

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MENACHEM LIEBERMAN,

Defendant.

No. 23 Cr. 004 (JHR)

THE GOVERNMENT’S SENTENCING SUBMISSION

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The Government respectfully submits this memorandum in advance of defendant Menachem Lieberman's sentencing. For the reasons below, this Court should impose a custodial sentence at or near the bottom of the Guidelines range of 46 to 57 months' imprisonment, and a fine of \$200,000, which is at the top of the Guidelines range.

I. Background

For several years, Lieberman conspired with others to defraud government-funded childcare programs responsible for assisting low-income families in New York City, and to place his desire for profit above his obligation to follow rules intended to protect the integrity of those programs. And when federal investigators investigated complaints from a whistleblower about Lieberman's role in all of this, he encouraged others to lie and attempted to buy the whistleblower's silence.

A. Lieberman's Initial Efforts to Obtain a Head Start Award

At all relevant times, Lieberman was the sole shareholder of Simche Kinder, Inc., a for-profit daycare company he incorporated in New York in 2014. For several years, Simche Kinder's revenue appears to have been derived substantially from tuition payments funded by a federally funded voucher program administered by the New York City Administration for Children's Services ("ACS"). Under that program, ACS issued vouchers to low-income families, who in turn redeemed them at Simche Kinder. Upon Simche Kinder certifying to ACS that Simche Kinder in fact provided services to the children in question, ACS then issued payment to Simche Kinder.

No later than in or about March 2018, Lieberman began exploring obtaining an additional funding stream through the federal Head Start program, which is administered by the U.S. Department of Health and Human Services ("HHS"). Under that program, HHS issues "awards" to "agencies," such as non-profit or for-profit childcare providers, which are to use the proceeds of those awards exclusively to administer services to children and pregnant mothers from low-

income families, and not to derive a profit. *See* 42 U.S.C. §§ 9833, 9836; 45 C.F.R. § 75.216(b). Several statutory and regulatory directives govern how the Head Start program is operated to achieve its goals. For example, with respect to program governance, Head Start agencies (*i.e.*, the childcare providers) are required to establish an independent “governing body” that has “a legal and fiscal responsibility to administer and oversee the agency’s Head Start and Early Head Start programs,” 45 C.F.R. § 1301.1, and that has members whose fiduciary duty to the Head Start program that is undivided, 42 U.S.C. § 9837(c)(1)(A).

B. Lieberman’s Purchase of Control over Project Social Care Head Start Inc.

By October 2018, Lieberman focused his attention on purchasing an entity with an existing Head Start program rather than applying to HHS for one on behalf of Simche Kinder. Lieberman particularly focused on “purchasing” control over Project Social Care Head Start Inc. (“PSCHS”), an entity organized as a non-profit—which could not legally be privately owned—operating in Brooklyn with several million dollars in existing Head Start awards. At the time, Lieberman’s co-defendant, Martin Handler (“Handler”),¹ was the shadow “owner” of PSCHS and was operating PSCHS, in violation of Head Start program requirements, by engaging in less-than-arm’s-length dealings with Handler’s other business interests and to make a profit. (PSR ¶ 23).

Lieberman began negotiating with Handler the opportunity to “buy” access to PSCHS’s Head Start award proceeds. Negotiations focused heavily on the proceeds of a particular form of Head Start grant—known as an Early Head Start Childcare Partnership (“EHS CCP”) grant—under which a direct recipient of federal funds (here, PSCHS) is expected to partner with, and supervise, other entities that themselves are to provide daycare services that meet Head Start

¹ As used herein, “Handler” refers to Martin Handler, and “Isidore Handler” refers to Martin Handler’s brother, another co-defendant.

standards. (PSR ¶ 22). At the time, PSCHS's EHS CCP grant awarded PSCHS annually approximately \$5.3 million for 296 "slots" that PSCHS could dole out to other providers. (*Id.*). Both Lieberman and Handler viewed these "slots" as highly lucrative and profitable. Internal projections that Lieberman relied on when negotiating with Handler showed he viewed a potential acquisition of PSCHS as expected to amount to nearly \$3 million in profits. (Exs. 1-2).

In mid-April 2019, Lieberman and Handler came to an agreement under which Lieberman would purchase for \$1.5 million from Handler a portion of the EHS CCP "slots" awarded to PSCHS by HHS, as well as control over the proceeds of two separate Head Start grants issued to PSCHS for two centers in Brooklyn. (PSR ¶¶ 28, 45). Those two centers were located, respectively, in the East Flatbush neighborhood, on Church Avenue, and in Borough Park. The agreement was initially memorialized on April 10, 2019 in WhatsApp messages between Lieberman and Handler, and then in a more formal written contract executed two days later, on April 12, 2019. (Exs. 3-5).² The contract itself acknowledged the corrupt nature of the transaction, recognizing that Handler was "legally prevented from selling and transferring [PSCHS] to others in a regular manner," given that PSCHS is a non-profit entity, so the sale would be effectuated by Handler arranging for half of PSCHS's board members to resign with Lieberman authorized to "replace them with three others of his own who will represent his rights there." (Ex. 4).

Consistent with Lieberman acquiring partial "ownership" of PSCHS upon execution of the April 2019 agreement, for the next fiscal year (mid-2020 through mid-2021) and after PSCHS steered proceeds of the EHS CCP grant to Lieberman's for-profit daycare company, Simche Kinder. (PSR ¶ 33). By fall 2019, Lieberman began forecasting profits and losses in a spreadsheet

² Exhibit 4 is a certified English translation of the contract.

containing three columns, each representing the three components of PSCHS that Lieberman understood himself to have acquired: “Church”; “BP”; and “CCP.”³ (Ex. 6).

The self-dealing and secret “ownership” of PSCHS by Handler and Lieberman was enabled by a governing board and executives at PSCHS who served the interests of Handler and Lieberman above all else. The governing board, for example, consisted of members selected by Handler and/or Lieberman. (PSR ¶¶ 27-29). It did not meet or abide by statutory requirements that it approve and monitor PSCHS’s applications, spending, or hiring or appointment of key personnel. For the day-to-day operations of PSCHS, Handler and Lieberman relied on a figurehead executive director, their co-defendant Harold Schwartz, and a collection of “consultants” and “assistant executive directors” who were responsible for actually administering PSCHS’s Head Start programs. (*See, e.g.,* Trial Tr. 1005-10, 1132-33, 1148).⁴ The latter included, among others, co-defendant Arie Rangott, whom Lieberman and Handler jointly hired to operate PSCHS in May 2021. (PSR ¶ 57).

Later that summer, in August 2021, Handler sold Lieberman full control over PSCHS in exchange for \$3.2 million. (PSR ¶ 25). Once again, the parties recognized the significance of the “owner” of PSCHS—a non-profit that could not legally be owned—having control of PSCHS’s supposedly independent governing body. To effectuate this transfer of so-called “ownership,” Rangott worked on Lieberman’s behalf with Handler’s brother, Isidore Handler, to collect letters of resignation from members of the PSCHS governing body who were serving at the pleasure of Martin Handler and to facilitate the change in secret control. (PSR ¶ 29). Indeed, a to-do list that Rangott prepared and shared with Lieberman on August 31, 2021, identified as tasks the need to

³ “BP” is the initials for “Borough Park,” the neighborhood serviced by one of the grants over which Lieberman purchased control through his April 2019 agreement with Handler.

⁴ Citations in the form of “Trial Tr.” are to the trial transcript for *United States v. Arie Rangott*, No. 23 Cr. 004 (JHR).

“Notify Headstart [*i.e.*, HHS] of the changes to the Board of Directors” and “Obtain the resignation letters from the outgoing board members.” (Ex. 7).

C. Lieberman’s Impairment of HHS’s Administration of the Head Start Program

To protect his control over PSCHS’s funding streams and his ability to self-deal, Lieberman conspired with others for a several-year period to impair HHS’s ability to provide effective oversight of PSCHS. (PSR ¶¶ 30-31). That conspiracy involved regular misrepresentations to HHS that PSCHS had an independent board of directors and was a bona fide non-profit entity, and the regular submissions of funding applications that falsely stated PSCHS had a “Governing Board of Directors” that “participates in the ongoing monitoring process” even though the governing board did no such thing. (*See, e.g.*, Ex. 8). Similarly, PSCHS submitted board meeting minutes that described detailed participation at meetings by board members even though such meetings never occurred at all. (PSR ¶ 30). The documentation submitted by PSCHS additionally concealed Handler’s and Lieberman’s control over PSCHS, thereby inhibiting HHS’s ability to assess the reasonableness of PSCHS’s commercial dealings with related parties that Lieberman and Handler privately owned. (PSR ¶ 30). Through his corrupt relationship with PSCHS, Lieberman was able to route approximately \$3.7 million in EHS CCP award proceeds to Simche Kinder. (PSR ¶ 33). Further, PSCHS used additional proceeds of its federal grants to steer another approximately \$797,167 to other companies in which Lieberman had an ownership or less-than-arm’s-length interest for services related to bussing, catering, and teacher recruitment, among others. (PSR ¶ 34).

D. Lieberman’s Fraud on ACS

Lieberman perpetrated a distinct and separate fraud causing harm of nearly \$2 million upon ACS. As noted, ACS administers childcare assistance to low-income families by providing vouchers that cover all or most of the cost of childcare. (Ex. 9 (ACS victim impact letter)). Those

families, in turn, can redeem the vouchers at childcare providers, such as daycares, that ACS pre-approves based on an application process. (*Id.*). Prior to Lieberman's agreement with Handler, PSCHS had never operated—let alone applied to operate—an ACS program at any of its locations. Rather, PSCHS's sole revenue derived from federal grants issued by the Head Start program and a related federal grant issued by the U.S. Department of Agriculture to provide food to low-income families.

On July 10, 2020, Lieberman submitted an application to ACS for PSCHS to provide childcare for families with ACS vouchers at PSCHS's Church Avenue location. (PSR ¶ 46). Lieberman sent the application via email, from his personal email account, and copied the personal email account (and not the PSCHS-issued email account) of the then-assistant executive director of PSCHS, who functioned as the *de facto* executive director. (Ex. 10). At the time, PSCHS had an existing *Head Start* program operating from the Church Avenue location that served low-income families. But PSCHS did not operate any other programming at the Church Avenue location or serve families who paid for PSCHS out-of-pocket. Providing services via an ACS program, therefore, would have marked a significant shift in PSCHS's operations.

Lieberman's application contained several falsehoods. In several places, the application bore a fake signature for Schwartz, PSCHS's nominal executive director.⁵ (Ex. 10 at 6, 20-23). Schwartz did not authorize Lieberman to use his signature (fake or otherwise) to apply for an ACS program at the Church Avenue program.⁶ The application also included fake receipts for six

⁵ The application included one example of Schwartz's real signature, which was included on a W-9 form on behalf of PSCHS that dated May 11, 2019. That Lieberman repurposed a W-9 form that was over a year old—rather than obtain a newly signed version—demonstrates that lengths Lieberman went to conceal the ACS program from others at PSCHS.

⁶ Lieberman states that “it was accepted practice at Project Social Care to use Schwartz's signature in his absence.” (Dkt. 546 (Lieberman Sentencing Memorandum (“Mem.”) at 32)). That is

children that purported to show those children had begun attending the Church Avenue location in a full-time capacity (and paying out-of-pocket tuition) several months earlier, in January 2020. (Ex. 10 at 8-13). Those six children, however, could not have attended (and did not attend) the Church Avenue location in such a capacity, because, as noted, the Church Avenue location did not operate a program for families who paid out-of-pocket.⁷

On paper, Lieberman began “operating” an ACS program at the Church Avenue location in September 2020 and obtaining reimbursements from ACS for a program that employed no teachers specifically assigned to it, did not operate, and had no children actually attending. (PSR ¶ 49). Lieberman received these reimbursements through multiple fraudulent means. To begin, Lieberman created and used a Google email address—rather than a PSCHS-issued email address—to communicate with ACS. (PSR ¶ 51). Moreover, when using that address, Lieberman submitted to ACS attendance forms that bore Schwartz’s fake signature and not, as Lieberman implies (Mem. 32), Schwartz’s real signature from a legitimate signature stamp. (PSR ¶ 52).

For the first eighteen months of the voucher program’s “operation,” Lieberman claimed reimbursements under a waiver program instituted by ACS to provide payments during the COVID-19 pandemic for which his “program” was ineligible. Under the terms of the waiver, an

immaterial. Although certain PSCHS employees had authorization to use a stamp of Schwartz’s real signature, the “signature” Lieberman used on the application and later on was not derived from that stamp. With the exception of the W-9 form, the signature used on the application was Schwartz’s forged signature, so it is irrelevant whether Lieberman understood that PSCHS used a stamp of Schwartz’s actual signature in certain circumstances.

⁷ Although Lieberman has claimed the receipts were “intended to be illustrative of the tuition that Max would charge at the Church Avenue location” (Mem. 28), there is no indication anywhere on the face of the application that the receipts were so intended. Nor has the Government identified anywhere else any objective evidence substantiating that Lieberman’s contemporaneous intent to attach the receipts for non-fraudulent “illustrative” purposes. The only support for this claim appears to be Lieberman’s say-so.

ACS program (such as PSCHS) was permitted to redeem vouchers from ACS so long as the children for whom the program was claiming reimbursement were absent because (a) the program itself was closed due to the COVID-19 pandemic, or (b) the pandemic inhibited the children from attending (*e.g.*, because the child or a caregiver was sick). (PSR ¶ 44). Lieberman’s program met neither of those conditions. As to the first condition, the Church Avenue location was not closed because of COVID-19 and, in fact, was operating a Head Start program at the time. Thus, insofar as Lieberman was unable to operate a voucher program at Church Avenue beginning in fall 2020, that could not have been a result of a failure by PSCHS to keep the Church Avenue location open because of the pandemic.⁸ As to the second condition, as Lieberman admits (Mem. 29), the children he represented to ACS as “enrolled” in the Church Avenue location were “were happy to attend the program” notwithstanding the pandemic, so the pandemic did not bar any individual child that Lieberman claimed was “enrolled” from actually attending the Church Avenue location.

Lieberman also used the Google email address he created to fraudulently pose as Schwartz. (PSR ¶ 53). On August 30, 2021, for example, ACS emailed the Google email address, over which Lieberman had sole control, and noted that Schwartz’s signature (in truth, the fake signature Lieberman was using) on recently submitted reimbursement requests did “not match the one we have on file.” (*Id.*). In response, on September 9, 2021, Lieberman used the Google email address to send an email to ACS stating, “Find attached a notarized letter confirming my signature. Please advise if this is okay to go ahead and process our attendance sheets from June July and August. Thanks, Harold.” (*Id.*). Attached to the email was a “notarized” letter, bearing Schwartz’s fake

⁸ The Church Avenue location recorded monthly attendance for its Head Start program of 23 children in September 2020, and of 26 children in October 2020. (Ex. 11). While such attendance levels are far below the number of slots granted to PSCHS for the Church Avenue location for its Head Start program, the figures demonstrate the location was *not* closed because of the COVID-19 pandemic.

signature, that Lieberman had completely fabricated. The letter stated, in relevant part, “I the undersigned Harold Schwartz was, and still is, the director of Project Social Care Head Start Inc., and is the authorized person to sign the monthly ACS1 form, maybe my signature looks slightly different over time.”⁹ (*Id.*). Lieberman’s continued deception worked: ACS continued providing payment for the Church Avenue location. (*Id.*).

Notably, even after ACS lifted the waiver, beginning in April 2022, Lieberman continued to falsely report to ACS a fully functioning ACS program at the Church Avenue location and, correspondingly, request full payment for reimbursement from ACS. (PSR ¶ 55). It was not until in or about September 2022, when the Church Avenue *Head Start* program ceased operating because its principal resigned and that location was otherwise empty, that Lieberman finally opened an ACS voucher program at the Church Avenue location. (*Id.*). But even then, Lieberman legitimately operated a bona fide ACS voucher program until the end of October 2022. (Mem. 34).

E. Lieberman’s Obstruction

On two separate occasions, Lieberman obstructed efforts by HHS to uncover his illegal control over PSCHS. *First*, in December 2021, Lieberman conspired with several of his co-conspirators to respond falsely to a written inquiry from HHS about, among other topics, Lieberman’s relationship with PSCHS. As relevant here, HHS’s letter requested that PSCHS address a complaint that PSCHS “has not guarded against personal or financial conflicts of interest and entered into contract agreements with Max Liberman and or his immediate family that do not ensure an arm’s length third-party agreement.” (Ex. 12). Consistent with Lieberman’s role as *de*

⁹ To date, the Government does not know how the letter came to be “notarized”—*e.g.*, whether an actual notary fraudulently used his own notary stamp; or whether Lieberman (or someone working at his direction) presented an actual notary with an individual falsely posing as Schwartz; or whether Lieberman (or someone working at his direction) repurposed a legitimate notary stamp for an illegitimate purpose.

facto owner of PSCHS and Rangott’s boss, on December 8, 2021, Rangott forwarded the letter to Lieberman. (Ex. 13).

In parallel, Lieberman worked with others to ensure that Schwartz in particular would maintain the lie, if confronted by HHS, that Lieberman had purely an arm’s length relationship with PSCHS. Lieberman and Handler, for instance, discussed via WhatsApp whether Schwartz would “cooperate[.]” with their efforts to respond falsely, with Handler writing to Lieberman that “I want to make sure Harold cooperates” in the effort to submit a false response to HHS. (PSR ¶ 37). In reference to Schwartz, Handler asked Lieberman “are you talking to him” and whether Schwartz “is . . . doing the right thing.” (*Id.*). Lieberman responded that PSCHS’s draft response “went to a lawyer” and had been “worked over by sruly [a nickname for Isidore Handler] and harold [sic],” and that Schwartz was “fully in [sic] board.” (*Id.*).

Ultimately, on December 21, 2021, PSCHS submitted a response to HHS that falsely denied the allegations concerning related-party transactions with Lieberman, stating unequivocally: “There are no less-than-arms-length third-party agreements or procurements of any kind involving personal or financial conflicts of interest with Max Lieberman or any member of his family.” (Ex. 15).

Second, and several months later, Lieberman obstructed a second inquiry—this time from the HHS Office of the Inspector General (“OIG”)—that examined allegations by a whistleblower claiming retaliation for complaining about Lieberman’s illegal relationship with PSCHS. (PSR ¶¶ 39-41). As part of the inquiry, OIG investigators sought to interview, among others, the chair of the PSCHS board, Yehuda Zorger, whom Lieberman had installed. Zorger spoke to Lieberman prior to Zorger’s interview, and Lieberman conveyed that he wanted Zorger to lie when questioned about Lieberman’s relationship to PSCHS. (Trial Tr. 282-83; PSR ¶ 39). Lieberman separately

endeavored to corruptly influence the whistleblower to drop his complaint. After Lieberman learned the identity of the whistleblower, Lieberman proposed to co-defendant Isidore Handler that they provide the whistleblower with a “bundle of cash so that it gets to him” and that the two needed “someone who can go to [the whistleblower] and [say] this is what you want, here you have it, a whole pack . . . I’m talking about big numbers, show enough, walk away and be happy.” (PSR ¶ 40). By mid-September 2022, OIG prematurely halted its investigation because the whistleblower withdrew his complaint. (Trial Tr. 918). At the time, OIG’s outstanding investigative steps included interviewing Lieberman, but that never occurred because the whistleblower withdrew his complaint and the investigation was closed. (*Id.*).

F. PSCHS’s Closure

Following Lieberman’s arrest in January 2023, HHS and ACS stripped PSCHS of its funding. Practically, that regulatory action resulted in families—children and pregnant mothers—abruptly needing to find a new provider of services. PSCHS, which relied entirely on government funding, stopped servicing families by spring 2023 and is now practically defunct, lacking any board of directors or staff.

G. Procedural History

On March 21, 2024, Lieberman pleaded guilty, pursuant to a written plea agreement, to a two-count superseding Information charging him with (1) conspiracy to commit wire fraud from at least July 2020 through at least January 2023, in connection with the ACS fraud at the Church Avenue location, in violation of 18 U.S.C. § 371 (Count One); and (2) conspiracy to defraud HHS, in violation of 18 U.S.C. § 371 (Count Two). (PSR ¶¶ 1-5). In the plea agreement, the parties stipulated that the total offense level under the Guidelines is 23, which includes a two-level enhancement for Lieberman’s obstruction of HHS’s investigations, and that Lieberman is in

Criminal History Category I, yielding a recommended sentence of 46 to 57 months' imprisonment. (PSR ¶ 5).

In a sentencing memorandum filed on December 20, 2024, Lieberman asks the Court to impose a custodial sentence “substantially below the Guidelines range or[] a sentence of home incarceration.” (Mem. 50). The Probation Office recommends a sentence of 46 months' imprisonment. (PSR p. 49).

II. The Section 3553(a) Factors

The sentencing factors in Section 3553(a)—most pertinently, the nature and circumstances of the offense; the need to promote respect for the law and to provide just punishment; the need for deterrence; and the history and characteristics of the defendant—support a custodial sentence at or near the lower bound of the applicable Guidelines range of 46 to 57 months, and a fine at the top of the Guidelines range of \$20,000 to \$200,000.

A. The Nature, Circumstances, and Seriousness of the Offense

A sentence comprising a term of imprisonment at or near the bottom of the custodial Guidelines range and a fine of \$200,000 fine is necessary to reflect “the nature and circumstances of the offense” and “the seriousness of the offense.” 18 U.S.C. §§ 3553(a)(1), 3552(a)(2)(A). Lieberman's offenses were serious in multiple ways. For several years, Lieberman secretly exercised control over PSCHS, and used that secret control to engage in rampant self-dealing. Through this self-dealing, Lieberman extracted profits from PSCHS, which was prohibited as a matter of law (because PSCHS was a nonprofit entity) and under the terms of PSCHS's federal funding. It is no exaggeration to conclude that Lieberman's crimes undermined the ability of government agencies to carry out essential functions.

Lieberman's conduct also imposed significant, tangible harm upon the communities that the programs attempted to serve. With respect to the Head Start program, HHS was compelled to

terminate PSCHS's Head Start funding almost immediately upon uncovering Lieberman's criminal conduct. That resulted in PSCHS abruptly shutting down, "requiring the very individuals whom the [Head Start] funding was designed to help, low-income families, to find new service providers and also requiring teachers who had lost their jobs to find new ones." (Dkt. 520 (M. Handler Sentencing Tr.) at 83). Concerning ACS, and as ACS explains in a victim impact letter, because its funding for vouchers "is capped annually, . . . every dollar, and every child care voucher, fraudulently taken by Mr. Lieberman deprived real children and their families of child care assistance." (Ex. 9 at 2). ACS estimates that in light of the "wait list of 36,000 children whose families were desperately seeking child care assistance" at the time of Lieberman's criminal conduct, Lieberman's fraud deprived approximately 110 children from getting off that wait list. (*Id.*).

In an effort to downplay the seriousness of his offense, Lieberman claims the loss resulting from his fraud on ACS is overstated as it relates to the money he obtained from ACS from September 2020 through March 2022, *i.e.*, when ACS had in place a waiver that excused child absences caused by the COVID-19 pandemic. (Mem. 35-36). Lieberman asserts he could "never [have] believed he was acting illegally" during the waiver period (*id.*), but it is unclear how that could be the case when he made material misrepresentations to ACS at every stage in the process.

As explained, the application to ACS that Lieberman submitted included Schwartz's forged signature on multiple pages, and it appended documentation falsely conveying that PSCHS had a pre-existing daycare program at the Church Avenue location (that was separate and apart from any Head Start program) for families paying out-of-pocket. That means that Lieberman induced ACS to approve the Church Avenue ACS program through fraud. Months later, Lieberman falsely represented that PSCHS actually operated (or would have operated, but for COVID-19) so-called

wraparound programs at the Church Avenue location, and he further falsely represented on monthly forms through Schwartz's forged signature that the children on PSCHS's attendance sheets were actually "enrolled."¹⁰ Those lies, too, induced ACS to issue payment that it would not otherwise have issued. Next, in September 2021 (still during the waiver period), Lieberman fraudulently posed as Schwartz and prepared a doctored letter that was falsely notarized in order to cover up that Lieberman had, up until that point, been forging Schwartz's signature for more than a year. In short, the facts do not support a "clear and obvious difference between the amounts Max received between September 2020 and March 2022 . . . and the amounts he received for the brief period after March 2022." (Mem. 35-36). During both time periods, Lieberman relied on lies to obtain money from ACS, and Lieberman's criminal conduct was serious during both time periods.

Just as serious—and particularly pernicious—was Lieberman's obstruction of HHS's investigative efforts. By maintaining the lie in December 2021 and later in summer and fall 2022 that PSCHS was at arm's length to Lieberman and subjected to oversight by an independent board of directors, Lieberman impeded HHS's ability to detect and root out his and Handler's corruption of PSCHS. For more than a year (from December 2021 until the time Lieberman was arrested in January 2023), Lieberman successfully stopped HHS from finding out the truth: he conspired with Handler to make sure that Schwartz would be "on board" with lies in the December 2021 letter, and he later not only pressured a witness, Zorger, to lie to federal investigators but also endeavored to bribe the whistleblower into dropping a complaint. When a campaign of obstruction is led by powerful and prominent members of a community, like Lieberman, it has an especially corrosive

¹⁰ Tellingly, once the waiver period ended in March 2022, the children who were supposedly "enrolled" did not immediately begin attending, reinforcing that they were not *bona fide* enrolled children.

effect. It creates, as it did here, a “code of silence” that values loyalty over truth and justice. And so for more than a year, because of Lieberman’s obstruction, HHS was unable to remedy the conflicts of interest at PSCHS and ensure the Head Start program was achieving its aims of using each and every dollar toward its laudable goal of helping low-income families.

Finally, that Lieberman may have believed his criminal acts were justified because he thought Handler and a “faction of PSC[HS] staff . . . seemed inexplicably hostile to him,” (Mem. 24), does not mitigate the seriousness of his misconduct. The genesis of Lieberman’s dealings with Handler was to commit a crime—*i.e.*, to “purchase” the proceeds of federal grants and conceal his control over those federal grants from HHS. That Lieberman believes Handler reneged on that initial deal could not (and did not) justify Lieberman’s installation of a new board at PSCHS and an executive, Rangott, who would answer to Lieberman rather than HHS. (*See* Mem. 20 (arguing that Lieberman agreed to pay Handler \$3.2 million in August 2021 to stop Handler from “participating in PSC’s affairs” and to allow Lieberman to “appoint a new board”)). Nor, for that matter, does Lieberman’s purported view that PSCHS staff members did not wish to work at an ACS program at the Church Avenue location, (Mem. 28), justify Lieberman’s fraudulent misrepresentations to ACS that he operated an ACS program at the Church Avenue location, when he in fact did not. At bottom, the Court should reject any notion that Lieberman’s criminal conduct is excused in any way by whatever petty squabbles he had with Handler or PSCHS staff.

B. The Need to Promote Respect for the Law and Provide Just Punishment

The Government’s recommended sentence is necessary “to promote respect for the law, and to provide just punishment for the offense.” 18 U.S.C. § 3553(a)(2)(A). Lieberman’s criminal conduct reflects a disregard for the rules that apply to all members of society. Lieberman conspired to lie to HHS and ACS repeatedly in order to secure government funding, and he lied even more when HHS and ACS inquired into his actions. Lieberman’s actions undermined the rule of law;

efforts to undermine the health of the body politic must be met with significant punishment. If the rule of law is to mean anything, it must mean that everyone—including Lieberman—is subject to the same rules.

The custodial sentence Lieberman requests—one that is “substantially below the Guidelines range” or one of home confinement—would not provide just punishment, and indeed would undermine respect for the law. (Mem. 46-47, 50). Lieberman’s contrary argument is that he has suffered enough because of the significant restitution and forfeiture payments he has agreed to pay, and because “the stain of a federal conviction will follow him for the rest of his life, as will his shame and guilt for his role in these schemes.” (Mem. 46). Lieberman also submits that a custodial sentence will deprive Lieberman from “tak[ing] care of his own family” and unduly “punish[]” his family members. (*Id.* at 47). These factors cannot justify the substantial variance Lieberman seeks.

As an initial matter, the “stain” of being a felon—and any attendant “shame and guilt”—is hardly unique, especially for white-collar defendants. *See United States v. Cutler*, 520 F.3d 136, 170-71 (2d Cir. 2008) (holding district court erred as a matter of law in imposing non-incarceratory sentence on grounds that humiliation and loss of law license adequately punished convicted attorney).¹¹ Nor is it unusual for a defendant, like Lieberman, who will be subject to substantial restitution and forfeiture orders, also to be subjected to a substantial custodial sentence. A contrary result would perversely mean “the more loss a criminal inflicts, the shorter his sentence.” *United*

¹¹ The Second Circuit later abrogated *Cutler* but has continued to rely on *Cutler*’s substantive reasoning in explaining why privileged defendants like Lieberman do not deserve lenient treatment. *See Watts v. United States*, No. 21-2925, 2023 WL 2910634, at *3 & n.2 (2d Cir. Apr. 12, 2023) (citing *Cutler* and holding that sentencing court should not place undue emphasis on wealthy defendant’s ability to pay restitution, to avoid creating unwarranted sentencing disparities with less well-off defendants).

States v. Crisp, 454 F.3d 1285, 1291 (11th Cir. 2006) (vacating substantially below-Guidelines sentence as unreasonable when based on need for restitution). In addition, while the Government is certainly sympathetic to the effects that a prison sentence will have on Lieberman and his family, his conviction and the attendant consequences are the product of Lieberman's choices and not a unique mitigating factor. Indeed, "[h]ardship on the family almost always results from serious criminal conduct." *United States v. Jiminez*, No. 10 Cr. 392 (CS), 2023 WL 3260395, at *1 (S.D.N.Y. May 4, 2023) (denying motion for compassionate release).

Crediting Lieberman's argument would raise fundamental concerns of fairness. It suggests that privileged offenders, by virtue of the very privilege they bemoan losing, need not suffer the same custodial consequences as less fortunate defendants who (under this rationale) would have less to lose through a conviction alone. *See United States v. Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012) ("It is impermissible for a court to impose a lighter sentence on white-collar defendants than on blue-collar defendants because it reasons that white-collar offenders suffer greater reputational harm or have more to lose by conviction."). Any such sentencing outcome is unjust in a society that strives to value all persons as equals in the eyes of the law.

C. The Need to Afford Adequate Deterrence to Criminal Conduct

The need for adequate deterrence strongly weighs in favor of the Government's proposed sentence. A significant sentence is necessary to promote general deterrence. When a scheme like the one at issue here is successfully prosecuted, a substantial sentence is essential to deter others who might be tempted to engage in conduct that would be similarly difficult to detect. As courts have recognized, "[p]ersons who commit white-collar crimes like defendant's are capable of calculating the costs and benefits of their illegal activities relative to the severity of the punishments that may be imposed." *United States v. Stein*, No. 09 Cr. 377 (JBW), 2010 WL 678122, at *3 (E.D.N.Y. Feb. 25, 2010).

A significant sentence is also necessary to specifically deter Lieberman from committing future crimes. Lieberman argues otherwise on the basis that his “age, his significant family and community, and the fact that he has no history of criminal activity whatsoever” are sufficient, by themselves, to provide specific deterrence. (Mem. 49). But each of those of factors was present when Lieberman committed the crimes at issue. Lieberman, now 48 years old, was 42 years old when he illegally “purchased” influence over PSCHS from Handler, and he was 45 years old when he asked Isidore Handler to explore the possibility of bribing the whistleblower. Lieberman has equally enjoyed substantial family and community support before, during, and after the offense conduct. In addition, although this case represents Lieberman’s first conviction, his conduct involved multiple criminal schemes, all of which reflected disrespect for the law. Quite simply, Lieberman’s offense conduct was not previously deterred by maturity, a loving family, and a lack of a criminal history, and he offers no reason to conclude those factors alone will specifically deter him moving forward.

The need for specific deterrence is particularly acute where, as here, a defendant appears not to acknowledge the full extent of his conduct in a way that undermines the sincerity of his remorse and claims of rehabilitation.¹² Throughout his sentencing submission, Lieberman casts blame for his own criminal conduct on external factors. Lieberman variously excuses his own

¹² To be clear, the Government is not seeking to deny Lieberman any Guidelines adjustment for acceptance of responsibility under U.S. Sentencing Guideline § 3E1.1. As the Second Circuit has held, to obtain such an adjustment, “a defendant need accept responsibility only for the conduct underlying the offense[s] of conviction,” *United States v. Oliveras*, 905 F.2d 623, 628-30 (2d Cir. 1990), and Lieberman has done so. The Government highlights Lieberman’s failure to acknowledge the full scope of his conduct because it bears on this Court’s consideration of the Section 3553(a) factors. *See, e.g., United States v. Cox*, 458 F. App’x 79, 83-84 (2d Cir. 2012) (noting approvingly that the district court found heightened risk of recidivism based, in part, on defendant’s inability to completely accept responsibility); *United States v. Wallace*, 755 F. App’x 63, 65 (2d Cir. 2018) (“A defendant’s lack of remorse is an appropriate sentencing factor.”).

actions because: Handler insisted that the only way Lieberman could gain access to EHS CCP slots was if Lieberman “paid Handler for them” in a plainly illegal manner (*id.* at 19); Handler turned “certain members of the PSC staff . . . against [Lieberman] as a means to try to prevent [Lieberman] from attempting to enforce his rights to the CCP slots” (*id.* at 20); and the employees at the Church Avenue location dared to attempt “to unionize to fend off [Lieberman]’s efforts to open the Church Avenue location” (*id.* at 29). Lieberman’s attempt to shift the blame for his actions onto others seriously undermines the notion that this prosecution has prompted productive introspection mitigating the need for a significant custodial sentence.

Lieberman’s related attempts to minimize his criminal intent also demonstrate a need for specific deterrence consistent with a custodial sentence at or near the bottom of the Guidelines range. Lieberman states at various times, and in tension with his guilty plea to knowingly joining a criminal conspiracy to defraud ACS, that his “submissions [to ACS] were not intended to deceive anyone,” even though the submissions to ACS contained lies and Schwartz’s forged signature. (Mem. 28; *see also* Mem. 36 (“Max never believed he was acting illegally by submitting ACS1 forms”); Mem. 42 (Lieberman “did not set out with the intention of defrauding ACS”)). In a similar vein, Lieberman seeks leniency on the basis that he relied on Schwartz’s forged signature (which he does not dispute was wrong) because the *de facto* director of PSCHS purportedly “told him he could, and [Lieberman] understood this was common practice at PSC[HS].” (Mem. 28). Yet, Lieberman does not support his claim with any corroborating evidence, and the Government is aware of none. Lieberman even goes so far as to paint his undeniable control over PSCHS—which he paid millions of dollars to obtain—as nothing more than the run-of-the-mill actions of a “CCP partner” who “merely stopped by the office periodically,” (Mem. 23), when it is Lieberman’s very control over PSCHS that turned PSCHS’s provision of slots to Simche Kinder and signing of

contracts with vendors associated with Lieberman into less-than-arm's-length transactions. Conspiring to hide that information from HHS is at the core of Lieberman's offense conduct. Lieberman clearly believes each of these purported facts is mitigating. But to the contrary, his insistence on minimizing his criminal conduct at every turn reflects that he has not truly learned his lesson, which in turn demonstrates the continued need for specific deterrence.

Nor does Lieberman make any serious attempt to grapple with how his misconduct affected the families that abruptly lost Head Start services, the employees at PSCHS who lost jobs, or the families who never got off the ACS voucher waiting list. Lieberman's inability to acknowledge the harm caused by his actions requires that the sentence imposed deter Lieberman from committing future crimes.

D. Lieberman's Personal Circumstances Do Not Support the Extraordinary Variance He Seeks

A custodial sentence at or near the bottom of the Guidelines range and a \$200,000 fine would be well-supported by Lieberman's history and characteristics. 18 U.S.C. § 3553(a)(1).

That Lieberman committed his crimes out of greed—not necessity—weighs heavily in any assessment of Lieberman's history and characteristics. In arguing to the contrary, Lieberman states that he acted out of a “genuine desire to provide top quality childcare services to as many needy families as he could in New York.” (Mem. 40). Even if it is true that Lieberman was partially motivated by the desire to provide childcare services, his actions reflect that he also acted with a profit motive, contrary to the Head Start rules. As Lieberman concedes, his purpose for doing business with PSCHS in the first place was to use Head Start funds to support Simche Kinder's “fixed costs” rather than the provision of childcare. (Mem. 19 (describing Simche Kinder as “struggling to turn a profit” and seeking out Head Start funding to provide “a stable source of revenue to cover Simche Kinder's fixed costs”))). That purpose was prohibited, because Head Start

funding must be used exclusively to support Head Start services rather than to support unrelated other aspects of a for-profit business. (Trial Tr. 436 (Peralta)). Similarly, Lieberman's contemporaneous communications with Handler in September 2020 show that he viewed ACS's waiver for attendance as a windfall worth celebrating. On September 3, 2020, for example, Handler shared news with Lieberman that the waiver would be extended another month, prompting Lieberman to respond with glee, "U r having a great time, 😊😊." (Ex. 14). Indicating his appreciation for the fact that the waiver would mean increased revenue, Handler responded, "I let you know immediately . . . For you to party [with] me." (*Id.*).

Lieberman also touts his history of charitable and civic acts, and supportive letters from community members. (Mem. 43-46). These aspects of Lieberman's history and characteristics are deserving of consideration. The Government agrees his past charitable acts are substantial and especially commends Lieberman's courageous involvement in the exoneration of David Ranta. (Mem. 11 & Ex. 48). Were it not for these aspects of Lieberman's history and characteristics, the Government likely would recommend the Court impose a top-of-the-Guidelines custodial sentence of 57 months' imprisonment. Thus, although Lieberman is deserving of credit at sentencing for certain aspects of his personal history and characteristics, they cannot justify the substantial downward variance that Lieberman seeks. As to the letters, that Lieberman competently performed the jobs which he also used to commit his crimes does not mitigate the severity of the offense conduct. While letters of support from family and the community may be honest and heartfelt, they are not atypical in white-collar cases. *See, e.g., United States v. Barbera*, No. 02 Cr. 1268 (RWS), 2005 WL 2709112, at *13 (S.D.N.Y. Oct. 21, 2005) ("high regard in which he is evidently held by the colleagues and friends who have written letters on his behalf does not distinguish him from other white-collar criminals").

The plain truth is that Lieberman was not acting with charitable spirit or consistent with the considerable positive attributes letter-writers describe when he committed his crimes. The communities served by PSCHS and Simche Kinder deserved Lieberman's honesty, integrity, and his demonstrated history of helping people. It is tragic that those communities got very little of those aspects of Lieberman through his offense conduct. Simply put, the mitigating factors that are present cannot and do not wipe away the seriousness of his offense conduct, the need to promote respect for the law, or the need to promote deterrence. On balance, full consideration of all of the Section 3553(a) factors requires a custodial sentence at or near the bottom of the applicable Guidelines range and the imposition of a \$200,000 fine.

E. Relative Culpability

Lieberman will be the fifth defendant in this case to be sentenced and, in the Government's view, is the second most culpable defendant among those charged in this case, behind Handler. The Guidelines ranges memorialized in each defendant's plea agreement reflects their relative culpability. Lieberman's stipulated Guidelines range of 46 to 57 months' imprisonment is slightly less than that of Handler, whose stipulated Guidelines range is 51 to 63 months' imprisonment, and who was recently sentenced to a custodial term of imprisonment of 58 months. Like Handler, Lieberman profited substantially through the offense conduct. And like Handler, Lieberman was a driving force in causing the offense conduct and recruiting others to engage in it. Lieberman, however, participated in the conduct at issue for a shorter period of time than Handler did, and Lieberman's history of charitable and civic achievements is substantially greater than Handler's. Accordingly, the Government respectfully recommends that the Court sentence Lieberman in accordance with his relative culpability.

III. Conclusion

For the reasons explained above, the Government respectfully submits that a sentence at or near the bottom of the Guidelines custodial range of 46 to 57 months' imprisonment and a fine of \$200,000 is warranted.

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Respectfully submitted,

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