

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	Criminal Case No.
)	
Complainant)	1:21-cr-00623 (CRC)
)	
v.)	1:22-cr-00025 (APM)
)	
KIRSTYN NIEMELA,)	
)	
Defendant)	

**DEFENDANT KIRSTYN NIEMELA’s ERRATA TO HER
REPLY to SENTENCING MEMORANDUM**

Plaintiff KIRSTYN NIEMELA (“Niemela”) by undersigned counsel, hereby submits this Errata to the Court her Reply Sentencing Memorandum.

While the undersigned counsel and his partner were concluding an intensive trial in *United States v. Kenneth Thomas* and making detailed closing arguments, counsel directed people in his firm to pull together the elements needed to complete Defendant’s Sentencing Memorandum due by May 24, 2023.

While counsel was in trial, his support staff was unable to see on PACER or ECF the Probation Office’s draft Presentence Investigative Report posted in the case but invisible to anyone but the counsel of record John Pierce. Support staff was also unable to check John Pierce’s email, including because his chief researcher and litigation support staff was in the courtroom as well running the audio-visual graphics for counsel’s closing argument, or to interrupt counsel in court.

As a result, JPL’s litigation support paralegal asked the DC Probation office by email on its website for a copy of the Presentence Report. DCP responded to Jonathon Moseley during the final

day on May 24, 2024, that the DCP had only filed the PSR on May 24, 2023.

The description in the Defendant's Sentencing Memorandum is not the interpretation of undersigned counsel or staff or Moseley but the actual response that DCP sent to Moseley by email, that the PSR had only been filed on May 24, 2023, the day when the Sentencing Memorandum was due.

This, unfortunately, was not accurate or a misinterpretation. DCP's email response to Moseley was perhaps not understood by either side as asking for a history of the PSR but only where the latest final version could be found. DCP's email response pointed to PACER as of May 24, 2023.

On or about April 26, 2023, DCP filed a draft PSR, also invisible to anyone but the official counsel of record, John Pierce, and not to other lawyers in the firm. Therefore, DCP's response did not (nor was intended to) alert the firm's support staff to the complete history of the PSR. Therefore, staff such as Moseley compiling the details for the final Defendant's Sentencing Memorandum assumed that the only thing he was told was the PSR filed on May 24, 2023, was the only final and legally effective PSR provided.

As it turns out, the final PSR does correctly assign zero (0) points to the Defendant's prior charges as the U.S. Sentencing Guidelines require. Therefore, the net result of the longer PSR's review of past charges does not change the Defendant's argument that for the purposes of sentencing she has no effective criminal history. Counsel does still believe that time-barred items such as from 2012 and 2006 should not be mentioned at all, and reminds the DCP to carefully consider the USSG sunseting rules. But it does not in fact change of the Court's evaluation.

The PSR does continue the long-running pattern of reciting as fact the allegations of charging documents which even the jury instructions warn juries should not be considered as evidence. The full, final PSR is flawed in reciting unproven assertions as if they are facts. The Court is required to

resolve factual disputes carefully. But the Defendant's REPLY powerfully and painstakingly rejects the false impression about what happened already, drawing upon the transcript of the first day of actual trial, after jury selection. (All transcripts are on order but not yet received.)

Therefore, as it turns out, the DCP did file a draft PSR on April 26, 2023, and email it to counsel.

Meanwhile, as it turns out, the DCP – as it stated to our firm – filed its final PSR on May 24, 2023, consisting of 25 pages, on the day when the final, fully-reviewed Sentencing Memorandum were due to be filed, along with a 6 page summary of recommendations.

Dated: June 8, 2023

RESPECTFULLY SUBMITTED
KIRSTYN NIEMELA, *By Counsel*

/s/ John M. Pierce
John M. Pierce, Esq.
John Pierce Law Firm
21550 Oxnard Street
3rd Floor, PMB #172
Woodland Hills, CA 91367
Tel: (213) 400-0725
Email: jpierce@johnpiercelaw.com
Attorney for Defendant

/s/ Roger I. Roots
Roger I. Roots, Esq.
John Pierce Law Firm
21550 Oxnard Street
3rd Floor, PMB #172
Woodland Hills, CA 91367
Tel: (775) 764-9347
Email: rroots@johnpiercelaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that this document is being filed on this June 8, 2023, with the Clerk of the Court by using the U.S. District Court for the District of Columbia's CM/ECF system, which will send an electronic copy of to the following CM/ECF participants. From my review of the PACER account for this case the following attorneys are enrolled to receive notice and a copy through the ECF system.

MICHAEL MATTHEW GORDON, ESQ.
DOJ-USAO
U.S. Department Of Justice
400 North Tampa Street, Suite 3200
Tampa, FL 33602
(813) 274-6370
michael.gordon3@usdoj.gov

/s/
John M. Pierce, Esq.