

respectfully ask the Court to make that will bring the total offense level to 18. With zero criminal history points - Category I - the guideline range is 27 to 33 months.

First, Clayton is the only one of the remaining eight co-defendants who has *not* been found guilty of 18 U.S.C. § 111(b) (assault of an officer causing serious bodily injury or use of a dangerous weapon) (Co-Defendant Lopatic died in 2022, PSR at p. 12, ¶ 47). Clayton pled guilty to a lesser included offense (§ 111(a)(1)) because he did not cause the injuries that would support the five-level increase pursuant to USSG § 2A2.2(b)(3)(B). The signed plea agreement shows the intent of the parties was “Bodily Injury” and “+3” (ECF No. 355 at p. 3).

The second adjustment relates to a two-level decrease under USSG § 4C1.1(a), Chapter Four Adjustment Zero-Point Offender, effective November 1, 2023. This provision was not available to the parties when they signed the plea agreement last August but paragraph 10.E. (Id. at p. 8) gives Clayton the right to file a motion under 18 U.S.C. § 3582(c)(2) for a sentence modification based on subsequent reduction of a guideline range by the Sentencing Commission. In the interests of judicial economy, we ask the Court to address this issue at sentencing. As shown above, Clayton did not cause the officer’s serious bodily injury and his vigorous efforts to free the officer from a violent assault does not exclude him from this new provision of mercy.

II. STATUTORY FACTORS - 18 U.S.C. § 3553(a)

A. Nature of Offense - § 3553(a)(1)

Clayton illegally climbed the United States Capitol steps and assaulted an officer on January 6, 2021. He accepts responsibility for his unlawful behavior. The following information does not excuse his misconduct but is humbly offered for mitigation.

When mayhem erupted on the Capitol steps, Clayton chose charity, not malice, to aid the distressed souls around him. Surprised by the tumult, a lifelong instinct to serve others drove him to help people in peril. Unlike his co-defendants, Clayton had no rage or battle armor. Clayton did not target or taunt the police officers.

As an AUSA in DC during the 1990's, counsel papered and prosecuted hundreds of Assault on Police Officer (APO) cases. That experience engendered great respect for the women and men who risk their lives every day to protect us. Most APO defendants were enraged and / or drunk beyond all reason. On January 6th, Clayton was sober and somber. He tried to assist Roseanne Boyland who lay dying at the West Terrace Archway. A New York Times article shows Clayton just to the right of her friend Justin Winchell (bright blue coat) trying to help her. www.nytimes.com/2021/01/15/us/rosanne-boyland-capitol-riot-death.html

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Clayton also helped others in the crowd who were being trampled. Thirty seconds later, Clayton tried to help MPD Officer A.W. by pulling him away from Co-Defendants Sabol, Jersey and McAbee who were beating him. The following timeline references videos from the body worn cameras (BWC) of MPD Officers A.W. and C.M. which use military time. These videos are covered by the Court's protective order and have been previously delivered to the Court.

Officer A.W. BWC Video - 13 minutes and 31 seconds duration:

16:25 - Officer A.W. reaches front line at Archway;

16:26 - People are piled up;

16:26:13 - Clayton renders aid to people on ground;

16:26:23 - Another view of Clayton helping others;

16:26:54 - Justin Winchel cries: "She's dead, she's dead!!"

16:26:55 - Clayton still helping others;

16:27:13 - Officer A.W. goes down;

16:27:50 - Co-Defendant McAbee is fighting officers right on top of Officer A.W. and then falls on him;

16:28:25 - Clayton is on other side of rail several feet away from Officer A.W.

16:28:41 - Officer A.W. is back on his feet near Archway.

Officer A.W. was on the ground for less than 90 seconds and remained on the top steps near the Archway. Clayton did not pull Officer A.W. down the steps. He did not fight Officer A.W. He watched him get up and return to his fellow officers.

Officer C.M. BWC Video - 18 minutes and 2 seconds duration:

16:24 - Officer C.M. reaches front line at Archway;

16:24:57 - Justin Winchell screams repeatedly: "There are people crushed here!!"

16:25:44 - Mr. Winchell pleads: “Get her up, please save her life!!”

16:27:31 - Officer A.W. is on the ground and Clayton is 10 feet away;

16:27:34 - Clayton is at the rail;

16:27:36 - Clayton reaches over the rail; Officer A.W.’s head is off the ground
BEFORE Clayton touches him and *BLOOD* is already visible on
Officer A.W.’s back collar;

16:27:50 - Co-Defendant McAbee is fighting officers at the front line.

Co-Defendants Sabol, Jersey and McAbee, who attacked Officer A.W. and threw him to the ground, caused Officer A.W. 's head wound. You can already see blood on Officer A.W.'s jacket collar upon Clayton's first encounter with him. As to Officer B.M., Clayton directed him to safety away from the maelstrom in the Archway. And Clayton certainly did not pull Officer B.M. down the Capitol steps

A Washington Post article published March 10, 2021 captures the moment that Clayton tries to pull Officer A.W. away from Co-Defendant McAbee. Clayton’s head is turned away because there is a rioter just above him swinging a hockey stick. That is why he could not see that another officer was trying to pull Officer A.W. into the Archway at the same time. Clayton released Officer A.W. when he realized that another officer was assisting him.

https://www.washingtonpost.com/local/legal-issues/police-assaults-capitol-riot-charges/2021/03/10/7b44ea2c-7b70-11eb-a976-c028a4215c78_story.html



This brief factual summary of these awful events on January 6th supports Clayton's account from day one that he was trying to help, not hurt Officers A.W. and B.M

B. Clayton's History and Characteristics - § 3553(a)(1)

There are now 90 letters of public support filed in this case from Claytons's family and friends. These direct descriptions from lifelong observers give the best insight into his history and characteristics. They show a man from humble honest roots who is law-abiding, hard-working, peaceful and always helping others in need. After an EF-4 tornado destroyed his hometown of Mayfield, Kentucky on December 10, 2021, killing 24 Graves County residents, Clayton volunteered his services and heavy equipment for months and years afterwards to help folks recover.

Clayton's letter to the Court shows the extreme remorse he carries for his conduct on January 6, 2021 (Exhibit 1). He admits that he was "energized" by the January 6th crowd but knows that he should have resisted the urge to get close to the Capitol. He is now "going through the toughest trials of his life...I am willing to make amends and follow the rule of law." (Id. at p. 1). He emphasizes that he has always supported law enforcement and first responders and helped them with "traffic accidents, tornado and ice storm disaster clean up (.)" (Id. at p. 2). After recounting his actions on January 6th (also submitted for PSR at p. 13, ¶ 58), he writes "I walked away from the Capitol that day a changed man. I was crying when I reached my family. In shock I said 'a woman got hurt and I tried to help her' and 'they were hitting and injuring the police officers and I was trying to help the police and get them to safety.'" (Ex. 1 at p. 3). His immediate reaction to the tragic events on the Capitol steps captures the soul-crushing impact on Clayton. He concludes "I now have a felony conviction of which shames me. I have asked my

Lord for forgiveness and want to personally ask the police officers for forgiveness for my involvement.” (Id. at p. 4).

In her letter (Exhibit 2), Clayton’s wife Nancy shares his grief and torment: “Our hearts break for the people harmed on that day and have never forgotten the ones that lost their lives. We have spent much time on our knees praying for the victims and asking God to forgive us for being a part of that tragic day.” She recounts specific instances of Clayton’s generous spirit in helping family members whose homes were destroyed by the tornado. She confirms his respect for the police and how he once assisted them in rounding up cattle and directing traffic after a wreck. Clayton has been especially helpful to Nancy’s elderly parents and been a steadfast life partner as she undergoes cancer treatment.

Retired Judge Gregory D. Pruitt expresses his great admiration for the Mullins family and knows Clayton to be “caring, loving, and supportive of others and his community.” (Exhibit 3) He believes that he has been “positive, committed, and helpful anytime he knew that someone was in need in any way.” Clayton is “intuitive to the needs of those around him.” Judge Pruitt cites his own limited mobility with a walker and describes Clayton’s focused attention: “While many are sympathetic or supportive in assisting me from time to time, very few are keenly aware of my risk. He, however, is literally standing close enough to assist immediately if needed. I believe Clayton certainly attempts to be that attentive and helpful to anyone around him who may have a similar need or weakness.”

Retired FBI Supervisory Special Agent Robert Edward Dueker, Sr. is Clayton’s neighbor in Benton, Kentucky (Exhibit 4). He served in Vietnam as a Marine Pilot and spent 29 years with the Bureau. He writes that Clayton is an “honest, trustworthy, hard worker, and a devoted

husband...Clayton and his wife Nancy are the kind of neighbors everybody wants to have.” He says that “in the 14 years I have known Clayton, he has never been violent in any way and never promoted it in any way.”

Retired Deputy Sheriff Kelly E. Drew has known Clayton since they were high school farm boys picking tobacco, hunting and fishing (Exhibit 5). He is “dependable and trustworthy” and “loved by everyone.” He recalls how “Clayton was always helping our community and supporting our sheriff’s office 100 percent.” He cites a specific example of Clayton lending his business expertise to help with the investigation of a “large equipment theft ring that spanned several states.” He emphatically states that “Clayton Mullins is a great friend, husband, relative, neighbor, community member, businessman and person” who is “dependable, honest, loyal, committed and serving his community.”

The following family members have recently submitted letters for Clayton (Exhibit 6):

- 1) Robert Rohrer, Father-in-Law - Mayfield, Kentucky
- 2) Barry Newsome, Brother-in-Law - Graves County, Kentucky
- 3) Joe Skaggs, Brother-in-Law - Mayfield, Kentucky
- 4) James Gooch, Brother-in-Law - Mayfield, Kentucky
- 5) Brooke Smith, Niece - Mayfield, Kentucky
- 6) Tina Skaggs, Niece - Mayfield, Kentucky
- 7) Laken Clapp, Niece - Mayfield, Kentucky
- 8) Jaden Feagin, Great Niece - Mayfield, Kentucky
- 9) Kyle Feagin, Great Nephew - Mayfield, Kentucky
- 10) Joey Rogers, Nephew - Mayfield, Kentucky

The following friends and business associates sent recent letters for Clayton (Exhibit 7):

- 11) Michael Goode, Retired Deputy Sheriff - Mayfield, Kentucky
- 12) Cory Crowley, Business Owner - Mayfield, Kentucky
- 13) Paulette Spence, Retired Business Executive - Bertrand, Missouri
- 14) Danny Foy, Lifelong Friend - Wingo, Kentucky

The following letters from family and friends were filed on June 7, 2021 as exhibits to Defendant's Motion to Modify Conditions of Release (ECF No. 77):

Family (ECF No. 77-1):

- 15) Nancy Mullins, Wife - Benton, Kentucky
- 16) Tena Sisson, Sister - Mayfield, Kentucky
- 17) Judy Skaggs, Sister - Mayfield, Kentucky
- 18) Ricky Dale Mullins, Brother - Mayfield, Kentucky
- 19) Charlotte Ann Mullins, Sister-in-law - Mayfield, Kentucky
- 20) Angie Gooch, Sister-in-law - Mayfield, Kentucky
- 21) Stephanie Dawn Mullins Richards, Sister-in-law - Paducah, Kentucky
- 22) Kim Rogers, Niece - Mayfield, Kentucky
- 23) Andy Spraggs, Nephew - New Orleans, Louisiana

Friends (ECF No. 77-2):

- 24) Mark L. Crawford, M.D. - Paducah, Kentucky
- 25) Ben Crawford - Mayfield, Kentucky
- 26) Pastor Thomas Fortner - Trenton, Tennessee
- 27) Pastor Richard H. Heatherly - Portland, Tennessee

- 28) Pastor Chad Johnson - Russellville, Kentucky
- 29) Kyle Clayton - Finger, Tennessee
- 30) Jamey Clayton - Finger, Tennessee
- 31) David Baggett - Finger, Tennessee
- 32) Shanda Abbott - Wingo, Kentucky
- 33) Nicholas Dempsey - Benton, Kentucky

Friends (ECF No. 77-3):

- 34) Robert Mosley - Belton, South Carolina
- 35) Billy Duncan - Kentucky
- 36) Rick Johnson - Mayfield, Kentucky
- 37) Anita Parker - Kentucky
- 38) Carol Ramage - Mayfield, Kentucky
- 39) Dewayne McKnight - Murray, Kentucky
- 40) Hazel Brewer - Baltimore, Kentucky
- 41) Richard Tomlin - Center, Texas
- 42) Johnny Gossum - Columbus, Kentucky
- 43) Raymond E. McAlpin - Mayfield, Kentucky

Friends (ECF No. 77-4):

- 44) Belinda McCullough - Walker, Louisiana
- 45) Layta Kay Guthrie - Mayfield, Kentucky
- 46) Allene Skulina - Bardwell, Kentucky
- 47) Geneva Sullivan Wall - Mayfield, Kentucky

- 48) Don R. Holshouser - Mayfield, Kentucky
- 49) Lori Bunch - Wingo, Kentucky
- 50) Steven Bunch - Wingo, Kentucky
- 51) Joe Bunch - Wingo, Kentucky
- 52) Joshua H. Tabers - Murray, Kentucky.

The following letters from family and friends were filed on June 29, 2021 as exhibits to Defendant's Reply In Support of Motion to Modify Conditions of Release (ECF No. 80):

Family (ECF No. 80-1)

- 53) Janice Mullins Spraggs, Sister - Murray, Kentucky
- 54) Patricia & Bobby Rohrer, Paternal-In-Laws - Mayfield, Kentucky
- 55) Robert & Dana Rohrer, Sibling-In-Laws - Mayfield, Kentucky
- 56) Connie Newsome, Sister-In-Law - Farmington, Kentucky
- 57) Amber Spraggs, Niece - Murray, Kentucky
- 58) Colton Sisson, Nephew - Wingo, Kentucky
- 59) Corey Newsome, Nephew - Farmington, Kentucky
- 60) Victoria Prock, Cousin - Avon, Indiana

Friends (ECF No. 80-2)

- 61) Dr. Bobby J. Adams - Dyersburg, Tennessee
- 62) April Brown - Hixson, Tennessee
- 63) Danny L. Cope - Calvert City, Kentucky
- 64) Bettye E. Crawford - Mayfield, Kentucky
- 65) Chandra Davis - Mayfield, Kentucky

- 66) Don & Nancy Gossum - Mayfield, Kentucky
- 67) James Gossum - Mayfield, Kentucky
- 68) Brent & Cassie Graham - Harrisburg, Illinois
- 69) Greg Graves - Paducah, Kentucky

Friends (ECF No. 80-3)

- 70) David Graziano - Paducah, Kentucky
- 71) Branon Hardy - Gilbertsville, Kentucky
- 72) Kim Harris - Mayfield, Kentucky
- 73) Don R. Holshouser - Mayfield, Kentucky
- 74) Ross Howell - Gilbertsville, Kentucky
- 75) Seth Jones - Mayfield, Kentucky
- 76) Michael Jurglomies - Wingo, Kentucky
- 77) Jim Kimmel - Benton, Kentucky
- 78) Tanna Kimmel - Gilbertsville, Kentucky

Friends (ECF No. 80-4)

- 79) Linda LaTourelle King - Mayfield, Kentucky
- 80) Kim McGhee - Hickory, Kentucky
- 81) Thomas & Sandra Mock - Bertrand, Missouri
- 82) David Moore - Jackson, Tennessee
- 83) Jake Peeler - Farmington, Kentucky
- 84) Bobby Poat - Paducah, Kentucky
- 85) Teresa Rogers - Graves County, Kentucky

86) Clay Wagnon - Warren, Arkansas

We are most grateful for the Court's review and consideration of these 90 letters of support as it deliberates on Clayton's history and characteristics.

C. Avoidance of Unwarranted Sentence Disparities - § 3553(a)(6)

Since Clayton is the only surviving co-defendant in this case who has not been found criminally liable for a § 111(b) offense, we are stuck with comparing apples and oranges. The maximum sentence for Clayton's § 111(a) conviction is eight years, a significantly lower ceiling than the twenty years for § 111(b). Co-Defendant Barnhart, who has a criminal record including convictions for setting a vehicle on fire during a riot and a road rage incident where he pointed a gun at one driver, hit another driver in the face and left the scene, received the lowest sentence of 36 months from this Court (PSR at p. 12, ¶ 49; ECF No. 284 at p. 27). Unlike Clayton, Barnhart boasted of his January 6th exploits on social media. (*Id.*) And Barnhart's criminal acts in this case are much more egregious - he grabbed the neck of Officer's B.M.'s ballistic vest and dragged him down the steps headfirst in a prone position where he was assaulted by a flagpole and a baton. After assaulting Officer B.M., Barnhart charged up the steps to the police line and began beating the officers with a flagpole. (*Id.* at pp. 7 - 13). Again, it begs credulity to even compare Clayton with Barnhart but, given the greater 20 year offense, worst conduct and disturbing criminal history, Clayton should receive a substantially lower sentence than Barnhart.

The following defendants received sentences for assaultive conduct of less than one year:

- 1) Defendant Mark Jefferson Leffingwell, 21-cr-005-ABJ, (Statement of Offense, ECF No. 26) pled guilty to assaulting *two* officers (§ 111(a)(1)) *inside* the Capitol. The Court sentenced him to 6 months incarceration.

- 2) Defendant Matthew Council, 21-207-TNM (Statement of the Offenses, ECF No. 55) also pled guilty to assaulting an officer (§ 111(a)(1)) *inside* the Capitol. The government asked for 30 months imprisonment and the Court sentenced Mr. Council to 6 months of home detention.
- 3) Defendant Grayson Sherrill, 21-cr-282-TSC (Statement of Offense, ECF No. 104) pled guilty to assaulting an officer with a metal pole (§ 111(a)(1)) and then took that pole *inside* the Capitol. The government asked for 41 months and the Court sentenced Mr. Sherrill to 7 months incarceration.
- 4) Defendant David Alan Blair, 21-cr-186-CRC (Statement of Offense, ECF No. 51) pled guilty to Civil Disorder (18 U.S.C. § 231(a)(3)) but his offense conduct included striking an officer in the chest with a lacrosse stick adorned with a Confederate battle flag. The Court sentenced Mr. Blair to 5 months in prison.

We respectfully submit to the Court that these cases of defendants assaulting officers *inside* the Capitol or outside with a pole and lacrosse stick are more egregious than Clayton's conduct. And in contrast to Clayton, these defendants targeted and attempted to injure or incapacitate officers.

We pray this Court will show mercy on Clayton Mullins.

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Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2024, I electronically filed the foregoing Memorandum with the Clerk of Court using the CM / ECF system, which will send an electronic notification of such filing to all counsel of record.

/s/

Pat Munroe Woodward, Esq.