No. 18-7451

IN THE
Supreme Court of the United States

SHANE COX,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITIONER'S REPLY BRIEF

MELODY BRANNON
Federal Public Defender
DANIEL T. HANSMEIER
Appellate Chief
Counsel of Record
PAIGE A. NICHOLS
Assistant Federal Public Defender
KANSAS FEDERAL PUBLIC DEFENDER
500 State Avenue, Suite 201
Kansas City, Kansas 66101
Phone: (913) 551-6712
Email: daniel_hansmeier@fd.org
Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

PAGE

Statutes

Other Authorities

PETITIONER'S REPLY BRIEF

I. The Tenth Circuit erred when it denied Mr. Cox the right to present his good-faith defense.

Shane Cox sincerely believed that an Act passed by the Kansas Legislature – the Kansas Second Amendment Protection Act – allowed him to make, sell, and possess silencers, as well as to possess a short-barreled rifle, so long as these things remained within the borders of Kansas (which they did). But he is now a felon, with federal firearms convictions, because he did what the Kansas Legislature told him that he could do. At trial, the district court refused to give a good-faith-defense instruction on Kansas's Second Amendment Protection Act. This decision, which conflicts with factually-similar decisions from this Court, is one that this Court should review.

The government disagrees. The government says that review is unwarranted because the Tenth Circuit's decision does not conflict with decision from other Circuits. BIO 9. But there is some dissension. Pet. 12-14. More importantly, this Court has never adopted the lower courts' rationale that, in order for this defense to apply, "the person who gives the advice on which the defendant relies must be a governmental official who is responsible for enforcing the law at issue." BIO 9-10. The lower courts have devised this test based on the underlying facts of the four leading good-faith-reliance-on-governmental-official cases from this Court. But nothing within those decisions holds, or even implies, that this defense only applies in such circumstances. Pet. 9-12. If individuals are expected to follow all laws and law enforcement officials, it makes little sense to limit the good-faith defense to particular circumstances. As a Kansan, Mr. Cox could reasonably rely on state law. Because he

did, the jury should have been instructed on his good-faith defense.

The government also invokes the maxim, "ignorance of the law is no excuse." BIO 9. But it is inaccurate to claim that Mr. Cox was ignorant of the law. In fact, it was his knowledge of state law (the Kansas Second Amendment Protection Act) that convinced him to make and sell silencers in the first place. BIO 4 (explaining that Mr. Cox sold the silencers in a glass case next to a copy of the Act). While the interplay between state and federal law escaped Mr. Cox, the jury should have been allowed to at least consider his good-faith reliance on state law as an affirmative defense to his conduct. Pet. 9-18.

The government counters that a good-faith instruction in such circumstances would "subvert" the Supremacy Clause. BIO 10. That argument is frivolous. It is not our position that the Kansas Act trumps federal law. It may well be that the Act is in violation of the Supremacy Clause. But until the Act is declared unconstitutional, a Kansan who in good-faith relies on the Act should at least be able to present a good-faith defense based on his reasonable reliance. The presentation of that good-faith defense *in the federal prosecution* obviously does not "enable States to nullify federal law through declarations that state citizens are *immune* from federal prosecution." BIO 10 (emphasis added).

Finally, the government claims that this case is a poor vehicle to address this issue because the Tenth Circuit also found that Mr. Cox's reliance on the Kansas Act was unreasonable. BIO 12-13. But with a good-faith defense in tow, this issue is one for the jury, not the judge. Whether Mr. Cox reasonably relied on the Kansas Act is a

question a jury should answer, not the Tenth Circuit. And a jury could easily find reasonable reliance here. While the Kansas Act expressly includes a reference to "interstate commerce," it also references "any federal law, treaty, federal regulation, or federal executive action, including any federal firearm or ammunition registration program." Pet. App. 79a. This language is broad enough for an average citizen to think that the Kansas Act exempts him from the requirements in the National Firearms Act. At the least, a jury should decide the issue.

II. The Tenth Circuit erred when it held that silencers and short-barreled rifles are not protected by the Second Amendment.

This Court should also review whether silencers and short-barreled rifles are protected by the Second Amendment. In suggesting otherwise, the government continues to treat the Second Amendment as a disfavored right. While the government thinks that short-barreled rifles are too "dangerous and unusual" for Second Amendment protection, BIO 13-14, the present-day facts suggest otherwise, Pet. 20. It also defies reason that Congress permits their possession, if registered under the National Firearms Act, if the firearms are in fact "dangerous and unusual."

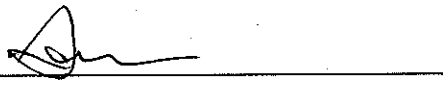
The government also asks this Court not to decide whether the Second Amendment protects firearm "accessories" like silencers. BIO 17-18. According to the government, only accessories that are necessary to make a firearm "usable" *might* receive constitutional protection. BIO 17. But the Second Amendment must mean more than that. The incidents of the Second Amendment are too important to ignore. The Constitution is over two centuries old. It is time that this Court define the Second Amendment's scope so that we all understand its reach.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

MELODY BRANNON
Federal Public Defender



DANIEL T. HANSMEIER
Appellate Chief
Counsel of Record
PAIGE A. NICHOLS
Assistant Federal Public Defender
KANSAS FEDERAL PUBLIC DEFENDER
500 State Avenue, Suite 201
Kansas City, Kansas 66101
Phone: (913) 551-6712
Email: daniel_hansmeier@fd.org
Counsel for Petitioner