

No. 18-918

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In The  
**Supreme Court of the United States**

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JOHN COPELAND, PEDRO PEREZ, AND  
NATIVE LEATHER, LTD.,

*Petitioners,*

-v-

CYRUS VANCE, JR. IN HIS OFFICIAL CAPACITY AS  
THE NEW YORK COUNTY DISTRICT ATTORNEY, AND  
CITY OF NEW YORK,

*Respondents.*

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**On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Second Circuit**

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**SUPPLEMENTAL BRIEF FOR PETITIONERS**

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June 7, 2019

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**TABLE OF APPENDIX**

E-mail from New York Police Department  
Office of the Deputy Commissioner, Public  
Information to Jesse McKinley, Albany  
Bureau Chief, The New York Times (May 31,  
2019).....Supp.App.1a

Jesse McKinley, *The ‘Gravity Knife’ Led to  
Thousands of Questionable Arrests. Now It’s  
Legal*, N.Y. Times, May 31, 2019.....Supp.App.3a

## ARGUMENT

### **I. Assembly Bill 5944 Did Not Moot the Petition Because Gravity Knives Remain Illegal on New York City Subways and Buses, and the NYPD has Announced its Intention to Enforce Those Prohibitions**

In their letter dated June 4, 2019, Respondents New York County District Attorney Cyrus A. Vance, Jr. (the “DA”) and the City of New York (the “City”) argue that legislation signed into law on May 30, 2019 renders the Petition moot. Respondents, however, misleadingly failed to inform the Court that gravity knives remain illegal on public transportation in the City, and the New York Police Department (“NYPD”) intends to continue enforcing these unconstitutionally vague prohibitions.

Respondents are correct that Assembly Bill 5944 (“AB 5944”) was signed on May 30, 2019 by Governor Andrew Cuomo, repealing the prohibition on gravity knives found in N.Y. PENAL LAW § 265.01(1). However, Respondents failed to inform the Court that AB 5944 did not repeal the definition of “gravity knife” found in N.Y. PENAL LAW § 265.00(5), which as Respondents acknowledge, is one of the statutory provisions being challenged in this lawsuit, and which is the very source of the unconstitutionally

vague “Wrist Flick Test” -- the main subject of this vagueness challenge.

Further, Respondents failed to inform the Court that AB 5944 did not remove all gravity knife prohibitions from the law. Gravity knives remain illegal on New York City subways and buses, and therefore the unconstitutionally vague definition of gravity knife found in § 265.00(5) will continue to place Petitioners and other New Yorkers in jeopardy,

Rules of the Metropolitan Transportation Authority governing subway and bus operations throughout the City provide as follows:

**Section 1050.8 - Weapons and other dangerous instruments**

(a) No weapon, dangerous instrument, or any other item intended for use as a weapon may be carried in or on any facility or conveyance. . . . For the purposes hereof, a weapon or dangerous instrument shall include, but not be limited to, a firearm, switchblade knife, boxcutter, straight razor or razor blades that are not wrapped or enclosed in a protective covering, *gravity knife*, sword, shotgun or rifle. [Emphasis added.]

21 NYCRR § 1050.8.

**Section 1040.9 - Firearms or other weapons**

No weapon, dangerous instrument, or any other item intended for use as a weapon may be carried in or on any facility or train. . . . For the purposes hereof, a weapon or dangerous instrument shall include, but not be limited to, a firearm, switchblade knife, *gravity knife*, boxcutter, straight razor or razorblades that are not wrapped or enclosed in a protective covering, sword, shotgun or rifle. [Emphasis added.]

21 NYCRR § 1040.9.

**Section 1044.11 - Firearms or other weapons**

No weapon, dangerous instrument, or any other item intended for use as a weapon may be carried in or on any facility or conveyance. . . . For the purposes hereof, a weapon or dangerous instrument shall include, but not be limited to, a firearm, switchblade knife, *gravity knife*, box cutter, straight razor or razorblades that are not wrapped or enclosed in a protective covering, sword, shotgun or rifle. [Emphasis added.]

21 NYCRR § 1044.11.

Penalties for violating these prohibitions include fines or civil penalties up to \$100 and up to 30 days in prison. *See* 21 NYCRR § 1040.12; 21 NYCRR § 1044.14; 21 NYCRR § 1050.10.

(The foregoing, collectively, the “MTA Rules.”)

Thus, in reality, gravity knives remain illegal to possess in the City if you happen to be one of the more than 5 million New Yorkers who ride the subway or the nearly 2 million New Yorkers who ride the bus to work every day. *See* <http://web.mta.info/nyct/facts/ridership/> (last accessed June 6, 2019). Significantly, Petitioner Pedro Perez’s 2010 arrest took place in the subway. C.A.App.59.

The City has explicitly declared its intention to continue to enforce this gravity knife prohibition in, at least, the New York City subways. One day after AB 5944 was signed into law, the NYPD issued the following statement from its office of the Deputy Commissioner, Public Information (“DCPI”) to Albany Bureau Chief Jesse McKinley of the New York Times:

The NYPD opposed the legislation because gravity knives are in reality rapidly-deployable combat knives, and there have been more than 1600 stabbings and slashings

in New York City so far this year.<sup>1</sup> The public should also be aware that the possession of gravity knives in the New York City subway system remains illegal. The NYPD will continue its work to ensure New York City remains the safest big city in America.

(See e-mail from DCPI to New York Times Albany Bureau Chief Jesse McKinley and New York Times story dated May 31, 2019. Supp.App.1a-8a.)

The NYPD statement makes it clear that the City does not consider AB 5944 the end of the story regarding gravity knife enforcement against ordinary law abiding New Yorkers possessing common folding knives, the most commonly possessed pocket knives in the United States. The use of aggressive and misleading hyperbole such as “rapidly-deployable combat knives” (which they are not) and the promise that NYPD will “continue its work” in this regard makes the City’s intention to continue its unconstitutionally vague gravity knife enforcement activities unmistakable. Indeed, the inconsistent messages from the state and the City do little more than set a trap for the unwary and compounds the existing vagueness and notice problems – New Yorkers who believe the Governor

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<sup>1</sup> Notably, the City cannot actually connect these crimes to the every-day common folding knives law abiding folks carry and which the City tries to label “gravity knives.” The juxtaposition of this number with the inflammatory phrase “rapidly-deployable combat knives” appears intentionally misleading.

that the ban has been repealed may be fooled into mistakenly believing that they can carry their work tools on their person and find themselves confronted by the police on public transportation as a result.

Continued gravity knife enforcement action under the MTA Rules would require the NYPD to apply exactly the same unconstitutionally vague Wrist Flick Test from N.Y. PENAL LAW § 265.00(5) as was previously used unconstitutionally to enforce the now repealed N.Y. PENAL LAW § 265.01(1).

Thus, in reality, little has changed with the signing of AB 9544. Law abiding New Yorkers are still at risk of being charged by the NYPD with unlawful gravity knife possession using the unconstitutionally vague Wrist Flick Test that is being challenged in this lawsuit, and Petitioners John Copeland and Pedro Perez, and millions of other New Yorkers remain prospectively in jeopardy. Accordingly, the Petition is not moot.

## **II. Assembly Bill 5944 Did Not Moot the Petition Because Retailers Potentially Remain Subject to Future Prosecution for Conduct Prior to the Repeal**

There is a second reason the Petition is not moot after the signing of AB 9544. Nothing in AB 9544 indicates that it is intended to be retroactive. Thus, in accordance with New York's "savings statute," N.Y. GEN. CONSTR. LAW § 93, this means that there



is a potential for any New York City retailer, including Petitioner Native Leather, Ltd., to be prosecuted for selling common folding knives during the two year statute of limitations period prior to May 30, 2019. *See* N.Y. CRIM. PROC. LAW § 30.10 (2)(c). For the same reason that Petitioners Copeland and Perez could not know which common folding knives were legal for them to possess due to the inherent vagueness of the Wrist Flick Test, retailers could not be sure which knives were legal for them to sell. Until the two year statute of limitations runs out, they all remain at risk, and therefore the Petition is not moot.

### CONCLUSION

The Petition is not moot, and for all the reasons previously presented to the Court, the Petition should be granted.

Respectfully submitted,

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