

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	
)	
v.)	CASE NO: 1:22-cr-00061-RBW
)	
)	
CAROL O'NEAL KICINSKI)	
_____)	

DEFENDANT, CAROL O'NEAL KICINSKI'S,
SENTENCING MEMORANDUM

COMES NOW, Defendant, CAROL O'NEAL KICINSKI (hereinafter "Kicinski"), by and through the undersigned attorney, pursuant to the United States Sentencing Guidelines, and Title 18 U.S.C. § 3553(a), and files this Sentencing Memorandum, and in support thereof sets forth the following:

SENTENCING MEMORANDUM

This Court shall impose a sentence that is "sufficient but not greater than necessary," free from the old mandatory nature of the Federal Sentencing Guidelines, and with "wide discretion" that will not be disturbed absent an abuse of discretion. Gall v. United States, 522 U.S. 38 (2007); Kimbrough v. United States, 522 U.S. 85 (2007). In Pepper v. United States, 131 S.Ct. 1229 (2001), the United States Supreme Court emphasized the need for individualized sentencing, and then in United States v. Booker, 543 U.S. 220 (2005), clearly stated that the factors set forth in 18 U.S.C. § 3553(a) must be considered in fashioning the appropriate sentence.

PROCEDURAL HISTORY

On February 22, 2022, Kicinski was arrested pursuant to a Criminal Complaint. (Doc. 7; Case No. 1:22-mj-36). On February 25, 2022, the United States filed a four (4) count Information charging Kicinski with various Federal offenses related to events that occurred at the United States Capitol on January 6, 2021. (Doc. 9). Subsequently, on March 9, 2022, the United States filed a Superseding Information against Kicinski. (Doc. 20).

On November 8, 2022, Kicinski appeared before this Honorable Court, and pursuant to a written Plea Agreement, accepted responsibility for his conduct and entered a guilty plea as to Count One of the Superseding Information. Count One of the Superseding Information charged Kicinski with knowingly entering or remaining in a restricted building or grounds without lawful authority to do so, in violation of 18 U.S.C. § 1752(a)(1).

MEMORANDUM OF LAW

Title 18 U.S.C. § 3553(a), sets-forth factors for the Court to consider when imposing a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. In considering an appropriate sentence for Kicinski, this Court shall consider:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

- (2) the need for the sentence imposed:
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range;
- (5) any pertinent policy statement;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

THE NATURE AND CIRCUMSTANCES OF THE OFFENSE

Kicinski arrived in Washington, D.C. on January 5, 2021, and the purpose of her visit was to listen to former President Trump speak. On January 6 Kicinski went to Ellipse, listened to the speech, and then followed a large group of people to the Capitol. During the walk to the Capitol, the group of people she was with was very orderly and peaceful, and she felt she was exercising her First Amendment right.

Kicinski initially followed the crowd into the building but immediately became troubled she observed broken glass. Kicinski tried to exit the building however, the large group of people continuing to enter the Capitol made it impossible and she was forced back into the building. Once back inside the Capitol, Kicinski adopted a tourist-like attitude because she had never been inside before. Kicinski walked through the Capitol and Kicinski took a short video inside Speaker Pelosi's office. Kicinski never published or disseminated the video to any source or medium. While inside the Capitol Kicinski never touched, moved, or harmed anything or anyone.

Kicinski wandered down hallways, through an office, and eventually asked a Capitol Police Office for the correct way out. They then exited the building, went back to the hotel and then to the airport.

While the circumstances surrounding the offense are those many people have not seen before, Kicinski's involvement in the offense was limited to non-violent conduct.

THE HISTORY AND CHARACTERISTICS OF KICINSKI

Kicinski is a 66-year-old mother, grandmother, and businesswoman. During her life she has been a business owner who has employed other people, paid taxes, and positively contributed to society.



Kicinski's main business was the publication of a bi-monthly national magazine, then called Simply Gluten Free, now called Gluten Free & More, and a website. The purpose of these endeavors is to help people with celiac disease and gluten sensitivity navigate a gluten free diet and lifestyle. Kicinski was responsible for the creative content of the business. After the death of her late husband in 2017, Kicinski assumed full responsibility for the business even getting the next issue of the magazine out on time just weeks after her husband's death and a week after hurricane Irma had ravaged Florida and left her home and business without power or internet. Throughout her career she has adopted a "make it go right" attitude.

During COVID 19 pandemic when many companies stopped paying their bills, Kicinski kept her employees employed at her own expense, never laying

anyone off or cutting their hours. Kicinski is a cookbook author, television personality, and advocate for celiac awareness.



Kicinski also has a long history of volunteer work including spending two months in Africa working with the Red Cross in three countries and being a first responder volunteer to New Orleans after Katrina. She has also volunteered untold hours to her church, including assisting terminal cancer patients who were parishioners. Since her arrest in this matter, Kicinski has received counseling for her remorse, has contributed to the clean-up efforts post hurricane Ian in Florida, and has volunteered hours to assist the elderly.

Kicinski was born on a military base in Virginia to an American Air Force Officer and British homemaker who later became a nationalized citizen. She spent most of her growing up years on or around military bases and even attended grammar school in a Quonset hut on a military base on Okinawa.



Kicinski married at the age of 18 and was married for almost 42 years before her husband died of terminal cancer. Together they raised two children and have 4 grandchildren, all of whom are very close to each other. Kicinski has lived and traveled all over the world, including many third world countries and has a deep appreciation for this great country of ours.



It is clear that her actions on January 6, 2021, are not reflective of Kicinski's character. During her life she has been a productive member of society. Her actions on January 6, 2021, were aberrant behavior. Kicinski's involvement in the events on January 6, 2021 was a single misdemeanor occurrence committed without significant planning, was limited in duration, and represented a marked deviation from an otherwise law-abiding life. This type of behavior is a critical consideration for this Court. See U.S.S.G. § 5K2.20.

For the Court's consideration, "Exhibit 1" of this Memorandum contains character letters for review.

**THE NEED TO REFLECT THE SERIOUSNESS OF OFFENSE,
PROMOTE RESPECT AND PROVIDE JUST PUNISHMENT,
AFFORD ADEQUATE DETERRANCE, AND TO PROTECT
THE PUBLIC FROM FURTHER CRIMES OF KICINSKI**

Pursuant to the Final Presentence Investigation Report prepared in this matter (Doc. 58), Kicinski's Total Offense Level is a four (4) and Kicinski is a Criminal History Category I. As a result, Kicinski's applicable guideline range in this matter is 0-6 months. Kicinski's guideline range takes into account the seriousness of the offense and the need for just punishment.

Based on Kicinski's character, there is a limited need to protect the public from further crimes of Kicinski as her risk of recidivism is minimal. During her time on pretrial release Kicinski has been compliant with all conditions of her release and

thus illustrates that Kicinski is a perfect candidate to comply with terms of supervision, **not** incarceration.

For further consideration, as this Court may be aware, the United States Sentencing Commission has proposed amendment which are set to become effective on November 1, 2023. Among those proposed amendments is an adjustment for certain zero-point offenders. See attached text of U.S.S.G. § 4C1.1. New guideline, U.S.S.G. § 4C1.1., would provide for a two-level reduction in a defendant's total offense level if he has zero criminal history points and if he is not convicted of certain disqualifying offenses. The undersigned understands that section 4C1.1 will not take effect until November 1, 2023, and only if Congress does not act to reject said amendment. However, given the clear intent of the United States Sentencing Commission to recognize persons in Kicinski's situation, the undersigned submits that the proposed guideline amendments can be considered by this Court to argue for a low-end guideline sentence, and in this matter, specifically supports a term of probation, not incarceration.

This Court is left with broad discretion in its sentencing decision, and Kicinski submits to this Court that an appropriate sentence in this matter is a term of probation of six (6) months. The Sentencing Commission recognizes the need to ensure that the guidelines reflect the appropriateness of imposing a sentence other than imprisonment in cases where the defendant is a first offender who has not been

convicted of a crime of violence, or otherwise serious offense. See 28 U.S.C. § 994(j). Kicinski has been convicted of a misdemeanor, non-violent offense.

Additional amendments to the Sentencing Guidelines include revised Commentary to U.S.S.G. § 5C1.1. New Application Note 10(A) provides that if the defendant received an adjustment under new §4C1.1 and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. Again, the undersigned is not asking this Court to reduce Kicinski's offense level, but rather asks this Court to consider the foregoing as a justification for a low-end guideline sentence of probation.

In the large picture of the events of January 6, 2021, Kicinski had minimal involvement. Kicinski traveled to Washington, D.C. with her co-defendant, not a large group of people. While in Washington, DC, she did not meet up with other groups, did not make plans with other groups, and at no time had any plans to overturn the election results. Kicinski has no ties to any radical groups, and her actions were not motivated by such beliefs. Kicinski was not among the initial group that gained access to the Capitol, he damaged no property, and did not display any violent actions. Kicinski was inside the Capitol for approximately twenty (20) minutes before exiting and leaving the Capitol grounds. All of these factors should lead this Court to a minimum term of supervision and not incarceration.

