ECF No. 18 at 11-64 (Exs. B-G).

Accordingly, this case is not the same as *Knife Rights, Inc. v. Garland*, No. 4:23-cv-00547-0, 2024 WL 2819521 (N.D. Tex. June 3, 2024). Indeed, this case is more akin to District Judge Reed O'Connor's more recent case, *Nat'l Ass'n for Gun Rights, Inc. v. Garland*, 4:23-cv-00830-0, 2024 WL 3517504 (N.D. Tex. July 23, 2024). In that case, gun rights organizations and individuals challenged federal regulations broadening the classification of firearms and defendants renewed their standing and pre-enforcement credible-threat claims. *Id*. at *6. The district court rejected the claims, finding that "Defendants have twice refused—and *continue*

their refusal—to disavow prosecution against these Plaintiffs" so "credible threats of enforcement continue to loom over Plaintiffs such that there is standing to sue." *Id.* at *7 (original emphasis). The district court added that:

> "There is no dispute that the Individual Plaintiffs 'inten[d] to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute.' *Zimmerman*, 881 F.3d [378, 391 ((5th Cir. 2018)]. Each Individual Plaintiff currently possesses—or previously possessed—a newly proscribed [forced reset trigger]. What is disputed is whether engaging in the newly proscribed [forced reset trigger] ownership carries "a credible threat of prosecution." *Id.* Defendants liken the Plaintiffs' concern to no more 'than a generalized threat of prosecution' that cannot support pre-enforcement relief, particularly because the ATF has no current 'intentions to take enforcement actions against the Individual Plaintiffs.' The Court disagrees and instead finds that a sufficiently credible threat exists to establish standing."

Id. at *7. Same here.

In this case, Plaintiff Rodney Shedd, an individual, a Knife Rights' member, and member of the Muscogee Nation Tribe, testified under oath that he legally owned and possessed an automatically opening knife, or a switchblade, in Arizona, and before moving to Oklahoma, he abandoned his knife due to the FSA's prohibition on the possession of such a knife within Indian country, namely, Muscogee Nation tribal land. *See* 15 U.S.C. § 1243; and ECF No. 18 at 62-63, (Ex. G, Shedd Dec. ¶¶ 1-5) *see also* ECF No. 1 at 30, ¶¶ 84-87. Mr. Shedd was forced to abandon this property due to the FSA, and but for the FSA prohibitions, he would continue to legally possess his knife at his residence in Oklahoma (Indian country). ECF No. 1 at 30-31, ¶¶ 88-92; and ECF No. 18 at 62-63 (Ex. G ¶¶ 6-10).

Further, Plaintiffs Arnold and Folloder, as individuals, owners, operators, and federally licensed firearms dealers of Firearm Solutions and MOD Specialties, respectively; members of Knife Rights; and on behalf of their actual and prospective customers, have alleged and proven that: (a) they cannot make any purchases of

switchblade knives from manufacturers and distributors, nor any sales to such customers due to the prohibitions in the FSA; (b) they are "ready, willing, and able to immediately purchase and sell" such knives and "the only thing stopping them, now and in the future," are their "fear of prosecution for violating Sections 1242 and 1243" of the FSA; (c) "[c]ommerce in such knives is … a prerequisite to keeping and possessing bladed arms for self-defense and other purposes;" (d) they "pursue the Second Amendment claim in this case for [their] own interests and [their] business interests;" (e) their "business interests are derived from [their] actual and prospective customers, all of whom have a corollary right to keep and bear bladed arms for self-defense and other lawful purposes;" and (f) "the core Second Amendment right … is meaningless without the ability for [their] customers … to acquire [such knives] in interstate commerce," and to sell, possess, and use such knives "throughout the United States, including within and through Native American (Indian) land, … and federal land." See ECF No. 1 at 15-18, ¶¶ 36-45 (Arnold/Firearm Solutions); and *id*. at 18-23, ¶¶46-60 Folloder/MOD Specialties). S*ee also* ECF No. 18 at 12-16 (Ex. B, Arnold Dec. ¶¶ 1-14), at 19-24 (Ex. C, Folloder Dec. ¶¶1-21).

Moreover, concrete injury, and risk of prosecution, are shown by the other Individual Plaintiffs, who are also members of Knife Rights. *See, e.g*., ECF No. 1 at 15-29 (Plaintiffs Arnold, Folloder, Kaufmann, and Warden). *See also* ECF No. 18 at 10-24 (Exs. B-C, Arnold and Folloder Decs)); and *id*. at 48-59 (Exhibits E-F, Kaufmann and Warden Decl(s)).

Additionally, Plaintiff Knife Rights has alleged and shown its associational and organizational standing, including injury and a concrete fear of prosecution comprised of documentary evidence confirming that as recently as September 2020, Knife Rights' member Johan Lumsden was subjected to a search and seizure of

switchblades and knife sales and parts—establishing that a Knife Rights' member was targeted for violating Section 1242 of the FSA, which constitutes Defendants' active and unconstitutional enforcement of the FSA. See ECF No. 1 at 9-15, ¶¶ 23-35; and ECF No. 18 at 27-47 (Ex. D).

These facts also confirm a point conceded by Defendants. Mr. Lumsden, a member of Plaintiff Knife Rights, has had the FSA enforced against him, which is enough to establish standing for Knife Rights. See ECF No. 25 at 19, where Defendants state that a "substantial threat may also arise where a 'statute has already been enforced against a plaintiff, ….'" citing *Joint Heirs Fellowship Church v. Akin*, 629 F.App'x 627, 631 (5th Cir. 2015).[3] There is more, as illustrated below.

III. OPPOSITION TO MOTION TO DISMISS

A. Plaintiffs Have Article III Standing.

i. Plaintiffs Have Sufficiently Alleged and Proven Standing.

Plaintiffs acknowledge their burden to allege facts sufficient to satisfy Article III standing; and they have done so. ECF No. 1 at 2-5, 8-32; ECF No. 18 at 11-64 (Exs. B-G); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The Complaint and the accompanying sworn declarations and evidence submitted with Plaintiffs motion for summary judgment show that Plaintiffs have sustained (1) "an injury in fact," (2) the injury is "fairly traceable to the challenged conduct of the defendant," and (3) the injury is "likely to be redressed by a favorable judicial decision." *Id.* at 560-561; *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

"[G]eneral factual allegations of injury" are enough because the Court must "presume that general allegations embrace those specific facts that are necessary to

[3] Mr. Lumsden is a member of Knife Rights, a plaintiff in this case. If necessary, Mr. Lumsden is willing to join as a named plaintiff by amendment to the Complaint.

support the claim." *Lujan*, 504 U.S. at 561 (citation and brackets omitted). Under this applicable standard, the Complaint is more than sufficient.

Moreover, the standing requirement is satisfied for *all plaintiffs if any plaintiff has standing* on the same complaint seeking the same relief, which is the case here. See *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 330 (1999); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264 and n.9 (holding that presence of one party with standing assures that the controversy before the Court is justiciable). Within this context, the Complaint and sworn declarations and evidence establish standing.

ii. The Standing "Injury" Prong is More Than Satisfied.

Defendants state that "even assuming" Plaintiffs "have established the first two prongs" of standing, they have not met their burden to show that Plaintiffs (all of them) have "suffered a cognizable injury." *See* ECF 25 at 17-18. Defendants also focus only on the "injury" component, stating that Plaintiffs have failed to allege and prove a credible threat of prosecution under Sections 1242 and 1243 of the FSA. *Id.* at 18-19. For that reason, Plaintiffs focus on the "credible threat" prong of standing—the only factor at issue. *Id.* As to that factor, Defendants are incorrect, they misconstrue the legal test, and they minimize Plaintiffs' substantial factual allegations and sworn declarations and evidence supporting this injury component of standing.

To establish a credible threat of prosecution, a plaintiff must allege "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (describing the factors). Though the leading Supreme Court precedent, Defendants do not cite *Driehaus*.

Defendants also wrongly suggest that the "credible threat" component requires that Plaintiffs allege and prove that they have been arrested or prosecuted

for violating Sections 1242 and 1243 of the FSA, citing *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 782-783 (5th Cir. 2024). The *McCraw* case is inapposite. In *McCraw*, which involved a due process challenge and *not* a Second Amendment challenge, the defendants showed that "they have not arrested or prosecuted anybody" for violating the statute and that they "have never enforced" the statute "against Plaintiffs (or anybody)." *Id*. at 782.[4] This is a far cry from the enforcement efforts under Sections 1242 and 1243 of the FSA. Moreover, Defendants' own evidence concedes there have been four criminal cases filed under 15 U.S.C. § 1242; and an undisclosed number of prosecutions under 15 U.S.C. § 1243 prior to 2004. *See* ECF No. 25-1 (Zabkiewicz Dec.). As shown in Mr. Ritter's declaration, Defendants also "have never disavowed enforcement of the FSA." Specifically, Mr. Ritter correctly points out that:

> "[N]owhere do Defendants disclose that they no longer enforce the Federal Switchblade Act or that they will not enforce the law in the future. Any statements by the government that there have been a low number of prosecutions since 2010 is not evidence that there have been no arrests, raids, charges, seizures, or pleas under the challenged provisions of the Federal Switchblade Act. The Federal Switchblade Act remains "on the books" and can be enforced now and in the future, by this administration or a future one."

ECF No. 18 at 32, ¶ 22 (Ex. D).

iii. Plaintiffs Have Shown a "Credible Threat" of Enforcement and Prosecution under the FSA.

Contrary to Defendants' argument (ECF No. 25 at 8), a plaintiff need not "expose himself to actual arrest or prosecution" before "challeng[ing] the statute that he claims deters the exercise of his constitutional rights." *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (allowing standing based on credible-threat analysis without need to show an arrest or prosecution); *see also MedImmune, Inc.*

[4] The court in *McCraw* also found standing on plaintiffs' First Amendment claims, suggesting that for standing, enumerated constitutional rights, such as the Second Amendment, are given more leeway. *Id*. at 782-784.

v. Genentech, Inc., 549 U.S. 118, 129 (2d Cir. 2007) ("The dilemma posed by that coercion—putting the challenger to the choice between abandoning his rights or risking prosecution—is 'a dilemma that was the very purpose of the Declaratory Judgement Act to ameliorate.'" [citation omitted]). There is no doubt that the FSA prescribes the course of conduct Plaintiffs intend to engage in, namely, the manufacture, transport, distribution, sale, or possession of automatically opening knives prohibited under Defendants' near-total switchblade knife ban. See 15 U.S.C. §§ 1241, 1242, 1243, 1244. Further, Defendants have not shown, with the Zabkiewicz declaration or otherwise, that Plaintiffs' fear of criminal prosecution is "imaginary or wholly speculative." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302 (1979); *see also Babbitt*, 442 U.S. at 302:

> "Appellants maintain that the criminal activity provision has not yet been applied and may never be applied …. But, as we have noted, *when fear of criminal prosecution under an alleged unconstitutional statute is not imaginary or wholly speculative* a plaintiff need not 'first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute,'" citing *Steffel*, 415 U.S. at 459.

Id. (emphasis added).

Importantly, the *Babbitt* Court also found that because the State had "not disavowed any intention of invoking the criminal penalty provision," plaintiffs' fear of prosecution was "not without some reason[.]" *Id.* Similarly, here, Defendants have steadfastly refused to disavow its enforcement of the FSA; and yet, vigorously defend its constitutionality—keeping their enforcement and prosecution options open.

For example, in characterizing the reasons for the FSA's enactment, and subsequent enforcement, Defendants undermine their own standing arguments. They simultaneously claim that Plaintiffs lack standing to challenge the switchblade knife ban because they may decide not to enforce it, but also argue the

ban's existence prevents "switchblades" from "falling into the hands of juveniles;" and preventing these knives from being "widely distributed through the mail, effectively circumventing local controls[.]" ECF No. 25 at 13-14. In short, Defendants claim there is no threat of enforcement or prosecution, but also assert that the FSA is a necessary deterrent to criminal activity and promotes public safety. Both cannot be true.

In short, absent disavowal, Defendants do not overcome the presumption that the federal government can and will enforce the switchblade knife ban. *See Barilla v. City of Houston*, 13 F.4th 427, 433 (5th Cir. 2021) (finding a substantial threat of enforcement where "the [defendant] did not disclaim its intent to enforce the [challenged ordinances] to the district court, in its appellate briefing, or during oral argument, and instead stressed the Ordinances' legitimacy and necessity."); *see also Nat'l Ass'n for Gun Rights, Inc., v. Garland*, 2024 WL 3517504 at *7-8 ("Defendants' refusal to disavow prosecuting the Individual Plaintiffs during the pendency of this case—the exact type of "prosecutorial indecision" that the Fifth Circuit has "repeatedly held" as more than enough for standing.").

And courts may "infer a credible threat of enforcement as long as a challenged statute applies to the intended conduct. *Hoyt v. City of El Paso, Tex.*, 878 F.Supp.2d 721 (W.D. Tex. 2012) (*citing Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 542-543 (5th Cir. 2008)). Undaunted, Defendants assert there is no substantial likelihood of future enforcement due to its modest *prosecution* data. ECF No. 25 at 20-21.

Notably, the FSA remains in full force and effect. *See Barilla v. City of Houston, Texas*, 13 F.4th 427, 433-434 (2021). Defendants have not shown that there have been no arrests, charges, pleas, and/or convictions under the FSA provisions. ECF No. 18 at 32, ¶ 22 (Ex. D). That Defendants may have been

selective in their enforcement over the years merely highlights they are ready, willing, and able to enforce the FSA on anyone they know is violating it. Defendants also attempt to pigeon-hole FSA enforcement by providing a declaration regarding *prosecutions* under section 1242 and 1243, while ignoring that the FSA is *actively enforced* through other mechanisms (*e.g.*, Spyderco plea agreement requiring that Spyderco use "acknowledgment and representation" forms for its switchblade distributors and sellers acknowledging that such companies and individuals "will comply" with the FSA before reselling such knives). See ECF No. 1 at 3-4, ¶¶ 5-7.

Importantly, "[s]ince 2007 and to the present, manufacturers and retailers throughout the United States also implement and require the so-called 'Spyderco Acknowledgement and Representations' in connection with their sales of automatically opening knives (switchblades)." ECF No. 1 at 4, ¶ 8; *See also* ECF No. 22, at 113-115, ¶¶ 24-31, (Exs. A-B, Spyderco prosecution and plea documents). Nonetheless, Plaintiffs allege that manufacturers and retailers, including Plaintiffs Firearm Solutions and MOD Specialties, who are also Knife Rights members, "adhere to such requirements, acknowledgements, and representations out of fear that the U.S. Attorney will target them, as it did with Spyderco—a well-publicized arrest, search/seizure, and prosecution that sent shock waves throughout the knife industry in the United States." *Id.*[5]

[5] While Defendants state that Spyderco was *convicted* under a different statute, they ignore that under the explicit terms of the plea agreement, Spyderco must adhere to Sections 1242 and 1243 of the FSA. ECF No. 22, at 113-115, ¶¶ 24-31, Exs. A-B. Moreover, Spyderco must provide the acknowledgment and representations to any distributor and seller acknowledging that the "switchblade" knives being sold meet the explicit exceptions under Section 1244 of the FSA. *Id.* While Spyderco may have been *convicted* under a different statute, this does not take away from the fact that the federal government actively enforces the challenged sections of the FSA against Spyderco through the ongoing plea

Defendants also concede that "a substantial threat may arise where an agency has brought [an] enforcement action, one which serves as a 'clear shot across the bow' against potential violators," citing *Braidwood Mgmt., Inc. v. Equal Emp. Opp. Comm'n*, 70 F.4th 914, 927 (5th Cir. 2023).[6] That "shot across the bow" was (a) the Lumsden enforcement, (b) the Spyderco arrest, search/seizure, prosecution, and well-publicized plea agreement and ongoing enforcement thereunder, and (c) government agency publications prohibiting the public, including Plaintiffs, from traveling with a "switchblade knife." ECF No. 1 at 3-5, ¶¶ 5-8, 11, 109, and n.2; *id.* at 35-37, ¶¶ 105-108 (Lumsden) and ¶¶110, 115-116-118 (Spyderco); *See also* ECF No. 22, at 113-115, ¶¶ 24-31 (Exs. A-B); *see also* Johan Lumsden Declaration (Lumsden Dec.), filed concurrently herewith, at ¶¶ 4-17.

The Lumsden and Spyderco enforcement actions illustrate that "Defendants have succeeded in enforcing the FSA through their prior raid of Mr. Lumsden and the prosecution of Spyderco, along with the active and ongoing enforcement of the terms and conditions of Spyderco's prosecution—which have been adopted by the … knife industry in the United States." *Id.* at 37, ¶ 110. These "shots across the bow" (Lumsden and Spyderco) have "reverberated in the knife industry throughout the United States from 2007 to the present." *Id.* at 6, ¶ 13; *See also* ECF No. 22, at 113-115, ¶¶ 24-31, (Exs. A-B); Lumsden Dec. at ¶¶ 15-17.

Moreover, the Fifth Circuit in *Braidwood*, confirmed that "'a threat of government prosecution is credible if … there is a 'history of past prosecution or enforcement under the challenged statute.'" *Id.* 70 F.4th at 925, and n.18. The

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agreement. This alone constitutes active and ongoing enforcement against Knife Rights' member Spyderco, which is sufficient to support Article III standing.

[6] Defendants engraft a "recency" requirement onto the standing credible-threat analysis, but there is no such requirement. See ECF No. 25 at 19 (using the term, "recent," no less than three times on one page).

Complaint, the sworn declarations and evidence, and the Zabkiewicz declaration all reflect a "history of past prosecution *or* enforcement" supporting Plaintiffs' standing allegations and supporting declarations and evidence.

Moreover, the Fifth Circuit in *Braidwood,* footnote 18, cited with approval three cases supporting its position, including *Holder v. Humanitarian L. Project*, 561 U.S. 1, 15-16 (2010). In that case, the Supreme Court permitted "pre-enforcement review of a criminal statute because plaintiffs alleged they had performed now-prosecuted activities before the enactment of the challenged statute, the Attorney General had prosecuted cases under the statute …, and the government did not affirmatively declare it would not prosecute the plaintiffs." *Id.* at 925, n. 18. *Holder* applies with equal force in this case. And the Complaint, the declarations, and the evidence do not stop there.

The Customs and Border protection actively enforces section 1242 of the FSA to this day. See ECF No. 1 at 5-6, ¶¶ 11, 13. While Plaintiffs have not specifically challenged the *importation regulations* used to enforce Section 1242 of the FSA, there is no dispute that Section 1242 is actively enforced by the federal government through a website notification stating that, switchblade knives … "are prohibited and may be subject to seizure (with an exception for one-armed people). ECF No. 1 at 36, ¶ 109. That the government chooses to focus more on limiting *importations* from outside the United States over actions and transactions through interstate commerce *within* the United States is a discretionary choice. At any time, Defendants can change, and often do change, their focus in terms of enforcement, prosecutions, and other criminal mechanisms. In simple terms, that Section 1242 is actively enforced by an agency of the federal government, sufficiently establishes that Plaintiffs are under a very real, concrete, and imminent threat of prosecution if

they choose to violate the FSA. This fact was explicitly acknowledged in *Knife Rights, Inc. v. Garland,* 2024 WL 28195521 at *7:

> "It would also be sufficient if Plaintiffs proved that the challenged statute was recently used to prosecute several individuals, and the Government would not disavow prosecution of the specific Plaintiffs if they continued the proscribed activity. *E.g., Holder v. Humanitarian Law Project*, 561 U.S. 1, 16 (2010). Or, as in *Braidwood Management, Inc. v. EEOC* Plaintiffs could point to a recent enforcement action by an administrative agency, which served as a "clear shot across the bow" against potential violators. 70 F.4th 914, 927 (5th Cir. 2023). It would also suffice if the Government explicitly threatened a particular Plaintiff with forfeiture, fines, or other penalties for violating the particular law. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 129 (2007)."

Id.

The Complaint and the declarations and evidence provide this Court exactly what was requested to sufficiently allege standing in *Knife Rights, Inc. v. Garland.*

Nor have Defendants demonstrated that the switchblade knife ban—which was amended by Congress as recently as 2009—is moribund or of merely historical curiosity. *See Johnson v. District of Columbia*, 71 F. Supp. 3d 155, 159-60 (D.D.C. 2014) (finding that the "conventional background expectation of enforcement may be overcome where the law is moribund or of purely historical curiosity" (quotations omitted); *See* ECF No. 1 at 5, ¶ 9, and Pub. L. 85–623, § 4, Aug. 12, 1958, 72 Stat. 562; Pub. L. 111–83, title V, § 562, Oct. 28, 2009, 123 Stat. 2183. "The moribund statute exception is narrow, as courts are appropriately wary of requiring plaintiffs to commit criminal acts in order to obtain standing, especially given the real possibility that authorities may take renewed interest in prosecuting conduct that had historically been tolerated. *Brooklyn Branch of Nation Association for the Advancement of Colored People v. Kosinski*, 735 F.Supp.3d 421, 439 (S.D.N.Y. 2024). As such, Congress continues to keep the FSA in effect, active, and, therefore, subject to enforcement. ECF No. 1 at 5, ¶ 10; *See also* ECF No. 22, at 113-115, ¶¶ 24-31,

(Exs. A-B); *see also* Lumsden Dec. at ¶¶ 4-17. Defendants also do not disavow the law. Instead, they rigorously defend its constitutionality under the Second Amendment. See ECF No. 25, at 30-50.

Additionally, Defendants' enforcement actions against Knife Rights' member Lumsden is enough to establish standing. In 2020, federal and state agencies raided Johan Lumsden's home/business (a switchblade manufacturer and dealer) for alleged violations of the FSA. The raid on Mr. Lumsden reverberated throughout the knife industry, including rumblings with knife manufacturers and dealers, throughout the United States. ECF No. 1, at 3, ¶ 4; *id*. at 6, ¶ 13. Based on the "search and seizure warrants" and related documents, enforcement officers initiated a violent raid of his home/business using flashbang or like devices. *See* Lumsden Dec. at ¶¶ 15-17. Mr. Lumsden was arrested, detained, and questioned for hours sustaining injuries to his hands and wrists; his dog was injured and "tased" by law enforcement; authorities seized/confiscated approximately $5 million switchblades and switchblade parts from Mr. Lumsden home/business; shut down his multiple retail websites; and forced him out of business. *Id*. Though never charged, Mr. Lumsden was detained, questioned, physically injured, and had valuable property seized as a result of authorities enforcing in Sections 1242, 1243, and 1244 of the FSA. Mr. Lumsden's property was eventually returned in 2023, significantly damaged. *Id*. Mr. Lumsden also sustained substantial injury, loss, and harm, including the damage/loss of his inventory with an estimated value in the millions of dollars. *Id*. Further, Mr. Lumsden's computers and hard drives used for his business were confiscated, and were not returned. *Id*. This unlawful retention of his property, along with the fact that Mr. Lumsden still lives under a cloud of enforcement/prosecution prevents Mr. Lumsden from continuing his switchblade business. *Id*.

The history of past enforcement against Mr. Lumsden meets the criteria for standing in *Braidwood*, 70 F.4th at 925.

Additionally, Plaintiffs have submitted sworn declarations stating that the Individually named Plaintiffs have a justifiable "fear" of prosecution under the FSA due to the severe criminal penalties thereunder. *See*, *e.g.*, ECF No. 18, at 50-51, ¶¶ 2-21 (Ex. E Kaufmann Dec.); and *id*. at 56-59, ¶¶ 2-21 (Ex. F, Warden Dec.).

Further, other Individual and Retailer Plaintiffs have alleged and sworn to their intent to exercise their right to keep and bear automatically opening knives for lawful purposes, including self-defense, and would, but for the Defendants' enforcement of the switchblade knife ban. *See, e.g.*, ECF No. 1, ¶¶ 40-42 and 44 (Arnold and Firearm Solutions); and *id*. ¶¶ 50-59 (Folloder and MOD Specialties); *See also* ECF No. 18 at 12-16; and 19-24. As to the Retailer Plaintiffs (Firearm Solutions and MOD Specialties), they have alleged and proven they are federally licensed firearms dealers and that if they engage in conduct that violates the FSA, such violations can result in revocation or non-renewal of their federal firearms licenses; and that this "jeopardy" is "real and concrete" and threatens their livelihood and business. *See, e.g.*, ECF No. 1 at 32-33, ¶¶ 93-95; *See also* ECF No. 18 at 12-16; and 19-24.

Additionally, Plaintiff Knife Rights has standing for itself and its members. See *Hunt v. Washington State Apple advertising Com'n*., 432 U.S. 333, 343; *see also Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,* 600 U.S. 181, 199 (2023); *and La Union del Pueblo Entero,* 614 F.Supp.3d at 516 (W.D. Tex 2022) (showing standing established for organization if "at least one member will suffer injury-in-fact"). Because Plaintiff Knife Rights challenges Defendants' conduct in this case, neither Knife Rights, nor its members need to be the current subject of Defendants' enforcement action, provided their conduct causes injury to Plaintiff or one of its members. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 153-56 (2010) (plaintiffs had standing to challenge federal agency's failure to

regulate a third party's use of genetically modified seeds); *Texas v. United States*, 809 F.3d 134, 155-60 (5th Cir. 2015) (Texas had standing to challenge federal government's failure to enforce immigration laws), aff'd 136 S. Ct. 2271 (2016).

Under *Hunt*, "[a]n association has standing to bring suit on behalf of its members when (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 333 (1977). All are present here. And despite Defendants' implication, *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015) does not create a separate "especially rigorous" standard, but rather affirms the standard set forth in *Hunt*. *See* ECF No. 25 at 17-18; *see also Crane v. Johnson*, 783 F.3d 244 at 251.

As alleged in the Complaint, Knife Rights is a member advocacy organization and serves its members "through efforts to defend and advance the right to keep and bear bladed arms." ECF No. 1 at 9, ¶ 23; *see also* ECF. No. 18 at 29-37. It also serves its members, supporters, and the public through "litigation and advocacy and public education" and the successful repeal of numerous knife bans throughout the country. *Id*. at 10-11, ¶¶ 24-27. Mr. Ritter, the Chairman and Executive Director of Knife Rights, has submitted a detailed sworn declaration describing Knife Rights' standing in its own right and on behalf of its many members. *See* ECF. No. 18 at 29-37.

The Complaint alleges that Knife Rights has incurred "extraordinary" and "distinct" "expenditures of time, effort, and cost on litigation matters to protect knife rights" and that those extraordinary expenditures "have placed a real, concrete drain on Knife Rights' resources, particularly the funds relied upon from our member contributions to also pursue our other customary political, educational, and legislative efforts." ECF No. 1 at 12-13, ¶¶ 29-31. Further, the Complaint alleges that "[b]y expending substantial and extraordinary organizational time,

effort, money, and other resources to challenge the [FSA] in court, Plaintiff Knife Rights has sustained injury, harm, and losses that are over, above, and beyond its customary actions and accomplishments. Such expenditures are exceptional and not merely in furtherance of Knife Rights' mission, goals, and purposes." ECF No. 1 at 13, ¶ 31. *See also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (organization had standing to challenge policy based on allegation that organization "had to devote significant resources to identify and counteract the Defendant's" practices). But it does not stop there. The Complaint further alleges:

> "As a direct result, Plaintiff Knife Rights, and its members, face a lose-lose setting where they are injured either way—they must either continue to refrain from exercising their Second Amendment rights, or risk enforcement up to and including prosecution and severe criminal and other penalties and consequences. Plaintiffs cannot simply assume that because Defendants say that prosecutions may be down for the time being, it follows that Plaintiff Knife Rights and its members can acquire and possess switchblades and move them through interstate commerce and within and through Native American (Indian) land, National Parks, BLM public land, and other federal land—free of enforcement and criminal penalties. In short, Defendants' purported slowdown in prosecutions is not synonymous with Defendants' disavowing prosecutions and more broadly, halting all enforcement now and in the future of the Federal Switchblade Act. Quite simply, the only thing that would support any claim of a lack of a threat of prosecution is an act of Congress. As Congress has continued to enforce and amend the FSA, there is a very real threat of prosecution."

Id. at 14, ¶ 34.

It also alleges:

> "But for the Federal Switchblade Act challenged in this action, Plaintiff Knife Rights' organizational efforts would otherwise be expended in other ways. Plaintiff Knife Rights' injury, harm, and losses as an organization could also be fully redressed if the Court were to issue the nationwide injunction that Plaintiffs have requested in this case. Until then, however, Plaintiff Knife Rights and its members cannot engage in interstate commerce with respect to switchblade knives (as defined), nor purchase, possess, and carry them within and through Native American (Indian) land, National Parks, BLM public land, and other federal land without substantial risk of criminal prosecution now and in the future under the Federal Switchblade Act."

Id. at 15, ¶ 35.

These allegations are supported by Mr. Ritter's sworn declaration. See ECF No. 18 at 29-37, ¶¶ 24-28.[7]

iv. Remaining Elements of Standing Not in Dispute.

As stated, the remaining elements of standing are not disputed. ECF No. 25, at 18-26. Suffice it to say, the Complaint and supporting declarations support that the injury Plaintiffs complain of is directly traceable to Defendants, who are the officials responsible for enforcement of the switchblade knife ban. *Lujan,* 504 U.S. at 560; and *see, e.g.*, ECF No. 1, at 26, ¶ 72, ECF No. 18, at 53, ¶ 21 (Kaufmann Dec.). Additionally, Plaintiffs' injury would be redressed by a remedy that this Court could provide them, namely, a permanent injunction against enforcement of Sections 1242, 1243, and 1244 of the FSA. *Lujan*, 504 U.S. at 561; and ECF No. 1, at 26, ¶ 72; ECF No. 18, at 53, ¶ 21 (Kaufmann Dec.).

In sum, Plaintiffs, and each of them, have met the credible threat prong of the standing doctrine, and have satisfied the requirements for Article III standing.

IV. REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

A. Defendants Fail to Dispute Plaintiffs' Claims and Evidence.

At the outset, Defendants' offer their views about Plaintiffs' summary judgment motion and supporting evidence, but fail to provide any evidence supporting those views. Specifically, they offer no evidence that automatically opening knives (switchblades) are not "arms" under the plain text of the Second Amendment. They offer no evidence contradicting Plaintiffs' experts' opinions or

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[7] Mr. Ritter's declaration also supports that Knife Rights members have been subject to enforcement under the FSA in recent time, despite the Defendants' previous statements regarding no prosecutions. The declaration includes **Exhibit A, which** documents detail the search and seizure warrant issued against Knife Rights member Johan Lumsden in 2020. See ECF No. 18 at 34; 39-47, ¶ 29 (Ritter Dec.).

Knife Rights' declaration establishing that an automatically opening knife, or switchblade knife, is merely a variation of a folding pocket knife. See ECF No. 18 at 35-37, ¶¶ 40-48 (Ritter Dec.); ECF No. 21 at 201, 204-211 (Onion Dec.); ECF No. 22 at 96 (Voyles Dec.); 106-107 (Price Dec.); 111-112 (Zalesky Dec.); 134-135 (Terzuola Dec.); and 141 (Emerson Dec.).

And Defendants offer no evidence that automatically opening knives are *both* "dangerous and unusual." ECF No. 25 at 32-38. Specifically, Defendants fail to provide any contradictory evidence that automatically opening knives are no more dangerous than any other knife, *nor do they dispute their lower lethality relative to handguns*. Defendants also fail to provide any evidence that such knives are not in common use across the country. *See* ECF No. 25 at 32-38; *see also* ECF No. 17 at 19-30. Indeed, Defendants cite their own Subcommittee report showing that a "large number of switchblades were being manufactured or imported and sold in the United States" and that such knives "were being widely distributed through the mail, …." ECF No. 25 at 14. Yet Defendants omit that specific numbers of such knives are being manufactured or imported and sold in the United States—o*ver 1 million per year*. *See* ECF No. 17 at 26.

B. The Second Amendment's Plain Text Covers Plaintiffs' Conduct.

Defendants again attempt to cabin the broad reach of the FSA, claiming that the Second Amendment's plain text "'does not include purchase' of arms," citing *McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024). This misses the point.

Plaintiffs' conduct, protected by the Second Amendment, is considerably broader than "purchase"—the conduct at issue here extends to "whoever" manufactures, transports, or distributes any switchblade knife in interstate commerce, and "whoever" manufactures, sells *or* possesses such a knife within any federal land and within Indian country. 15 U.S.C. §§ 1242, 1243. This fact is supported the recent unanimous decision by the Fifth Circuit in *Reese, et al. v.*

Bureau of Alcohol, Tobacco, Firearms, and Explosives, et al., No. 23-30033 (filed, Jan. 30, 2025), which held "the right to 'keep and bear arms' surely implies the right to purchase them." *Id.* Slip op. at 9 (supporting citations omitted).

Additionally, *McGory* is inapplicable. The case dealt with "conditions and qualifications" on the commercial sale of arms, namely, expanded background checks for 18-to-20-year-olds. *Id.* at 834-835. The Fifth Circuit denied the preliminary injunction, holding that the expanded background check law was not subject to the *Heller/Bruen* framework because the law was a presumptively lawful measure. *Id.* at 836-837, 838. Here, in contrast, there is no question the statutes at issue impose a much broader prohibition than expanded background checks for a certain age group. Importantly, the court in *McGory* recognized that the Second Amendment is implicated by laws prohibiting arms if the laws are "so burdensome" that they trigger the *Heller/Bruen* framework and act as [a] de facto prohibition[ ] on acquisition of the arm at issue." *Id.* at 838, n.18. That is this case here—a near-total-switchblade knife ban due to the broad reach of the FSA. 15 U.S.C. §§ 1242, 1243. "To suggest otherwise proposes a world where citizens' constitutional right to 'keep and bear arms' excludes the most prevalent, accessible, and safe market used to exercise the right." *Reese v. BATFE*, Slip op. at 10.[8]

Moreover, the Massachusetts Supreme Judicial Court recently ruled that switchblade prohibitions are unconstitutional. In that decision, the court applied the correct *Bruen* analysis in which switchblades clearly fall under the plain text of "arms" under the Second Amendment. *Commonwealth v. Canjura*, 494 Mass. 508, 512–513, 240 N.E.3d 213, 217–219 (2024). Notably, the Court also applied the exact

[8] And it is both undisputable and a matter of common sense that, in today's world, internet sales and products shipped directly to your door (*e.g.*, sales *via* interstate commerce) are the most prevalent, accessible, and safe market to purchase such knives.

analysis offered by Plaintiffs to show that switchblades are "in common use" and not both "dangerous and unusual" under *Heller's* historical analysis relying on numerical commonality, proportionate commonality (*e.g.,* categorically common), and jurisdictional commonality. *Canjura*, 494 Mass. at 515-517. The Court also found that the government failed to justify its prohibition through any analogous arms regulation.

C. Defendants Misconstrue the Purported "Dangerous and Unusual" Analysis

Defendants apply the wrong standard and burden in asserting that the "arms" protected under the Second Amendment exclude "weapons not typically possessed by law-abiding citizens for lawful purposes, such as 'dangerous and unusual' weapons" and that "Plaintiffs bear the burden of demonstrating" that the switchblade knife is not both dangerous and unusual, "such that it comes within the ambit of the Second Amendment's reference to "arms." ECF No. 25 at 32. The assertions are incorrect.

Heller stated that the relevance of a weapon's dangerous and unusual character falls within the *"historical tradition* of prohibiting the carry of dangerous and unusual weapons." *Id.* 554 U.S. at 627 (emphasis added). The *Heller* Court did not say that dangerous and unusual weapons are not "arms." Accordingly, Defendants, and not Plaintiffs, bear the burden of proving that a switchblade knife is *both* "dangerous and unusual" under the "historical tradition" analysis of the *Heller/Bruen* framework.

In any case, Plaintiffs have met the call. As set forth in their opening brief, Plaintiffs are "ordinary, law-abiding, adult citizens, and are therefore unequivocally part of 'the people' whom the Second Amendment protects." ECF No. 17 at p. 15. Plaintiffs' proposed course of conduct—the manufacture for sale, sale, distribution, and transport in interstate commerce, and the sale *or* possession of automatically opening knives (switchblades)—falls within the conduct protected by the Second

Amendment's plain text. *Bruen*, 597 U.S. at 17, 24. The Supreme Court has already defined the Second Amendment's key terms relevant here. "The people" includes "all Americans;" "Arms" includes "all instruments that constitute bearable arms[;" and, to "bear" simply means to "carry." *Heller*, 554 U.S. at 580–82, 584; *Bruen*, 597 U.S. at 28, 31-33.

Automatically opening knives (switchblades) are indisputably "arms" under the plain text of the Second Amendment. Defendants should not dispute these facts under the proper constitutional standard; and in any event, they provide no evidence contradicting Plaintiffs' evidence. Plaintiffs and their members are law-abiding citizens who seek to manufacture, transfer, distribute, sell, or possess bearable arms (switchblades) for traditionally lawful purposes, such as self-defense. These undisputed facts end the textual inquiry under the *Heller/Bruen* framework, resulting in a presumption of unconstitutionality that Defendants must rebut.

Undeterred, Defendants misapply binding Supreme Court precedent, claiming the FSA does not "implicate" the Second Amendment because switchblades are "dangerous and usual" arms and there is no constitutional right to bear dangerous and unusual arms, such as switchblades. ECF No. 25, at 32. As shown above, Defendants incorrectly *conflate* the *Heller/Bruen* textual analysis with the historical analysis.

Additionally, to support their assertion that such knives are both "dangerous and unusual," Defendants rely on *Hollis v. Lynch,* 827 F.3d 436 (5th Cir. 2016), abrogated by *United States v. Diaz*, 116 F.4th 458, 463, 466 (5th Cir. 2024). Relying on *Hollis,* Defendants claim that "the relevant considerations include whether the weapon has a heightened capacity for danger or is otherwise suited to criminal use, and whether the weapon is widely owned and legal in state and local jurisdictions." ECF No. 25 at 33. *Hollis* may have properly acknowledged that the question of common use must be considered when determining whether an arm is both "dangerous and unusual," but the standard applied in *Hollis* is the now abrogated

two-step means-end test and not the standard set forth in *Bruen*. *See United States v. Diaz*, 116 F.4th at 463.

As established above, under *Bruen*, the Second Amendment presumptively protects switchblades. Since Plaintiffs have demonstrated as much, the burden shifts to Defendants to prove otherwise. And the controlling analysis is set forth in *Heller, Bruen, and Caetano (see below).*

Further, any argument that a switchblade knife is equivalent to a machinegun or a grenade in "dangerousness" is absurd. And any comparison by Defendants that a switchblade knife is as dangerous as a gun, let alone a machine gun, is unsupported by any evidence. Plaintiffs submitted multiple declarations from several top knife designers in the world establishing that automatically opening knives are no more dangerous than any other folding pocket knife—let alone as dangerous as constitutionally protected firearms. *See* ECF No. 18 at 35-37, ¶¶ 40-48 (Ritter Dec.); ECF No. 21 at 201, 204-211 (Onion Dec.); ECF No. 22 at 96 (Voyles Dec.); 106-107 (Price Dec.); 111-112 (Zalesky Dec.); 134-135 (Terzuola Dec.); and 141 (Emerson Dec.). Defendants fail to provide any evidence to the contrary.

Instead, Defendants make the unsupported claim that "switchblades are clearly dangerous weapons that are suited to criminal use" as "a switchblade's defining feature is that its blade is concealed up to the moment it could be used, which enables a criminal to threaten serious injury with the press of a button." ECF No. 25 at 33. Under this definition, Defendants successfully describe from a practical, mechanical standpoint *every one-hand opening common folding pocket knife in existence* and fail to distinguish how a "switchblade" is any more dangerous than any other one-hand opening common folding pocket knife.

Lastly, mere opinion regarding criminal use (especially opinions regarding criminal use that are from 1958) are patently insufficient to justify the FSA. It can be argued that all portable arms are associated with criminals to some extent, but Defendants provide no basis to find such arms are not commonly used for traditionally lawful purposes, such as self-defense. *See Heller*, 554 U.S. at 634-635

(rejecting the interest balancing argument that handgun violence justified D.C. ban). Instead, Defendants attempt to repackage the abrogated two-step means-end test to justify its ban. But the Supreme Court in *Bruen* rejected that test.

D. Defendants Cannot Engraft Requirements Into the Second Amendment That Do Not Exist.

Defendants wrongly engraft requirements into the plain text of the Second Amendment. For example, Defendants attempt to revive the means-end test abrogated in *Bruen*, arguing that the FSA was enacted because of findings that switchblades were "contributing to an increase in juvenile crime and delinquency." ECF No. 25 at 13-15, 33-34. The inference is that a near-total-switchblade ban on such knives should not violate the Second Amendment. *Id*. The arguments fail because the ban is not limited to juveniles or criminals. *See* 15 U.S.C. §§ 1242, 1243 ("Whoever"). Indeed, the undisputed evidence in this case is that Plaintiffs are not juveniles or criminals, so Defendants arguments do not resolve their claims.

Additionally, Defendants attempt to cabin the Second Amendment, asserting that "Plaintiffs have failed to provide evidence that switchblades are commonly used *for self-defense*." ECF No. 25, at 37 (emphasis added).

First, this is not an inquiry under the initial *Heller/Bruen* framework—where the focus is on whether the Second Amendment's plain text covers the conduct at issue, so there is no such burden of proof on Plaintiffs. See *Bruen*, 596 U.S. at 17, 24. Second, the Supreme Court in *Bruen* focused on "self-defense" because the case centered on the unconstitutionality of New York's "proper cause" requirement by preventing law-abiding citizens with self-defense needs from exercising their Second Amendment right to keep and bear arms. *Bruen*, 597 U.S. at 31-33.

Third, the Second Amendment's plain text is not limited to "self-defense." *Heller* entailed the unconstitutionality of a law prohibiting the carry of an unlicensed handgun in the home for self-defense purposes, but the Heller Court made clear that the Second Amendment extends to arms that are in common use for "traditionally lawful purposes, such as self-defense within the home." *Id*. 554 U.S. at 577. The *Heller* Court also interpreted "arms" in the Second Amendment as "weapons of offense *or* armor of defense." *Id*. at 581 (cleaned up; emphasis added). *See also McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) ("our central holding in *Heller*: that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense …" and not exclusively for self-defense). In short, there is no "self-defense" limitation on the Second Amendment right to keep and bear arms. U.S. Const. amend II. Defendants' attempt to engraft such a requirement into the Second Amendment's text should be rejected.

E. Defendants Cannot Meet Their Burden to Offer Historical Analogues.

With the initial legal question answered, the burden is then placed on Defendants to "justify its regulation by demonstrating that it is consistent with the Nations' 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 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n.10 (1961)).

Under *Bruen*, three considerations must guide the Court's consideration of historical evidence. First, any proffered historical analogue must be from, at, or around the Founding, centering on 1791, when the Second Amendment was ratified. *See Bruen*, 597 U.S. at 34-36. "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them." *Heller*, 554 U.S. at 634–635. Thus, "not all history is created equal," and courts must not overweigh

historical evidence that long predates or postdates the Founding era. *Bruen*, 597 U.S. at 34; see also Smith, *Not all History is Created Equal*, SSRN, Oct. 1, 2022, https://bit.ly//3CMSKjw. By looking to 1791, the Court in *Bruen* continued its practice of focusing on the Founding era when analyzing constitutional rights. *See, e.g., Ramos v. Louisiana*, 140 S. Ct. 1390, 1396 (2020); *Timbs v. Indiana*, 139 S. Ct. 682, 687–88 (2019); *Virginia v. Moore*, 553 U.S. 164, 168 (2008).

Second, to be a "proper analogue," a law must be "relevantly similar" based on "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Bruen*, 597 U.S. at 27-29. Founding-era laws arising in different contexts, and for different reasons, will be inapt comparisons. For example, wartime export regulations in 1791 tell us little about whether the federal government can ban the manufacture for sale, sale, transfer, distribution, sale *or* possession of switchblades. Such Founding era laws regulated the ability to export firearms and ammunition during a time of war (the "how"). And the rationale for such restrictions included preventing foreign adversaries from acquiring our arms (the "why"). Neither has any resemblance to an individual's right to manufacture, transport, distribute, sell, or possess a knife for traditionally lawful purposes, including self-defense.

Third, historical analogues must be representative. Laws existing in only a few jurisdictions—historical "outlier[s]"—should be disregarded. *Bruen*, 597 U.S. at 29-30. A smattering of regulations is not a "historical tradition" of regulation sufficient to inform the original public meaning at the Founding. *See, e.g., id.* at 64-65; *id.* at 44-45; *Koons v. Platkin*, No. 22-7464, 2023 WL 3478604, at *68 (D.N.J. May 16, 2023); *see also id.* at *85 (finding one state law and 25 local ordinances, covering less than 10% of the nation's population, insufficient). Similarly, territorial laws are afforded "little weight" because they were "localized," "rarely subject to judicial scrutiny," and "short lived." *Bruen*, 142 S. Ct. at 66-68; see also *Antonyuk v. Hochul*, 639 F. Supp. 3d 232, 332 (N.D.N.Y. 2022) (*Antonyuk II*).

In *Heller*, this Court explained that the only tradition of historical regulation that can excuse a ban on a type of arm is the tradition of restricting "dangerous and

unusual weapons." 554 U.S. at 627. By definition, this principle does not extend to arms "in common use." *Id*. As discussed above, Defendants fails to contradict Plaintiffs' evidence that automatically opening knives are no more dangerous than any other folding pocket knife. Even if Plaintiffs' undisputed evidence is ignored, automatically opening knives are indisputably in common use.

Here, Defendants must prove that automatically opening knives are *both* "dangerous *and* unusual" weapons, and thus are not protected by the Second Amendment. This is a conjunctive test. The arm in question must be *both* "dangerous" and "unusual." *See Caetano v. Massachusetts,* 577 U.S. 411, 420 (2016). If the arm in question is in common use, or commonly possessed by the people for lawful purposes, such as self-defense, then it necessarily cannot be "unusual."

In support of its motion for summary judgment, Plaintiffs submitted extensive evidence establishing that automatically opening knives are in common use. ECF No. 17 at 19-30. In its opposition, Defendant agrees with Plaintiffs' evidence regarding the overall numbers of automatically opening knives in circulation and the number of jurisdictions that permit such knives determine whether an arm is "in common use." ECF No. 25 at 34-36. Yet, Defendants still make the unsupported claim that such knives are not in common use (*id*. at 35); but they provide no evidence that disputes Plaintiffs' evidence.

i. Defendants' Own Arguments Confirm Automatically Opening Knives are In Common Use.

Because Defendants fail to provide any evidence that automatically opening knives (switchblades) are both dangerous and unusual, they fail to justify the constitutionality of the FSA. As such, this Court's analysis can end here. In fact, there is no genuine issue of material fact as to whether such knives are commonly used for lawful purposes. The Department of Justice made this clear in 1958:

> "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.[9]

See ECF No. 21 at 119-120, 147.

Nonetheless, Defendants' own argument supports Plaintiffs' position. First, in claiming that such knives are not in common use for lawful purposes, Defendants incorrectly assert it is Plaintiffs' burden to "demonstrate that switchblades are in common use." ECF No. 25, at 34. *Heller* made it clear the "dangerous and usual" or "common use test" is found within the Supreme Court's "historical tradition" inquiry. *Heller*, 554 U.S. at 627. This historical inquiry was adopted by the Fifth Circuit in *United States v. Diaz,* 116 F.4th at 465. As such, Defendants have the burden to show that switchblades are *both* "dangerous and unusual," and thus, not in common use for lawful purposes. *Bruen*, 597 U.S. at 47.

Even though it is not their burden, Plaintiffs have proven that switchblades are in common use under every metric. ECF No. 17, at 22-30. While Defendants attempt to discount Plaintiffs' evidence supporting common use of automatically opening knives, Defendants fail to provide any evidence to meet their burden, let alone anything contradicting Plaintiffs' evidence. In any case, Defendants agree that in determining common use, the absolute number of weapons at issue and the jurisdictions where the arm may lawfully be possessed must be considered. ECF No. 25 at 34. The only evidence before this Court, however, supports the conclusion that automatically opening knives are in common use under both of those metrics. *See* ECF No. 18 at 35-37; ECF No. 20 at 224-225; ECF No. 21 at 16, 114, 119, 146, 148, 205, and 210; ECF No. 22 at 96, 106-107, 111-112, 134-135, and 141.

Additionally, the legislative history of the FSA establishes that more than a million automatically opening knives were manufactured per year by just two manufacturers in 1958 (ECF No. 20 at 224-225; ECF No. 21 at 16, 114, 119, 146, 148); moreover, monthly shipments distribute three to four thousand knives per

[9] To clarify, Plaintiffs do not concede that any hypothetical state prohibitions on such knives are permissible under the Second Amendment.

month (ECF No. 21 at 16). Today, thousands of different models of automatically opening knives exist for sale for lawful use. ECF No. 17 at 28 n.6; ECF No. 18 at 35. Multiple publications as well as the top knife designers in the world (many of which have designed the automatically opening knives available today) agree that automatically opening knives are commonly possessed and used throughout the country. ECF No. 22 at 96, 106-107, 111-112, 134-135, and 141. Defendants offered no contrary evidence.

Defendant's *opinion* that a definitive total number was not produced does not outweigh Plaintiffs' evidence. Defendant fail to provide any evidence to *indicate* that such knives are not in common use. In fact, Defendants claim that such knives are easily acquired throughout the country. *See* ECF No. 25 at 21 (citing Paul A. Clark, *Criminal Use of Switchblades: Will the Recent Trend towards Legalization Lead to Bloodshed?,* 13 Conn. Pub. Int. L.J. 219, 242 ("There are only a handful of recorded prosecutions, *despite reports of widespread distribution*."); *see also id*. ("switchblades are regularly and publicly offered for sale…").

Additionally, Defendants' inaccurate jurisdictional analysis also supports Plaintiffs position.[10] *See also Canjura*, 494 Mass. at 508, 515–516. Defendant claims that "five states and the District of Columbia have an outright ban switchblades or other automatic knives." ECF No. 25 at 35. Notably, this number is down from the prior FSA challenge in which Defendants claimed there were eight states that had outright bans. Both Illinois and New York provide exceptions to their prohibition if an individual obtains a FOID card (Illinois) or uses the switchblade while hunting, fishing, and trapping and holds a license to hunt, fish or trap (New York). See Illinois Comp. State. Ann. 5/24-1(e)(2) (West 2023); and N.Y. Penal Law § 265.20(a)(6). In other words, as Plaintiffs show in their opening brief, at least 45 states do not have an outright prohibition on switchblades. ECF No. 17 at 25.

[10] Even if Defendant's claims were accurate, the small number of jurisdictions that prohibit such knives do not outweigh the vast majority of jurisdictions that do not prohibit them.

While Defendants claim Maryland bans the sale and concealed carry of automatically opening knives, the state still allows their possession and open carry. Md. Code Ann., Crim. Law, § 4-101 (West 2023). New Jersey allows the possession of automatically opening knives with an "explainable purpose." N.J. Stat. Ann. § 2C:39-3 (West 2023). While Defendants claim that "four other states also prohibit or restrict *concealed carry* of switchblades or automatically opening knives" this is just another way of saying that these jurisdictions allow for the sale, acquisition, possession, and open carry of such knives. ECF No. 25 at 36 (emphasis added). Thus, as Plaintiffs accurately contended in their motion, the *vast majority* of states *do not* prohibit the sale or possession of switchblade knives.[11] Similarly, the Supreme Court in *Caetano* found that 45 states did not prohibit stun guns, establishing common use. *Caetano*, 577 U.S. 411 at 420. Thus, with 45 states allowing automatically opening knives, it is undisputed that under the jurisdictional analysis, they are in common use.

Finally, Defendants opine that Plaintiffs cannot "show switchblades are in common use because they make up an unknown fraction of some larger number of folding knives" and "Plaintiffs cite no case holding that a particular weapon is in common use because of the prevalence of another weapon," but Defendants fail to provide any evidence to the contrary and ignore the court's analysis in *Canjura*. *See* ECF No. 25 at 35; and *Canjura*, 494 Mass. at 515.

*A*s established by Plaintiffs' evidence, an automatically opening knife is merely a variation of a folding pocket knife. ECF No. 17 at 28-29. In fact, the difference between an unrestricted assisted opening pocket knife and a banned automatically opening pocket knife are *extraordinarily minute*. *Id*. Both pocket

[11] Defendants' assert that "local jurisdictions often impose their own bans," but the assertion is of no moment. See ECF No. 25 at 36. Defendants cite only six city codes to justify this *broad assumption*. Plainly, seven cities within the entire United States are insufficient to make the claim that local jurisdictions "often" implement bans on automatically opening knives. As such, this assertion should be rejected.

knives have a handle, spring, and blade. *Id*. The only difference in these two pocket knife variations is where the user places a small amount of pressure to open the knife. *Id.* It is either opened by pressing on the blade or by pressing a button. There is no difference in speed, function, or use. *See* ECF No. 18 at 35-37, ¶¶ 40-48; ECF No. 21 at 201, 204-211; ECF No. 22 at 96, 106-107, 111-112, 134-135, and 141. There is also no difference in concealability or function. *Id*.

One-hand opening folding pocket knives are some of the most widely used knives in the country. They account for 80% of the current market. ECF No. 21 at 205, ¶ 36, and 85. Because Defendants do not provide any evidence to differentiate between an automatically folding pocket knife and another folding pocket knife, such as an assisted opening knife, they cannot claim that automatically opening knives are distinct from a folding pocket knife. An automatically opening knife (switchblade) is in common use—as they are merely a variation of the folding pocket knife.

ii. The Historical Analysis Justifies Granting Plaintiffs' Motion for Summary Judgment.

As stated above, the historical analysis on arms bans was already completed by *Heller* and reiterated by *Bruen*. *Heller* established the relevant application of this historical analysis. 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 20-21. The Supreme Court made clear that this analysis was a historical matter. *Id*.

As shown above, an automatically opening knife is no more dangerous than any other folding pocket knife—and are certainly not more dangerous than a constitutionally protected firearm (handgun). Defendants fail to dispute this fact with any evidence. Further, applying Plaintiffs' uncontested evidence regarding the number of automatically opening knives in the United States, the jurisdictional analysis, and the categorical analysis, all of which Defendants fail to dispute with

any evidence, automatically opening knives are in common use. As such, they cannot be banned. The analysis is over.

Defendants appear to concede this point. "The Supreme Court already undertook the historical analysis needed to determine that the history of regulations on 'dangerous and unusual weapons' fairly support a principle that weapons 'not typically possessed by law-abiding citizens for lawful purposes' are not protected by the Second Amendment," citing *Heller*, 554 U.S. at 627. *See* ECF No. 25 at 38. By this statement, Defendants concede Plaintiffs' contention that the "dangerous and unusual" analysis is part of the "historical analysis" conducted by *Heller*. Defendants also concede that this historical analysis supports the principle that "weapons 'not typically possessed by law-abiding citizens for lawful purposes' are not protected by the Second Amendment."[12] *Id*. Nonetheless, if this Court were inclined to revisit the historical analysis, the small number of historical laws regulating some bladed arms offered by the Defendants falls well short of their burden to establish an historical tradition that would justify the FSA.

iii. Restrictions on the Sale and Use of Bladed Weapons.

If Plaintiffs and this Court were to blindly accept all the cited historical laws that allegedly justify the FSA, Defendants have—*at most*— cited to nine specific *state laws* from the Founding Era through 1885, and an additional 12 *state* laws enacted in the 1950s. In other words, Defendants claim that in approximately 186 years (1837 through 2023), a total of 21 state laws that regulated various actions with certain bladed arms—*mainly restricting the manner in which said arms were carried*—justify an outright ban on all interstate commerce and the sale or possession of automatically opening knives within any federal land and Indian country. This is woefully insufficient to satisfy its burden under *Heller* and *Bruen*. Most telling, Defendants *fail to provide a single federal law* that banned the sale,

[12] Oddly, Defendants state, "the question then is not whether the history of a particular weapon shows that it is dangerous and unusual." But Plaintiffs have never made this assertion. And indeed, the question is whether such arms are typically possessed by law-abiding citizens for lawful purposes. They are.

transfer, transportation, or possession of any bladed arm (or firearm) of any kind within the United States. The analysis need not go further. Defendants have failed to meet their burden.

Nonetheless, Defendants cite only *two laws* that were enacted before 1850 that prohibited sale and possession of knives of any kind. However, the 1837 Georgia law was held unconstitutional in *Nunn v. State* and invalidated *in its entirety*. *See Nunn v. State,* 1 Ga. 243, 251 (1846). As such, it cannot be considered authority justifying the FSA. In fact, Plaintiffs contend precisely the opposite as *Heller* described the decision in *Nunn* to "perfectly capture[] the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause, in continuity with the English right:"

> "The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this right, originally belonging to our forefathers, trampled under foot by Charles I and his two wicked sons and successors, re-established by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own Magna Charta!"

Heller, 554 U.S. at 612–13.

As such, the single remaining 1838 Tennessee law is simply an outlier. Defendants also attempt to mislead regarding the 1838 Mississippi law allegedly banning "the odious and savage practice of wearing dirks and bowie-knives or pistols." ECF No. 25 at 41-42. The referenced law *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…" 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. There is no evidence that any such law regulating any kind of knife

was ever passed. Simply, Defendants cannot justify the prohibitions enforced by the FSA by relying on a hypothetical law that was never passed.

Moreover, early *tax laws* provide no justification for the challenged prohibitions. The 1837 Alabama tax law cited by the Defendants did impose a tax on the selling, giving or disposing of any "bowie knife or Arkansas toothpick." ECF No. 25 at 41. However, this is far from an outright ban on all interstate commerce or the sale or possession of switchblades in large portions of the country. The same is true for the other tax law referenced by Defendants in the Florida Territory in 1838. *Id*. The FSA does not attempt to impose a tax on the sale of automatically opening knives. It bans all interstate commerce within the United States and all sale or possession of automatically opening knives within any federal land and within Indian country.

Defendants' reliance on the few restrictions placed on legal minors also provides no justification for the current ban. ECF No. 25 at 42. The 1856 Tennessee law prohibiting sales to *minors* was merely a restriction on legal minors. Any legal adult was still 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. See Act of Feb. 26, 1856, ch. 81, § 2, 1855–1856 Tenn. Acts 92, 92. Similarly, the 1859 Kentucky law prohibiting "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 being unconstitutional on its face, it is not an outright ban on the manufacture, transport, distribution of knives in interstate commerce and the sale or possession of such knives within any federal land or Indian country. The three other bans on the sale to minors referenced by Defendants (1878 Mississippi, 1883 Kansas, and 1885 Illinois) do not provide any

analogous historical support that the ***federal government*** can impose an outright ban on all interstate commerce, as well as the sale or possession of a certain arm; and the laws come far too late after the relevant time period to be given any weight by this Court.[13]

Defendants claim that 14 states banned *concealed carry* of bowie knives between 1850 and 1875, and between 1875 and 1900 that number rose to 22 states. This 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 manufacture, transport, distribution, of bladed arms in interstate commerce, nor any restrictions on the sale or possession of bladed arms within any federal land or Indian country. 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 that era. *Bruen*, 597 U.S. at 66 ("late-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."); *see also* ECF 17 at 36-37.

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 to Defendants' reliance on the restrictions placed specifically on switchblades in the 1950s. ECF No. 25, at 43. In fact, *Bruen* refused to consider laws enacted this far from the Founding era as any historical evidence. *Bruen*, 597 U.S. at 66, n.28.

[13] 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 Defendants' near-total-switchblade ban.

Thus, Defendant fails to meet their burden to establish an historically analogous regulation that could justify the ban imposed by the FSA.

iv. Restrictions on the Export and Transportation of Arms and Ammunition.

Unable to identify analogous regulations on knives that justify the FSA, Defendants claim that "early American history also reveals a related, robust tradition of regulation on the sale and transport of arms and ammunition" justifies the FSA. ECF No. 25 at 44-46. Yet, Defendants' argument is largely premised on either racist or outright unconstitutional laws or laws so fundamentally distinct from the FSA they provide no justification for the continued enforcement of the FSA. As such, Defendants' historical references bear no authority in this case.

First, Defendants place great significance on the Act of May 22, 1794, which prohibited the exportation of certain arms out of the United States for a period of one year, claiming this single, limited prohibition on exportation "provide powerful evidence" that Congress believed it could place restrictions on firearms "across borders." ECF No. 25 at 45. However, as made clear in *Heller*, "we would not stake our interpretation of the Second Amendment upon a single law…." *Heller*, 554 U.S. at 632. Moreover, the Act of May 22, 1794 was imposed on *international trade* in response to international tensions and concerns about the potential involvement of the United States in conflicts arising from the French Revolutionary Wars. See David P. Currie, *The Constitution in Congress: The Third Congress, 1793-1795*, University of Chicago Law Review, Vol. 63, No. 1 (Winter 1996), at 1-4, 17-21. Under President George Washington's administration, the United States pursued a policy of neutrality, and the embargo was implemented to prevent the United States from indirectly supporting one side or the other in the ongoing European conflicts, as well as to keep arms local in case of an armed conflict making its way to the

United States. *Id*. The policy was expressed in the April 22, 1793 Proclamation of Neutrality given by George Washington. *Id*. The goal was to protect American interests and avoid the potential pitfalls of involvement in the conflicts between the European powers. This is precisely why the Act still "encourage[ed] the importation of the same [arms]" during this period by removing any duty on such imports. *See* Act of May 22, 1794, ch. 33, section 5. Importantly, the Act granted no power for the federal government to prohibit or even restrict commerce of arms within the United States. This fact is clear, considering Defendants fail to provide any historical law from 1794 through 1958 that granted the federal government such power.

Defendants also cite colonial "restrictions on the commercial sale of firearms" from the colonies of Massachusetts, Connecticut, Maryland, and Virginia, which made it a crime to "sell, give, or otherwise deliver firearms or ammunition to Indians." ECF No. 25 at 44. However, laws of several colonies and states disarming classes of people considered to be dangerous, specifically including those unwilling to take an oath of allegiance, slaves, and Native Americans, are not relatively similar historical analogues delimiting outer bounds of right to keep and bear arms; and these racists laws disarmed people by class or group, something that is repugnant:

> "Laws that disarmed slaves, Native Americans, and disloyal people may well have been targeted at groups excluded from the political community—*i.e.*, written out of "the people" altogether—as much as they were about curtailing violence or ensuring the security of the state. Their utility as historical analogues is therefore dubious, at best."

United States v. Rahimi, 61 F.4th 443, 457 (5th Cir.), *cert. granted*, 143 S. Ct. 2688 (2023).

Nor can these laws be used to justify the broad category of "controlling firearms trade." Such a generalized comparison would justify *any* regulation of

arms. And notably, none of the laws cited by Defendants restricted the commercial sale of *bladed weapons*. They restricted firearms and ammunition, and not knives. Neither are early colonial and state restrictions on gunpowder sufficiently relevant to justify the FSA. Specifically, the Massachusetts, Connecticut, New Jersey, and New Hampshire restrictions cited by Defendants merely required *licensing or inspection* of gun powder before it could be sold. ECF No. 25 at 45-46.

There is no licensing or inspection requirement in the FSA. It is a complete ban on all interstate commerce and possession within federal land and Indian country. There is also a distinct and fundamental difference between early gun powder and automatically opening knives. In the Colonial era, gun powder was far more volatile and explosive than modern gun powders. As such, there was a very real fire danger in its storage, use, and transportation. The laws were put in place to mitigate this danger. On the other hand, there is no inherently dangerous nature with switchblades, a fact that the federal government made clear in 1958 when William P. Rogers, then Deputy Attorney General, submitted a letter on behalf of the Department of Justice refusing to support enactment of the FSA:

> "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.

ECF No. 21 at 119 (emphasis added).

This official position discredits Defendants' position today. Defendants' official position in 1958 is also reinforced by the fact that, other than the FSA's own "ballistic knife" prohibition, the federal government does not prohibit or even limit the interstate commerce or possession of any other kind of bladed weapon.[14] In fact, there are no federal restrictions on pocket knife, fixed-blade knife, bowie knife, stiletto, dirk, dagger, sword, spear, kitchen knife or other bladed instruments. The fact is an automatically opening knife is no different from any other folding knife—a fact that Defendants fail to rebut by providing any contrary evidence. And the historical regulations requiring *licensing or inspection* on *explosive* gun powder are irrelevant to the FSA and offer no justification for Defendants' near-total-switchblade knife ban. Thus, there is no historically relevant and analogous laws or regulations that justify the outright prohibition of all interstate commerce, including the sale and possession of automatically opening knives under the FSA within all federal land and Indian country.

v. Defendants' "Sensitive Places" Argument is Without Merit.

Defendants assert that this case is a "facial challenge," inferring limitations that do not exist here. ECF No. 25 at 46-47. Indeed, in *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 415 (2015), the Supreme Court clarified that facial challenges under the Fourth Amendment are "not categorically barred or especially disfavored," and that it "has never held that these claims (facial challenges) cannot be brought under *any otherwise enforceable provision of the Constitution*." *Id.* (emphasis added). Indeed, *Patel* clarified that it "has allowed such challenges to proceed under a diverse array of constitutional provisions," citing *Heller*, 554 U.S. 570 (Second Amendment). *Id*. *Patel* also cited Fallon, *Fact and Fiction About Facial*

[14] Note that the FSA was amended almost 30 years later in 1986 to prohibit knives defined as "ballistic knives." While not specifically challenged in this case, Plaintiffs do not concede such prohibition is constitutional under *Heller* and *Bruen*.

Challenges, 99 Cal. L.Rev. 915, 918 (2011) (pointing to several terms in which the Supreme Court "adjudicated more facial challenges on the merits than it did as-applied challenges"). *Id.*

Here, Plaintiffs acknowledge they must show the FSA is facially unconstitutional, and have met that threshold showing. Now, under *United States v. Rahimi*, 602 U.S. 680, 691 (2024), the Supreme Court has "clarified that when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to 'justify its regulation.'" *Id.* Accordingly, Defendants bear the burden to prove under the *Heller/Bruen* framework that the FSA is consistent with this Nation's tradition of regulating arms in a setting historically analogous to FSA's broadly defined ban on the manufacture, transport, or distribution in interstate commerce of switchblade knives and their sale *or* possession within any federal land or Indian country. 15 U.S.C. §§ 1242, 1243. Defendants do not come close to meeting their burden.

Instead, Defendants argue that historical regulations of arms in "sensitive places such as government facilities" (courthouses, hospitals, military bases) shows that the FSA is somehow constitutional under the Second Amendment. ECF No. 25, at 46-49. But the FSA's coverage is so sweeping that it turns all federal land (roughly 640 million acres) and all Indian country (about 56 million acres) into "sensitive places," which acts to effectively abolish the Second Amendment rights of law-abiding citizens to keep and bear arms. Moreover, Plaintiffs' case is not about switchblades at federal courthouses, hospitals, or military bases, so Defendants' argument does not bear on the case. That said, Defendants' argument absurdly covers roughly 30% of the United States; and as such, it lacks merit, just as in *Bruen*, where the government attempted to characterize New York's proper-cause requirement as a "sensitive place" law lacked merit "because there is no historical

basis for New York to effectively declare the island of Manhattan a 'sensitive place' ...." *Bruen*, 576 U.S. at 31.

To make matters worse, to justify their law, Section 1243, Defendants rely on a tradition—stemming from the Statute of Northampton—that *Bruen* expressly rejected as irrelevant to broad prohibitions on public carry. ECF No. 25, at 47; *Bruen*, 597 U.S. at 40-41. Defendants fails to offer any relevantly similar Founding-era analogues to their law, looking mostly to laws passed in southern states after the Fourteenth Amendment's ratification in 1868; and since those laws are inconsistent with the Founding era's treatment of the right to carry, *Bruen* instructs they are not relevant.

Here, Defendants focus only on the facial challenge to Section 1243 of the FSA. And in response, Plaintiffs have alleged and proven their inability to sell, possess, or use such knives within any federal land and any Indian country for any lawful purposes, such as self-defense and recreation. *See* ECF No. 1 at 6-9; and *see also* ECF No. 18 at 11-64 (Exs. B-G).

V. THE INJUNCTION SHOULD APPLY NATIONWIDE

Plaintiffs seek to permanently enjoin the unconstitutional prohibitions in place under the FSA. A nationwide injunction is the only relief that should be granted by this Court as the switchblade knife ban not only violates the Second Amendment protected rights of the Plaintiffs, but any other individual or organization in the country that seeks to obtain and acquire an automatic opening knife *via* interstate commerce; by sale or possession of such knives in large portions of the western half of this country (any federal land and within Indian country). These individuals include Knife Rights' members, who reside across the United States.

While there may be instances in which courts will not grant a nationwide injunction, this is not the case here. The scope of the remedy is dictated by the scope of the violation. *Texas v. United States*, 555 F.Supp.3d 351, 439 (2021). Where a law is unconstitutional on its face, and not simply in its application to certain plaintiffs, a nationwide injunction is appropriate." *E. Bay Sanctuary Covenant v. Trump,* 349 F. Supp. 3d 838 (N.D. Cal. 2018); *see also Califano v. Yamasaki*, 442 U.S. 682, 702, (1979) ("[T]he scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff."). In fact, "[o]nce a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation." *Hills v. Gautreaux*, 425 U.S. 284, 293–94, (1976); *see also City of S.F. v. Sessions*, 349 F.Supp. 3d 924 (N.D. Cal. 2018). "When the court believes the underlying right to be highly significant, it may write injunctive relief as broad as the right itself." *City of Chicago v. Barr*, 513 F. Supp. 3d 828, 837 (N.D. Ill. 2021), citing *Zamecnik v. Indian Prairie Sch. Dist. No. 204*, 636 F.3d 874, 879 (7th Cir. 2011).

Limiting relief to the individual Plaintiffs, retailer Plaintiffs, and Plaintiff Knife Rights and its members would allow enforcement of an unconstitutional prohibition to continue across the vast majority of the United States. "[T]he deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As such, if this Court were to limit any injunction to only Plaintiffs, it would permit irreparable harm on the rest of the public through the FSA's unconstitutional enforcement. This Court should not permit Defendants to continue to strip any individual of their constitutional rights any longer. Moreover, considering the nationwide context of automatic opening knife regulation, the large majority of states *permit* their sale, acquisition, possession, use, and carry for lawful purposes, including self-defense. As such, a nationwide injunction against the FSA would rightfully bring the federal government in line with the majority of state jurisdictions in this country.

VI. CONCLUSION

Based on the foregoing, Plaintiffs request that this Court issue an order declaring the Federal Switchblade Act, 15 U.S.C. §§ 1241-1244, enacted in 1958 as Pub. Law 85-623, unconstitutional under the Second Amendment.[15] Plaintiffs also ask that the challenged aspects of the law be permanently enjoined through a nationwide injunction.[16]

January 31, 2025

Respectfully submitted,

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[15] Plaintiffs do not challenge any importation regulations of the FSA.

[16] This consolidated brief adheres to the page length requirements under Texas Local Rules, Rule 7.2 and Rule 56.5.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS, FORTH WORTH DIVISION

KNIFE RIGHTS, INC.; et al., Plaintiffs, v. MERRICK B. GARLAND, Attorney General of the United States; UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	Case No. 4:24-cv-926 Hon. Judge Mark Pittman

DECLARATION OF JOHN W. DILLON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

DECLARATION OF JOHN W. DILLON

I, John W. Dillon, declare as follows:

1. I am counsel for Plaintiffs in the above-titled action. I am an attorney licensed in the State of California. I am admitted *Pro Hac Vice* in the Northern District of Texas. I am over the age of 18, have personal knowledge of the facts referred to in this declaration, and am competent to testify to the matters stated below.

2. I have personally verified the documents described below an used the factual information within each document in the drafting of the Points and Authorities in Support of Plaintiffs' Notice of Motion and Motion for Summary Judgment, and Plaintiffs Consolidated Opposition to Defendant's Motion to Dismiss and Reply in Further Support of Plaintiffs' Summary Judgment Motion.

3. The documents identified below have been identified and included in as Exhibits in this declaration in support of Plaintiffs Consolidated Opposition to Defendant's Motion to Dismiss and Reply in Further Support of Plaintiffs' Summary Judgment Motion.

4. Attached hereto as **Exhibit A**, is a true and correct copy of the Congressional Research Service, *Federal Land Ownership: Overview and Data*, Updated Feb. 21, 2020.

5. Attached hereto as **Exhibit B**, is a true and correct copy of excerpts from the "U.S. Dept. of the Interior, Natural Resources Revenue Data, *Native American Ownership and Governance, et al.*" also available at: https://revenuedata.doi.gov/how-revenue-works/native-american-ownership-governance/.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that my declaration was executed on January 30, 2025, in Carlsbad, California.

John W. Dillon

EXHIBIT A

Congressional Research Service
Informing the legislative debate since 1914

Federal Land Ownership: Overview and Data

Updated February 21, 2020

Congressional Research Service
https://crsreports.congress.gov
R42346

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The federal government owns roughly 640 million acres, about 28% of the 2.27 billion acres of land in the United States. Four major federal land management agencies administer 606.5 million acres of this land (as of September 30, 2018). They are the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture. A fifth agency, the Department of Defense (excluding the U.S. Army Corps of Engineers), administers 8.8 million acres in the United States (as of September 30, 2017), consisting of military bases, training ranges, and more. Together, the five agencies manage about 615.3 million acres, or 27% of the U.S. land base. Many other agencies administer the remaining federal acreage.

The lands administered by the four major agencies are managed for many purposes, primarily related to preservation, recreation, and development of natural resources. Yet the agencies have distinct responsibilities. The BLM manages 244.4 million acres and the FS manages 192.9 million acres under similar multiple-use, sustained-yield mandates that support a variety of activities and programs. The FWS manages 89.2 million acres of the U.S. total, primarily to conserve and protect animals and plants. In FY2018, the NPS managed 79.9 million acres in 417 diverse units to conserve lands and resources and make them available for public use. The 8.8 million acres of DOD lands are managed primarily for military training and testing.

The amount and percentage of federally owned land in each state vary widely, ranging from 0.3% of land (in Connecticut and Iowa) to 80.1% of land (in Nevada). However, federal land ownership is concentrated in Alaska (60.9%) and 11 coterminous western states (45.9%), in contrast with lands in the other states (4.1%). This western concentration has contributed to a higher degree of controversy over federal land ownership and use in that part of the country.

Throughout America's history, federal land laws have sought to dispose of some federal lands while keeping others in federal ownership. During the 19th century, many laws encouraged western settlement through federal land disposal. Mostly in the 20th century, emphasis shifted to retention of federal lands. Congress has provided the agencies with varying land acquisition and disposal authorities, ranging from restricted (NPS) to broad (BLM). As a result of acquisitions and disposals, from 1990 to 2018, total federal land ownership by the five agencies declined by 31.5 million acres (4.9%), from 646.9 million acres to 615.3 million acres. Much of the decline is due to BLM land disposals in Alaska and reductions in DOD ownership in favor of other legal arrangements. By contrast, land ownership by the NPS, FWS, and FS increased over the 28-year period. Further, 15 states had decreases of federal land during this period and the other states had varying increases.

Numerous issues affecting federal land management are before Congress. One set of issues relates to the extent of federal ownership and whether to decrease, maintain, or increase the amount of federal holdings; the concentration of federal lands in the West; the suitability and use of acquisition and disposal authorities; and the amount, type, and location of use of acquisition funding. A second issue is the priority of acquiring new lands versus addressing the condition of current federal infrastructure. The $19.38 billion maintenance backlog of the four major land management agencies is a factor in the debate. A third focus is the optimal balance between land protection and use (e.g., for energy development, livestock grazing, recreation, and other purposes), and whether federal lands should be managed primarily to benefit the nation as a whole or to benefit the localities and states in which the federal lands are located. Fourth, border control on federal lands along the southwestern border presents particular challenges due to the length of the border, differing agency missions, and divergent views on constructing border barriers.

Contents

Figures

Tables

Contacts

Introduction

Today the federal government owns and manages roughly 640 million acres of land in the United States, or roughly 28% of the 2.27 billion total land acres.[1] Four major federal land management agencies manage 606.5 million acres of this land, or about 95% of all federal land in the United States. These agencies are as follows: Bureau of Land Management (BLM), 244.4 million acres; Forest Service (FS), 192.9 million acres; Fish and Wildlife Service (FWS), 89.2 million acres; and National Park Service (NPS), 79.9 million acres. Most of these lands are in the West, including Alaska. A fifth agency, the Department of Defense (DOD) administers 8.8 million acres in the United States,[2] about 1% of all federal land.[3] Together, the five agencies manage about 615.3 million acres. The remaining acreage, approximately 4% of all federal land in the United States, is managed by a variety of other government agencies.

Ownership and use of federal lands have stirred controversy for decades.[4] Conflicting public values concerning federal lands raise many questions and issues, including the extent to which the federal government should own land; whether to focus resources on maintenance of existing infrastructure and lands or acquisition of new areas; how to balance use and protection; and how to ensure the security of international borders along the federal lands of multiple agencies. Congress continues to examine these questions through legislative proposals, program oversight, and annual appropriations for the federal land management agencies.

Historical Background

Federal lands and resources have played a significant role in American history, adding to the strength and stature of the federal government, serving as an attraction and opportunity for settlement and economic development, and providing a source of revenue for schools, transportation, national defense, and other national, state, and local needs.

The formation of the U.S. federal government was particularly influenced by the struggle for control over what were then known as the "western" lands—the lands between the Appalachian Mountains and the Mississippi River that were claimed by the original colonies. The original

[1] Total federal land in the United States is not definitively known. The estimate of 640 million acres presumes that the five agencies of focus in this report have accurate data on lands under their jurisdiction. The combined total for the five agencies is estimated at 615.3 million acres, as shown in **Table 1**. Other agencies are presumed to encompass about 20 million acres of federal land, although this estimate is rough. The estimate of 640 million acres generally excludes lands in marine refuges and national monuments and ownership of interests in lands (e.g., subsurface minerals, easements). It also does not reflect Indian lands, many of which are held in trust by the federal government but are not owned by the federal government. According to the Bureau of Indian Affairs (BIA), the United States holds approximately 56 million acres in trust for various Indian tribes and individuals. There are also other types of Indian lands. See U.S. Department of the Interior, BIA, "Frequently Asked Questions," at https://www.bia.gov/FAQs/.

[2] Acreage figures for the four land management agencies are current as of September 30, 2018; the Department of Defense (DOD) figure is current as of September 30, 2017 (the most recent available). The DOD figure excludes land managed by the U.S. Army Corps of Engineers.

[3] In addition, Forest Service (FS), Fish and Wildlife Service (FWS), National Park Service (NPS), and DOD manage varying acreages in the U.S. territories; FWS manages additional acres of marine refuges and national monuments; and DOD manages additional acres overseas.

[4] In this report, the term *federal land* is used to refer to any land owned (fee simple title) and managed by the federal government, regardless of its mode of acquisition or managing agency; it excludes lands administered by a federal agency under easements, leases, contracts, or other arrangements. *Public land* is used to refer to lands managed by the Bureau of Land Management (BLM) as defined in 43 U.S.C. §1702(e).

states reluctantly ceded the lands to the developing new government. This cession, together with granting constitutional powers to the new federal government, including the authority to regulate federal property and to create new states, played a crucial role in transforming the weak central government under the Articles of Confederation into a stronger, centralized federal government under the U.S. Constitution.

Subsequent federal land laws sought to reserve some federal lands (such as for national forests and national parks) and to sell or otherwise dispose of other lands to raise money or encourage transportation, development, and settlement. From the earliest days, these options took on East/West overtones, with easterners more likely to view the lands as national public property, and westerners more likely to view the lands as necessary for local use and development. Most agreed, however, on measures that promoted settlement of the lands to pay soldiers, to reduce the national debt, and to strengthen the nation. This settlement trend accelerated with federal acquisition of additional territory through the Louisiana Purchase in 1803, the Oregon Compromise with England in 1846, and cession of lands by treaty after the Mexican War in 1848.[5]

In the mid-to-late 1800s, Congress enacted many laws to encourage and accelerate the settlement of the West by disposing of federal lands. Examples include the Homestead Act of 1862 and the Desert Lands Entry Act of 1877. Approximately 1.29 billion acres of public domain land was transferred out of federal ownership between 1781 and 2018. The total included transfers of 816 million acres to private ownership (individuals, railroads, etc.), 328 million acres to states generally, and 143 million acres in Alaska under state and Native selection laws.[6] Most transfers to private ownership (97%) occurred before 1940; homestead entries, for example, peaked in 1910 at 18.3 million acres but dropped below 200,000 acres annually after 1935, until being fully eliminated in 1986.[7]

Although several earlier laws had protected some lands and resources, such as salt deposits and certain timber for military use, new laws in the late 1800s reflected the growing concern that rapid development threatened some of the scenic treasures of the nation, as well as resources that would be needed for future use. A preservation and conservation movement evolved to ensure that certain lands and resources were left untouched or reserved for future use. For example, Yellowstone National Park was established in 1872 to preserve its resources in a natural condition, and to dedicate recreation opportunities for the public. It was the world's first national park,[8] and like the other early parks, Yellowstone was protected by the U.S. Army—primarily

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[5] These major land acquisitions gave rise to a distinction in the laws between *public domain lands*, which essentially are those ceded by the original states or obtained from a foreign sovereign (via purchase, treaty, or other means), and *acquired lands*, which are those obtained from a state or individual by exchange, purchase, or gift. About 90% of all federal lands are public domain lands, while the other 10% are acquired lands. Many laws were enacted that related only to public domain lands. Even though the distinction has lost most of its underlying significance today, different laws may still apply depending on the original nature of the lands involved.

[6] U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2018,* Table 1-2, at https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2018.pdf.

[7] U.S. Dept. of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, DC: GPO, 1976), H.Doc. 93-78 (93rd Congress, 1st Session), pp. 428-429. The homesteading laws were generally repealed in 1976, although homesteading was allowed to continue in Alaska for another 10 years.

[8] Act of March 1, 1872; 16 U.S.C. §21, et seq. "Yo-Semite" had been established by an act of Congress in 1864, to protect Yosemite Valley from development, but was transferred to the State of California to administer. In 1890, surrounding lands were designated as Yosemite National Park, and in 1905, Yosemite Valley was returned to federal jurisdiction and incorporated into the park. Still earlier, Hot Springs Reservation (AR) had been reserved in 1832; it was dedicated to public use in 1880 and designated as Hot Springs National Park in 1921.

from poachers of wildlife or timber. In 1891, concern over the effects of timber harvests on water supplies and downstream flooding led to the creation of forest reserves (renamed national forests in 1907).

Emphasis shifted during the 20th century from the disposal and conveyance of title to private citizens to the retention and management of the remaining federal lands. During debates on the Taylor Grazing Act of 1934,[9] some western Members of Congress acknowledged the poor prospects for relinquishing federal lands to the states, but language included in the act left disposal as a possibility. It was not until the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA) that Congress expressly declared that the remaining public domain lands generally would remain in federal ownership.[10] This declaration of permanent federal land ownership was a significant factor in what became known as the Sagebrush Rebellion, an effort that started in the late 1970s to strengthen state or local control over federal land and management decisions. Recently, there has been renewed interest in some western states in assuming ownership of some federal lands within their borders. This interest stems in part from concerns about the extent, condition, and cost of federal land ownership and the type and amount of land uses and revenue derived from federal lands. Judicial challenges and legislative and executive efforts generally have not resulted in broad changes to the level of federal ownership. Current authorities for acquiring and disposing of federal lands are unique to each agency.[11]

Current Federal Land Management

The creation of national parks and forest reserves laid the foundation for the current federal agencies whose primary purposes are managing natural resources on federal lands—the BLM, FS, FWS, and NPS. These four agencies were created at different times, and their missions and purposes differ. As noted, DOD is the fifth-largest land management agency, with lands consisting of military bases, training ranges, and more. These five agencies, which together manage about 96% of all federal land, are described below. Numerous other federal agencies—the U.S. Army Corps of Engineers, Bureau of Reclamation,[12] Post Office, the National Aeronautics and Space Administration, the Department of Energy, and many more—each administer relatively small amounts of additional federal lands.

[9] 43 U.S.C. §§315, et seq.

[10] 43 U.S.C. §§1701, et seq. The Federal Land Policy and Management Act of 1976 (FLPMA) also established a comprehensive system of management for the remaining western public lands, and a definitive mission and policy statement for the BLM.

[11] For a description of these authorities, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al.

[12] The Bureau of Reclamation (Reclamation), a federal agency created in 1902, is responsible for much of the water infrastructure in the 17 states west of the Mississippi River. Reclamation is the largest water wholesaler in the country and provides irrigation water for 10 million acres of farmland. Pursuant to its authorities to develop and maintain water resources infrastructure, Reclamation owns approximately 6 million acres of land in the western United States.

Agencies[13]

Bureau of Land Management

The BLM was formed in 1946 by combining two existing agencies.[14] One was the Grazing Service (first known as the DOI Grazing Division), established in 1934 to administer grazing on public rangelands. The other was the General Land Office, which had been created in 1812 to oversee disposal of the federal lands.[15] The BLM currently administers 244.4 million acres, more federal lands in the United States than any other agency. BLM lands are heavily concentrated (more than 99%) in the 11 contiguous western states and Alaska.[16]

As defined in FLPMA,[17] BLM management responsibilities are similar to those of the FS—sustained yields of multiple uses, including recreation, grazing, timber, energy and minerals, watershed, wildlife and fish habitat, and conservation. However, each agency historically has emphasized different uses. For instance, more rangelands are managed by the BLM, while most federal forests are managed by the FS. In addition, the BLM administers more than 700 million acres of federal subsurface mineral estate throughout the nation.[18]

Forest Service

The FS is the oldest of the four federal land management agencies. It was established in the Department of Agriculture (USDA) in 1905 and is charged with conducting forestry research, providing assistance to nonfederal forest owners, and managing the National Forest System (NFS).[19] Today, the FS administers 192.9 million acres of land in the United States,[20] predominantly in the West, while also managing about three-fifths of all federal lands in the East (as shown in **Table 5**).

The first forest reserves—later renamed national forests—originally were authorized to protect the lands, preserve water flows, and provide timber. These purposes were expanded in the Multiple Use-Sustained Yield Act of 1960.[21] This act added recreation, livestock grazing, and wildlife and fish habitat as purposes of the national forests, with wilderness added in 1964.[22] The

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[13] For a list of CRS experts for federal land management agencies and issues, see CRS Report R42656, *Federal Land Management Agencies and Programs: CRS Experts*, by R. Eliot Crafton.

[14] Paul W. Gates, *History of Public Land Law Development*, written for the Public Land Law Review Commission (Washington, DC: GPO, Nov. 1968), pp. 610-622.

[15] The General Land Office administered the forest reserves prior to the creation of the FS in 1905.

[16] The 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Data on BLM acreage by state was provided by BLM to CRS on December 16, 2019. Figures represent acreage as of September 30, 2018.

[17] FLPMA is sometimes called the BLM Organic Act.

[18] Not all of the more than 700 million acres contain extractable mineral and energy resources.

[19] In 1891, Congress had authorized the President to establish forest reserves from the public domain lands administered by the Department of the Interior (Act of March 3, 1891; 16 U.S.C. §471). This authority was repealed in 1976. See also the Organic Administration Act of 1897, 16 U.S.C. §§473 et seq.

[20] U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System—As of Sept 30, 2018*, Tables 1 and 4, at https://www.fs.fed.us/land/staff/lar/LAR2018/lar2018index.html. Data reflect land within the National Forest System, including national forests, national grasslands, purchase units, land utilization projects, experimental areas, and other areas. The FS manages an additional 28,937 acres in the U.S. territories.

[21] 16 U.S.C. §§528-531.

[22] The Wilderness Act of 1964, 16 U.S.C. §§1131-1136.

act directed that these multiple uses be managed in a "harmonious and coordinated" manner "in the combination that will best meet the needs of the American people." The act also directed the FS to manage renewable resources under the principle of sustained yield, meaning to achieve a high level of resource outputs in perpetuity without impairing the productivity of the lands.

Fish and Wildlife Service

The first national wildlife refuge was established by executive order in 1903, although it was not until 1966 that the refuges were aggregated into the National Wildlife Refuge System (NWRS) administered by the FWS.[23] The NWRS includes wildlife refuges, national monument areas, waterfowl production areas, and wildlife coordination units. Outside of the NWRS, the FWS administers lands for administrative sites, National Fish Hatcheries, and national monument areas. In total, the FWS administers 89.2 million acres of federal land in the United States, of which 76.6 million acres (85.9%) are in Alaska.[24]

The NWRS's mission is to administer a network of lands and waters for the conservation, management, and restoration of fish, wildlife, and plants and their habitats.[25] Other uses (recreation, hunting, timber cutting, oil or gas drilling, etc.) may be permitted, to the extent that they are compatible with the NWRS mission and an individual unit's purpose.[26] However, wildlife-related activities (hunting, bird watching, hiking, education, etc.) are considered "priority uses" and are given priority consideration in refuge planning. It can be challenging to determine compatibility, but the relative clarity of the mission generally has minimized conflicts over refuge management and use, although there are exceptions.[27]

National Park Service

The NPS was created in 1916 to manage the growing number of park units established by Congress and monuments proclaimed by the President.[28] By September 30, 2018, the National Park System had grown to 417 units with 79.9 million acres of federal land in the United States. About two-thirds of the lands (52.5 million acres, or 65. 6%) are in Alaska.[29] NPS units have

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[23] National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. §§668dd-668ee.

[24] U.S. Dept. of the Interior, Fish and Wildlife Service, *2018 Annual Lands Report Data Tables, as of September 30, 2018*, Table 1A, at https://www.fws.gov/refuges/land/PDF/2018_Annual_Report_of_Lands_Data_Tables.pdf. Data reflect federally owned lands, submerged lands, and waters, over which the FWS has sole or primary jurisdiction in the 50 states. The FWS manages an additional 24,773 acres in the U.S. territories and an estimated 662 million acres within the U.S. Minor Outlying Islands, which primarily include marine areas in the Pacific Ocean.

[25] 16 U.S.C. §668dd(a)(2).

[26] In the case where the NWRS mission and a unit's purpose are in conflict, the unit's purpose takes priority (16 U.S.C. §§668dd(a)(4)(D)). For example, see CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): An Overview*, by Laura B. Comay, Michael Ratner, and R. Eliot Crafton.

[27] On some FWS lands, there are preexisting property rights, particularly of subsurface resources, but also easements or rights-of-way. In such cases, use of these rights may conflict with primary uses of a refuge. Where possible, the FWS may seek to acquire these rights through purchase from willing sellers.

[28] NPS was created by the Act of Aug. 25, 1916; 16 U.S.C. §§1-4.

[29] This text identifies the number of NPS units in existence on September 30, 2018, for consistency with the acreage data presented for the other agencies, which are from that date (except for DOD). See U.S. Dept. of the Interior, National Park Service, Land Resources Division, *Acreage by State*, as of 9/30/2018, at https://www.nps.gov/subjects/lwcf/upload/NPS-Acreage-9-30-2018.pdf. Data reflect federally owned lands managed by the NPS, as of September 30, 2018. Also, the NPS managed an additional 26,852 acres in the U.S. territories as of that date. Currently, the National Park System contains 419 units, with 80.0 million acres in the U.S. and an additional 26,852 acres in the territories as of December 31, 2019.

diverse titles—national park, national monument, national preserve, national historic site, national recreation area, national battlefield, and many more.[30]

The NPS has a dual mission—to preserve unique resources and to provide for their enjoyment by the public. Activities that harvest or remove resources from NPS lands generally are prohibited. Park units include spectacular natural areas, unique prehistoric sites, and special places in American history, as well as recreational opportunities. The tension between providing recreation and preserving resources has caused many management challenges.

Department of Defense

The National Security Act of 1947 established a Department of National Defense (later renamed the Department of Defense, or DOD) by consolidating the previously separate Cabinet-level Department of War (renamed Department of the Army) and Department of the Navy and creating the Department of the Air Force.[31] Responsibility for managing the land on federal military reservations was retained by these departments, with some transfer of Army land to the Air Force upon its creation.

There are more than 4,775 defense sites worldwide on a total of 26.9 million acres of land owned, leased, or otherwise possessed by DOD. Of the DOD sites, DOD owns 8.8 million acres in the United States, with individual parcel ownership ranging from 1 acre to more than a million acres.[32] Although management of military reservations remains the responsibility of each of the various military departments and defense agencies, those secretaries and directors operate under the centralized direction of the Secretary of Defense. With regard to natural resource conservation, defense instruction provides that

> The principal purpose of DOD lands, waters, airspace, and coastal resources is to support mission-related activities. All DOD natural resources conservation program activities shall work to guarantee DOD continued access to its land, air, and water resources for realistic military training and testing and to sustain the long-term ecological integrity of the resource base and the ecosystem services it provides.... DOD shall manage its natural resources to facilitate testing and training, mission readiness, and range sustainability in a long-term, comprehensive, coordinated, and cost-effective manner.[33]

Federal Land Ownership, 2018

The 615.3 million acres of federal land in the United States managed by the five major land management agencies represents about 27% of the total land base of 2.27 billion acres. **Table 1** provides data on the total acreage of federal land administered by the four major federal land management agencies and the DOD in each state and the District of Columbia. The lands administered by each of the five agencies in each state are shown in **Table 2**.[34] These tables

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[30] See CRS Report R41816, *National Park System: What Do the Different Park Titles Signify?*, by Laura B. Comay.

[31] Act of July 26, 1947; 50 U.S.C. §3001 et seq. (2012).

[32] See U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense for Infrastructure, *Base Structure Report, Fiscal Year 2018 Baseline (A Summary of the Real Property Inventory Data)*, as of September 30, 2017, VI (hereinafter referred to as DOD FY2018 Baseline). Total DOD Inventory, pp. DOD-29 to DOD-88, at https://www.acq.osd.mil/eie/Downloads/BSI/Base%20Structure%20Report%20FY18.pdf. Unlike the data for the other agencies, the DOD data is current as of September 30, 2017. The source excludes U.S. Army Corps of Engineers lands.

[33] Department of Defense Instruction 4715.03 of March 18, 2011, p. 2.

[34] Some county-level data are available through the Payments in Lieu of Taxes (PILT) program, administered by the Department of the Interior. For these data, see at https://www.nbc.gov/pilt/states-payments.cfm. However, though most

reflect federal acreage as of September 30, 2018, except that DOD figures are current as of September 30, 2017. The figures understate total federal land, since they do not include lands administered by other federal agencies, such as the Bureau of Reclamation and the Department of Energy. **Table 1** also identifies the total acreage of each state and the percentage of land in each state administered by the five federal land agencies. These percentages point to significant variation in the federal presence within states. The figures range from 0.3% of land (in Connecticut and Iowa) to 80.1% of land (in Nevada). **Figure 1**, **Figure 2**, and **Figure 3** show these federal lands. **Figure 1** is a map of federal lands in the West; **Figure 2** is a map of federal lands in the East; and **Figure 3** is a map of federal lands in Alaska and Hawaii.

Although 15 states contain less than half a million acres of federal land,[35] the 11 western states and Alaska each have more than 10 million acres managed by these five agencies within their borders. This contrast is a result of early treaties, land settlement laws and patterns, and laws requiring that states agree to surrender any claim to federal lands within their border as a prerequisite for admission to the Union. Management of these lands is often controversial, especially in states where the federal government is a predominant or majority landholder and where competing and conflicting uses of the lands are at issue.

Table 1. Total Federal Land in the United States Administered by Five Agencies, by State, 2018

	Total Federal Acreage	Total Acreage in State	Federal Acreage's % of State
Alabama	880,188	32,678,400	2.7%
Alaska	222,666,580	365,481,600	60.9%
Arizona	28,077,992	72,688,000	38.6%
Arkansas	3,159,486	33,599,360	9.4%
California	45,493,133	100,206,720	45.4%
Colorado	24,100,247	66,485,760	36.2%
Connecticut	9,110	3,135,360	0.3%
Delaware	29,918	1,265,920	2.4%
District of Columbia	9,649	39,040	24.7%
Florida	4,491,200	34,721,280	12.9%
Georgia	1,946,492	37,295,360	5.2%
Hawaii[a]	829,830	4,105,600	20.2%
Idaho	32,789,648	52,933,120	61.9%
Illinois	423,782	35,795,200	1.2%
Indiana	384,726	23,158,400	1.7%

lands of the four major federal land management agencies are eligible for PILT payments, a small fraction are not. Also, DOD lands are among those generally not eligible for PILT payments. A small portion of PILT payments are made for certain lands managed by agencies other than the five covered in this report. Thus, the PILT county-level data do not always match the state acreage data shown in this report. For additional information on PILT, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by Katie Hoover.

[35] This includes 14 states and the District of Columbia. When referring to acreage figures in this report, *states* is often used to include the District of Columbia in addition to the 50 states.

	Total Federal Acreage	Total Acreage in State	Federal Acreage's % of State
Iowa	97,509	35,860,480	0.3%
Kansas	253,919	52,510,720	0.5%
Kentucky	1,100,160	25,512,320	4.3%
Louisiana	1,353,291	28,867,840	4.7%
Maine	301,481	19,847,680	1.5%
Maryland	205,362	6,319,360	3.2%
Massachusetts	62,680	5,034,880	1.2%
Michigan	3,637,599	36,492,160	10.0%
Minnesota	3,503,977	51,205,760	6.8%
Mississippi	1,552,634	30,222,720	5.1%
Missouri	1,702,983	44,248,320	3.8%
Montana	27,082,401	93,271,040	29.0%
Nebraska	546,852	49,031,680	1.1%
Nevada	56,262,610	70,264,320	80.1%
New Hampshire	805,472	5,768,960	14.0%
New Jersey	171,956	4,813,440	3.6%
New Mexico	24,665,774	77,766,400	31.7%
New York	230,992	30,680,960	0.8%
North Carolina	2,434,801	31,402,880	7.8%
North Dakota	1,733,641	44,452,480	3.9%
Ohio	305,502	26,222,080	1.2%
Oklahoma	683,289	44,087,680	1.5%
Oregon	32,244,257	61,598,720	52.3%
Pennsylvania	622,160	28,804,480	2.2%
Rhode Island	4,513	677,120	0.7%
South Carolina	875,316	19,374,080	4.5%
South Dakota	2,640,005	48,881,920	5.4%
Tennessee	1,281,362	26,727,680	4.8%
Texas	3,231,198	168,217,600	1.9%
Utah	33,267,621	52,696,960	63.1%
Vermont	465,888	5,936,640	7.8%
Virginia	2,373,616	25,496,320	9.3%
Washington	12,192,855	42,693,760	28.6%
West Virginia	1,134,138	15,410,560	7.4%
Wisconsin	1,854,085	35,011,200	5.3%
Wyoming	29,137,722	62,343,040	46.7%

	Total Federal Acreage	Total Acreage in State	Federal Acreage's % of State
U.S. Total	**615,311,596**	**2,271,343,360**	**27.1%**

Sources: For federal lands, see sources listed in **Table 2**. Total acreage of states is from U.S. General Services Administration, Office of Governmentwide Policy, *Federal Real Property Profile, as of September 30, 2004*, Table 16, pp. 18-19.

Notes: Figures understate federal lands in each state and the total in the United States. They include only land of the five largest land-managing agencies: BLM, FS, FWS, NPS, and DOD lands. Thus, the figures exclude federal lands managed by other agencies, such as the Bureau of Reclamation. They also exclude any land managed by the five agencies in the territories, DOD-managed acreage overseas, submerged lands in the outer continental shelf, and an estimated 662 million acres managed by FWS within the U.S. Minor Outlying Islands, primarily marine areas in the Pacific Ocean.

The total federal acreage column does not add to the precise total shown due to small discrepancies in the sources used. This is also the case for some other tables in this report. Also, here and throughout the report, figures might not sum to the totals shown due to rounding.

a. This figure includes approximately 253,000 acres of submerged lands and waters within the Hawaiian Islands National Wildlife Refuge. Thus, the percentage shown overestimates the area that is federally owned.

Table 2. Federal Acreage in Each State, by Agency, 2018

State	BLM	FS	FWS	NPS	DOD
Alabama	3,011	670,889	32,585	17,540	156,163
Alaska	71,397,880	22,138,560	76,649,320	52,455,308	25,512
Arizona	12,120,512	11,179,113	1,683,512	2,658,112	436,743
Arkansas	1,405	2,593,165	379,648	98,346	86,922
California	15,088,090	20,791,505	296,899	7,612,898	1,703,741
Colorado	8,352,437	14,487,064	174,983	665,260	420,503
Connecticut	0	23	1,754	5,846	1,487
Delaware	0	0	25,543	890	3,485
Dist. of Col.	0	0	0	8,476	1,173
Florida	2,239	1,203,418	293,636	2,469,173	522,734
Georgia	0	867,580	488,648	39,935	550,329
Hawaii[a]	0	0	309,594	358,160	162,076
Idaho	11,776,995	20,447,859	49,733	511,963	3,098
Illinois	20	304,538	90,000	12	29,212
Indiana	0	204,318	16,868	10,769	152,771
Iowa	0	0	73,427	2,708	21,374
Kansas	1	108,621	29,509	462	115,326
Kentucky	0	818,268	11,838	94,103	175,951
Louisiana	2,043	608,546	582,342	17,690	142,670
Maine	0	53,880	73,434	156,205	17,962
Maryland	548	0	49,795	41,532	113,487
Massachusetts	0	0	23,342	33,336	6,002
Michigan	610	2,874,631	117,816	632,280	12,262

State	BLM	FS	FWS	NPS	DOD
Minnesota	1,101	2,844,937	516,150	139,789	2,000
Mississippi	5,048	1,190,979	211,438	104,369	40,800
Missouri	59	1,507,891	61,368	54,569	79,096
Montana	8,022,852	17,186,331	653,097	1,214,193	5,928
Nebraska	5,325	351,205	174,401	5,899	10,022
Nevada	47,298,840	5,760,954	2,345,102	797,613	60,101
New Hampshire	0	753,921	34,716	13,696	3,139
New Jersey	0	0	73,785	35,683	62,488
New Mexico	13,500,023	9,225,354	332,058	468,968	1,139,371
New York	0	16,352	29,301	34,106	151,233
North Carolina	0	1,256,493	423,879	366,889	387,540
North Dakota	58,032	1,103,160	488,648	71,192	12,609
Ohio	0	244,440	9,109	20,290	31,663
Oklahoma	1,942	399,578	108,046	10,011	163,712
Oregon	15,742,384	15,697,445	575,379	196,197	32,852
Pennsylvania	0	513,891	12,614	53,460	42,195
Rhode Island	0	0	2,415	5	2,093
South Carolina	0	634,594	130,051	32,339	78,332
South Dakota	275,336	2,006,214	206,930	148,010	3,515
Tennessee	0	722,057	54,338	359,197	145,770
Texas	12,188	757,036	574,956	1,206,489	680,529
Utah	22,787,881	8,192,893	110,567	2,097,860	78,420
Vermont	0	410,654	34,195	9,836	11,203
Virginia	805	1,668,369	132,201	306,393	265,848
Washington	437,342	9,335,431	163,791	1,834,616	421,675
West Virginia	0	1,046,426	19,888	65,554	2,270
Wisconsin	2,488	1,524,576	202,424	61,835	62,762
Wyoming	17,493,875	9,215,971	70,930	2,345,619	11,327
U.S. Total	**244,391,312**	**192,919,130**	**89,205,999**	**79,945,679**	**8,849,476**
Territories	0	28,937	24,773	26,852	59,058
Overseas	0	0	0	0	12,816
Agency Total	244,391,312	192,948,059	89,230,772	79,972,531	8,921,349

Sources: For BLM, data provided to CRS by BLM on December 16, 2019. Data reflect BLM ownership as of September 30, 2018.

For FS: U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System—As of Sept 30, 2018*, Tables 1 and 4, at https://www.fs.fed.us/land/staff/lar/LAR2018/lar2018index.html. Data reflect land within the National Forest System, including national forests, national grasslands, purchase units, land utilization projects, experimental areas, and other areas. **Table 1** shows an agency total of 192,948,059. However, the individual state and territory acreages copied here from **Table 4** appear to sum to 192,948,067. The reason for the

discrepancy is not apparent. In this table, the agency total is reflected as the total reported in **Table 1**, 192,948,059.

For FWS: U.S. Dept. of the Interior, Fish and Wildlife Service, *2018 Annual Lands Report Data Tables, as of September 30, 2018*, Table 1A, at https://www.fws.gov/refuges/land/PDF/2018_Annual_Report_of_Lands_Data_Tables.pdf. Data reflect federally owned land over which the FWS has sole or primary jurisdiction.

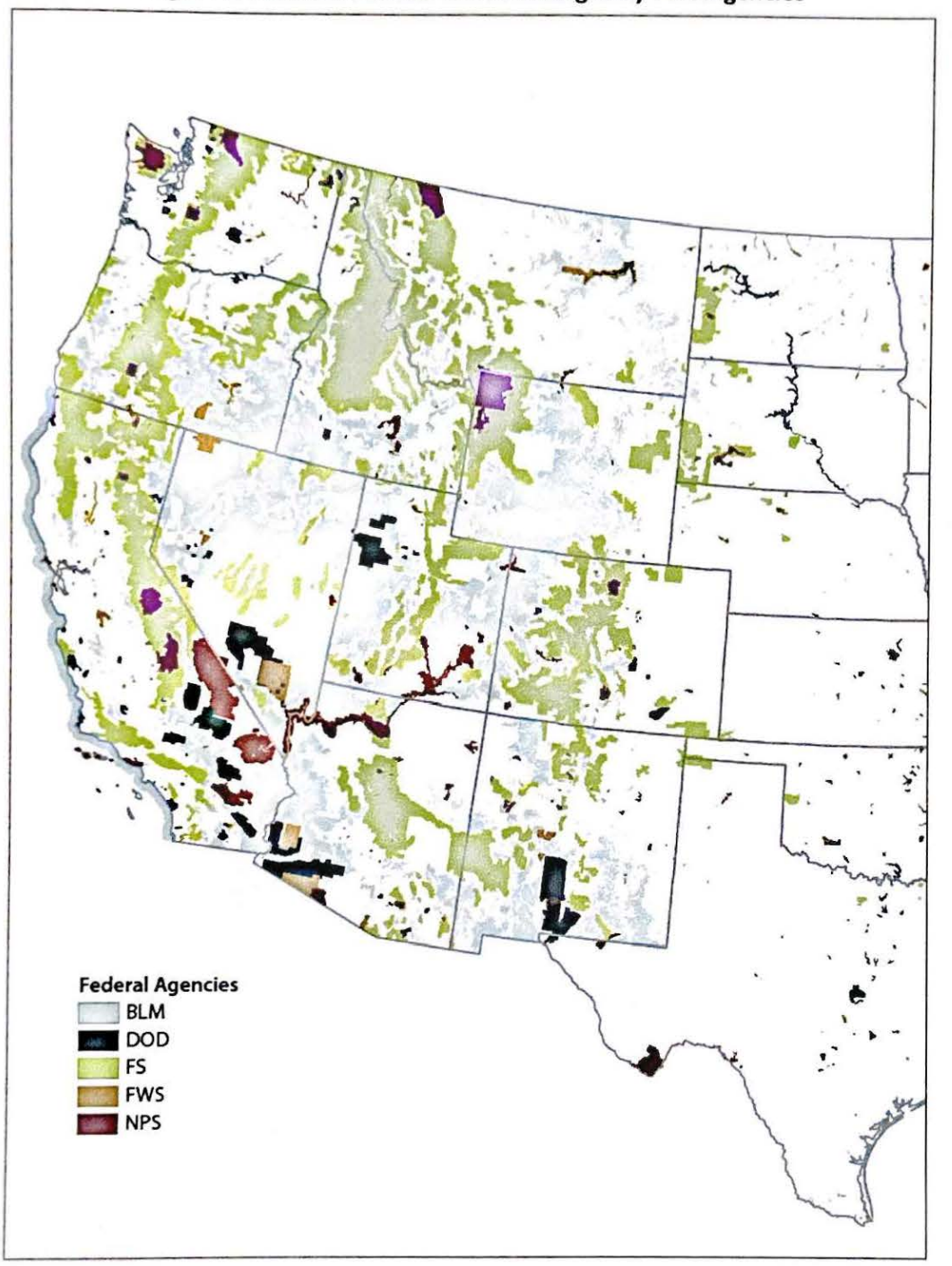
For NPS: U.S. Dept. of the Interior, National Park Service, Land Resources Division, *Acreage by State*, as of 9/30/2018, at https://www.nps.gov/subjects/lwcf/upload/NPS-Acreage-9-30-2018.pdf. Data reflect federally owned lands managed by the NPS.

For DOD: U.S. Department of Defense, Office of the Deputy Assistant Secretary of Defense for Infrastructure, *Base Structure Report, Fiscal Year 2018 Baseline (A Summary of the Real Property Inventory Data)*, as of September 30, 2017, VI. Total DOD Inventory, pp. DOD-29 to DOD-88, at https://www.acq.osd.mil/eie/Downloads/BSI/Base%20Structure%20Report%20FY18.pdf. Hereinafter this source is referred to as the DOD FY2018 Baseline. Unlike the data for the other agencies, the DOD data is current as of September 30, 2017. The source excludes U.S. Army Corps of Engineers lands.

Notes: See notes for **Table 1**.

a. This figure includes approximately 253,000 acres of submerged lands and waters within the Hawaiian Islands National Wildlife Refuge.

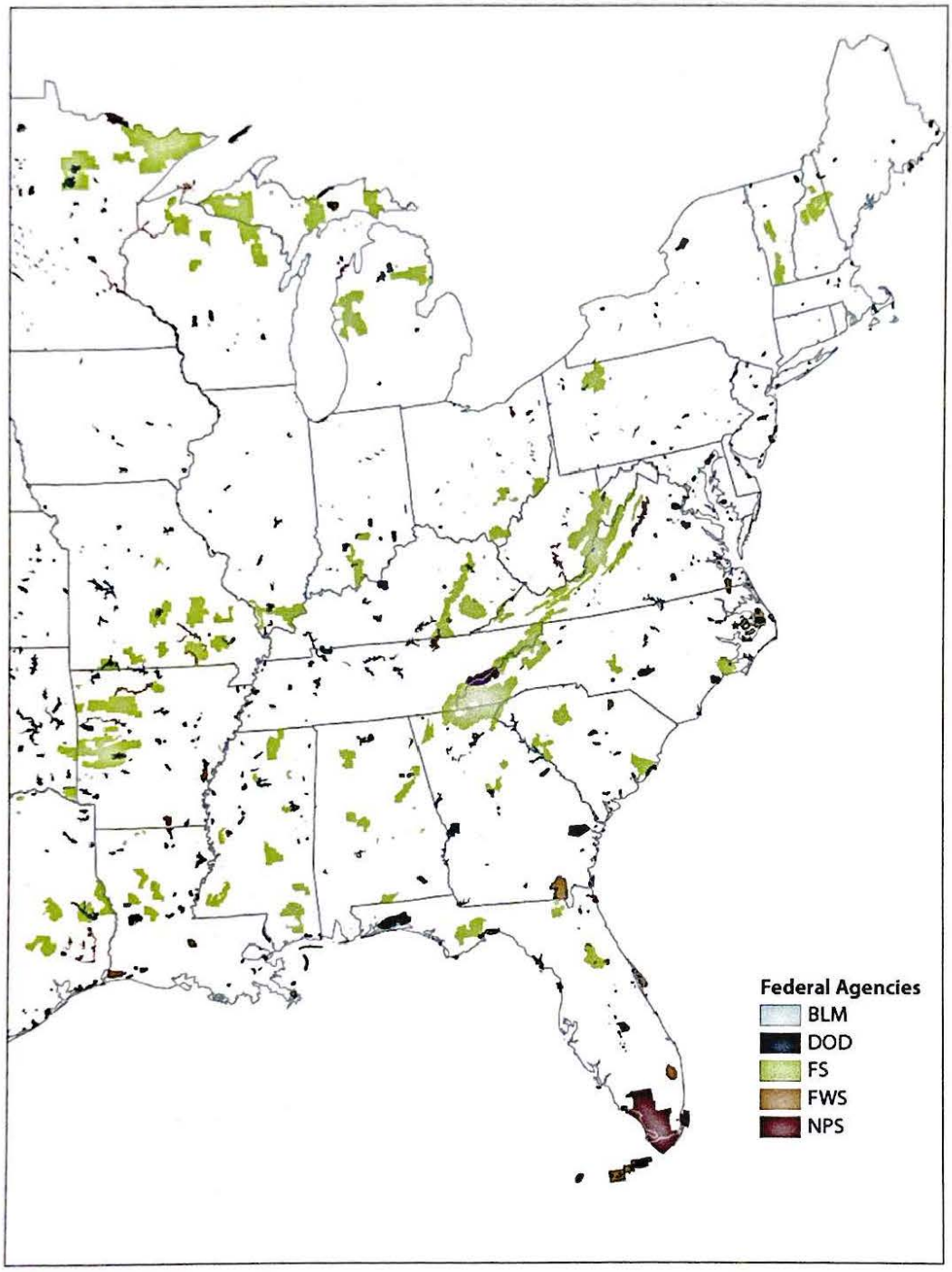
Figure 1. Western Federal Lands Managed by Five Agencies



Source: Map boundaries and information generated by CRS using federal lands GIS data from the National Atlas, 2005, and an ESRI USA Base Map.

Notes: Scale 1:11,283,485. The line along the coast of California indicates BLM administration of numerous small islands. Also, the map may reflect a broader definition of DOD land than shown in the data in **Table 2**.

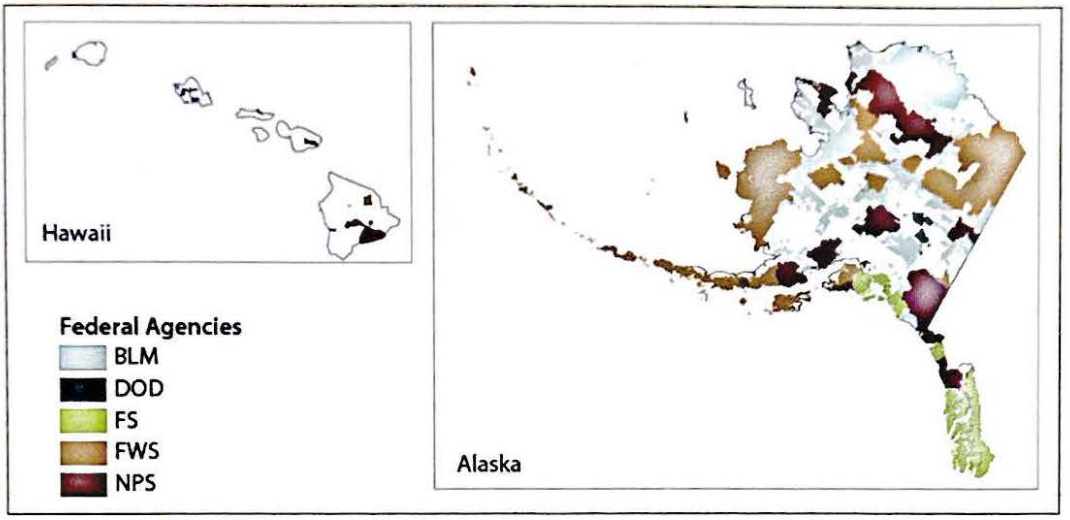
Figure 2. Eastern Federal Lands Managed by Five Agencies



Source: Map boundaries and information generated by CRS using federal lands GIS data from the National Atlas, 2005, and an ESRI USA Base Map.

Note: Scale 1:13,293,047. Also, the map may reflect a broader definition of DOD land than shown in the data in Table 2.

Figure 3. Federal Lands in Alaska and Hawaii Managed by Five Agencies



Source: Map boundaries and information generated by CRS using federal lands GIS data from the National Atlas, 2005, and an ESRI USA Base Map.

Note: Hawaii scale 1:8,000,000. Alaska scale 1:20,000,000. Also, the map may reflect a broader definition of DOD land than shown in the data in Table 2.

Federal Land Ownership Changes, 1990-2018

Since 1990, total federal lands in the United States have generally declined. Many disposals of areas of federal lands have occurred. At the same time, the federal government has acquired many parcels of land, and there have been various new federal land designations, including wilderness areas and national park units. Through the numerous individual acquisitions and disposals since 1990, the total federal land ownership has declined by 31.5 million acres, or 4.9% of the total of the five agencies, as shown in **Table 3**.

The total acreage decline reflects decreased acreage for two agencies but increased acreage for three others. BLM ownership decreased by 27.6 million acres (10.2%), in large part due to the disposal of BLM land, under law, to the State of Alaska, Alaska Natives, and Alaska Native Corporations.[36] DOD land ownership also declined, by 11.7 million acres (56.8%). This decline was primarily due to changes in legal arrangements for managing military installations rather than changes in the sizes of the installations themselves. For instance, of the 26.9 million acres of defense sites (worldwide) in DOD's FY2018 Baseline report—more than 98% of which is in the United States or territories—8.9 million acres (33%) were federally owned,[37] 0.9 million acres (3%) were leased, and 17.1 million acres (63%) were managed through a legal interest that was "other" than owned or leased.[38] By comparison, of the 28.4 million acres of defense sites

[36] Other actions and factors contributed to the decline in BLM lands. For example, a reduction of about 1 million acres (primarily in the eastern states) resulted from a revision in the way the BLM reported acreage withdrawn or reserved for another federal agency or purpose.

[37] The 8.9 million figure used here includes lands worldwide, whereas the 8.8 million figure shown for 2018 elsewhere in this report reflects land in the United States only.

[38] Acreage figures are taken from the DOD FY2018 Baseline, pp. DOD-15 to DOD-16. That document indicates, on p. DOD-5, that total acreage figures include "government owned land, public land, public land withdrawn for military use, licensed and permitted land," and other types of arrangements.

(worldwide) in DOD's 2010 report, approximately 19.8 million (70%) were federally owned,[39] 0.5 million (2%) were leased, and 8.0 million (28%) were managed under another legal interest.

In contrast, the NPS, FWS, and FS expanded their acreage during the period, with the NPS having the largest increase in both acreage and percentage growth—3.8 million acres (5.0%). In some cases, a decrease in one agency's acreage was tied to an increase in acreage owned by another agency.[40]

Table 3. Change in Federal Acreage in the United States Since 1990, by Agency

	1990	2000	2010	2018	Change 1990-2018	% Change Since 1990
BLM	272,029,418	264,398,133	247,859,076	244,391,312	-27,638,106	-10.2%
FS	191,367,364	192,355,099	192,880,840	192,919,130	1,551,766	0.8%
FWS	86,822,107	88,225,669	88,948,699	89,205,999	2,383,892	2.7%
NPS	76,133,510	77,931,021	79,691,484	79,945,679	3,812,169	5.0%
DOD	20,501,315	24,052,268	19,421,540	8,849,476	-11,651,839	-56.8%
U.S. Total	**646,853,714**	**646,962,190**	**628,801,839**	**615,311,596**	**-31,542,118**	**-4.9%**

Sources: See sources listed **Table 2.**

Notes: See notes for **Table 1.** Also, estimates generally reflect the end of the fiscal year for the years shown, (i.e., September 30). However, DOD figures for the years indicated were not readily available. Rather, the DOD figures for the four columns were derived respectively from the FY1989 Base Structure Report (published in February 1988), the FY1999 Base Structure Report (with data as of September 30, 1999), the FY2010 Base Structure Report (with data as of September 30, 2009), and the FY2018 Base Structure Report (with data as of September 30, 2017).

The total federal acreage decline (shown in **Table 3**) is a composite of various decreases in acreage in 15 states and increases in acreage in 36 states (including the District of Columbia). A reduction in federal lands in Alaska was a major reason for the total decline in federal lands since 1990. As shown in **Table 4**, federal land declined in Alaska by 23.0 million acres (9.4%) between 1990 and 2018. As noted, this decline in Alaska is largely the result of the disposal of BLM land under Alaska-specific laws. Specifically, from 1990 to 2018, BLM land in Alaska declined by 21.1 million acres (22.8%).

Since 1990, federal land also has decreased in the 11 contiguous western states, by 10.7 million acres (3.0%). Reflected in the overall decline are reductions for 6 of the 11 states, with decreases of 6.3 million acres in Arizona, 3.7 million acres in Nevada,[41] and smaller decreases in four other states. Five of the 11 states each had increases ranging roughly from 0.2 million acres to 0.5 million acres, with the largest being 0.5 million acres in Colorado.

[39] The 19.8 million acre figure used here includes land worldwide, more than 97% of which is in the United States. The 19.4 million acre figure shown for 2010 in **Table 3** reflects land in the United States only.

[40] For instance, a decrease in BLM acreage and an increase in NPS acreage was the result of enactment of the California Desert Protection Act of 1994 (P.L. 103-433). Among other provisions, the law established one new national park unit and expanded two other park units on land that was owned by the BLM, and transferred ownership of the lands to the NPS. BLM estimated the total transfer of BLM land to the NPS for the three areas at 2.9 million acres.

[41] These reductions were due primarily to relatively large reductions of both BLM and DOD land in Arizona and of DOD land in Nevada.

Outside Alaska and the other western states, federal land increased by 2.1 million acres (4.5%). This increase was not uniform, with declines in some states and varying increases (in acreages and percentage) in others.

Table 4. Change in Federal Acreage in the United States Since 1990, by State

	1990	2000	2010	2018	Change 1990-2018	% Change Since 1990
Alabama	944,505	979,907	871,232	880,188	-64,317	-6.8%
Alaska	245,669,027	237,828,917	225,848,164	222,666,580	-23,002,447	-9.4%
Arizona	34,399,867	33,421,887	30,741,287	28,077,992	-6,321,875	-18.4%
Arkansas	3,147,518	3,418,455	3,161,978	3,159,486	11,968	0.4%
California	46,182,591	47,490,824	47,797,533	45,493,133	-689,458	-1.5%
Colorado	23,579,790	24,001,922	24,086,075	24,100,247	520,457	2.2%
Connecticut	6,784	9,012	8,557	9,110	2,326	34.3%
Delaware	27,731	28,397	28,574	29,918	2,187	7.9%
Dist. of Col.	9,533	8,466	8,450	9,649	116	1.2%
Florida	4,344,976	4,671,958	4,536,811	4,491,200	146,224	3.4%
Georgia	1,921,674	1,933,464	1,956,720	1,946,492	24,818	1.3%
Hawaii	715,215	682,650	833,786	829,830	114,615	16.0%
Idaho	32,566,081	32,569,711	32,635,835	32,789,648	223,567	0.7%
Illinois	353,061	403,835	406,734	423,782	70,721	20.0%
Indiana	274,483	394,243	340,696	384,726	110,243	40.2%
Iowa	33,247	83,134	122,602	97,509	64,262	193.3%
Kansas	281,135	300,465	301,157	253,919	-27,216	-9.7%
Kentucky	966,483	1,065,814	1,083,104	1,100,160	133,677	13.8%
Louisiana	1,578,151	1,565,875	1,330,429	1,353,291	-224,860	-14.2%
Maine	176,486	210,167	209,735	301,481	124,995	70.8%
Maryland	173,707	190,783	195,986	205,362	31,655	18.2%
Massachusetts	63,291	63,998	81,692	62,680	-611	-1.0%
Michigan	3,649,258	3,692,271	3,637,965	3,637,599	-11,659	-0.3%
Minnesota	3,545,702	3,581,741	3,469,211	3,503,977	-41,725	-1.2%
Mississippi	1,478,726	1,544,501	1,523,574	1,552,634	73,908	5.0%
Missouri	1,666,718	1,676,175	1,675,400	1,702,983	36,265	2.2%
Montana	26,726,219	26,745,666	26,921,861	27,082,401	356,182	1.3%
Nebraska	528,707	556,347	549,346	546,852	18,145	3.4%
Nevada	60,012,488	60,180,297	56,961,778	56,262,610	-3,749,878	-6.2%
New Hampshire	734,163	754,858	777,807	805,472	71,309	9.7%
New Jersey	146,436	164,865	176,691	171,956	25,520	17.4%

	1990	2000	2010	2018	Change 1990-2018	% Change Since 1990
New Mexico	24,742,260	26,829,296	27,001,583	24,665,774	-76,486	-0.3%
New York	215,441	229,097	211,422	230,992	15,551	7.2%
North Carolina	2,289,509	2,415,560	2,426,699	2,434,801	145,292	6.3%
North Dakota	1,727,541	1,729,430	1,735,755	1,733,641	6,100	0.4%
Ohio	234,396	289,566	298,500	305,502	71,106	30.3%
Oklahoma	505,898	696,377	703,336	683,289	177,391	35.1%
Oregon	32,062,004	32,703,212	32,665,430	32,244,257	182,253	0.6%
Pennsylvania	611,249	598,165	616,895	622,160	10,911	1.8%
Rhode Island	3,110	4,867	5,248	4,513	1,403	45.1%
South Carolina	891,182	872,173	898,637	875,316	-15,866	-1.8%
South Dakota	2,626,594	2,642,646	2,646,241	2,640,005	13,411	0.5%
Tennessee	980,416	1,251,514	1,273,974	1,281,362	300,946	30.7%
Texas	2,651,675	2,855,997	2,977,950	3,231,198	579,523	21.9%
Utah	33,582,578	34,982,884	35,033,603	33,267,621	-314,957	-0.9%
Vermont	346,518	428,314	453,871	465,888	119,370	34.4%
Virginia	2,319,524	2,381,575	2,358,071	2,373,616	54,092	2.3%
Washington	11,983,984	12,646,137	12,173,813	12,192,855	208,871	1.7%
West Virginia	1,062,500	1,096,956	1,130,951	1,134,138	71,638	6.7%
Wisconsin	1,980,460	2,006,778	1,865,374	1,854,085	-126,375	-6.4%
Wyoming	30,133,121	30,081,046	30,043,513	29,137,722	-995,399	-3.3%
U.S. Total	**646,853,714**	**646,962,190**	**628,801,639**	**615,311,596**	**-31,542,118**	**-4.9%**

Sources: See sources listed in **Table 2**.

Notes: See notes to **Table 1** and **Table 3**.

Current Issues

Since the cession to the federal government of the western lands by several of the original 13 states, many federal land issues have recurred. The extent of ownership continues to be debated. Some advocate disposing of federal lands to state or private ownership; others favor retaining currently owned lands; still others promote land acquisition by the federal government, including through increased or more stable funding sources. Another focus is on the condition of federal lands and related infrastructure. Some assert that lands and infrastructure have deteriorated and that agency activities and funding should focus on restoration and maintenance, whereas others advocate expanding federal protection to additional lands. Debates also encompass the extent to which federal lands should be developed, preserved, and open to recreation and whether federal lands should be managed primarily to produce national benefits or benefits primarily for the localities and states in which the lands are located. Finally, border security, along and near the southwestern border in particular, raises questions related to management of, and access to,

federal lands. These questions stem, in part, from the differing roles of the Department of Homeland Security (DHS) and the federal land management agencies.[42]

Extent of Ownership

The optimal extent of federal land ownership is an enduring issue for Congress. Current debates encompass the extent to which the federal government should dispose of, retain, or acquire lands in general and in particular areas. Advocates of retention of federal lands, and federal acquisition of additional lands, assert a variety of benefits to the public of federal land ownership. They include protection and preservation of unique natural and other resources; open space; and public access, especially for recreation. Some support land protection from development.

Disposal advocates have expressed concerns about the efficacy and efficiency of federal land management, accessibility of federal lands for certain types of recreation, and limitations on development of federal lands. Some support selling federal land for financial reasons, such as to help lower federal expenditures, reduce the deficit, or balance the budget. Others assert that limited federal resources constrain agencies' abilities to protect and manage the lands and resources. Other concerns involve the potential influence of federal land protection on private property, development, and local economic activity. Some seek disposal to states or private landowners to foster state, local, and private control over lands and resources.

Other issues center on the suitability of authorities for acquiring and disposing of lands and their use in particular areas. Congress has provided to the federal agencies varying authorities for acquiring and disposing of land.[43] With regard to acquisition, the BLM has relatively broad authority, the FWS has various authorities, and the FS authority is mostly limited to lands within or contiguous to the boundaries of a national forest. DOD also has authority for acquisitions.[44] By contrast, the NPS has no general authority to acquire land to create new park units. Condemnation for acquiring land is feasible, but, with the exception of DOD, rarely is used by these agencies. Its potential use has been controversial in some cases. The primary funding mechanism for federal land acquisition, for the four major federal land management agencies, has been appropriations from the Land and Water Conservation Fund (LWCF).[45] For the FWS, the Migratory Bird Conservation Fund (supported by sales of Duck Stamps and import taxes on arms and ammunition) provides an additional source of mandatory spending for land acquisition. Funding for acquisitions by DOD is provided in DOD appropriations laws. There continue to be different views as to acquisition funding, including the appropriate amount, type (discretionary and/or mandatory), and location of use.

With regard to disposal, the NPS and FWS have no general authority to dispose of the lands they administer, and the FS disposal authorities are restricted. The BLM has broader authority under provisions of FLPMA.[46] DOD lands that are excess to military needs can be disposed of under the surplus property process administered by the General Services Administration (GSA). While

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[42] Additional discussion of federal land management issues is contained in CRS Report R43429, *Federal Lands and Related Resources: Overview and Selected Issues for the 116th Congress*, coordinated by Katie Hoover.

[43] For information on the acquisition and disposal authorities of the four major federal land management agencies, see CRS Report RL34273, *Federal Land Ownership: Acquisition and Disposal Authorities*, by Carol Hardy Vincent et al.

[44] See 10 U.S.C. §2663.

[45] For information on the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

[46] 43 U.S.C. §1713.

surplus DOD real property is routinely disposed of by the GSA, legislation authorizing base realignment and closure (BRAC) rounds typically has authorized the Secretary of Defense to exercise GSA's disposal authority during BRAC rounds.[47]

It is not uncommon for Congress to enact legislation providing for the acquisition or disposal of particular lands where an agency lacks such authority or providing particular procedures for specified land transactions. Further, recent Congresses have considered measures to establish or amend broader authorities for acquiring or disposing of land.

Western Land Concentration

The concentration of federal lands in the West has contributed to a higher degree of controversy over federal land ownership in that part of the country. For instance, the dominance of BLM and FS lands in the western states has led to various efforts to divest the federal government of significant amounts of land. In recent years, some western states, among others, have considered measures to provide for or express support for the transfer of federal lands to states, to establish task forces or commissions to examine federal land transfer issues, and to assert management authority over federal lands. An earlier collection of efforts from the late 1970s and early 1980s, known as the Sagebrush Rebellion, also sought to foster divestiture of federal lands. However, that effort was not successful in achieving this end through legal challenges in the federal courts and efforts to persuade the Reagan Administration and Congress to transfer the lands to state or private ownership. Some supporters of continued or expanded federal land ownership have asserted that state and local resource constraints, other economic considerations, or environmental or recreational priorities weigh against state challenges to federal land ownership. In recent years, some states have considered measures to express support for federal lands or to limit the sale of federal lands in the state.[48]

As shown in **Table 1** and **Table 2**, the 11 contiguous western states and Alaska have extensive areas of federal lands. **Table 5** summarizes the data in **Table 1** to clarify the difference in the extent of federal ownership between western and other states. As can be seen in **Table 5**, 60.9% of the land in Alaska is federally owned, which includes 85.9% of the total FWS lands and 65.6% of the total NPS lands. In contrast, only 0.3% of DOD-owned lands are in Alaska. Of the land in the 11 contiguous western states, 45.9% is federally owned, which includes 73.4% of total FS lands and 70.6% of total BLM lands. In the rest of the country, the federal government owns 4.1% of the lands. The FS manages the largest portion of this land in other states—61.8%—and BLM manages the least—0.8%. Slightly more than half (51%) of DOD lands are in the other states, with slightly less than half (49%) in the 11 western states.

[47] For information on the disposal of surplus federal property by the U.S. General Services Administration (GSA), see 40 U.S.C. §101 et seq. and CRS Report R44377, *Disposal of Unneeded Federal Buildings: Legislative Proposals in the 114th Congress*, by Garrett Hatch. For information on DOD disposal during BRAC rounds, see CRS Report R45705, *Base Closure and Realignment (BRAC): Background and Issues for Congress*, by Christopher T. Mann.

[48] For a discussion of issues related to potential state management of federal lands, see CRS Report R44267, *State Management of Federal Lands: Frequently Asked Questions*, by Carol Hardy Vincent.

Table 5. Federal Acreage in the United States, by Agency and State or Region, 2018

	Alaska	11 Western States[a]	Other States	U.S. Total
BLM	71,397,880	172,621,231	372,201	244,391,312
FS	22,138,560	141,519,920	29,260,650	192,919,130
FWS	76,649,320	6,456,051	6,100,632	89,205,999
NPS	52,455,308	20,403,299	7,087,074	79,945,679
DOD	25,512	4,313,759	4,510,205	8,849,476
U.S. Total	222,666,580	345,314,260	47,330,762	615,311,596
Acreage of States	365,481,600	752,947,840	1,152,913,920	2,271,343,360
Percentage Federal	**60.9%**	**45.9%**	**4.1%**	**27.1%**

Sources: For federal lands, see sources listed in **Table 2**. Total acreage of states is from U.S. General Services Administration, Office of Governmentwide Policy, *Federal Real Property Profile, as of September 30, 2004*, Table 16, pp. 18-19.

Notes: See notes for **Table 1**. As mentioned, the U.S. total shown is not the precise sum of the figures in the first three columns due to small discrepancies in the sources used and rounding.

a. The 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Maintaining Infrastructure and Lands

Debate continues over how to balance the acquisition of new assets and lands with the maintenance of the agencies' existing infrastructure and the care of current federal lands. Some assert that addressing the condition of infrastructure and lands in current federal ownership is paramount. They support ecological restoration as a focus of agency activities and funding and an emphasis on managing current federal lands for continued productivity and public benefit. They oppose new land acquisitions and unit designations until the backlog of maintenance activities has been eliminated or greatly reduced and the condition of current range, forest, and other federal lands is significantly improved. Others contend that expanding federal protection to additional lands is essential to provide new areas for public use, protect important natural and cultural resources, and respond to changing land and resource conditions.

The ecological condition of current federal lands has long been a focus of attention. For example, the poor condition of public rangelands due to overgrazing was the rationale for enacting the Taylor Grazing Act of 1934 and the creation of the BLM.[49] Today, debates on the health and productivity of federal lands center on rangelands, forests, riparian areas, and other resources. These lands and resources might be affected in some areas by various land uses, such as livestock grazing, recreation, and energy development. Many other variables might impact the health of federal lands and resources, including wildfires, community expansion, invasive weeds, and drought.

The deferred maintenance of federal infrastructure also has been a focus of Congress and the Administration for many years. Deferred maintenance, often called the maintenance backlog, is defined as maintenance that was not done when scheduled or planned. The agencies assert that

[49] S.T. Dana and S.K. Fairfax, *Forest and Range Policy: Its Development in the United States*, 2nd ed. (New York: McGraw-Hill Book Co., 1980), pp. 158-164.

continuing to defer maintenance of facilities accelerates their rate of deterioration, increases their repair costs, and decreases their value.

Congressional and administrative attention has centered on the NPS backlog. DOI estimated deferred maintenance for the NPS for FY2018 at $11.92 billion. Of the total deferred maintenance, 57% was for roads, bridges, and trails; 19% was for buildings; 6% was for irrigation, dams, and other water structures; and 18% was for other structures (e.g., recreation sites).[50] DOI estimates of the NPS backlog have increased overall since FY1999, from $4.25 billion in that year.[51] It is unclear what portion of the change is due to the addition of maintenance work that was not done on time or the availability of more precise estimates of the backlog. The NPS, as well as the other land management agencies, increased efforts to define and quantify maintenance needs over the past two decades.

While attention has focused on the NPS backlog, the other federal land management agencies also have maintenance backlogs. The FS estimated its backlog for FY2018 at $5.20 billion.[52] Of the total deferred maintenance, 61% was for roads,[53] 24% was for buildings, and the remaining 15% was for a variety of other assets (e.g., trails, fences, and bridges). For FY2018, DOI estimated the FWS backlog at $1.30 billion and the BLM backlog at $0.96 billion.[54] The four agencies together had a combined FY2018 backlog estimated at $19.38 billion.

The agency backlogs have been attributed to decades of funding shortfalls. However, it is unclear how much total funding has been provided for the maintenance backlog over the years. Annual presidential budget requests and appropriations laws typically have not identified funds from all sources that may be used to address the maintenance backlog. Opinions differ over the level of funds needed to address deferred maintenance, whether to use funds from other programs and new sources, and how to prioritize funds for maintenance needs.

Protection and Use

The extent to which federal lands should be opened to development, available for recreation, and/or preserved has been controversial. Differences of opinion exist on the amount of traditional commercial development that should be allowed, particularly involving energy development, grazing, and timber harvesting. Whether and where to restrict recreation, generally and for high-impact uses such as motorized off-road vehicles, also is a focus. How much land to dedicate to enhanced protection, what type of protection to provide, and who should protect federal lands are continuing questions. Another area under consideration involves how to balance the protection of wild horses and burros on federal lands with protection of the range and other land uses.

Debates also encompass whether federal lands should be managed primarily to emphasize benefits nationally or for the localities and states where the lands are located. National benefits can include using lands to produce wood products for housing or energy from traditional (oil, gas, coal) and alternative/renewable sources (wind, solar, geothermal, biomass). Other national benefits might encompass clean water for downstream uses; biodiversity for ecological resilience

[50] This information was provided to CRS by the DOI Budget Office on March 25, 2019. DOI estimates are based on DOI financial reports and may differ from figures reported by the agencies independently. As one example, DOI financial reports reflect agency-owned assets only, whereas figures reported by individual DOI agencies sometimes include other types of assets (e.g., leased assets).

[51] FY1999 is the first year for which an estimate is readily available.

[52] This information was provided to CRS by the Forest Service, Office of Legislative Affairs, on February 12, 2019.

[53] This estimate of the deferred maintenance for roads reflects passenger-car roads only.

[54] This information was provided to CRS by the DOI Budget Office on March 25, 2019.

and adaptability; and wild animals and wild places for human enjoyment. Local benefits can include economic activities, such as livestock grazing, timber for sawmills, ski areas, tourism, and other types of development. Local benefits could also be scenic vistas and areas for recreation—picnicking, sightseeing, backpacking, four-wheeling, snowmobiling, hunting and fishing, and much more.

At some levels, the many uses and values can generally be compatible. However, as demands on the federal lands have risen, the conflicts among uses and values have escalated. Some lands—notably those administered by the FWS and DOD—have an overriding primary purpose (wildlife habitat and military needs, respectively). The conflicts typically are greatest for the multiple-use lands managed by the BLM and FS, because the potential uses and values are more diverse.

Other issues of debate include who decides the national-local balance, and how those decisions are made. Some would like to see more local control of land and a reduced federal role, while others seek to maintain or enhance the federal role in land management to represent the interests of all citizens.

Border Security[55]

Border security presents special challenges on federal lands, given the extensive federal lands along the southwestern border with Mexico and the northern border with Canada. The federal lands on the borders tend to be geographically remote and include mountains, deserts, and other inhospitable terrain with limited law enforcement coverage. Moreover, the lands are managed by different federal agencies, under various laws, and for many purposes.

The southwestern border with Mexico has been a particular focus. There are various estimates and depictions of federal lands on or near the border. For instance, by one estimate, six different agencies manage 621.5 (linear) miles of federal lands along the southwestern border.[56] Second, a depiction of federal (and Indian) lands located within 50 and 100 miles from the U.S.-Mexican border is shown in **Table 4**. Third, according to the House Committee on Natural Resources, there are about 26.7 million acres of federal lands within 100 miles of the border (and an additional 3.5 million acres of Indian lands).[57] Nearly half of the federal lands (12.3 million acres) are managed by the BLM, and the remainder are managed by DOD (5.8 million acres), FS (3.8 million acres), NPS (2.4 million acres), FWS (2.2 million acres), and other federal agencies (0.2 million acres).

The extent to which federal and other lands along the southwestern border should be used for the construction of barriers to deter illegal immigration and other illegal activity is under current debate. Efforts to build border infrastructure to reduce illicit activity at the border, such as illegal entry and drug and contraband smuggling, are a priority for the Trump Administration as well as for some Members of Congress and portions of the public. By contrast, some Members of Congress and segments of the public oppose barrier construction as potentially costly, possibly

[55] For additional information, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*, coordinated by Audrey Singer.

[56] The estimate of 621.5 linear miles was prepared by CRS. It excludes 71.9 miles of land managed by the Bureau of Indian Affairs, for a total of 693.4 miles of federal and Indian lands on the border. For additional information, see CRS In Focus IF10832, *Federal and Indian Lands on the U.S.-Mexico Border*, by Carol Hardy Vincent and James C. Uzel.

[57] See the map on the website of the House Committee on Natural Resources at https://republicans-naturalresources.house.gov/info/borderoverview.htm.

damaging to lands and resources, and unlikely to be a major deterrent to illegal activity, among other reasons.[58]

Within DHS, the U.S. Border Patrol (USBP) takes the lead role in staffing and securing the international borders, but more than 40% of the southwestern border abuts federal and tribal lands overseen by the FS and the four DOI agencies (including the Bureau of Indian Affairs) that also have law enforcement responsibilities.[59] Differences in missions and jurisdictional complexity among these agencies may hinder border control. To facilitate control efforts, three federal agencies—DHS, the Department of Agriculture (for the FS), and DOI—have signed memoranda of understanding (MOUs) on border security. These MOUs govern information sharing, budgeting, operational planning, USBP access to federal lands, and interoperable radio communications, among other issues.[60]

In general, federal efforts to secure the border are subject to the National Environmental Policy Act of 1969 (NEPA), which requires agencies to evaluate the potential environmental impacts of proposed programs, projects, and actions before decisions are made to implement them.[61] Implementing regulations require agencies to integrate NEPA project evaluations with other planning and regulatory compliance requirements to ensure that planning and decisions reflect environmental considerations.[62] Federal law confers the DHS Secretary with broad authority to construct barriers and roads along U.S. borders to deter illegal crossings. The Secretary may waive application of NEPA and other laws that the Secretary determines may impede the expeditious construction of these barriers and roads.[63] In the past, Congress has introduced legislation to broaden DHS's authority to be exempt from NEPA, land management statutes, and other environmental laws on the grounds that these laws (and related litigation) may impede DHS from taking actions on federal lands to secure the border. Some have opposed such legislation on the grounds that it would remove important protections for sensitive and critical habitats and resources and that the current authority is already sufficiently broad.

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[58] For an overview of funding appropriated for border barrier constructions, see CRS Report R45888, *DHS Border Barrier Funding*, by William L. Painter and Audrey Singer. For a discussion of Department of Defense funding of border barrier construction see CRS Report R45937, *Military Funding for Southwest Border Barriers*, by Christopher T. Mann.

[59] U.S. Government Accountability Office, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177, November 2010, p. 4.

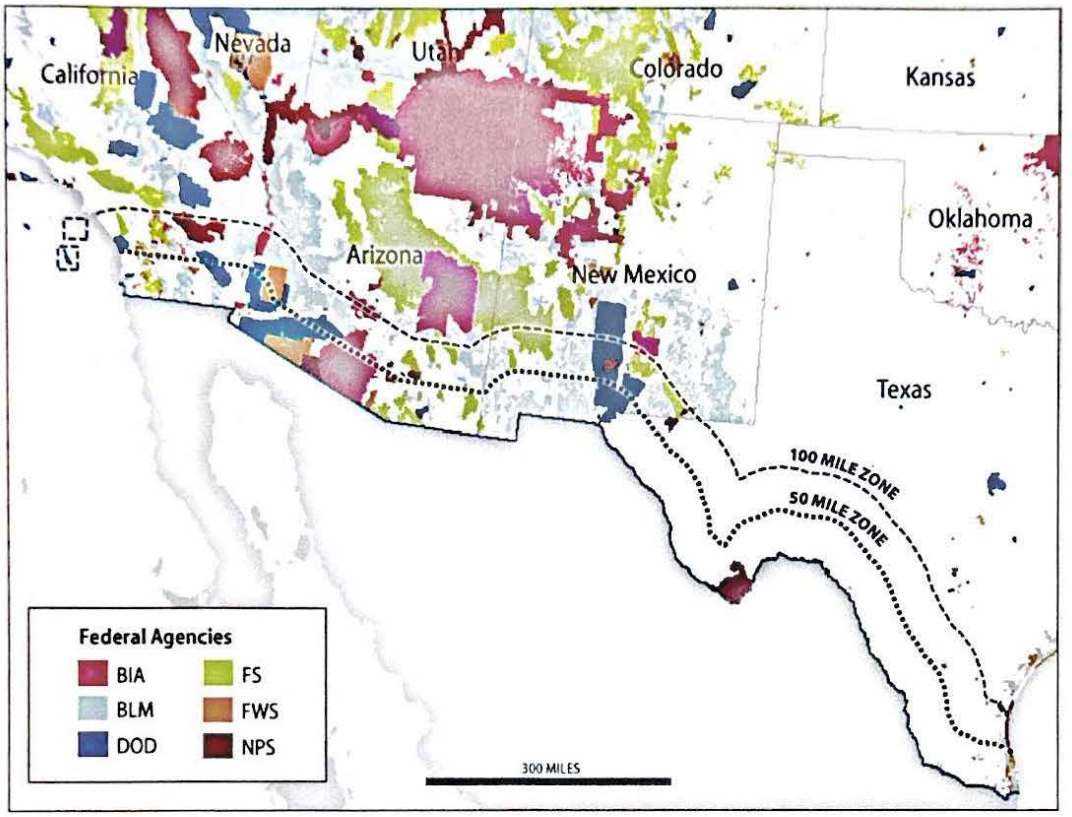
[60] For example, in 2006, DOI, DHS, and USDA entered into a memorandum of understanding entitled *Cooperative National Security and Counterterrorism Efforts on Federals Lands along the United States' Borders.* These departments have entered into additional memoranda of understanding addressing issues such as "road maintenance, secure radio communication, environmental coordination, and sharing of geospatial information, among others." U.S. Congress, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, *The Consequences of Federal Land Management Along the U.S. Border to Rural Communities and National Security*, testimony of U.S. Department of the Interior's Interagency Borderlands Coordinator, Jon Andrew, 114th Cong., 2nd sess., April 28, 2016.

[61] P.L. 91-190; 42 U.S.C. §§4321-4347.

[62] For more information on DHS compliance with NEPA, see https://www.dhs.gov/national-environmental-policy-act-nepa-department-homeland-security-implementing-procedures. The U.S. Border Patrol is a component within DHS's U.S. Customs and Border Protection (CBP). For more information on CBP's compliance with NEPA, see https://www.cbp.gov/about/environmental-management-sustainability/nepa.

[63] Illegal Immigration Reform and Immigrant Responsibility Act, P.L. 104-208, div. C, §102(a)-(c), as amended by the REAL ID Act of 2005, P.L. 109-13, div. B, §102; the Secure Fence Act of 2006, P.L. 109-367, §3; and the Consolidated Appropriations Act, 2008 P.L. 110-161, div. E, §564(a). See also CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*, by Michael John Garcia, which discusses DHS's border infrastructure deployment authority and identifies laws waived for several border construction projects.

Figure 4. Federal and Indian Lands Near the Southwestern Border



Source: Map boundaries and information generated by CRS using U.S. Geological Survey, Gap Analysis Program (GAP). May 2016. Protected Areas Database of the United States (PAD-US), version 1.4 Combined Feature Class and an ESRI USA Base Map.

Notes: Two areas of land off the southwest border (in the Pacific Ocean) are shown in dashed boxes because they are within the 100-mile zone. Federal lands not owned by BLM, DOD, FS, FWS, and NPS or held in trust by the Bureau of Indian Affairs were not included due to their small size relative to the displayed federal lands.

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EXHIBIT B

Native American Ownership and Governance of Natural Resources

Native American land ownership is complex. It involves a patchwork of titles, restrictions, obligations, statutes, and regulations. Natural resources are extracted on Native American lands. The associated revenue from extraction is then disbursed. This is a unique process and involves many stakeholders.

Land ownership

Today, there are two major types of Native American land:

- Trust land, in which the federal government holds legal title, but the beneficial interest remains with the individual or tribe. Trust lands held on behalf of individuals are known as allotments.
- Fee land purchased by tribes, in which the tribe acquires legal title under specific statutory authority.

In general, most Native American lands are trust land. Approximately 56 million acres of land are held in trust by the United States for various Native American tribes and individuals. View BIA's definition of a federal Indian reservation to learn more.

Natural resource ownership

Native American natural resource ownership is like Native American land ownership. Natural resources on Native American land can be held in trust for a tribe or individual, or owned by them as part of restricted-fee land. Different laws govern mineral development on trust land. The laws differ based on whether an individual or a tribe holds the beneficial interest. Regardless, a tribe or individual cannot develop their natural resources without the federal government's approval.

New types of legal agreements for extraction have given greater control to tribes. Federal government approval remains necessary at some point in the process for most tribes.

For more detail on the leasing process for individually-owned minerals, see:

- The Act of March 3, 1909, as amended (25 U.S. Code § 396)
- The regulations at 25 CFR Part 212

For more detail on the leasing process for tribes, see:

- The Indian Mineral Development Act (25 U.S. Code § 2102)
- The regulations at 25 CFR Part 225
- The Indian Mineral Leasing Act of 1938 (25 U.S. Code § 396a)
- The regulations at 25 CFR Part 211

Laws and regulations

The laws and regulations governing Native American land and the federal government's relationship to it are grounded in a trust responsibility. This trust responsibility goes back to the 1830s. Since then, the policies enacted by Congress have varied.

History of federal obligations

The U.S. Constitution's Commerce Clause established the regulatory relationship between Native American tribes and the federal government. (See Article 1, Section 8, Clause 3.) This relationship, as it pertains to land use and ownership, was clarified in the 1830s.

Justice John Marshall established several important principles of Native American law. His series of Supreme Court decisions are known as the Marshall Trilogy. One of his decisions was the federal Native American trust responsibility. Here, the government charged itself with "moral obligations of the highest responsibility and trust" toward Native American tribes. The government maintains fiduciary responsibility to protect Native American assets and resources. It serves as a trustee for Native American lands. Another decision was the principle that tribes are sovereign. This sovereignty can only be diminished by Congress.

The Handbook of Federal Indian Law provides an overview of the foundational laws, regulations, and court cases that govern federal Native American law. The Department of the Interior published this handbook in 1942.

General Allotment Act of 1887 (The Dawes Act)

To understand current ownership of Native American lands, one must begin with the history of allotment on reservations. During the Allotment Era of the late 1800s and early 1900s, the federal government parceled out millions of acres of Native American lands to individual Native Americans in an effort to break up reservations.

While the practice of allotting Native American land to individual Native Americans began in the 18th century, it was not in widespread use until the late 19th century. The passage of the General Allotment Act of 1887, also known as the Dawes Act, greatly expanded the practice. This expansion had devastating consequences for Native Americans.

Under the Dawes Act and other tribe-specific allotment acts, the federal government allotted a specified amount of land, usually 80 or 160 acres, to each tribal member. These allotments were to be held in trust by the United States for the beneficial Native American owner for a specified period of time, usually 25 years. After, the federal government would remove the trust status and issue the allottee fee simple title to the land.

Once out of trust, however, the land became subject to state and local taxation. These costs led to thousands of acres of Native American land to pass out of Native American hands once the trust status was lifted. Furthermore, non-allotted lands were often declared “surplus land” by the federal government, which opened them to homesteaders. This accelerated the loss of Native American land to non-Native Americans.

The policy of allotment reduced the amount of land owned by tribes. In 1887, tribes held 138 million acres. Forty-seven years later, in 1934, they owned 48 million acres. To stop the loss of Native American land, the federal government ended the allotment policy in 1934 and extended the trust period indefinitely. Today, allotments are still held in trust by the federal government for the beneficial Native American owner.

In addition to diminishing the total acreage owned, the allotment policy also left behind a checkerboard of land ownership on many reservations. Individual parcels of land sometimes owned by a tribe or tribes, Native American individuals, and non-Native Americans. As the original recipients of allotments died, their land was divided among their descendants. Each descendent receives only a fractional share of the whole. This division among multiple heirs is known as fractionation.

In many cases, ownership of allotted lands continued to divide over multiple generations. Today, individual parcels sometimes have more than 100 co-owners. Fractionation limits economic development on reservations. It can divide lease income among co-owners so that individuals receive just a few cents based on their share.

You can learn more about government and tribal efforts to mitigate the effects of fractionation in the annual report of the Cobell Land Buy-Back Program for Tribal Nations.

Case 4:24-cv-00926-P Document 29-1 Filed 01/31/25 Page 36 of 37 PageID 1495

Top

Land ownership

Natural resource ownership

Laws and regulations

Indian Reorganization Act of 1934

The Allotment Era ended with the Indian Reorganization Act of 1934 (IRA). This act ended the policy of allotment. It also authorized the Secretary of the Interior to restore remaining (unallotted) surplus lands to tribal ownership. It also incentivized tribes to adopt U.S.-style governments and constitutions. Most federally recognized tribes are organized under the IRA. While the impact of the IRA varied by tribe, it marked a shift towards the promotion of tribal self-government. This change supports the modern extractive industries policy for tribes in the United States.

Indian Mineral Leasing Act of 1938

The Indian Mineral Leasing Act of 1938 (IMLA) increased the amount of control tribes have over extraction on their land. Under IMLA, leases for extraction on tribal lands required tribal consent. This remains true today. It also requires the approval of the Secretary of the Interior. Yet, under IMLA, tribes could not negotiate leases, influence operations, cancel leases, or set rates for leases.

Indian Mineral Development Act of 1982

The Indian Mineral Development Act of 1982 (IMDA) increased Native American self-governance on extraction. Tribes and individuals gained the right to negotiate their own “mineral development agreements” (MDAs) with companies. These agreements could cover the full range of the extraction process. MDAs include terms on the employment of tribal members or subcontracting to entities owned by tribes. An individual Native American can include their mineral interests in a tribally-negotiated MDA. When requested by a tribe, the federal government may assist in the negotiations of MDAs. The Secretary of the Interior must still approve MDAs as in the best interest of the tribe.

Indian Tribal Energy Development and Self-Determination Act of 2005

The Indian Tribal Energy Development and Self-Determination Act provides more flexibility to tribes. This grants tribes greater autonomy to manage their energy resources.

A tribe can do the following with the Secretary’s review and approval:

- Enter into “tribal energy resource agreements” (TERAs) with the Secretary of the Interior.
- Enter into business agreements and leases for energy resources development.
- Grant rights-of-way for pipelines, electric transmission, or distribution lines on tribal land.

Indian Tribal Energy Development and Self-Determination Act Amendments of 2017

Chairman Hoeven introduced a bill S.245 to amend the Indian Tribal Energy Development and Self Determination Act of 2005. The bill passed the Senate, and the president signed it into law in December 2018.

The bill is composed of two Titles. Title I amends the Act to address grants and technical assistance, loan guarantees, and TERAs. Title II amends several statutory provisions that were enacted in legislation other than the 2005 Act.

Title I: Indian Tribal Energy Development and Self-Determination Act Amendments

- Directs the Department of the Interior (DOI) to provide Native American tribes with technical assistance. This helps Native Americans in planning energy resource development programs.
- Allows leases and business agreements that pool a tribe's energy resources with other energy resources.
- Streamlines the Bureau of Indian Affairs’ approval process for TERAs.
- Requires the Department of Energy to collaborate with the Directors of the National Laboratories. This ensures technical and scientific resources are available for tribal energy activities and projects.

Top

Land ownership

Natural resource ownership

Laws and regulations

Title II: Miscellaneous Amendments

- Amends the Federal Power Act. This requires the Federal Energy Regulatory Commission to give tribes, in addition to states and municipalities, preference for the receipt of preliminary hydroelectric licenses.
- Authorizes tribal biomass demonstration projects under the Tribal Forest Protection Act of 2004. This assists tribes in securing reliable, long-term supplies of woody biomass materials.
- Amends the Energy Conservation and Production Act. This includes revised requirements for direct home weatherization grants to tribes.
- Authorizes Indian tribes and certified third parties to conduct energy appraisals. This is in addition to the Secretary of the Interior.
- Amends the Long-Term Leasing Act. This allows the Navajo Nation to enter into mineral resource leases on their restricted lands without DOI's approval.
- Allows the Crow Tribe of Montana to enter into leases of their land held in trust for a term of up to 99 years.
- Sets forth provisions for money held by DOI in the trust fund system for the benefit of the Native American tribes and individuals from whose land the funds were generated.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS, FORTH WORTH DIVISION

KNIFE RIGHTS, INC.; et al., Plaintiffs, v. MERRICK B. GARLAND, Attorney General of the United States; UNITED STATES DEPARTMENT OF JUSTICE, Defendants.	Case No. 4:24-cv-926 Hon. Judge Mark Pittman

DECLARATION OF JOHAN LUMSDEN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

DECLARATION OF JOHAN LUMSDEN

I, Johan Lumsden, declare as follows:

1. I am not a party in the above-titled action. I am over the age of 18, have personal knowledge of the facts referred to in this declaration, and am competent to testify to the matters stated below. My declaration is executed in support of Plaintiffs' motion for summary judgment and in opposition to Defendant's motion to dismiss.

2. I currently reside in Denver, Colorado.

3. I am an active member of Plaintiff Knife Rights. Plaintiffs Knife Rights is taking part in this action on my behalf as a Knife Rights member and to represent my and other member's interests.

4. In October 1, 2020, federal and state agencies conducted a no-knock raid of my home. This was also the location of my online business, RoadsideImports, LLC, as I operated as a "switchblade" manufacturer and dealer.

5. According to the search and seizure documents that I was given, along with my conversations with the law enforcement agencies who conducted the raid, my home and business was raided for alleged violations of the Federal Switchblade Act.

6. This was not some administrative inquiry, but a violent raid of my home/business in which law enforcement used flashbang or like devices, which detonated about a foot from me.

7. As a part of this raid, I was arrested, detained, and questioned for hours. I was handcuffed and kept in a patrol car long enough to suffer nerve damage in both hands; I also suffered injuries to my right foot and middle finger on my right hand. As a part of this raid, my dog was severely injured and "tased" by law enforcement. He died shortly after because of health issues which I attribute to the horrible treatment he suffered at the hands of law enforcement conducting the raid.

8. Authorities seized/confiscated approximately $5 million dollars of switchblades and switchblade parts, and computers and hard drives from my home/business; shut down my multiple retail websites; and forced me out of business.

9. Even with all this violent enforcement of the FSA, I was never charged. However, I was detained, questioned, physically injured, and had valuable property seized as a result of authorities enforcing in Section 1242 of the Federal Switchblade Act.

10. The documents previously provided to this court as a part of Doug Ritter's declaration were the search and seizure documents that I was given after the raid. As you can see, they specifically reference the enforcement of Section 1242 as one of the reasons for the raid. I provided these documents to Mr. Ritter as proof the FSA is still being enforced.

11. While some of my property was eventually returned in 2023. Law Enforcement took my property for three years under the allegation that I had violated the prohibitions under Section 1242, and 1243 of the FSA.

12. When this property was eventually returned without any explanation, it was returned significantly damaged.

13. The various injuries I sustained, which include physical injury, loss, and harm, including the damage/loss of my inventory with an estimated value in the millions of dollars.

14. Further, my computers and hard drives used for my business were also confiscated during the raid in 2020. However, these still have not been returned.

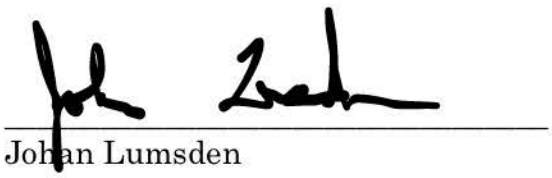
15. As a result of this unconstitutional raid, I still live under a cloud of enforcement/prosecution. I believe that I am a target if I should continue my business of manufacturing and selling "switchblade" style knives. I also have been unable to continue my business because law enforcement still has not returned my

computers or hard drives, which are essential in continuing operations.

16. From my understanding, the raid conducted on me and my business reverberated throughout the knife industry, including rumblings with knife manufacturers and dealers, throughout the United States. I believe this acted as an effective deterrent for other manufacturers, dealers, and or individuals to avoid violating Sections 1242 and 1243 of the Federal Switchblade Act.

17. There is no question that the Federal Switchblade Act is actively enforced throughout the United States. I believe I am one example of how the Federal Government selectively enforces these provisions to ensure that the knife industry continues to adhere to the prohibitions of the FSA.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that my declaration was executed on January 30, 2025, in Denver, Colorado.



Johan Lumsden