

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

SETH ANDREW,

Defendant.

No. 22 Cr. 32 (JPC)

DEFENDANT'S SENTENCING MEMORANDUM

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I. PRELIMINARY STATEMENT

By any measure, Seth Andrew has lived an extraordinary life of service. He has dedicated his professional efforts to lifting up the neediest among us. His story is one of middle-class beginnings, outsized dreams, and odds-defying impact on the lives of literally thousands. But Seth's good deeds have not been confined to public service. He also has had a profound impact on those in his private life: friends, family, neighbors. He is the friend who has shown up in the worst of times, the one others have chosen as family, and he has dedicated himself to being the consummate husband and father.

Given Seth's history and characteristics, his acceptance of responsibility, the lack of a need for further deterrence, and the mitigating aspects of the offense conduct, including singular and unprecedented facts that make this case unlike any traditional fraud case, we respectfully ask the Court to take into account the entirety of Seth's actions and sentence him to a period of home confinement, followed by three years' probation.

II. SETH'S LIFE AND BACKGROUND

A. Seth's Childhood

Seth Andrew was born on May 10, 1978, in Upper Manhattan, New York. PSR ¶ 77. He grew up in a hard-working, middle-class family. His mother was a social worker who spent most of her career at the Goddard Riverside Senior Center. *Id.* Seth's father was a grants administrator, primarily at Columbia Presbyterian Hospital in Washington Heights, and was actively involved in politics. *Id.*

Growing up, Seth was especially close with his mother. She was a constant source of love and, though she did not have much, always made sure that Seth was cared for and never wanted for basic necessities. *Id.* ¶ 78. She was Seth's support system, and he leaned on her

during his most challenging times as a child. Seth's relationship with his father was more complicated. *Id.* While Seth looked up to his father and credits him with modeling a strong sense of civic duty, their relationship could at times be emotionally turbulent. *Id.* When Seth was 11 years old, his parents separated, which in many respects upended Seth's family life. *Id.* Seth spent the ensuing years of his childhood shuttling on the subway between Washington Heights, Harlem, Manhattan Valley, and high school in the Bronx.

Seth's lifelong commitment to improving public education has its roots in his educational background. Seth attended New York City public schools for 13 years, at P.S. 163, Booker T. Washington J.H.S. 54, and then the Bronx High School of Science. *Id.* ¶ 79. At these schools, Seth's friends and classmates primarily came from low-income and working-class families; he vividly recalls that many of his friends lived in public housing and the shock he experienced visiting them just a few blocks from his apartment. *Id.*

In his early years in school, Seth earned mixed grades and was the regular target of bullies. *Id.* His teachers praised his verbal and math performance in the classroom, but his written assignments often lagged significantly behind his peers. In third grade, [REDACTED] *Id.* Soon thereafter, he began typing his assignments on a Radio Shack 386 computer and he immediately saw a marked improvement. *Id.* Seth then continued to thrive academically throughout middle school, high school, college, and graduate school—success he attributes to his mother, a few specific teachers, special education services, and assistive technology.

Seth's early experiences left an indelible impression, and his response to these formative years was an overwhelming desire to improve society—and specifically education. A lifelong friend recalls that “[e]ven when [they] were young, Seth was looking at the world through the

lens of finding ways he could make it better.” Ex. G, A. Downey Letter; *see also* Ex. HH, A. Hunt Letter (“[Seth] was one of the first teens I’d met who seemed passionate about...well, anything of substance, but specifically, about making the world a better place.”); Ex. NN, C. Levis Letter, (“How I know Seth is as a teenager constantly talking about the inequities young people faced in our society. He wanted, planned, and knew it was possible to envision and enable bold positive changes that would open up the possible paths of individual lives as well as shape a more just and thriving society for us all.”).

B. Seth’s Path to Democracy Prep

Seth enrolled at Brown University in 1996. PSR ¶ 101. Even as a young college student, Seth was unusually focused on public service. He consulted for the Providence Mayor’s Council on Drug and Alcohol Abuse, served as staff and a volunteer on multiple policy and political campaigns, and was vice president and president of the Brown student government. Seth was often praised (and criticized) for his outspoken nature and heterodox thinking. In recognition of his excellence and commitment to public service, he was awarded an Open Government award from Common Cause Rhode Island and a Truman Scholarship, among other accolades.

In 1998, as a junior in college, Seth saw an opportunity to make a difference through public policy. He ran for Rhode Island State Representative on a platform dedicated to civic engagement, educational reform, and environmental stewardship. *Id.* Seth spent months literally wearing out the soles of numerous shoes while knocking on prospective voters’ doors and talking with them about his civic mission. Even though he was running in a diverse district that included some of Providence’s lower-income residents and its best-educated neighborhoods around Brown, Seth was surprised and dismayed to realize that many of the district’s residents—from all backgrounds—lacked basic knowledge about how laws were made. If civic understanding was so low even among extremely well-educated adults, Seth wondered, how much worse must it be

among children without access to politically engaged families, civics teachers, and excellent schools? These questions sparked in Seth a realization of the vital role civic literacy can play in promoting a flourishing democracy. Seth lost the election (by 79 votes), but the experience formed in him an even deeper commitment to quality civic education. *Id.* As one friend from that time writes:

What impressed me most about Seth in this event was not the campaign, but rather his response to losing. He became understandably discouraged with ordinary politics. Such discouragement could lead in two directions: redoubling effort with a more cynical approach or simply checking out and letting the world take care of itself. Seth chose neither. Rather, he decided to change the world more locally, starting charter schools that provided excellent education and leadership skills to some of New York's most disadvantaged students.

Ex. XX, J. Pojanowski Letter.

Galvanized by the link between education and democracy, Seth drafted an application to form a public charter school, which he initially prepared in his junior-year dorm room. Seth's proposal was rejected not because of its civic content, but due to a law capping the number of charter schools in Rhode Island. Undeterred, Seth subsequently advocated for years to change that law. While his efforts to do so were unsuccessful, they were not wasted—the law was eventually changed, and Seth's public charter school proposal would become Democracy Prep.

After graduating from college, Seth felt a pull toward the classroom. He taught classes in South Africa and at a rural school in South Korea. PSR ¶ 118. Seth's exposure to South Korean education was formative, and ultimately, Korean culture and educational techniques would become integral to the curriculum at Democracy Prep.

In 2001, Seth returned to the U.S. in order to obtain his master's degree in school leadership and development from Harvard University. *Id.* ¶ 100. He did so with the goal of dedicating his career to transforming educational opportunities for the most vulnerable

communities worldwide. While in graduate school, Seth began to focus his work more precisely on low-income children of color with disabilities. *Id.* This decision was informed in part by Seth's personal experience: [REDACTED]

[REDACTED]. *Id.*

After graduating in 2002, Seth spent the next two years of his career working as a special education teacher in Massachusetts. *Id.* ¶ 118. Seth's vision for a charter school not only endured but was shaped by his time in the classroom. After years of dreaming and planning, Seth's application for a charter school in Central Harlem was approved in 2005. *Id.* ¶ 113. The following year, Democracy Prep's¹ first public school (Democracy Prep Charter School) welcomed its inaugural class of sixth grade students, sharing the same building with the lowest-performing middle school in the entire city. More than a quarter of those who enrolled had special needs and over 95% were both low-income and students of color.

From its beginnings, Democracy Prep reflected Seth's belief in the importance of public schools of choice and the need for world-class teachers. The organization was uniquely focused on cultivating a passion for democracy, aiming, in Seth's words, not just to create students, but to shape citizen-scholars poised to make civic change. Further, because of Seth's commitment to forgoing operating philanthropic funding after opening, the school and the school's leadership were not beholden to donors and could instead focus on employing the best educational techniques possible. Seth felt strongly that Democracy Prep should not focus its attention on advancing the most successful students, as many other charter schools were doing. Instead,

¹ Democracy Prep Public Schools ("Democracy Prep") was initially incorporated as Democracy Builders. PSR ¶ 15. Its name was formally changed to Democracy Prep in September 2011. Seth also incorporated Democracy Builders, Inc. and Democracy Builders Fund as related non-profit organizations with the IRS.

under Seth’s leadership, Democracy Prep concentrated its efforts on helping the most vulnerable children achieve academic, civic, and social *growth*. *Id.* ¶ 114. As one of Seth’s peers in the field writes:

Seth made a conscious choice to serve more challenging students. . . . Seth’s schools catered to underdogs. These kids were less likely to have any strong advocate at home. Seth and his team would use Census data, find the poorest streets, go knock on the doors, and find the families with the least social capital. In doing so, Seth knew that he and his teachers would be getting kids who’d likely arrive with the most acute academic needs, and therefore it would put great test score pressure on his schools. He shrugged. He wanted to let the chips fall where they may so long as they were giving opportunity to students that others might shy away from.

Ex. CC, M. Goldstein Letter.

This focus on the neediest even among the underserved has endured throughout Seth’s career and would later become central to his vision for forming many other non-profit organizations, including Democracy Builders Fund.

Seth worked tirelessly to advance Democracy Prep’s mission. As one friend noted, Seth “worked incredibly hard for years – fifteen hour days, seven days a week –” and used “his own example of dedication and hard work to inspire his faculty to do more with less.” Ex. L, D. Sculley Letter. Seth was utterly committed to making Democracy Prep a success, and this devotion extended to all facets of his life. *See, e.g.*, Ex. L, D. Sculley Letter (“He moved to Harlem so that he could live in the same community as his students.”); Ex. DD, D. Gross Letter (“[W]hen the first class of [Democracy Prep] students was admitted, Seth paid a personal visit to each of their families to learn about their conditions and expectations of the school.”).

Seth’s sacrifices bore fruit. The organization’s flagship campus—Democracy Prep Charter School—and its students achieved significant success, winning recognition locally, nationally, and internationally. PSR ¶ 114. The network soon added more schools and expanded

into multiple states. *Id.* ¶ 113. In 2010, Democracy Prep Charter School was named the number one public middle school and the number one charter school in all of New York City. *Id.* ¶ 114.

Remarkably, even as Democracy Prep—and Seth’s work to build it—garnered increasing praise, Seth never lost his focus on engaging with students on an individual level. As one of Seth’s former students recounts, “[w]hen Seth found out about what my family and I were going through he set me aside, crouched down in front of me with tears in his eyes and said to me, ‘In times of adversity you have to use your struggles as a way of strength, one day you’ll talk about how you overcame this.’” Ex. K, L. Moya Letter. Seth also continually found ways to encourage and foster his students’ potential. Dan, another one of Seth’s former students, recalls Seth asking him at 12 years old to speak on a panel at the Harvard Graduate School of Education. After the panel, Seth took Dan and his father to “the iconic John Harvard statue and instructed [him] to swipe [his] hand on the statue’s shoe, a major ritual for prospective students wanting to one day be a part of this renowned institution.” Ex. J, D. Clark Letter. As Dan describes, “I left Harvard feeling empowered and confident that one day, I too would be a scholar at a prestigious university.” *Id.* Seth’s interactions with his students have also left lasting impressions that extend well beyond their time at Democracy Prep. One former student credits Seth as the reason why she is teaching and as the inspiration for her desire to found a public charter school in the future. Ex. I, A. Mason Letter. She also writes:

I could say it was his curiosity and diligence that struck me, because it did. But truly, it was his love for us that defied my understanding of the kind of heart, the type of person you must be to be a public servant. Effective public servants change the lives of those they serve and I am certain that if I had not encountered Seth back in 2006, although I would have found success, I would not have developed the work ethic, integrity and diligence he led with. . . . I have never met someone as dedicated to serving youth and this country such as Seth has.

Id.

Seth's utter devotion to the mission of Democracy Prep is impossible to capture on paper.

But the friends who saw his work during this period bear eloquent witness. As one friend writes:

I'll never forget the way the students lit up when they saw him. He seemed to fill them with hope, pride, confidence and enthusiasm all at once. And it wasn't just the odd student here or there, but just about every young person we came in contact with during our nearly two hour visit.

I was particularly struck by the way he appeared to know each student on a personal level—checking in with child after child on hyper specific details about their day or following up on a previous interaction. It was easy to see what an impact it made on them to be seen and known by Seth. And not just because he was the adult in charge, but because he was genuinely invested in them as individuals.

Ex. S, B. Burwell Letter. Another friend recounts: “I walked those halls with him, so deeply moved by what he had built and the impact he'd made on these children's lives. As he told me about their programs . . . I felt such a swell of pride in my friend. He was a model among my peers of what it meant to commit to a life of service.” Ex. G, A. Downey Letter. Seth's former advisor at Brown, and now dear friend, describes the genuine commitment Seth had to the school: “Seth and [his wife,] Lana shared life fully with the school—their aspirations for the students reaching generously beyond the boundaries of courses and activities. Time, ideas, advocacy, substance, love—Seth invested fully in this community.” Ex. RR, Rev. J. C. Nelson Letter; *see also* Ex. A, L. Zak letter (“For years before we had our own children, we would joke that we had a hundred, the scholars of Democracy Prep. . . . [H]e gave his heart and nearly every waking hour to these students. He loved them, loves them still. Many of them became like family to us. They would share meals with us, tell us about their fears and dreams, and I literally cannot count all the times he was their first call when in trouble.”).

C. Seth's Broader Educational Work

After expanding the Democracy Prep network to multiple schools around the nation, Seth decided to transition to government service in 2013. PSR ¶ 112. While not eager to leave his

students in Harlem, Seth was humbled by the opportunity to contribute to educational initiatives in yet another manner. Through his service in various roles at the U.S. Department of Education and the White House, Seth promoted the use of technology to strengthen public education and to expand the public's ability to participate in American democracy. *Id.* ¶¶ 110, 112. In particular, Seth contributed to launching the Future Ready Initiative, which helped school superintendents improve digital learning in their districts, and Vote.gov, a project that helped register and turn out millions of voters. *Id.* Throughout his government service, Seth remained deeply connected to Democracy Prep, its leaders, board, teachers, and alumni, maintaining a close consulting and advisory relationship with the network and remaining on Democracy Prep's payroll. *Id.*

Seth left government service in 2016 to found and lead the board of Washington Leadership Academy (WLA), a technology-focused charter school in Washington, DC. *Id.* ¶ 109. Professionally, from 2017 to 2019 he shifted his focus to international education, accepting a position with another organization, New Globe International, where he worked with government leaders and local NGOs in some of the world's most impoverished communities—including those in Liberia, Nigeria, India, and Kenya—to create and cultivate high-quality schools that had an incredible impact on the students they served. *Id.* ¶ 108. One of Seth's colleagues at the time describes the work of the organization and Seth's contribution:

These schools served families who earn \$2/day. Seth joined our team for 2 years to help us figure out how to expand and yet maintain quality, as it grew from around 200 schools to 2,000 today. Seth's contribution was meaningful. Just as one metric: the 2019 Nobel economist Michael Kremer [has] release[d] a 2022 randomized control trial showing huge academic gains for kids who attended these Bridge schools. These are possibly some of the largest gains ever seen in the developing world.

Ex. CC, M. Goldstein Letter.

In 2010, Seth started Democracy Builders, Inc., a 501(c)(4) non-profit to help families and students advocate for policy changes, and in 2013, he founded Alumni Revolution, a 501(c)(3) non-profit organization (which would later be renamed Democracy Builders Fund) that worked on student recruitment for Democracy Prep, and civic engagement and educational initiatives in order to specifically support alumni of Democracy Prep schools and similar public charter schools. PSR ¶ 115. By one measure, 84% of Democracy Prep Charter School alumni succeed at four-year colleges—an order of magnitude greater than the national average, or those in random control trials of similar students. *Id.* However, instead of being content with the success of most of these students, Seth chose to rededicate himself to the 16% who hadn't yet succeeded in college (as his daughters now say, "Daddy's favorite word is *yet*"). He saw Democracy Builders Fund as a means to address that problem, and the initiatives he championed were always focused on supporting struggling Democracy Prep, WLA, and similar alumni. *Id.*

While working with schools around the world, Seth stayed connected to Harlem by continuing his work with alumni through Democracy Builders Fund. In 2019, Seth envisioned their major new initiative called *Degrees of Freedom* as a new kind of college model for students struggling to bridge the gap between high school and traditional four-year colleges, and one that would not burden its students with debt. *See Ex. Z, W. Edelglass Letter.* In July of 2020, Democracy Builders Fund bought a 550-acre college campus in Marlboro, Vermont which enrolled and housed numerous students and Democracy Prep alumni throughout 2020–2021 during the COVID pandemic. Seth and his wife donated and loaned their personal funds to Democracy Builders Fund during this time, and the organization was planning on welcoming its first full class in September 2021. After Seth's arrest in this case, Seth departed the organization

with hopes that it could survive without him, but the remaining board members subsequently sold the campus and ceased operations.

D. Seth's Family

Seth's mother, Susannah, was his rock. She was a constant presence in his life and provided him with unconditional love and support. PSR ¶ 78. When Seth was in high school, [REDACTED] and her deteriorating health required her to stop working. *Id.* ¶ 77. While Seth was in college, [REDACTED]. *Id.* As the effects of her illnesses began to increase, she was confined to a motorized wheelchair. Because her apartment, in which she had raised Seth and his sister Stephanie, was not accessible, Seth and his sister worked together to install temporary ramps and pull bars so Susannah could remain in her home of more than 30 years. Seth remembers his mother rolling up in her "beast"—beaming with pride and dignity—to his graduations, his wedding, and the earliest events for Democracy Prep.

While in college, Seth received financial aid for tuition and earned additional scholarships for room and board, all while working more than 20 hours a week to help defray his mom's expenses. During this complicated period, Lana, Seth, and his sister helped support, care for, and advocate for Susannah. *Id.* They provided unconditional love, but her health continued to deteriorate. [REDACTED] *Id.* Tragically, Seth's mother passed away in 2007, as Seth was nearing the end of his first year as principal at Democracy Prep Charter School. *Id.* While Susannah had been able to see him realize their dreams of starting a school, she was never able to see all that Seth's organizations became. Democracy Prep has always represented a tribute to Seth's mother's dedication to civic service and his deep and abiding love for her.

Seth's relationship with his father remains complicated, but Seth has worked hard to maintain a loving relationship with him. His father retired a decade ago, and before COVID, Seth and his family traveled to support his dad regularly. They still maintain a weekly Wednesday FaceTime call.

Seth's life revolves around his three young children and his wife, Lana, to whom he has been married for 18 years. *Id.* ¶ 80. Seth and Lana fell in love when they were both high school debaters. *Id.* The two dated long-distance during college, after which Lana accepted a Fulbright Scholarship in South Korea. When Seth came to Korea for a short visit on Lana's birthday, she asked him to stay. With only the pack on his back, Seth obliged, putting his life and career in the U.S. on hold to support Lana's research and to continue their adventures together. After 27 years together, and throughout this challenging chapter, they have become even more deeply devoted to each other. Ex. A, L. Zak Letter.

By all accounts, Seth is a committed and loving father to his three young children. Seth treasures his eight-year-old twins, **Z.A., L.A.**, and four-year-old son, **Z.A.** PSR ¶ 80. As one friend writes, "[o]f all the facets of Seth I've known over the years, he is truly at his best when he is with his children: generous, encouraging, connected. He's raising children who are as kind, reflective, and creative as he is, and it's clear to see their absolute adoration of him. . . . He's an empath, absorbing the feelings of his children and helping them process them." Ex. G, A. Downey Letter; *see also* Ex. B, S. Andrew Letter, Ex. BB, K. Gallogly-Lowell Letter, Ex. O, E. Gannon Letter, Ex. EEE, H. Won Tesoriero Letter, Ex. SS, J. Ory Letter.

Seth loves to take hikes in the woods with his daughter **L.A.** fostering her adventurous spirit and purposefully getting lost in nature and then orienteering their way back home. PSR ¶ 80. **Z.A.** loves to curl up in her father's lap as they read books before bed. *Id.*

Z.A. is fascinated by animals of all kinds. One of Seth’s favorite activities is taking **Z.A.** to zoos and the American Museum of Natural History, where the two debate the various strengths and attributes of animals in a game they call “Animal Showdown.” *Id.* Seth also applies the skills he has developed throughout his career in education to help his children grow and learn. Seth “translates big ideas into child-friendly learning opportunities, always prioritizing first safety and values. He is consistent: carefully disciplining, thoughtfully praising, always encouraging creativity and exploration.” Ex. Y, L. Crusey Letter.

As multiple letters make clear, Seth has given freely of himself to his broader family circle as well. To Seth’s sisters-in-law, he is an endless source of “inspiration,” “love,” “guidance, joy, and affection”; someone who is there to help them through tough times “like a true big brother” and the forever “humble guy” who is always happy to pitch in no matter the task. Exs. E and F, A. Stecher and J. Kowalski Letters. Seth encouraged his mother-in-law, whose parents had been unable to afford to send her to college, to return to the classroom and earn her college degree. She credits Seth with changing her life and pushing her to help other non-traditional students in her community to achieve their own dreams. *See* Ex. C, J. Michong Zak. She describes Seth as selfless, thoughtful, and generous, and writes, “I am very proud of Seth and love him so much. He is a devoted husband to my daughter and a wonderful father to their three, young children. I feel that I am the luckiest mother-in-law and even through all of this, I feel grateful that Seth is my son.” *Id.*

E. Seth’s Friends and Community

Strikingly, many of Seth’s friends use similar terms to describe their relationship with him: he is their chosen family. *See, e.g.*, Ex. N, J. Hogue Letter (“We now refer to our families as cousins; because friends are the family you choose, and [Seth and Lana] will forever be a part of our family.”), Ex. UU, N. Ozawa Letter (“When Eric and I got married in 2012, we had a

small wedding, only family. Only family, that is, and Seth and Lana. I remember, because without them it wouldn't have been complete.”), Ex. H, S. Birdsell Letter (“I am so grateful that my path crossed with Seth’s over 20 years ago. Seth is now part of what my son calls ‘our big family.’”). The numerous letters from Seth’s friends highlight consistent qualities. He is a devoted and selfless friend who others regularly look to for advice on their life choices, mentorship for their children, and support during their most trying times. Just a few of the many examples include:

In my personal life, Seth Andrew has served as a critical friend in my darkest hours. A few years ago, as I struggled [REDACTED] [REDACTED] Seth was there to open his home to me when I needed a place to stay while I relocated. He was there to listen and to help in whatever ways he reasonably could. What impresses me so much about Seth is knowing that he would do this for any of his friends.

Ex. EE, C. Heng Letter.

Uncle Seth brings the same joy, purpose and adventure to every moment he spends with my son and his kids. He creates outdoor adventure courses out of tree stumps and clotheslines; he shows the kids how to build a fire on a frozen pond and how to catch salamanders and snakes. He teaches them argument and logic and world geography in the most unlikely moments. He shows my son that opportunities to connect, learn and grow are all around him, that there are many ways to engage with the world - and that we are our best selves when we engage with it fully and openly.

Ex. H, S. Birdsell Letter.

I have known Seth Andrew since September 2018 when he began mentoring me as a new school administrator. . . . As a first year Assistant Principal, Seth whipped me into shape. He put a mirror in front of me, and helped me see how I could be a better and more effective school leader. He advised me on small details (like the importance of having a poster printer to be able to quickly brand the school for culture) as well as large initiatives (like our strategic plan). When something came down to the wire, he had no problem jumping in, opening up his computer, and cranking out work alongside me. At the end of my first year, we were the most improved school in Baltimore. We would not have been able to achieve this without Seth’s mentorship.

Ex. OO, J.D. Merrill Letter.

Just a few years after graduation, I had started a nonprofit and was struggling to figure out if I had made the right choice to continue moving forward. Seth was one of a very few people to ask me why I was choosing to continue. It was a hard question to answer at the time and one I was not ready to answer. Yet he kindly pushed me to answer it for myself.

Ex. Q, J. Anastasoff Letter.

Seth stood by me in one of the most difficult periods of my life, when I arrived on his doorstep in crisis. I happened to have a preplanned trip to New York, a day after my husband [REDACTED]. Seth and Lana were my respite in the storm as our family [REDACTED]. That weekend, we talked through the various scenarios ahead and cried and laughed together. I was so thankful to be in his home because he offered solace during that visit and for years to come.

Ex. O, E. Gannon Letter.

Put simply, and as multiple friends attest, Seth is the friend who always “showed up.”

Ex. T, J. Burwell Letter, Ex. BBB, K. Scott Letter.

Seth’s friends also consistently describe him as “generous,” “compassionate,” “loyal,” “caring,” and “encouraging.” He “always see[s] the best in [people] and encourage[s] [them] to push [themselves] to greater challenges and goals.” Ex. O, E. Gannon Letter. “He is never shy with his opinion, and, at the same time, will be a champion to help you with whatever path you are on.” *Id.*; *see also* Ex. Z, W. Edelglass Letter (“Seth has a remarkable capacity for sympathetic joy in the happiness of others.”). Seth’s ability to see potential in others and “nurture those seeds of potential into something real and tangible” is “one of Seth’s superpowers.” Ex. M, Rabbi N. Katz Letter. Despite his own challenges and commitments, Seth is always generous with his time and support, no matter the ask. *See* Ex. KK, G. Kaul Letter (“Seth would move mountains to help anyone in need.”); Ex. X, T. Connor Letter (“[H]is generosity has never known any bounds with me.”). And he values and recognizes the

importance of small acts of kindness and respect that leave a lasting impression on those around him. As the Superintendent of a building Seth previously lived in recounts:

Being a building engineer can be a thankless position, but Seth made it a point to acknowledge the efforts he saw and supported the positive changes that were being implemented. He was one of the few residents that would take the time to have real conversations with me and the staff about how projects were progressing. Seth showed a level of care that surpassed most of the other owners and earned him a special place in the heart of the building staff. Seth did not have to spend this time with us, he gained nothing from giving so freely of his time. He did it because he cared, and that care meant the world to me and my crew.

Ex. ZZ, M. Robertson Letter.

It is this same character trait that leads Seth to “make[] a point to say hello to the hard-working elderly ladies at the Korean grocery store.” Ex. C, J. Michong Zak Letter. As his mother-in-law describes, “[o]ver time, I saw first-hand how these ladies were happy to see him whenever he visited. They would offer him various samples of kimchi that they were making and he would buy more than he needed, not because he loves kimchi, but to acknowledge their hard work.” *Id.*

Simply put, Seth is a deeply trusted friend who is unconditionally committed to helping those around him. It is revealing that even with knowledge of Seth’s mistakes, to this day, those who know him best still seek to emulate the man they have known for years. As one friend writes, Seth “is a truly exceptional person, whom I’ve always known to be nothing but exceedingly good. I feel lucky to call him a friend and only wish there were more Seth’s to go around, because we’d all be better off for it.” Ex. S, B. Burwell Letter.

III. THE OFFENSE CONDUCT

Seth has accepted full responsibility for his decisions. As he acknowledged during his guilty plea, he transferred funds associated with three merged schools² in the Democracy Prep network without authorization. Seth does not ask the Court to excuse his conduct because of any of the factors described herein. Rather, we set them forth for the Court's consideration so that the Court can better understand Seth's mindset at the time of the conduct.

The offense conduct in this case is completely aberrational and does not reflect Seth's fundamental character. But when viewed in the context of Seth's life's work and his perception of the direction of Democracy Prep at the time, it is in some ways easier to understand.

Professionally speaking, Democracy Prep Charter School was Seth's greatest love and his first child, and even after he stepped away from day-to-day principalship of the school, he felt forever connected with and continuously drawn back to it, and its alumni. Seth never lost his deep commitment to Democracy Prep, and as its founder, he felt immense responsibility for the enduring success of the organization. And as would be expected of any founder, Seth had strong opinions about how best to achieve that success.

Although Seth's formal employment with Democracy Prep ended in 2017, Seth still maintained an active relationship with the organization in an unpaid, informal consulting and advisory role. Yet by March 2019, Seth had grown immensely frustrated as he watched Democracy Prep be forced to close its Washington, D.C. campus and move in directions that, in his view, diverged from its core mission. In his mind, Democracy Prep was in danger of losing focus on the most vulnerable of its students. Seth increasingly did not see eye-to-eye with the

² In 2018 and 2019, the three schools, Democracy Prep Charter School, Democracy Prep Harlem Charter School, and Democracy Prep Endurance Charter School were formally organized under the entity Democracy Prep New York (DPNY).

current leadership or the board's decisions on the best path forward, including their selection process for new management. As a result, he grew increasingly vocal about changes that he believed were necessary. Seth's overtures were, more often than not, rejected and his relationship with Democracy Prep's new management deteriorated rapidly.

In March of 2019, Seth formally presented his recommendations to the boards of Democracy Prep and Democracy Prep New York. One issue Seth highlighted was related to what he perceived as fundamental financial mismanagement at the organization.³ This included the fact that the escrow funds at issue were held in non-interest-bearing accounts and had been dormant for years. Seth's proposals were not accepted. Increasingly frustrated by the unwillingness of Democracy Prep's board or new leadership to accept his proposals more generally, and motivated in large part by a desire to prove that he was right about these funds and financial practices, Seth made a terrible decision, for which he fully accepts sole responsibility. He transferred funds from the escrow accounts of three schools—Democracy Prep Charter School (DPCS), Democracy Prep Harlem Charter School (DPHCS), and Democracy Prep Endurance Charter School (DPECS)—to other accounts.⁴

Seth initially transferred the funds from the oldest two accounts into an interest-bearing account that he had opened in the name of DPCS at Bank-2. Seth was motivated in part by his

³ Notably, after the board presentation, on March 11, 2019—weeks before he began withdrawing the funds at issue—Seth emailed the leadership of Democracy Prep about a variety of proposals to address the organization's ongoing deficiencies in a number of areas, including escrow account management.

⁴ As described in the complaint, these funds were held in escrow pursuant to state regulatory requirements for dissolution and other specified expenses. PSR ¶ 22. The funds were not used for any ongoing operations of the schools. Consistent with the dormant nature of these escrow accounts, in March 2019, Seth was in fact still an authorized signatory for all of these accounts despite no longer being formally employed by Democracy Prep.

opinion that the dormant funds should be placed in such an account. Another factor in his decision to deposit these funds at Bank-2, specifically, was his desire to bring sufficient funds to Bank-2 to qualify for a .125% interest rate deduction on a mortgage he was obtaining to purchase an apartment.⁵

However, it would be a mistake to say that Seth's movement of the funds was driven by financial greed.⁶ Seth did not spend any of the transferred funds for personal gain. Instead, in May of 2020 he transferred all of the funds to an account of Democracy Builders Fund at Bank-3. As recounted above, Democracy Builders Fund had a mission dedicated to promoting civic engagement and educational initiatives and was specifically focused on supporting Democracy Prep alumni and other students traditionally ignored by the education system. Critically, at the time he transferred the funds to Democracy Builders Fund, Seth had already contributed hundreds of thousands of dollars of his own funds in loans and donations to Democracy Builders Fund—far more than he had ever been paid by the organization. In short, Seth was not motivated by greed or a desire to enrich himself.

If not for financial gain, why did a man—who had dedicated his entire life to public service—transfer these funds? It is a question that Seth grapples with to this day, and the answer is not a simple one. Ego undoubtedly played a role in Seth's actions. At the time, Seth rationalized his actions as a way to prove to Democracy Prep's board and leadership that his

⁵ At or about the same time, Seth also transferred nearly all of his banking relationships to Bank-2 to secure a lower interest rate on this mortgage.

⁶ Per the government's calculation, the .125% interest rate deduction that Seth initially attempted to use these funds to secure amounted to a monthly savings of about \$170 that would have applied only for the first ten years of Seth's adjustable-rate mortgage. Notably, at the time, Seth possessed other funds, including retirement funds, that were independently sufficient to meet the threshold for the interest rate deduction. Seth requested that these funds be transferred to Bank-2, and they were, months before locking the final interest rate or closing on the relevant property.

opinion about how the funds should be managed was correct. He also justified his subsequent decision to transfer the funds to Democracy Builders Fund, by focusing on the fact that it was dedicated to ensuring the same fundamental mission that he had always envisioned for Democracy Prep. Both organizations were inextricably intertwined, as Seth built them both to be a part of the Democracy Prep (formerly Democracy Builders) network.⁷ Democracy Builders Fund was originally founded to conduct student recruitment for Democracy Prep and help support public charter school alumni. Even after the two organizations transitioned to independently governing boards in 2014, Democracy Builders Fund continued its work with Democracy Prep and their alumni. As Seth assured himself at the time, transferring the funds to Democracy Builders Fund meant that they would be managed appropriately, and help the same students and alumni that Democracy Prep had always served.

Seth recognizes and acknowledges the enormity of this mistake. He realizes that he was acting out of frustration and a desire to be proven right. In many respects, his actions can be understood as the response of a founder trying to continue to influence leadership that had chosen to move on from him. They also are, in large part, indicative of the kind of management style that has ironically led to Seth's successes throughout his career. Seth moved quickly and decisively and did not allow himself to get hung up on why he could not, or should not, do things.⁸ While that style served him well at many points during his professional life, including

⁷ All the individual schools and organizations that Seth founded shared close ties, overlapping personnel, and similar—albeit confusing—naming conventions that all reflected their shared beginnings. Among other things, Democracy Builders Fund's board was exclusively made up of former Democracy Prep students, parents, and teachers. Both organizations also utilized the same accounting and auditing firms.

⁸

See Ex. CCC, Dr. L. Thigpen Letter.

when he launched Democracy Prep, it is also, in part, the reason why he finds himself here today.

Seth often reflects that if he had a different relationship with much of Democracy Prep's board and leadership at this time, he would be on an entirely different path than he currently faces. Seth acknowledges that his inability to accept the board's decision to make a change in leadership and his challenge relinquishing control of the organization directly led to his misguided actions. At the least, perhaps if he had been able to set this contentious relationship aside and told the new management of Democracy Prep where the funds were, this matter would have never come before a criminal court.

None of these points take away from the fact that Seth is guilty and accepts full responsibility for his conduct. We present this broader context simply to help explain Seth's mindset at the time of the offense. Not a day goes by when Seth does not deeply regret his conduct in this case and its negative impact on the family he treasures, Democracy Prep, and the people with whom he worked so hard to build these schools. One of Seth's greatest regrets is that his actions have distracted from Democracy Prep's core mission of providing quality education to children most in need, a mission that he still holds dear.

IV. A NON-CUSTODIAL SENTENCE IS APPROPRIATE

The Court should impose a sentence of home confinement followed by a period of three years' probation. A non-custodial sentence is consistent with and called for by the Section 3553(a) factors and the interests of justice.

Seth recognizes the seriousness of his conduct and accepts the calculation of the Sentencing Guidelines range in the PSR. However, the Guidelines in this case are particularly ill-suited as a reference point and fail to consider several unprecedented and mitigating facts

relevant to the offense conduct, Seth's unique history and characteristics, and the absence of a need for further deterrence. As one judge has observed, "on this day of judgment, one must judge the man as a whole." *United States v. Gupta*, 904 F. Supp. 2d 349, 354 (S.D.N.Y. 2012), *aff'd*, 747 F.3d 111 (2d Cir. 2014); *see also United States v. Adelson*, 441 F. Supp. 2d 506, 513–14 (S.D.N.Y. 2006), *aff'd*, 301 F. App'x 93 (2d Cir. 2008) ("But, surely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance."). We respectfully request that the Court judge Seth as a whole and sentence him to a period of home confinement followed by probation.

A. The Guidelines Do Not Accurately Reflect an Appropriate Sentence.

While the Guidelines are no longer mandatory, they generally offer a starting point for courts' analyses of an appropriate sentence. *See United States v. Delacruz*, 862 F.3d 163, 178 (2d Cir. 2017) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). However, it is well accepted that the Guidelines are a particularly poor guide in white collar cases because of their myopic focus on loss amount. *See, e.g., Gupta*, 904 F. Supp. 2d at 351 ("By making a Guidelines sentence turn, for all practical purposes, on [the amount of monetary loss or gain], the Sentencing Commission effectively ignored the statutory requirement that federal sentencing take many factors into account, *see* 18 U.S.C. § 3553(a), and, by contrast, effectively guaranteed that many such sentences would be irrational on their face."); *Adelson*, 441 F. Supp. 2d at 509 ("As many have noted, the Sentencing Guidelines, because of their arithmetic approach and also in an effort to appear 'objective,' tend to place great weight on putatively measurable quantities, such as . . . the amount of financial loss in fraud cases, without, however, explaining why it is appropriate to accord such huge weight to such factors." (citations omitted)); *United States v. Corsey*, 723 F.3d 366, 377 (2d Cir. 2013), as corrected (July 24, 2013) ("The Guidelines

acknowledge that potentiality; application note [21](C) to U.S.S.G. § 2B1.1 indicates that a downward departure may be warranted where the offense level resulting from a loss calculation overstates the seriousness of an offense.”); *United States v. Parris*, 573 F. Supp. 2d 744, 754 (E.D.N.Y. 2008) (bemoaning “the Sentencing Guidelines for white-collar crimes” and arguing that they should not be “a black stain on common sense”); *United States v. Johnson*, No. 16 Crim. 457 (NGG), 2018 WL 1997975, at *3 (E.D.N.Y. Apr. 27, 2018) (“[T]he Sentencing Commission’s loss-enhancement numbers do not result from any reasoned determination of how the punishment can best fit the crime, nor any approximation of the moral seriousness of the crime. . . . Given the feeble underpinnings of the loss enhancement, it is particularly galling that this factor is often more or less solely responsible for a white-collar offender’s Guidelines sentence.”).

Similarly, here, loss amount is the single biggest driver of Seth’s Guidelines range, despite being an especially inadequate measure of the seriousness of Seth’s offense. The facts of this case are exceptional. As detailed above, this was not a crime of greed, and Seth’s actions were not driven by a desire to enrich himself. Far from it, in fact: the transferred funds at issue in this case were ultimately deposited in the account of another non-profit organization dedicated to helping the very same population of youth who Seth had always believed Democracy Prep should prioritize. The Guidelines are thus even less informative when considering the offense conduct, particularly in view of Seth’s motive, the lack of benefit received, and other critical context. Nor do the Guidelines account in any way for the other Section 3553(a) factors, including Seth’s history and characteristics, which are exemplary, and the deterrent effect that he has already experienced.

The Court’s ultimate responsibility is to impose a sentence that is “sufficient, but not greater than necessary,” to satisfy the objectives of Section 3553(a). 18 U.S.C. § 3553(a). Where, as here, the Guidelines fail to meaningfully address these objectives, courts have found that the Guidelines’ range “does not provide realistic guidance.” *Parris*, 573 F. Supp. 2d at 751. Indeed, the Supreme Court has made clear that the Guidelines are “not to be *presumed* reasonable.” *Nelson v. United States*, 555 U.S. 350, 352 (2009) (emphasis in original); *see also Adelson*, 441 F. Supp. 2d at 515 (“But where, as here, the calculations under the guidelines have so run amok that they are patently absurd on their face, a Court is forced to place greater reliance on the more general considerations set forth in section 3553(a), as carefully applied to the particular circumstances of the case and of the human being who will bear the consequences.”); *United States v. Wernick*, 691 F.3d 108, 118 (2d Cir. 2012) (“[T]he guideline recommendation is but one factor to be considered in selecting an appropriate sentence, and we have frequently emphasized that a sentencing court has discretion to consider a broad range of information bearing on the history and characteristics of the defendant.” (citation and internal quotation marks omitted)). Accordingly, we respectfully submit that the Guidelines offer no meaningful guidance in this case, and the Court should give them minimal consideration.⁹

B. The Nature of the Offense and Seth’s History and Characteristics Counsel in Favor of a Non-Custodial Sentence

1. The Nature of the Offense

This case is unlike any other white collar fraud case of which we are aware. Seth transferred funds without authorization from certain escrow accounts—which were held in long-dormant accounts—to another non-profit organization. He transferred these funds shortly after

⁹ Notably, Probation has also recognized that the singular nature of this case warrants a variance below the Guidelines range, in consideration of the Section 3553(a) factors. PSR, p. 38.

having expressed frustration about financial mismanagement related to escrow accounts, as well as other decisions he perceived as financial mismanagement. Moreover, the organization to which he ultimately transferred the funds, Democracy Builders Fund, was dedicated to helping the same groups of at-risk youth who were the focus of Democracy Prep’s mission. At the time of the transfer, Seth had already poured far more personal funds into Democracy Builders Fund than he had ever received. In short, this was not an offense that was motivated by greed or a desire for personal enrichment.¹⁰

2. Seth’s History and Characteristics

Seth has dedicated his life to public service. Though Seth undoubtedly could have chosen any professional path—many of which would have been far more lucrative—he instead dedicated himself to improving the educational prospects of the most vulnerable in our society. It is no exaggeration to say that his service has had a profound impact on the lives of tens-of-thousands of underserved students, teachers, and their families.

Seth has applied this same mindset of service to his personal life. He has given selflessly to his loved ones. As the letters submitted in support of Seth observe time and time again, Seth puts the needs of others above his own and is compassionate, generous, caring, and a source of support for many. He has spent countless hours guiding friends and family through some of the most difficult times in their lives.

The conduct at issue in this case was a total departure from an otherwise exemplary life of service. It can only be described as completely out of character for Seth. While the offense

¹⁰ Seth has also long since personally repaid Democracy Prep the amount of the funds that were transferred from the three school escrow accounts. PSR ¶ 140. He did so on February 1, 2022. He also has already fulfilled his forfeiture obligation to the Government, which was completed on February 11, 2022. *Id.* ¶ 144.

conduct represented a terrible lapse in judgment, its harm is vastly outweighed by the good that Seth has done in his life.

C. Imprisonment is Not Necessary to Achieve Specific or General Deterrence

There can be no question that specific deterrence has been achieved. No imprisonment is necessary to deter Seth from having any future contact with the criminal justice system. As the PSR and letters of support demonstrate, the conduct at issue was completely aberrational for Seth, who has lived an otherwise law-abiding life. And, as reflected in many of the letters written by loved ones, Seth has already seized upon his arrest as a mandate to improve himself and to ensure that nothing like this ever happens again. *See, e.g.*, Ex. A, L. Zak Letter (“[T]he man in your courtroom today has been forged into a better version of himself. More appreciative of his blessings, the person who you now judge is a better man than the one in the complaint. . . . Seth has grown so much in this time period. Too busy for self-care before, he has slowed down and done challenging personal work. . . . Known for a brutal honesty and bold moves in the past, he has taken time to evaluate his own conduct and learn from it.”); Ex. N, J. Hogue Letter (“He has been forever changed and the self-reflection and self-work he has done over the last year is only a glimmer of the work and reflection he will continue to do.”); Ex. P, L. Rosenfeld Letter (“He was certainly attentive to family before – but he is now wholly devoted to Lana’s career and his kids’ well-being to help himself and everyone through this impossible time.”). As his sister writes:

What I know about my brother today is that he has been deeply humbled by this experience and that he has devoted himself completely to being the best husband, father, brother, and person he knows how to be. He has done so much work on himself with humility and grace. Seth has always charged full steam ahead. In many regards, this is who he is. This forced period of pause and introspection has brought a new level of clarity to who he was, who he is, and who he wants to be moving forward. I believe it would be a mistake to impose a harsh penalty upon him when he has done so much to take accountability for his mistakes and has so much to offer the world with his incredible tenacity and intellect.

In short, Seth's fall has been sufficiently catastrophic to him, his family, his finances, and his former colleagues, that no term of imprisonment is necessary to achieve general deterrence.

D. Imprisonment is Not Necessary to Provide Just Punishment

Nor is imprisonment necessary to achieve just punishment.¹¹ As described above, Seth's professional reputation has already been completely destroyed. He has seen the organizations that he built distance themselves from him. Tragically, his ability to continue doing the work he loves in the educational non-profit sector has been crippled. This downfall has been especially difficult for Seth to accept, given that he has dedicated more than twenty years of his life to this work.

But for Seth, the impact on his family has been a particularly painful consequence of this case. As many of the letters of support eloquently describe, Seth is at his best as a father. Nothing makes him happier than spending time with his children, and it devastates him to think of the damage this case could have on their relationships with him. Additionally, as a young parent who would otherwise be entering the prime years of his earning potential, he faces daunting financial prospects. To be sure, Seth must and already does bear responsibility for

¹¹ In recent times, the Department of Justice has recognized that home confinement can be an appropriate alternative to imprisonment. *See* William P. Barr, Attorney General, *Memorandum for Director of Bureau of Prisons: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic*, at 1 (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf (“One of BOP’s tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances. I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic.”); *see also* Press Release, Department of Justice, Statement by Attorney General Merrick B. Garland (Dec. 21, 2021), <https://www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-0> (“Thousands of people on home confinement have reconnected with their families, have found gainful employment, and have followed the rules.”).

these consequences to his loved ones, but that does not change the fact that their pain is real and has deeply affected Seth.

Equally devastating is the impact on the students that Seth had been actively helping up until his arrest. Democracy Builders Fund has effectively shuttered. Programs that were in development, including the organization's once-promising attempt to develop a novel approach to college education, have been discontinued. The students that the organization was already serving have been stripped of that support, housing, and opportunity. That is a consequence that weighs heavily on Seth's conscience.

Seth's remorse is genuine and is evidenced by his actions. Rather than exercise his right to dispute the charges, Seth waived indictment and agreed to resolve this case before a single page of discovery was produced because he accepts full responsibility for his conduct. In addition, as part of this resolution, Seth personally and swiftly repaid the funds he transferred and fulfilled his forfeiture obligations prior to sentencing. He has and will continue to do everything possible to make amends for his actions.

* * *

Seth's character and the trajectory of his life until now also leave no doubt that this case will not mark the end of his commitment to service. He will continue to find ways to positively contribute to and improve our society. And those around Seth are unified in their conviction that he has much more to give.

- “Mr. Andrew is not finished improving the American or world educational system. He is the epitome of, ‘The best is yet to come.’ I pray the court grants leniency so Seth Andrew gets the chance to prove that his best is just beginning.” Ex. VV, M. Pannell Letter.
- “[Seth's] always wanted to make the world just a little bit better, and he's done that. I think he'll keep doing that, if given the chance.” Ex. HH, A. Hunt Letter.

- “[Y]ears of friendship have taught me that he’s someone you can never count out. I strongly believe that the community stands to gain more from locking him up, but from putting him to work. He’s still capable of making a greater and more lasting contribution to society.” Ex. TT, E. Ozawa Letter.
- “[I]f I know Seth like I think I do, I believe his response will be to pick himself up and try to figure out what he can do next to make life better for those with less than him.” Ex. XX, J. Pojanowski Letter.
- “This whole experience has scarred him for life, and once the healing happens, I know he will continue to do a lot of good in this world for people who need advocates like him.” Ex. N, J. Hogue Letter.
- “I know that Seth has in him more incredible ways of helping children in this world for many years to come.” Ex. BB, K. Gallogly-Lowell Letter.
- “Whatever this difficult moment requires of Seth, I am confident that he can repair the path forward and continue to make significant contributions. . . . He will surely offer more important strengths to the world and his generation. His capacities remain dearly needed in our world.” Ex. RR, Rev. J. C. Nelson Letter.
- “Seth is still not halfway through his professional journey. He is an unusually talented education innovator, with his North Star being to help kids from poor families. He has so much good he can do, and that I think he will do.” Ex. CC, M. Goldstein Letter.

V. CONCLUSION

For the foregoing reasons, we respectfully ask the Court to impose a sentence of home confinement followed by three years' probation. The offense conduct in this case was serious, but we ask the Court to consider Seth as a whole. He is a man who has devoted his life in service of others—from the most vulnerable in our society to those who are fortunate to call him friend, family, or neighbor. And, as a man of character, he has accepted responsibility for his conduct. He has much more good in this life yet to do. A sentence of home confinement and probation is a just one.

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Respectfully submitted,

By:  _____

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