

**UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 15-10150-2-JTM
	)	
JEREMY KETTLER,	)	
	)	
Defendant.	)	
_____	)	

**SENTENCING MEMORANDUM AND REQUEST FOR VARIANCE**

COMES NOW, the Defendant, Jeremy Kettler, through his attorney of record, Ian M. Clark, and respectfully moves this Court for a downward variance based on the following:

**BACKGROUND**

1. On October 6, 2015, Jeremy Kettler was charged by indictment in the above captioned case. (Doc. 1)

2. October 28, 2015, Mr. Kettler was released upon the government and pretrial services' recommendations of release on conditions, which included that Mr. Kettler did not need to be actively supervised.

3. Count One of the Indictment charged Mr. Kettler with Making False Statements During a Federal investigation, in violation of 18 U.S.C. 1001. (Doc. 1) Count Five charged Mr. Kettler with Conspiracy under 18 U.S.C. 371. *Id.*

4. March 9, 2016, the government caused to be filed the First Superseding Indictment that added the additional charge to Mr. Kettler of Possession of an Unregistered Firearm under 26 U.S.C. 5861(d). (Doc. 27).

5. At trial, this Court dismissed counts 1 and 5 against Mr. Kettler as the government could not provide sufficient evidence to support those charges.

6. The jury ultimately found Mr. Kettler guilty of the single count he was facing, possession of an unregistered firearm. (Doc. 71).

#### ARGUMENT AND AUTHORITIES

18 U.S.C. 3553(a) contains the factors the Court considers when determining its sentence. In this case, each and every factor squarely supports a variance below the suggested guideline range.

1. *The nature and circumstances of the offense and the history and characteristics of the defendant.* The nature of the offense of conviction in Mr. Kettler's case is a prohibition on a particular type of firearm accessory. The item in question, a sound suppressor, is an accessory meant to soften the report of a firearm. This item itself is not dangerous, and has absolutely no dangerous characteristics in itself. Further, it presented absolutely no danger in the manner in which Mr. Kettler was found to have possessed or utilized it.

At the heart of this case lies the Kansas Second Amendment Protection Act. The offense of conviction was substantially caused by Kansas legislation that attempted to exempt the type of

sound suppressor Mr. Kettler was found by the jury to have possessed. Therefore, the nature of this offense is not violent, it is not harmful to the community, it was not even committed with any guilty mind or heart whatsoever. The possession of the accessory in question was caused by a good faith misunderstanding of the nuanced interaction between state and federal law. This nuance escaped the entirety of the framers of the Kansas law itself.

The prohibited sound suppressor is not the type of item or material that creates a community danger. It is not like drugs where the possession and sale of which can cause harm to the community generally. Kansas, the particular community at issue here, was responsible for the passing of the Kansas law that got Mr. Kettler into this mess in the first place.

Mr. Kettler's history and characteristics are detailed in the presentence report but in summary he is a decorated veteran of a foreign war, he is a family man, he has no points towards criminal history, and he only did what he did in this case because he thought it was legal.

*2. The need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.* Again, the seriousness of the offense is at the absolute rock bottom of the spectrum of "criminal" offenses. The offense here caused no harm whatsoever except to the tax payers who have to foot the bill for this prosecution.

Respect for the law is something Mr. Kettler has always had. In fact, he thought he was following the law when he did what landed him under indictment in this case. Mr. Kettler would

have never purchased or possessed a firearm suppressor if not for the passage of the Kansas Second Amendment Protection Act with its purported guarantees and safeguards.

Mr. Kettler has already been punished far more severely than the crime of conviction warrants. The collateral consequences alone are mind bending. He is now a felon. He can never again possess a firearm for sport or to protect himself and his family. Mr. Kettler is a trained soldier and has been taught to handle firearms with respect, safety, and proficiency. If anyone in our community is the most well situated to possess a firearm for family and community safety, it is Mr. Kettler. He has had to undergo extreme hardship to make court appearances and attend a nearly week long trial when his place of residence is approximately 3 hours of drive time away from this Court situated in Wichita, KS. Mr. Kettler will likely befall difficulty for the rest of his life obtaining employment due to his felony conviction. He has lost important civil rights that he deserves more than most due to his sacrifice for our country during his time in the armed forces.

3. *The need to afford adequate deterrence to criminal conduct.* Any need for deterrence has almost certainly already been satisfied simply by the government's prosecution of Mr. Kettler and his co-defendant. They, like many other Kansas, were under the mistaken belief that the Kansas Second Amendment Protection Act was valid and protected them from federal regulation and prosecution. Now that this prosecution has taken place and received fairly wide media attention, any need for deterrence has been satisfied simply by making the community

aware that the federal government will prosecute possession of firearm accessories like these regardless of the Kansas Law.

Furthermore, any deterrence needs may be moot due to the introduction of H.R. 367, introduced January 9, 2017 in the 1st Session of the 115th Congress. This bill introduced in the House of Representatives of the United States is entitled the “Hearing Protection Act of 2017” and proposes the striking of “silencers” from the definition of “Firearm” under the Internal Revenue Code of 1986. See attached **Exhibit 1**. Not only would this law completely alleviate any need for deterrence if passed, but would add the ultimate insult to injury in this case.

4. *The need to protect the public from further crimes of the defendant.* Mr. Kettler has no criminal history that counts towards his sentence in this case. The most notable entry on Mr. Kettler’s presentence report is Minor in Possession of Alcohol that occurred when he was 18 years old. The Court’s sentence need not be bothered with considerations of deterrence because Mr. Kettler is a good man caught in the crossfire of a political strong arm contest and would not have knowingly broken the law in the first place.

5. *The need to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.* This factor is also of little concern in this case as Mr. Kettler is not the typical defendant. He has not engaged in a life of crime and the Court is aware of most all the facts and circumstances surrounding Mr. Kettler that would suggest he is of no threat of repeat offending or committing any other crimes

whatsoever. Mr. Kettler does not need the sorts of training or care that the Court or the Bureau of Prisons would be able to provide to many other offenders.

6. *The kinds of sentences available.* The Court has plenty of sentencing options available in this case that do not include time in custody. There is no mandatory minimum sentence called for under the law. The Court could place Mr. Kettler on probation, or perhaps even more appropriately, recognize the injustice involved in this prosecution and the extreme collateral consequences Mr. Kettler will be subject to given the conviction, and simply terminate this case.

7. *The kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines.* As to the applicable category of defendant, Mr. Kettler has zero criminal history points. The sentencing guideline at issue here is USSG 2K2.1. Therefore, the presumed guideline sentence range for Mr. Kettler has been calculated using the same guideline as defendants who are violent criminals possessing firearms, illegal drug users possessing firearms, and otherwise prohibited people under the Federal Criminal Code. Mr. Kettler was found to have violated the tax code for not properly registering a firearm accessory that caused no danger, and very well may be legal by the end of this term of congress.

8. *Any pertinent policy Statements.* We know of no pertinent policy statements relevant to this sentencing.

9. *The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.* To counsel's knowledge, there have been few if any convictions in this district for the same offense conduct in light of the Kansas Second Amendment Protection Act. Nonetheless, given Mr. Kettler's lack of criminal record, and the circumstances surrounding the offense conduct, there is no fear of a disparity in sentencing given Mr. Kettler's offense conduct.

10. *The need to provide restitution to any victims of the offense.* There were no victims of Mr. Kettler's conduct. As such, this factor weighs in favor of downward variance.

#### CONCLUSION

Mr. Kettler has no scored criminal history. He risked his life in service to us and our country. He only did what he did out of a good faith belief that the Kansas Second Amendment Protection Act made his conduct legal. The community in which this violation occurred was the same that passed the Kansas law that caused the confusion. The conduct of conviction resulted in no harm to any person or the community. The conduct of conviction may be decriminalized according to H.R. 367.

In Short, Mr. Kettler has already been adequately punished for his mistake, and will continue to be punished by the collateral consequences of said conviction. This Court would be well within the bounds of reasonableness to vary from the guidelines and give Mr. Kettler a sentence of time served and terminate the case given his period on bond without incident. If

something more is required of him by this Court, a brief probationary period would more than suffice.

WHEREFORE Mr. Kettler prays for a downward variance in sentencing.

Respectfully submitted:

Ariagno, Kerns, Mank & White L.L.C.

By: **s/Ian M. Clark**  
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Attorney for Defendant  
Jeremy Kettler

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of January, 2016 I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

United States Attorney's Office  
The Epic Center, Suite #1200  
301 North Main Street  
Wichita, Kansas 67202-4812

**s/Ian M. Clark**  
Ian M. Clark

EXHIBIT 1

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115TH CONGRESS  
1ST SESSION

# H. R. 367

To provide that silencers be treated the same as long guns.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2017

Mr. DUNCAN of South Carolina (for himself, Mr. CARTER of Texas, Mr. GENE GREEN of Texas, Mr. AUSTIN SCOTT of Georgia, Mr. BIGGS, Mr. GOSAR, Mr. HUDSON, Mr. LAMALFA, Mr. HARRIS, Mr. WESTERMAN, Mr. OLSON, Mr. CHAFFETZ, Mr. HENSARLING, Mr. CARTER of Georgia, Mr. LABRADOR, Mr. BROOKS of Alabama, Mr. SMITH of Texas, Mr. BISHOP of Utah, Mr. BRAT, Mr. ABRAHAM, Mr. PALMER, Mrs. LOVE, Mr. BRIDENSTINE, Mr. STEWART, Mr. MARSHALL, Mr. EMMER, Mr. RATCLIFFE, Mr. JODY B. HICE of Georgia, Mr. BUCK, Mr. WEBER of Texas, Mr. MESSER, Mr. MOONEY of West Virginia, Mr. DESANTIS, Mr. NEWHOUSE, Mr. SMITH of Missouri, Mr. GRAVES of Georgia, Mr. LAMBORN, Mr. WENSTRUP, Mr. ROGERS of Alabama, Mr. DESJARLAIS, Mr. MASSIE, Mr. KING of Iowa, Mr. GOHMERT, and Mr. YODER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide that silencers be treated the same as long guns.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Hearing Protection  
3 Act of 2017”.

4 **SEC. 2. EQUAL TREATMENT OF SILENCERS AND FIREARMS.**

5 (a) IN GENERAL.—Section 5845(a) of the Internal  
6 Revenue Code of 1986 is amended by striking “(7) any  
7 silencer” and all that follows through “; and (8)” and in-  
8 serting “; and (7)”.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as otherwise pro-  
11 vided in this subsection, the amendment made by  
12 this section shall take effect on the date of the en-  
13 actment of this Act.

14 (2) TRANSFERS.—In the case of the tax im-  
15 posed by section 5811 of such Code, the amendment  
16 made by this section shall apply with respect to  
17 transfers after October 22, 2015.

18 **SEC. 3. TREATMENT OF CERTAIN SILENCERS.**

19 Section 5841 of the Internal Revenue Code of 1986  
20 is amended by adding at the end the following:

21 “(f) FIREARM SILENCERS.—A person acquiring or  
22 possessing a firearm silencer in accordance with Chapter  
23 44 of title 18, United States Code, shall be treated as  
24 meeting any registration and licensing requirements of the  
25 National Firearms Act (as in effect on the day before the

1 date of the enactment of this subsection) with respect to  
2 such silencer.”.

3 **SEC. 4. PREEMPTION OF CERTAIN STATE LAWS IN RELA-**  
4 **TION TO FIREARM SILENCERS.**

5 Section 927 of title 18, United States Code, is  
6 amended by adding at the end the following: “Notwith-  
7 standing the preceding sentence, a law of a State or a  
8 political subdivision of a State that, as a condition of law-  
9 fully making, transferring, using, possessing, or trans-  
10 porting a firearm silencer in or affecting interstate or for-  
11 eign commerce, imposes a tax on any such conduct, or a  
12 marking, recordkeeping or registration requirement with  
13 respect to the firearm silencer, shall have no force or ef-  
14 fect.”.

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