IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

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| UNITED STATES OF AMERICA, | ) | CASE NO. 5:11CR594 |
| | ) | |
| Plaintiff, | ) | JUDGE DAN AARON POLSTER |
| | ) | |
| v. | ) | |
| | ) | |
| SAMUEL MULLET, SR., et al., | ) | **GOVERNMENT'S SENTENCING** |
| | ) | **MEMORANDUM AS TO ALL** |
| Defendants. | ) | **DEFENDANTS** |
| | ) | |

The United States of America, by and through Steven M. Dettelbach, United States Attorney, Thomas E. Perez, Assistant Attorney General, and the undersigned Department of Justice attorneys, hereby submits its Sentencing Memorandum, which responds to defense arguments about the applicable Guideline calculations, and sets out its sentencing position as to each defendant prior to the February 8, 2013 sentencing hearings.

## I. The Guideline Calculations

### A. Kidnapping

All of the Presentence Reports ("PSR") correctly conclude that the applicable base offense level is a 32 pursuant to the kidnapping guideline set forth at United States Sentencing Guidelines ("U.S.S.G.") § 2A4.1. As this Court is aware, Section 249 permits a sentencing

enhancement of up to life in prison if "the offense includes kidnapping or an attempt to kidnap." 18 U.S.C. § 249. In accordance with *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Superseding Indictment specifically alleged that each defendant committed acts that included kidnapping in connection with Counts 2 through 6. Likewise, the jury was instructed to make a specific finding beyond a reasonable doubt as to whether each defendant committed acts that constituted kidnapping. U.S.S.G. § 2H1.1, which governs the Guideline calculation for federal civil rights offenses, instructs that the base offense level for a violation of Section 249 should be the greatest of a level 12 (where, as here, the offense involved two or more persons), or "the offense level from the offense guideline applicable to any underlying offense." Given the jury's verdicts as to the specific issue of kidnapping, the most serious underlying offense is clearly kidnapping and, therefore, governed by U.S.S.G. § 2A4.1.

In spite of the jury's verdict, the defendants argue that the kidnapping guideline should not apply, both because this Court instructed the jury using an incorrect definition of kidnapping, and because the Sixth Circuit Court of Appeals has held that U.S.S.G. § 2A4.1 applies only to enumerated federal kidnapping statutes. But the defendants are wrong. First, as was extensively argued and decided prior to trial, while 18 U.S.C. § 1201 requires proof of interstate transport as a jurisdictional element, interstate travel is not a required element to define kidnapping where there is an independent basis for the exercise of federal jurisdiction. *See United States v. Guidry*, 456 F.3d 493, 510 (5th Cir. 2006) (holding that "[f]ederal jurisdiction exists without interstate abduction because [the defendant's] action constituted a violation of [the victim's] constitutional rights."). Furthermore, while the defendants also insisted that kidnapping should be defined as it was at common law with a requirement of asportation, *Guidry* counsels that courts should define

sentencing enhancements according to their "generic, contemporary" meanings. *Id.* As such, this Court defined kidnapping correctly for the jury.

Mullet, Sr. argues that even if the jury was instructed correctly, the Sixth Circuit's decision in *United States v. Epley*, 52 F.3d 571 (6th Cir. 1995), precludes the use of U.S.S.G. § 2A4.1 for civil rights offenses unless those offenses would also meet the elements of the federal kidnapping statute. However, *Epley* is inapposite. Unlike here, *Epley* did not involve a case in which the indictment charged and the jury found beyond a reasonable doubt that the defendants had committed kidnapping. Rather, the defendants in that case were police officers who were convicted of violating 18 U.S.C. §242 for, among other things, wrongfully arresting and planting evidence on their victims. The version of Section 242 that existed at the time the defendants in *Epley* went to trial did not contain a sentencing enhancement for kidnapping. When the government argued that the facts surrounding the defendants' conviction constituted "unlawful restraint" as contemplated by U.S.S.G. § 2A4.1, the Court of Appeals disagreed and noted that the underlying conduct did not constitute a federal crime that would be sentenced under that provision.

Section 242 was amended in 1994 to include enhancements for kidnapping and aggravated sexual abuse. Section 249 was passed in 2009 with identical sentencing enhancements. As such, kidnapping associated with a federal civil rights violation is now a "federal crime." For all of the reasons set forth in *Guidry,* the definition of kidnapping encompassed by U.S.S.G. § 2A4.1 should be as broad as the statutory sentencing enhancement. Any other result would strip the enhancement of all meaning.

In sum, the jury found the defendants guilty of kidnapping. The base offense level ascribed to their conduct should reflect that verdict.

**B. Dangerous Weapon**

The PSRs correctly add two levels pursuant to U.S.S.G. § 2A4.1(b)(3) because the defendants used dangerous weapons in the course of carrying out their religiously-motivated assaults on the victims. Several of the defendants contend that the "dangerous weapon" provision does not apply because scissors and clippers are implements used to cut hair and that the defendants used them for their intended purpose. This argument lacks merit. U.S.S.G. § 1B1.1 defines a "dangerous weapon" as, *inter alia*, "an instrument capable of inflicting death or serious bodily injury." In this case the defendants used sharp implements – horse mane shears that are capable of cutting through leather, to take one example – to physically assault and forcibly remove the head and beard hair of victims who struggled against them. The notion that these implements are not capable of causing serious bodily injury defies logic. Equally specious is the claim that the defendants intended the implements to be used for an innocuous purpose. As set forth fully in the discussion of bodily injury, *infra*, the defendants intended to use the scissors and clippers to assault people whom they knew full well did not want their hair and beards removed and who would likely fight back. They carried out these assaults in the dead of night or in isolated locations for the purpose of instilling fear in their victims, which enhanced the dangers associated with wielding sharp objects. Individuals are assumed to intend the natural and foreseeable consequences of their purposeful actions. It was not merely foreseeable, but a virtual certainty that injury would result from the use of sharp objects during the course of these assaults.

On a related point, the defendants argue that their offenses do not constitute kidnapping, which is addressed *supra*. They then argue in the alternative that their offenses also do not constitute aggravated assault within the meaning of U.S.S.G. § 2A2.2, again because they did not use dangerous weapons with the intent to cause bodily injury, but merely to cut hair. This argument is wrong for the same reasons stated above, and while the government contends that the appropriate guideline in this case is U.S.S.G. § 2A4.1, absent the jury's specific finding of kidnapping, these crimes were aggravated assaults at the absolute minimum.

C. **Bodily Injury**

Certain of the defendants have stated that no injuries were suffered by the victims, or that there was no intent to injure. The government will address these points in turn.

Bodily injury is defined by statute as follows:

> [A]ny injury to the body, no matter how temporary, and includes a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ or mental faculty; or other injury to the body, no matter how temporary. Bodily injury does not include solely emotional or psychological harm to the victim.

18 U.S.C. § 249(c)(1) and 18 U.S.C. § 1365(h)(4).

First, the evidence and testimony presented at trial conclusively established that the victims suffered bodily injury. Whether they suffered bruises, cuts, abrasions, disfigurement, physical pain, or other injury to the body, which they did, does not matter.[1] The statute expressly

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[1]Mullet, Sr.'s conclusion that the jury rejected the argument that removal of an Amish man's hair and beard or an Amish woman's head hair is disfigurement when it acquitted all defendants on Count 3 is unfounded. In fact, it is equally as likely, because there was no evidence Mullet, Sr. referred to David Wengerd as a hypocrite, that they could not find beyond a reasonable doubt that the defendants' attack on David Wengerd was religiously motivated.

states that any of these listed injuries, no matter how temporary, is sufficient for a jury to find bodily injury.

Second, defendants intend the natural consequences of their violent assaults. *See Sandstrom v. Montana*, 442 U.S. 510 (1979) (permitting inference that a person normally intends the consequences of his voluntary acts is permissible); *United States v. Myers*, 972 F.2d 1566, 1573 & n.3 (11th Cir. 1992) (approving instruction: "With regard to specific intent, you are instructed that intent is a state of mind and can be proved by circumstantial evidence. Indeed, it can rarely be established by any other means." "In determining whether this element of specific intent was present, you may consider all of the attendant circumstances of the case." "For example, you may infer that a person ordinarily intends all the natural and probable consequences of an act knowingly done. In other words, you may in this case infer and find that the defendant intended all the consequences that a person, standing in like circumstances and possessing like knowledge, should have expected to result from his or her act or acts knowingly done.")

What could the defendants here possibly have expected when they ambushed their victims; required numerous other attackers to help them hold their victims down so that they could use clippers (sometimes painfully inoperable) and shears (with curved and serrated edges that were strong enough to cut through bone) to attack victims who continued to fight and resist the attacks; pulled at the victims' beards with such force that they twisted the victims' faces; restrained women who tried to flee, and in one instance left bruises that lasted for more than three weeks; disfigured the victims to make them look so "funny and different" that Eli Miller and the Shrocks used a camera to memorialize their altered and maimed appearances; or

slammed one man onto the arm of a couch with such force he had rib pain for weeks? The only logical conclusion - and the one the jury reached - was that they intended bodily injury.

## II. Sentencing Position as to All Defendants

Like other multi-defendant cases, there is a range of culpability among the defendants in this case. Based on information learned during its investigation and the evidence established during trial, the government has created a tier chart reflecting where it believes each defendant lies within the range of culpability. The tiers are listed in descending order, with Tier 1 identifying the most culpable defendant.[2]

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| **Tier 1** | Samuel Mullet, Sr. |
| **Tier 2** | Johnny Mullet, Levi Miller, Eli Miller and Lester Mullet |
| **Tier 3** | Emanuel Shrock, Danny Mullet and Lester Miller |
| **Tier 4** | Linda Shrock and Raymond Miller |
| **Tier 5** | Freeman Burkholder, Lovina Miller, Anna Miller, Emma Miller, Elizabeth Miller and Kathryn Miller |

As the Court will see below, the government is taking the unprecedented step of recognizing that variances and departures may be warranted for 15 of the defendants in this case - despite the fact that they put the victims though the emotional pain and turmoil of testifying against them, and despite the fact that they put the government to its burden of proof at trial. For certain of these defendants, the government's recognition that 25-level variances or departures may be warranted amounts to an approximately 20-year reduction in their sentences.

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[2]There is very little distinction between Tiers 2 and 3, or among the defendants listed in those Tiers.

## A. Tier 1 Defendant: Samuel Mullet, Sr.

For Samuel Mullet, Sr., there are no factors or circumstances that warrant a departure or variance outside of the applicable Guideline range. Plainly stated, Samuel Mullet, Sr. should be sentenced to a life term of imprisonment because, *but for* Samuel Mullet, Sr., it is highly unlikely any of his co-defendants would have engaged in violent and obstructive conduct.

### 1. Mullet, Sr. Controlled and Manipulated the Bergholz Community For His Own Selfish Ends.

Samuel Mullet, Sr.'s control over the Bergholz Community was - and is - absolute. He was able to get men to surrender their wives to him. Wives would be forced to leave their small children and live in Mullet, Sr.'s home so that they could be available to him. Indeed, Lovina Miller lived with Mullet, Sr. for approximately two years while her husband and minor children lived at the home of Emanuel and Linda Shrock. And if a woman refused to come to Mullet when he requested that she do so, Mullet would send someone for her. Nancy Mullet described an occasion when she refused a nighttime request from Mullet, Sr. only to have Mullet, Sr. send his wife, Martha Mullet, to retrieve her. Nancy Mullet explained further that when she finally reached a point where she felt strong enough to refuse him, Mullet, Sr. confronted her and called her a whore. Mullet, Sr. did not tolerate community members who did not submit to his will. And to ensure that there was no dissension among the members or plans to leave his community, Mullet, Sr. read the community members' incoming and outgoing mail.

Mullet, Sr. manipulated his community, including his own children, nieces and nephews, to do his bidding. Mullet, Sr. did not receive the respect he believed he deserved from the other Amish communities and their members. His excommunications were considered vengeful and,

as a result, unenforceable. His practices and methods were denounced by other Amish Bishops, even to the point where he and his community were openly shunned. Mullet, Sr. could not abide this. In 2011, after years of letting his resentment and anger fester, after weeks of telling his flock that hypocrites needed to be sheared, Mullet, Sr. encouraged his members to take the hair and beards of other Amish. These were acts of religious degradation, a phrase Mullet, Sr. eagerly adopted.

Following their arrests, indictment, and during trial, Mullet, Sr. and the defendants have repeatedly argued that these attacks were intended to help reform their victims. But that is far from the truth. While it is undisputed that they sheared their own hair and beards for a reformative purpose, it is equally as clear that their attacks on members outside of their community were about something altogether different - revenge for Mullet, Sr. and to achieve "respect" for the Bergholz community.[3]

The defendants' own words belie the argument that they were "helping" others see the correct path to eternal life: they mocked the Millers for being Christians; Johnny Mullet denied being a Christian when he attacked Raymond Hershberger; and Levi Miller approached Andy Hershberger and said, "And you're a preacher, too," just before chopping at his face with the hair clippers.

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[3]Given the evidence at trial and the status of those defendants listed in Tier 5, it is possible that the Tier 5 defendants were so manipulated by Mullet, Sr. that they actually believed that attacking the Millers was intended, at least in part, to "help" them. This certainly does not negate their guilt, since any violent attack on a person because of their actual or perceived religion is forbidden, but it does factor in to the government's sentencing position as to those defendants.

It is the statements made during the recorded jail calls, however, that reveal Mullet, Sr.'s and the defendants' true intentions. They openly mocked and ridiculed their victims by calling them names like "simple," "stupid," and "boogers." (Gov't Ex. 17: Mullet, Sr. And Levi Miller jail call). They criticized Raymond Hershberger and Myron Miller for fighting back when they were attacked. (*Id.*) And while Levi Miller and Lester Mullet expressed their concerns to Mullet, Sr. during their jail calls, their resolve was shored up by Mullet, Sr. and others on the line who: (a) reminded them that these were "religious degradings;" (b) laughed about how Andy Hershberger was injured and disfigured; (c) shared their collective amusement that other Amish who saw them at auctions and sale barns feared and avoided them; and (d) cautioned them that talking to law enforcement would only lead to charges against Mullet, Sr. and the destruction of the Bergholz community.

**2. Mullet, Sr. Agreed With And Openly Encouraged A Campaign of Terror.**

Mullet, Sr. knew the power of his words. By telling his community that Amish hypocrites like the Millers, Myron Miller and Melvin Shrock needed to have their hair and beards sheared off, Mullet, Sr. was giving an instruction that no member could ignore.[4] And then to demonstrate his own agreement with and commitment to his flock's violent assaults, he held

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[4]Mullet, Sr.'s religious disagreement with Raymond Hershberger is well established. While there was no evidence that Mullet, Sr. openly referred to Raymond Hershberger as a hypocrite, he all but called him one when he told Levi Miller during their recorded call that a Bishop like Raymond Hershberger should not have fought back. Further, when interviewed by the FBI, Lester Miller said that Raymond Hershberger was an "Amish hypocrite." Mullet, Sr.'s attempt to establish that his comments about shearing the hair and beards of Amish hypocrites is protected speech is patently absurd. At no time has the First Amendment protected statements among co-conspirators about the commission of their crimes, and certainly not when those crimes are violent and terrorizing assaults targeting a victim's free exercise of religion.

vigil at his home during each assault, every time waiting to hear the assailants' reports no matter how late at night they returned to his home. And he gave directions to Raymond Hershberger's house knowing full well that his own preachers were going to attack Raymond and then venture on to Myron Miller - attacks that Mullet, Sr. openly spoke of *after* the men had gone to the Mt. Hope Auction on October 4, 2011.[5]

Mullet, Sr. further expressed his agreement with and encouragement of these attacks when he spoke with the media in October, 2011. Specifically, Mullet, Sr. told WKYC-TV, that these attacks were "all about religion." When Mullet, Sr. spoke with the Associate Press, he again characterized the attacks as "religious" and said: "We know what we did and why we did it."

### 3. Mullet, Sr. Has Repeatedly Blamed Those He Controls For His Own Criminal Conduct.

There is no doubt that Mullet, Sr. wanted, agreed with and encouraged all of these attacks. And for that reason, it is remarkable that he continues to deny his own culpability while throwing the other defendants under the proverbial bus, especially when some of these defendants are his children, his nephews, and his clergymen.

As set forth below, Mullet, Sr. is now saying that he agreed with the attacks for fear of being attacked himself, which is an utterly outrageous statement considering he had

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[5]A detailed list of the evidence which proved beyond a reasonable doubt that Mullet, Sr. agreed with and encouraged these attacks is set forth in the Government's Response to Defendant Samuel Mullet, Sr.'s Motion for Judgment of Acquittal/Motion for New Trial Pursuant to Criminal Rules 29 & 33, pages 8-16, and is incorporated herein.

misappropriated wives and read all incoming and outgoing mail without once being attacked.[6] (*See* December 29, 2012 New York Times article, E. Eckholm, "Braced for Hardship, an Amish Clan Awaits Sentences in Shearing Attacks).

Up until this most recent media statement, however, Mullet, Sr. maintained, albeit falsely, that the other defendants all acted without his agreement or consent. In fact, during his November 23, 2011 interview with the FBI, Mullet, Sr. was all too eager to tell the agents that Johnny Mullet (his son and a preacher); Lester Mullet (his son); Danny Mullet; (another son); Eli Miller (his nephew); and Levi Miller (the other preacher), had just gone off on their own to attack the Hershbergers and Myron Miller. And certainly, when he learned that Emanuel and Linda Shrock (his son-in-law and daughter) were going to avenge him once again by attacking Melvin and Anna Shrock, he waited to hear news of their success. He did not make any attempt whatsoever to stop or discourage them from committing the crime or from involving two of his own grandchildren - and we know that he could have and had, in fact, stopped others from committing similar attacks on or about October 9, 2011. For Mullet, Sr., retribution and vengeance were far more important than protecting his children, grandchildren and community members. It was then, and still is, all about Mullet, Sr.

**4. Mullet, Sr.'s Blatant Disregard for Law Enforcement and Willingness to Obstruct Justice Weigh Heavily Against Any Departure or Variance.**

Mullet, Sr. was convicted of obstructing justice and making materially false statements to the FBI. Now, Mullet, Sr. argues that the evidence of his obstruction is insufficient, which serves

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[6]At trial, it was established that Mullet, Sr. was never in the chicken coop and did not have his hair or beard shorn during the community's self-imposed cleansing.

to illustrate his lack of respect for the rule of law in general. Mullet, Sr.'s efforts to obstruct justice were captured on the jail calls with Levi Miller and Lester Mullet. He orchestrated the effort to conceal the camera from authorities by conspiring with Eli Miller to falsely state that the camera was destroyed, and then sharing this information with Lester Mullet in case the camera became an issue in any of his conversations with law enforcement. Of this there is simply no doubt.

Additionally, Mullet, Sr. has lied to law enforcement in connection with this case. The first time was on October 8, 2011, when he was approached by Holmes County Sheriff Tim Zimmerly and told by the Sheriff that these attacks needed to stop. In response, Mullet, Sr. told Sheriff Zimmerly that they were done. Of course, that was not true and Mullet, Sr. did not stay true to his word. After this conversation with Sheriff Zimmerly, but prior to the November 9, 2011 attack on the Shrocks, Mullet, Sr. was made aware of the plan to attack the Shrocks and did nothing to stop it or to inform law enforcement that another attack was imminent.

On November 23, 2011, Mullet, Sr. lied again.[7] Despite providing the directions to the Hershberger residence the night before they were attacked, and despite openly talking to his daughter, Barbara Yoder, on October 4, 2011, after the men had left for the Mt. Hope Auction, about how they may be attacking the Hershbergers and Myron Miller before returning home, Mullet, Sr. lied to two FBI agents about his knowledge of those attacks. On November 23, 2011,

[7]As set forth above, Mullet, Sr. was conveniently truthful about information that incriminated his children, relatives and community members.

Mullet, Sr. was specifically asked if he had any idea that the men were considering stopping at the Hershbergers on October 4, 2011. Mullet, Sr. denied having any such knowledge.[8]

And the list of Mullet, Sr.'s lies continues to grow. Mullet, Sr. has unsuccessfully challenged the characterization of certain statements he made to the media prior to the trial, but that has not stopped him voluntarily submitting to more media interviews:

- In a December 3, 2012 interview with the Daily Mail, Mullet, Sr. refused to say that attacking the victims was wrong: "I'm not saying [cutting hair] was right or wrong." (December 3, 2012 article, R. Quigley, http://www.dailymail.co.uk/news/article-2242573/Amish-leader-Sam-Mullet-tells-beard-cutting).

- In a separate interview with the New York Daily News, Mullet, Sr. finally admitted that the Miller Children brought a bag of hair to him when they returned to Mullet, Sr.'s home after attacking their parents - a fact he adamantly denied when being interviewed by FBI agents on November 23, 2011. (December 4, 2012 article, P. Caufield, http://www/nydailynews.com/news/national/amish-cult-leader-life-behind-bars-article-1.1213025).

- And then, in a December 29, 2012 article in the New York Times, Mullet, Sr. claimed that he went along with these attacks out of fear for his own safety: "I guess I didn't want my beard cut off, and that probably would have happened if I had tried to stop them . . . ."[9]

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[8]Prior to these attacks, Mullet, Sr. had an ongoing feud with the Jefferson County Sheriff. Indeed, Mullet, Sr. ordered that the Bergholz Community school be closed for a full year because he did not appreciate Sheriff Abdalla's presence in or near their community. Mullet, Sr.'s son, Eli Mullet, has also advised the FBI that Mullet, Sr. ordered Eli Mullet to threaten the Sheriff's life, which Eli Mullet did. Eli Mullet was convicted of this crime. Eli Mullet still lived in the Bergholz community at the time he threatened the Sheriff, but was reluctant to implicate his father in this crime. Mullet, Sr. was not prosecuted for his role in threatening Sheriff Abdalla's life.

[9] Although Mullet, Sr. continues to claim that he is being "smeared" for his religious beliefs, these more recent media statements illustrate that his story keeps changing to suit his purposes.

**5. The Greater Amish Community Uncharacteristically Seeks a Life Sentence for Mullet, Sr.**

During this trial, it became clear that the Amish are committed to forgiving those who sin against them. That is why the 14 letters the government has received from Amish practitioners in Ohio, Pennsylvania and New York are so compelling. In these letters, the writers seek either "life" or a "long" prison sentence for Mullet, Sr. Copies of these letters are attached hereto as Exhibit 1. Because these writers fear Mullet, Sr., their identities and any specific information from which Mullet, Sr. could identify them have been redacted.

In conclusion, Mullet, Sr.'s vengeful efforts to terrorize Amish practitioners who have made religious decisions to avoid and exclude him, or who have disregarded his excommunications, illustrates that he is a danger to the greater Amish community. Further, Mullet, Sr.'s control over and willingness to manipulate the members of his community to engage in violent, criminal conduct to avenge him and obstruct justice illustrates that he is a danger to his own community as well. This violent conduct, when coupled with Mullet, Sr.'s repeated disregard for the rule of law (unless it is his own), establishes that the most significant term of imprisonment contemplated by the Guidelines is the only sentence sufficient, and still not greater than necessary, under Section 3553(a).

**B. <u>Tier 2 Defendants: Johnny Mullet, Levi Miller, Eli Miller and Lester Mullet</u>**

Johnny Mullet (a preacher), Levi Miller (a preacher), Eli Miller and Lester Mullet are listed together in Tier 2 because of: (1) the especially violent nature of their conduct during the attacks in which they participated; and (2) either their role in the community or their convictions for obstruction. Each of these men here demonstrated a willingness to seek revenge for Mullet,

Sr. by using deceptive tactics and violent conduct. Johnny Mullet used his position to recruit participants in the attacks on the Hershbergers and Myron Miller, which he organized. Levi Miller, in his position as a preacher, used his position to endorse and assist with this violent conduct. And Eli Miller and Lester Miller, while not being clergymen, actively engaged in an effort to conceal the camera from the FBI. Accordingly, the government will seek terms of incarceration that reflect the seriousness of their offenses.

At both the Hershbergers' home and Myron Miller's home, these defendants tried to pass themselves off as friendly Amish hoping to have a conversation with the victims, despite the fact that it was late in the evening and that the victims were all in bed. But then, once physically close enough to do so, they acted. Johnny Mullet, in particular led the charge at both homes. After pouncing on Raymond Hershberger and saying, "We are here for what you did to our shunned people," Johnny Mullet attacked Raymond with Lester Miller's shears, and then later that night by grabbing hold of Myron Miller's beard and using Myron's beard to haul him out of the house. Levi Miller was actively engaged in both assaults as well, first by using the clippers on Raymond Hershberger and Andy Hershberger, and then by helping to hold Myron Miller as he fought to break free from the attack. Importantly, no other defendant in this case participated in more attacks than Eli Miller. Eli Miller also conspired with Mullet, Sr. to conceal the camera he used to memorialize the victims' appearance so that all of Bergholz, especially Mullet, Sr., could witness their shame. For his part, Lester Mullet violently pushed Levi Hershberger onto the couch and then, with the aid of Eli Miller, held Andy and Levi Hershberger still while Levi Miller attempted to chop off Andy Hershberger's beard. Lester Mullet also conspired with Mullet, Sr. to conceal the camera.

These men, unlike many other of their co-defendants, were in a position to stop these attacks. Instead, they recruited others to join them and led the charge - all to seek retribution for perceived slights against Mullet, Sr. Additionally, they were only too eager to report back to Mullet, Sr. Eli Miller placed the bag of hair from the Miller attack at Mullet, Sr.'s feet and said: "Here's the hair." He then went on to participate in numerous other assaults. Johnny Mullet, accompanied by Levi Miller, Lester Mullet and Eli Miller, marched right into Mullet, Sr.'s house after midnight on October 5, 2011, after they had come directly from Myron Miller's house, to report: "We got two of them." He then proceeded to describe in detail how the victims screamed and cried for the attacks to stop.

Because these defendants ruthlessly terrorized the victims, used their positions to recruit participants, planned certain of the attacks, and, in the case of Eli Miller and Lester Mullet, obstructed justice, these defendants should receive a significant term of incarceration. However, because they share some similarities to other co-defendants in the sense that they were controlled and manipulated by Mullet, Sr., the Court may be inclined to consider variances or departures for these defendants. If that is the case, the government would not object to such a departure or variance that is equal to or less than eight (8) levels.

### C. Tier 3 Defendants: Emanuel Shrock, Danny Mullet and Lester Miller

These defendants did not hold positions of authority in the community or obstruct justice.[10] Nevertheless, these defendants were especially deceptive and violent in their assaults and, like the defendants in Tier 2, require significant terms of incarceration.

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[10]Lester Miller was charged with obstructing justice, but the jury acquitted him on that count.

### 1. Emanuel Shrock

After the October 4, 2011 attacks resulted in the detention of five Bergholz community members, Emanuel Shrock began writing letters to his dad, Melvin Shrock, encouraging Melvin and his mother, Anna, to return to Bergholz in order to visit with Emanuel and his family. Melvin and Anna were reluctant to go to Bergholz because they had heard of the Bergholz community's campaign of terror, and they feared being assaulted or even poisoned. Excerpts from Emanuel's letters to Melvin are set out below:

- In his first letter, Emanuel pretended to consider the possibility that the Bergholz community was a cult: "The more things go on here in Bergholz, the more I'm beginning to wonder if perhaps you were right afterall, and we are some kind of cult?" Emanuel then went on to accuse Melvin of not caring about him or the grandchildren because Melvin had thus far refused to return to Bergholz. (Gov't Ex. 11).

- In his second letter, Emanuel acknoweldges his dad's fears about coming to Bergholz, but said: "I am still man of my own house and nobody, not even Sam Mullet, has a right in here without my consent." (Gov't Ex. 12).

- In the final letter, Emanuel again acknowledges Melvin's response to Emanuel's second letter as expressing a continued fear of going to Bergholz. In addressing Melvin and Anna's continued reluctance, Emanuel said: "And in my mind I guess I thought I told you it was safe to come. . . . you will be safe." (Gov't Ex. 13).

Emanuel's deceptive techniques were successful; Melvin and Anna went to his house on November 9, 2011, where they were assaulted by Emanuel and the others he recruited to assist him - Linda Shrock, Daniel Shrock (his then 18-year-old son), and David Shrock (his then 16-year-old son). And to add insult to the bleeding injury to Melvin's face, Emanuel and his sons

took pictures of Melvin and Anna so that they could share their shame with the rest of the Bergholz community.

It should also be noted that Emanuel Shrock's lies to his parents about their safety during the November 9, 2011 visit did not end there. That same day, Emanuel Shrock lied to Sheriff Abdalla when he falsely told the Sheriff that his parents would not be hurt while visiting with him and his family.

**2. Danny Mullet and Lester Miller**

Lester Miller was the leader of the attack on his parents, Marty and Barbara Miller. Indeed, after trying to open the door and discovering that it was locked, Lester Miller decided to gain entry by pretending to be a friendly Amish man. Lester Miller knocked on his parents' door, and then ducked to the side while covering his face with his hat. Lester Miller knew that his mother would not open the door if she saw him.[11] Barbara was fooled by Lester Miller and, once she opened the door, Lester Miller seized the opportunity to step around her and lead his siblings and their spouses into the house. He then proceeded to lead the way into his parents' bedroom, where he rousted his father from sleep and then grabbed Marty by his beard with such force that "it twisted his face." (Testimony of Barbara Miller). Lester then drew the scissors he brought and proceeded to attack his father.

Additionally, Lester Miller knowingly and willingly provided serrated horse mane shears to Johnny Mullet so that Johnny Mullet could use them in the attacks on the Hershbergers and Myron Miller.

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[11]The Miller Children tried to go to Marty and Barbara Miller in January 2011. Barbara did not open the door to them because she was afraid of them. She told them to "go back to Sam Mullet."

Danny Mullet participated in the October 4, 2011 attacks on the Hershbergers and Myron Miller. It was Danny Mullet who held Raymond Hershberger in the rocking chair, and who pushed the chair into the wall with such force that two distinct impressions from the back of the rocking chair were left in the Hershberger's wall. Danny Mullet is also responsible for pushing Sarah Hershberger, Raymond's then 79-year-old wife, into a nearby wall when she tried to intervene and help her husband.

While these defendants are most similar to those defendants listed in Tier 2, they were neither community leaders nor proven participants in efforts to obstruct the FBI's investigation. These facts, when coupled with the fact that they share some similarities to other co-defendants in the sense that they were controlled and manipulated by Mullet, Sr., might lead the Court to consider variances or departures for these defendants. If that is the case, the government would not object to such a departure or variance that is equal to or less than ten (10) levels.

**D. <u>Tier 4 Defendants: Linda Shrock and Raymond Miller</u>**

Linda Shrock and Raymond Miller were each convicted of participating in one religiously-motivated attack.[12] What sets them apart from the defendants listed in Tier 5, who similarly participated in one attack, is their proven disregard for law enforcement and the continuation of their illegal conduct after several community members were charged and arrested for the October 4, 2011 attacks. For this reason, Linda Shrock and Raymond Miller should be

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[12]Linda Shrock was also complicit in the September 24, 2011 attack on David Wengerd, which also included her sons Daniel and David among the assailants. She hosted the Wengerds for lunch, and entertained Sarah Wengerd knowing that Emanuel, Levi Miller and Eli Miller had deceived David Wengerd into walking to a remote area of her farm so that they could cut his hair and beard.

sentenced to a term of imprisonment that is at least one year longer than the longest term of incarceration imposed on a Tier 5 defendant.

**1. Linda Shrock**

Linda Shrock's attack on Melvin and Anna Shrock occurred *after* three of her brothers and two community members had already been arrested for attacking the Hershbergers and Myron Miller. Moreover, knowing that such attacks could result in arrests and criminal charges, Linda included her children (one of whom was a minor) in the attack on Melvin and Anna Shrock.

Linda Shrock and her husband also lied to Jefferson County Sheriff Fred Abdalla when they told him that neither Melvin nor Anna would be hurt while "visiting" with Linda and her husband. That is obviously not true because Daniel Shrock and Barbara Yoder both testified that Linda and Emanuel already had a plan in place to assault Melvin and Anna - and Linda, in particular, was concerned they "wouldn't be able to get it done." (Testimony of Barbara Yoder). Linda Shrock also went so far as to instruct her son Daniel to obstruct justice and hide the camera she knew was the subject of the FBI's inquiry.[13]

**2. Raymond Miller**

On October 9, 2011, just days after some Bergholz community members were arrested for religiously-motivated assaults on the Hershbergers and Myron Miller, Raymond was ready to commit more hair and beard cutting assaults. In fact, he was "ready to go again", if Samuel

[13]As the Court may recall, the purpose of wrapping the camera and placing it at the base of a tree marked with an "x" was to conceal it from the FBI, not to let it be destroyed. The community intended to wait for the FBI's investigation to end and then return to the tree, dig up the camera, and develop the pictures because seeing the victims so disfigured was just too enticing.

Mullet, Sr. would have permitted him to engage in more attacks. Samuel Mullet, Sr., while amused that Raymond and then men intended more attacks, ultimately advised them not to go.

Raymond Miller was not concerned with law enforcement or the possibility of being arrested for assaulting innocent Amish victims. His lack of remorse and concern for law enforcement manifested itself again when, in December 2011, Raymond Miller pointed a shotgun at an Amish man, put his finger on the trigger and his hand on the pump, and told the Amish man that he better not make any more disparaging remarks about Mullet, Sr. or the Amish man would get his hair and beard cut, too.

### E. Tier 5 Defendants: Freeman Burkholder, Lovina Miller, Anna Miller, Emma Miller, Elizabeth Miller and Kathryn Miller

Tier 5 comprises the least culpable defendants. To be sure, these defendants voluntarily participated in the violent attack on Marty and Barbara Miller. And each of them is responsible for the terror and injuries they inflicted on their victims because of the Millers perceived "religious hypocrisy." And each of them was found to have kidnapped their victims. They are certainly responsible for their conduct. But there are facts that set these defendants apart from the other defendants.

First, the Tier 5 defendants were involved in one attack, with no evidence that they intended to commit or inquired of Mullet, Sr. about committing additional attacks. Secondly, with the exception of Lovina Miller, these defendants do not appear to have directly participated in the concealment of the camera.[14] And finally, the PSRs prepared for these defendants

[14]After receiving direction from Eli Miller, Lovina Miller told Linda Shrock that Eli Miller wanted the camera hidden from the FBI. After having heard the testimony of Nancy Mullet, however, the unique circumstances of Lovina Miller's living arrangements during the relevant time period suggest that Lovina Miller was controlled by Mullet, Sr.

illustrate how they have largely become estranged from their families because of their association with Mullet, Sr. Thus, even if they had wanted to get out from under Mullet, Sr.'s control, it appears that they had few options. Consequently, should the Court determine that variances are warranted for the Tier 5 defendants, the government would defer to the Court as to the appropriate variance, but would object to a variance that placed these defendants outside of Zone D of the United States Sentencing Guidelines.

**F. Consideration for the Four Defendant-Couples**

The government is cognizant of the fact that there are four defendant-couples in this case: Linda and Emanuel Shrock; Eli and Lovina Miller; Lester and Elizabeth Miller; and Raymond and Kathryn Miller. As set forth in the PSRs, the Bergholz community has made arrangements for all of the children of these families, and it is clear that the minor children of these defendants will be cared for during their parents' incarceration. Nevertheless, the government would not object to stacking the defendants' sentences so that only two families have both parents incarcerated at any one time. If the Court is inclined to stack the sentences of the female defendants, the government would respectfully request that Elizabeth and Kathryn Miller,

perhaps the two least culpable defendants, serve their sentences after Linda Shrock and Lovina Miller.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of February, 2013, a copy of the foregoing Government's Sentencing Memorandum was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Bridget M. Brennan
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