IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 08-522
NAM QUOC NGUYEN	:	

GOVERNMENT'S SENTENCING MEMORANDUM

For nearly a decade, defendant Nam Quoc Nguyen paid bribes to multiple Vietnamese government officials in exchange for contracts for his business Nexus Technologies, Inc. ("Nexus"). Nguyen literally offered a bribe on every single contract bid over a period of more than nine years, and in exchange Nexus secured valuable negotiating advantages as well as government contracts on which it did not provide the best equipment or the lowest bid. Nguyen had worked out a simple but effective mechanism for paying the bribes – he and his co-defendants calculated Nexus' bid amounts to include enough money to pay the bribes, so that the ultimate bribe money was charged back to the Vietnamese government itself once a bid was accepted, taking money away from the public fisc of one of the poorest nations in the world. As a result, the people of Vietnam paid for Nguyen's criminal greed. Nguyen then covered his tracks by directing his co-defendants to pay these bribes surreptitiously through the use of an off-shore company, and to create false invoices and books and records.

Vietnam is a poor country that is struggling to overcome a severe economic crisis caused in part by government corruption. The Vietnamese government has, in recent years, launched a significant effort to clean up that corruption, and it is working together with the

United States to combat corruption, as well as to promote, protect, and support legitimate American business in Vietnam. Nonetheless, Nam Nguyen and his co-defendants greedily chose to bypass legitimate business options and instead exploit Vietnam's vulnerabilities by bribing its government officials in exchange for contracts. This is especially troubling because Nguyen's bribes won Nexus contracts to provide particularly sensitive technology to Vietnam, including computer systems, air traffic control systems, underwater mapping equipment, and bomb detection equipment – devices which should have been vetted, purchased, and provided on the basis of quality and price, without the taint and influence of bribes.

In the end, Nguyen paid bribes totaling more than $689,000 over a period of more than nine years. For all of the above reasons, as well as the other sentencing factors discussed below, the government recommends a sentence of incarceration within the advisory guideline range of 168-210 months.

I. BACKGROUND

On March 16, 2010, the defendant pled guilty to the following counts of the Superseding Indictment: (a) Count One, conspiracy to violate the Foreign Corrupt Practices Act and the Travel Act, and to launder money; (b) Count Six, a substantive violation of the Foreign Corrupt Practices Act; (c) Count Fifteen, a substantive violation of the Travel Act; and (d) Count Twenty-Four, money laundering. During his plea colloquy, the defendant admitted that he paid bribes and caused bribes to be paid to Vietnamese government officials in an effort to obtain and maintain business.[1] Nam Nguyen specifically admitted that he prepared the contract bids and

[1] Contrary to objections made by defense counsel to the PSR and reiterated in Nguyen's Sentencing Memorandum, Nam Nguyen also admitted that as the director of T&T Co. Ltd., Nguyen Van Tan, identified in the superseding indictment as Official A, was a foreign

negotiated the accompanying bribe payments. Nguyen also admitted that he took efforts to hide the bribes, including efforts to create falsified paperwork and to funnel the bribe-payments through an off-shore account to hide their origin and purpose.

II. SENTENCING CALCULATION

A. Statutory Maximum Sentences

The defendant faces the following maximum possible sentences: (a) Count One (conspiracy), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; (b) Count Six (FCPA), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; (c) Count Fifteen (Travel Act), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; and (d) Count Twenty-Four (money laundering), twenty years' imprisonment, a three-year period of supervised release, a fine of $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, and a $100 special assessment.

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government official under the Foreign Corrupt Practices Act during the plea colloquy. This Court has also ruled in favor of the government on this issue. Moreover, during interviews with the FBI on May 30, 2008, Nam Nguyen himself admitted that T&T Co. Ltd. is an instrumentality of the Vietnamese Ministry of Public Security. Nguyen's persistence in claiming that Tan is not a foreign government official raises serious questions as to whether or not he has actually accepted responsibility for his crimes.

The Total Possible Maximum Sentence is: 35 years' imprisonment; a three-year period of supervised release; a fine of $2,378,323, and a $400 special assessment. Finally, supervised release may be revoked if its terms and conditions are violated.

B. **Sentencing Guidelines Calculation**

The government agrees with the Sentencing Guidelines calculation in the PSR:

1. **Offense Level**

Base offense level	U.S.S.G. § 2C1.1(a)(2)[2]	12
More than one bribe	U.S.S.G. § 2C1.1(b)(1)	+2
Value of bribes exceeded $400,000	U.S.S.G. §§ 2C1.1(b)(2), 2B1.1(b)(1)(H)	+14
Offense involved public official in a high-level, decision-making or sensitive position	U.S.S.G. § 2C1.1(b)(3)	+4

[2] Pursuant to international treaty, the United States must impose comparable sentences in both domestic and foreign bribery cases. Thus, in 2002, the Sentencing Commission amended the statutory index of offenses located at U.S.S.G. Appendix A to specifically key FCPA's anti-bribery violations to U.S.S.G. § 2C1.1, the same guideline used for domestic bribery offenses. The Sentencing Commission stated that such amendment was necessary:

> to comply with the mandate of a multilateral treaty entered into by the United States, the Convention on Combating Bribery of Foreign Public Officials in International business Transactions. In part this Convention requires signatory countries to impose comparable sentences in both domestic and foreign bribery cases. Domestic public bribery cases are referenced to § 2C1.1 To comply with the treaty, offenses committed in violation of 15 U.S.C. §§ 78dd-1 through 78dd-3 are now similarly referenced to § 2C1.1.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2002), at p. 3 (emphasis added); see also Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), Art. 3, § 1 ("The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials."), reprinted in 37 I.L.M. 1 (1998).

Conviction under § 1956	U.S.S.G. § 2S1.1(b)(2)(B)	+2
Sophisticated laundering	U.S.S.G. § 2S1.1(b)(3)	+2
Organizer/leader	U.S.S.G. § 3B1.1(c)	+2
Acceptance of responsibility	U.S.S.G. § 3E1.1	-3[3]
	TOTAL	35

a. **Fourteen-level enhancement for bribes exceeding $400,000**

As set forth above, defendant Nam Nguyen offered a personal bribe with every single contract bid over a period of more than nine years. The bribes ranged anywhere from approximately 3% - 10% of a contract price, sometimes amounting to more than $50,000 for one bribe. In total, Nguyen paid $689,116 in bribes from 1999 - 2007 (and this amount does not even include all of the bribe offers that were made in conjunction with contract bids that never came to fruition, which cannot be calculated).

If the defense chooses not to stipulate that Nguyen's bribe total exceeds $400,000, the government will be prepared to prove it at sentencing using Nexus' accounting records, wire-transfer documents, bank records, and supporting testimony from cooperating defendants Joseph Lukas and Kim Nguyen. Together, this evidence will prove the following total bribe amounts per year:

1999 $1,428.57

2000 $32,490.49

[3] As discussed in footnote 1, Nguyen's repeated challenges to the status of T&T Co. Ltd. as an agency or instrumentality of the government of Vietnam, notwithstanding his plea, his admissions in that regard, and the rulings of this court, raise questions as to whether or not Nguyen has accepted responsibility. Thus, the sentence reduction for acceptance might not be appropriate here.

2001 $72,703.37

2002 $56,120.07

2003 $126,488.92

2004 $75,573.97

2005 $97,996.92

2006 $135,663.46

2007 $90,650.27

TOTAL: $689,116.04

b. **Enhancement for High-Level Decision-Making**

The government agrees with Probation that Nam Nguyen qualifies for a four-level enhancement under U.S.S.G. § 2C1.1(b)(3), because the offense involved a public official in a high-level decision-making or sensitive position.[4] Specifically, as explained in the PSR, the defendants paid bribes to Nguyen Van Tan, who was the Managing Director of T&T Co. Ltd. ("T&T"). T&T was the procurement arm of Vietnam's Ministry of Public Security. Paperwork seized from the defendants makes clear that, as Nam Nguyen well knew at the time and intentionally exploited, Mr. Tan exercised decision-making authority within T&T and directed purchasing for ministries and agencies instrumental to the public safety in Vietnam. Mr. Tan's decisions thus had a direct impact on Vietnamese public safety, for example his decisions regarding purchases of bomb detection equipment and air traffic control systems. Thus, Mr.

[4] The United States is not seeking this enhancement with Joseph Lukas because he had already left the company prior to the payments to Tan. In addition, the United States is not seeking this enhancement as to Kim Nguyen or An Nguyen, as they were unaware of the nature, position, or role of the specific officials who received the bribe payments. Nam Nguyen, on the other hand, was fully aware of Tan's identity and position.

Tan's receipt of bribes from Nam Nguyen places this offense squarely within the Sentencing Guidelines definition:

> "High-level decision-making or sensitive position" means a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.

U.S.S.G. § 2C1.1(b)(3) (2009), comment 4A. In keeping with the international treaty obligations discussed in footnote 2 above, this enhancement provision for a high-level decision maker must be applied to bribery of foreign officials in the same way it is applied to domestic officials, including the clear inclusion of those with decision making authority over contracts such as Official A.[5] This enhancement has been applied in FCPA cases in the past. See e.g. United States v. Jumet, 3:09-cr-00397 (E.D. Va. 2010).

2. Sentencing Range Calculation

With an offense level of 35 and a criminal history category of I, the defendant qualifies for an advisory guideline range of 168-210 months of incarceration.

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[5] See e.g. United States v. Abate, 302 Fed. Appx. 99 (3d Cir. 2008) (affirming application of the § 2C1.1(b)(3) enhancement for kickbacks paid to the Executive Director of a municipal utilities authority, where the Executive Director had decision-making authority); United States v. Matzkin, 14 F.3d 1014, 1021 (4th Cir. 1994) (affirming finding of sensitive position for Department of Navy employee who exercised considerable discretion in contract awards and supervised other employees); United States v. Lazarre, 14 F.3d 580, 582 (11th Cir. 1994) (affirming finding of sensitive position for INS employee who held discretion over parole decisions regarding Haitian detainees).

III. ANALYSIS

The Third Circuit has set forth a three-step process which the district courts must follow in compliance with the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005):

> (1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before Booker.
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> (2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-Booker case law, which continues to have advisory force.
>
> (3) Finally, they are to exercise their discretion by considering the relevant § 3553(a) factors in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing United States v. King, 454 F.3d 187, 194, 196 (3d Cir.2006); United States v. Cooper, 437 F.3d 324, 329-30 (3d Cir. 2006)). See also United States v. Smalley, 517 F.3d 208, 211 (3d Cir. 2008) (stating that the Gunter directive is consistent with later Supreme Court decisions). In calculating the guideline range, this Court must make findings pertinent to the guideline calculation by applying the preponderance of the evidence standard, in the same fashion as was employed prior to the Booker decision. United States v. Grier, 475 F.3d 556 (3d Cir. 2007) (en banc). The failure to properly calculate the advisory guideline range will rarely be harmless error. United States v. Langford, 516 F.3d 205, 214-18 (3d Cir. 2008).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent considerations of sentencing outlined in 18 U.S.C. § 3553(a) in determining the final sentence. "The record must demonstrate the trial court gave

meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises 'a ground of recognized legal merit (provided it has a factual basis)' and the court fails to address it." Cooper, 437 F.3d at 329. See also Rita v. United States, 127 S. Ct. 2456, 2468 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."); United States v. Schweitzer, 454 F.3d 197, 205-06 (3d Cir. 2006).

Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the

offense. 18 U.S.C. § 3553(a).[6] In this case, consideration of the 3553(a) factors supports a significant sentence of incarceration within the advisory guideline range.

First, these offenses were very serious ones. By way of explanation, the FCPA was enacted by Congress in 1977 (and amended in 1988) to combat corruption harmful to foreign economies and governments, to enhance the United States' public image worldwide, and to allow legitimate businesses to compete against corrupt businesses. Revelations of bribery by American businesses, the Senate's investigation determined, had produced:

> severe adverse effects. Foreign governments friendly to the United States in Japan, Italy, and the Netherlands have come under intense pressure from their own people. The image of American democracy abroad has been tarnished. . . . Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality, and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business. Managements which resort to corporate bribery and the falsification of records to enhance their business reveal a lack of confidence about themselves. Secretary of the Treasury Blumenthal, in appearing before the committee in support of the criminalization of foreign corporate bribery testified that: 'paying bribes – apart from being morally repugnant and illegal in most countries – is simply not necessary for the successful conduct of business here or overseas.' The committee concurs in Secretary Blumenthal's judgment. Many U.S. firms have taken a strong stand against paying foreign bribes and are still able to compete in international trade. Unfortunately, the reputation and image of all U.S. businessmen has been tarnished by the activities of a sizable number, but by no means a majority of American firms. A strong

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[6] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

> antibribery law is urgently needed to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system.

S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N. 4098 (emphasis added).

Since its passage, the FCPA has been at the forefront of a spreading international norm that has now been adopted in most developed countries to level the playing field for legitimate businesses. Prohibitions against bribery of foreign officials in international business transactions have been made binding through international conventions sponsored by the United Nations, the Council of Europe, the Organization for Economic Cooperation and Development, and the Organization of American States, and through the policies of other multilateral institutions like the World Bank and the International Chamber of Commerce. See Stuart H. Deming, The Foreign Corrupt Practices Act and the New International Norms (American Bar Association Section of International Law 2005), at 93-94. As discussed above in footnote 2, the Sentencing Commission's 2002 change in treatment of the FCPA to the punitive public corruption guideline implemented the mandate of one such international treaty to which the United States is party to provide serious punishment equivalent to sentences in domestic bribery cases.

The point of these anti-bribery laws is that sound government decisions can only be made by honest, unbiased procurement officials. Thus, those who would excuse a business committing bribery of a foreign official as simply adhering to a developing country's "local business custom" are fundamentally wrong. Such a statement not only shows a lack of respect for U.S. and international law, but also expresses a cultural condescension toward foreign nationalities. Most important, the assertion is false – contradicted by the anti-bribery laws on

foreign countries' books, by their public institutions specifically organized to combat corruption, by the public protests of their citizens against official corruption, and by their interference of scandal with the growth of democratic institutions. Vietnam is no exception. Recognizing the problems caused by past government corruption in Vietnam, in recent years the country has pursued a high-visibility campaign to end corruption. Not only have laws been passed to increase fiscal transparency in public management, but corruption involving more than a few thousand dollars is now punishable in Vietnam with the death penalty. Combating global corruption is a high priority for the United States, Vietnam, and the international community at large.

At sentencing, the government will present the testimony of Brent Omdahl, the former U.S. Commercial Attaché to the U.S. embassy in Vietnam. Mr. Omdahl is prepared to testify about the nature and structure of the Vietnamese economy, including the role of state-owned enterprises and government ownership, control, and centrality to the government of Vietnam of extractive industry operations. He will further testify about the engagement of U.S. businesses in the Vietnamese economy and the role of the U.S. Commercial Service in assisting such U.S. businesses, including, but not limited to, the Commercial Service's interactions with representatives of Nexus Technologies. Finally, Mr. Omdahl is prepared to explain the use, operation, and government control of procurement arms, entering into contracts on behalf of the Vietnamese Ministry of Defense and Ministry of Public Security, including the use of brokers acting at the direction of, under the control of, and on behalf of, those ministries. As Mr. Omdahl will make clear, American businesses could and did legitimately, legally, and successfully operate in Vietnam without bribing Vietnamese government officials.

Nguyen argues in his Sentencing Memorandum that he should not be subject to a term of incarceration, because other FCPA sentences have been low. He cites a handful of cases where no custodial sentences were imposed - but in the majority of the cases cited,[7] the defendants cooperated with the investigation and received motions for downward departures pursuant to U.S.S.G. § 5K1.1. All but one of the individuals remaining pled guilty at an early stage to informations, and did not put the government to the obligation of indictment. Such is not the case for Nam Nguyen, who pled guilty well after the government's plea deadline and only with trial looming, and has not earned a motion for downward departure. Attached as Exhibit A is a summary of sentences in cases where the defendant pled guilty to FCPA violations since 2001.

Nguyen goes on to look selectively at the history of FCPA sentencing, focusing on the statistical outlier of the case of *United States v. Green*, No. 08-CR-0599 (C.D. Cal.),[8] but ignoring the more common cases of significant prison time, which have a great deal in common with this case. Charles Jumet, who paid less than 1/3 of what Nguyen paid in bribes, received 87 months' imprisonment. For those similarly situated to Nguyen, pleading guilty but not receiving a motion for downward departure, the average sentence since 2001 has been 41 months. But not one of those defendants deliberately set up a company that operated entirely through criminal means - where a bribe was paid on every contract it ever won. Nguyen's scheme was more detailed and encompassed everything he did. He deserves a sentence within the guidelines.

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[7] As to Crites, Qualey, and Rothrock, it is unknown if they cooperated. Martin Self did not.

[8] At the time of this filing, the final sentencing order had not been entered in *Green*. The Department of Justice is considering appealing the sentence in that case.

Further, while any bribery of a foreign government official by an American hurts our international reputation and relations, Nam Nguyen's bribery was particularly egregious. Vietnam is one of the poorest countries in the world, with a per-capita income of less just over $1,000 per year, according to the U.S. Department of State.[9] Vietnam relies on the exploitation of its natural resources by companies like PetroVietnam Gas Company and VietSovPetro to fuel its economy and fund public services. Nexus' other clients provided critical public safety services. Just the single substantive bribe to which Nam Nguyen pled guilty represents the yearly income of more than 60 Vietnamese citizens, the equivalent of a $2,300,000 bribe in the United States, funded at direct cost to the Vietnamese public.

Moreover, this is not a case of an isolated incident. This is not a case of providing officials with gift baskets or entertainment that crossed some fine line. Nguyen was fully aware of the FCPA and that he was systematically violating it. Nor is this a case of a defendant finding one corrupt government official and taking advantage of the situation. In this instance, Nam Nguyen's conduct continued for almost a decade and touched many different Vietnamese government agencies. In essence, Nguyen systematically embezzled a developing country's public funds by acting as an accomplice to various Vietnamese public officials' theft of money from a wide range of agencies, all while depriving other potential legitimate bidders of business opportunities. No one, apart from the corrupt officials themselves, was more directly engaged in

[9] "Background Note: Vietnam," available at www.state.gov/r/pa/ei/bgn/4130.htm. Figure is for 2009.

these crimes than Nam Nguyen. Nguyen faces a guideline range of 168-210 months precisely because of the scale, scope, and potential harm of his offense conduct.[10]

Nguyen's knowledge of the wrongfulness of his conduct also contributes to the serious nature of these crimes. On Nam Nguyen's direction, he and his co-defendants took steps to conceal their bribes, including: (1) funneling the bribe payments through a Hong Kong bank account belonging to a company that was controlled by Nam Nguyen and Nexus Technologies; (2) falsified paperwork; and (3) efforts to disguise the bribe payments in Nexus books and records.

The history and characteristics of Nam Nguyen also favor a sentence within the advisory guideline range. With both a bachelor's and master's degree in electrical engineering from Drexel University, Nam Nguyen had the benefit of opportunities that are unavailable to the great majority of defendants before this Court. In fact, he worked as a successful hardware design engineer for AT&T for more than 15 years and took an early retirement package. Thus, it is clear that his crimes arose not from need or desperation, but from rational deliberation and calculated choice. Rather than find honest opportunities to earn a living, he chose to engage in corrupt behavior.[11] Nam Nguyen directed this corruption. He is the one who negotiated the

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[10] The Supreme Court has declared: "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 128 S. Ct. 586, 596 (2007). Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

[11] To the extent Nam Nguyen may attempt to minimize his conduct based on the claim that he did not make much money off of his scheme, it cannot be ignored that he and his co-defendants were slowly working their way from small contracts to big ones, as they reliably offered and paid the promised bribes. In other words, Nam Nguyen was working his way towards big money.

contracts in Vietnam as well as the bribes. He is the one who directed his co-defendants' criminal actions.

In pleading guilty, it should be noted that Nguyen agreed to cooperate with any foreign law enforcement investigating the misconduct in this case, should the United States ask him to do so. Due to the complexities of international law enforcement cooperation in this matter, discussions with foreign law enforcement have not yet reached a stage where Nguyen's cooperation would be workable. However, the United States notes that Nguyen did agree to cooperate if asked to do so.

To the extent Nam Nguyen intends to argue that his health problems entitle him to leniency, this is not a valid argument. The Bureau of Prisons is well-equipped to provide adequate health care to inmates with those health problems. When an inmate is sentenced, the Bureau of Prisons assigns a medical designation number to the inmate that reflects his or her medical needs. Every institution has a care-level assignment of one to four that reflects the medical resources available at that facility, and the BOP ensures that the inmate is assigned to an appropriate institution. And while some institutions are considered "medical referral centers," which are prisons which provide in-patient care to seriously ill inmates, every single general population institution is equipped to deal with medically ill inmates. Each of these institutions run a number of chronic care clinics whose purpose it is to provide routinely scheduled quality care to medically ill inmates, as well as to stay cognizant of any changes in medical conditions that may arise. Inmates enrolled in chronic care clinics are seen at a minimum on a quarterly basis, and more often if medically necessary. Further, should some truly "extraordinary and compelling" health situation arise, "compassionate release" is available under 18 U.S.C. §

3582(c)(1)(A), which vests discretion in the Director of the Bureau of Prisons to seek the early release of an inmate. Therefore, Nam Nguyen's health should not prevent or even impact a sentence of incarceration in this case.

The need for this sentence to promote general deterrence is also particularly strong here. Corrupt procurement schemes are both profitable and very hard to detect and to prove against individuals. Many cannot restrain themselves merely knowing that the illegal nature of their actions carries some vague risk of prosecution. In fact, Nguyen responded to this knowledge not with obedience to the law but by adopting methods to avoid detection. To the extent that conduct such as defendants' is in fact not unique in the U.S. business community, it will hardly be deterred by sending the message that the consequence of such conduct is at worst several months of imprisonment. On the other hand, word that violation of the FCPA carries serious prison time should discourage some of those who do not respect the law, or those who by nature or circumstance are strongly tempted by profit.

Unlike many cases where a deterrent effect of a sentence is more theoretical, this case has appropriately garnered the attention of many in Vietnam and the U.S. corporate and legal communities who will now see how defendants are actually punished after conviction of these charges.

IV. CONCLUSION

Individuals who do business in foreign countries must see that foreign bribery is a serious crime with serious consequences, especially when accompanied by money laundering and Travel Act violations. The government respectfully submits that only a sentence of incarceration within the advisory guideline range will adequately deter others in this industry from committing

similar crimes, will punish Nam Nguyen sufficiently for his criminal conduct, will sufficiently promote respect for the law and for U.S. treaty obligations, and will advance all of the other goals of sentencing.

For all of the above reasons, the government recommends a sentence of imprisonment within the advisory guidelines range.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Government's Sentencing Memorandum to be served by e-mail upon the following:

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Exhibit A

SENTENCES OF NATURAL PERSONS WHO PLEADED GUILTY TO FCPA VIOLATIONS SINCE 2001

	DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	**Juan Diaz** (Intermediary)	United States v. Diaz, 09-CR-20346 (S.D. Fla. 2009)	NO	~ 1M	57 months' imprisonment
2	**John W. Warwick**[1] (President)	United States v. Warwick, 09-CR-449 (E.D. Va. 2009)	NO	~ 200K	37 months' imprisonment
3	Charles Paul Edward **Jumet** (Vice President; President)	United States v. Jumet, 09-CR-397 (E.D. Va. 2009)	NO	~ 200K	87 months' imprisonment
4	**Misao Hioki** (General Manager)	United States v. Hioki, 08-CR-795 (S.D. Tex. 2008)	YES	~ 1M	24 months' imprisonment
5	**Shu Quan-Sheng** (President, Secretary, and Treasurer)	United States v. Quan-Sheng, 08-CR-194 (E.D. Va. 2008)	NO	~ 189K	51 months' imprisonment
6	**Martin Eric Self** (CEO)	United States v. Self, 08-CR-110 (C.D. Cal. 2008)	NO	~ 70K	2 years' probation
7	**Jason Edward Steph** (General Manager)	United States v. Steph, 07-CR-307 (S.D. Tex. 2007)	YES	~ 6M	15 months' imprisonment
8	**Jim Bob Brown** (Managing Director)	United States v. Brown, 06-CR-316 (S.D. Tex. 2006)	YES	~ 6M	1 year and 1 day's imprisonment
9	**Steven J. Ott** (Executive Vice President)	United States v. Ott, 07-CR-608 (D. N.J. 2007)	YES	~ 267K	6 months' home confinement; 5 years' probation
10	**Yaw Osei Amoako**[2] (Regional Director)	United States v. Amoako, 06-CR-702 (D. N.J. 2006)	YES	~ 267K	18 months' imprisonment
11	**Roger Michael Young** (Managing Director)	United States v. Young, 07-CR-609 (D. N.J. 2007)	YES	~ 267K	3 months' home confinement; 5 years' probation

[1] United States Sentencing Guidelines Section 2B4.1, with a base offense level of 8, was the applicable U.S.S.G. Section at this time. After November 2002, Section 2C1.1, with a base offense level of 12, became the applicable U.S.S.G. Section in accordance with international treaty obligations.

[2] Judgment states "defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months, including 6 months to be served in a halfway house." [Docket Entry 35]

SENTENCES OF NATURAL PERSONS WHO PLEADED GUILTY TO FCPA VIOLATIONS SINCE 2001

DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
Christian Sapsizian (Vice President)	United States v. Sapsizian, et al, 06-CR-20797 (S.D. Fla. 2006)	YES	~2.4M	30 months' imprisonment
Steven Lynwood Head[3] (Program Manager)	United States v. Head, 06-CR-1380 (S.D. Cal. 2006)	YES	~2M	6 months' imprisonment
Richard **John** Novak (Employee)	United States v. Randock, et al, 05-CR-180 (E.D. Wash. 2005)	YES	~30K-70K	3 years' probation
Faheem Mousa Salam (Translator/Contractor)	United States v. Salam, 06-CR-157 (D.D.C. 2006)	YES	~60K	36 months' imprisonment
Richard G. Pitchford[4] (Vice President; Country Manager)	United States v. Pitchford, 02-CR-365 (D.D.C. 2002)	YES	~400K	1 year and 1 day's imprisonment
Gautam Sengupta[3] (Task Manager)	United States v. Sengupta, 02-CR-040 (D.D.C. 2002)	YES	~50K[5]	2 months' imprisonment; 4 months' home confinement
Ramendra Basu[3] (Trust Funds Manager)	United States v. Basu, 02-CR-475 (D.D.C. 2002)	NO	~50K[4]	15 months' imprisonment
Richard K. Halford[3] (CFO)	United States v. Halford, 01-CR-221 (W.D. Mo. 2001)	YES	~1.5M	5 years' probation
Albert Reitz[3] (Vice President and Secretary)	United States v. Reitz, 01-CR-222 (W.D. Mo. 2001)	YES	~1.5M	6 months' home confinement; 5 years' probation
Daniel Ray Rothrock[2, 3] (Vice President)	United States v. Rothrock, 01-CR-343 (W.D. Tex. 2001)	–[6]	~300K	1 year's probation

[3] Defendant pleaded guilty to violating the books and records provisions of the FCPA, not the anti-bribery provisions.

[4] United States Sentencing Guidelines Section 2B4.1, with a base offense level of 8, was the applicable U.S.S.G. Section at this time. After November 2002, Section 2C1.1, with a base offense level of 12, became the applicable U.S.S.G. Section in accordance with international treaty obligations.

[5] The defendants admitted to having taken steps in furtherance of the payment of a $50,000 bribe to a Kenyan government official, in violation of the FCPA. The defendants also admitted to having received $127,000 in kickbacks in exchange for using their positions with the World Bank to give favorable treatment to a consultant.

[6] There is no indication on the docket.

SENTENCES OF NATURAL PERSONS WHO PLEADED GUILTY TO FCPA VIOLATIONS SINCE 2001

	DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
	**Albert Jackson "Jack" Stanley**[7] (Officer/Director)	United States v. Stanley, 08-CR-597 (S.D. Tex. 2008)	--	~ 10.8M	84 months' imprisonment; Rule 11(c)(1)(C)

[7] Stanley has not been sentenced, but he was included in this chart since his plea was pursuant to Rule 11(c)(1)(C), with an agreed upon sentence of 84 months and restitution of $10.8 million. The plea agreement also provides for the possibility of a sentence reduction below 84 months.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 08-522
JOSEPH T. LUKAS	:	

ORDER

AND NOW, this day of , 2010, upon consideration of the government's motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, for a downward departure, the Court enters this Order.

The Court finds as follows:

1. Nature of assistance. Section 5K1.1 lists as a relevant factor "the nature and extent of the defendant's assistance." In this case, the defendant Joseph Lukas provided assistance in many ways over an extended period of time. He met with the government on approximately seven separate occasions over the course of approximately 1 ½ years and explained everything he knew about his co-defendants, their criminal conduct, their personal histories, and their business records. Lukas also created spreadsheets of information for the government, voluntarily turned over his computer for government analysis, and spent hours upon hours poring through documents in order to explain the business practices of Nexus Technologies and the Nguyen siblings. In addition, Lukas was prepared to testify as a government witness at trial, and he still may be called to testify at the sentencings of his co-defendants.

2. Significance of cooperation. Section 5K1.1 lists as a relevant factor "the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered." In this case, Joseph Lukas's cooperation was very significant. He gave the government valuable insight into the workings of Nexus Technologies and his individual co-defendants, explained the meaning of various documents and emails, and provided the government with critical details regarding the bribery logistics and amounts, which played a key role in preparing the superseding indictment. In addition, had this case gone to trial, Lukas would have served as a critical witness for the government regarding the inner-workings of Nexus Technologies.

3. Reliability of information. Section 5K1.1 lists as a relevant factor "the truthfulness, completeness, and reliability of any information or testimony provided by the defendant." In this case, the government has concluded that Joseph Lukas provided truthful, complete, and reliable information, as his information was consistent with Nexus' documents and with information provided by cooperating co-defendant Kim Nguyen.

4. Danger to defendant. Section 5K1.1 lists as a relevant factor "any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance." Although the government has no information about any danger or risk to Joseph Lukas as a result of his cooperation, there is always some danger associated with cooperating with the government in a criminal case.

5. Timeliness. Section 5K1.1 lists as a relevant factor "the timeliness of the defendant's assistance." In this case, Joseph Lukas began cooperating quickly after indictment, which allowed the government ample time to use his information to obtain a superseding

indictment, to prepare his testimony for trial, and to calculate solid bribe totals prior to sentencing. The government therefore deems Lukas' cooperation timely.

Upon considering and balancing all of these factors, the Court determines that the defendant provided important and timely information in a matter of public significance, at some personal risk, and accordingly is entitled to a downward departure at sentencing. Therefore, the government's motion under Section 5K1.1 is hereby granted, based on the defendant's substantial assistance in the investigation and prosecution of others.

BY THE COURT:

HONORABLE TIMOTHY J. SAVAGE
Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 08-522
JOSEPH T. LUKAS	:	

GOVERNMENT'S SENTENCING MEMORANDUM AND MOTION FOR DOWNWARD DEPARTURE FROM GUIDELINE SENTENCING RANGE

For approximately six years, defendant Joseph T. Lukas helped Nexus Technologies, Inc. ("Nexus") pay bribes to multiple Vietnamese government officials in exchange for contracts. The owner of Nexus, co-defendant Nam Nguyen, had worked out a simple but effective mechanism for paying the bribes – the defendants calculated Nexus' bid amounts to include enough money to pay the bribes, so that the ultimate bribe money was charged back to the Vietnamese government itself once a bid was accepted, taking money away from the public fisc of one of the poorest nations in the world.. As a result, the people of Vietnam paid for the defendants' criminal greed.

Nam Nguyen is the one who negotiated the contracts and bribe amounts in Vietnam, while Lukas was responsible for vendor relations and negotiations in the United States (which included identifying vendors who could supply the requested goods at low enough prices to allow room for the bribe payments).[1] Nexus literally offered a bribe on every single contract

[1] When Lukas left Nexus in 2004-2005, co-defendants An Quoc Nguyen and Kim Anh Nguyen took over his role in the business.

bid, and in exchange it secured valuable negotiating advantages as well as government contracts on which it did not provide the best equipment or the lowest bid. This is especially troubling because Nguyen's bribes won Nexus contracts to provide particularly sensitive technology to Vietnam, including computer systems, air traffic control systems, underwater mapping equipment, and bomb detection equipment – devices which should have been vetted, purchased, and provided on the basis of quality and price, without the taint and influence of bribes.

To his great credit, Joseph Lukas made the decision to start cooperating with the government quickly after indictment. Since that time, Lukas has met with the government on approximately seven occasions and explained everything he knows about his co-defendants, their criminal conduct, their personal histories, and their documents. Lukas created spreadsheets of information for the government, voluntarily turned over his computer for government analysis, and spent hours upon hours poring through documents in order to explain the business practices of Nexus Technologies and the Nguyen siblings. Lukas would have been a critical trial witness, and the government may still ask him to testify at his co-defendants' sentencings regarding their bribe payments and amounts. Thus, the government has included below a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, for a downward departure.

For all of the above reasons, as well as the other sentencing factors discussed below, the government recommends a sentence of incarceration below the advisory guideline range of 37-46 months.

I. BACKGROUND

On March 16, 2010, the defendant pled guilty to the following counts of the indictment[2]: (a) Count One, conspiracy to violate the Foreign Corrupt Practices Act; and (b) Count Three, a substantive violation of the Foreign Corrupt Practices Act. During his plea colloquy, the defendant admitted that he participated in a conspiracy to pay bribes to Vietnamese government officials in order to secure contracts to provide technology and equipment to Vietnamese government agencies.

II. SENTENCING CALCULATION

A. Statutory Maximum Sentences

The defendant faces the following maximum possible sentences: (a) Count One (conspiracy), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; (b) Count Three (FCPA), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment.

The Total Possible Maximum Sentence is: 10 years' imprisonment; a three-year period of supervised release; a fine of $500,000, and a $200 special assessment. Finally, supervised release may be revoked if its terms and conditions are violated.

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[2] Lukas entered his guilty plea to the indictment before the grand jury returned the superseding indictment.

B. Sentencing Guidelines Calculation

It is the government's position that Joseph Lukas qualifies for the following Sentencing Guidelines calculation:

1. Offense Level

Base offense level	U.S.S.G. § 2C1.1(a)(2)[3]	12
More than one bribe	U.S.S.G. § 2C1.1(b)(1)	+2
Value of bribes exceeded $120,000[4]	U.S.S.G. §§ 2C1.1(b)(2), 2B1.1(b)(1)(F)	+10
Acceptance of responsibility	U.S.S.G. § 3E1.1	-3
	TOTAL	21

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[3] Pursuant to international treaty, the United States must impose comparable sentences in both domestic and foreign bribery cases. Thus, in 2002, the Sentencing Commission amended the statutory index of offenses located at U.S.S.G. Appendix A to specifically key FCPA's anti-bribery violations to U.S.S.G. § 2C1.1, the same guideline used for domestic bribery offenses. The Sentencing Commission stated that such amendment was necessary:

> to comply with the mandate of a multilateral treaty entered into by the United States, the Convention on Combating Bribery of Foreign Public Officials in International business Transactions. In part this Convention requires signatory countries to impose comparable sentences in both domestic and foreign bribery cases. Domestic public bribery cases are referenced to § 2C1.1 To comply with the treaty, offenses committed in violation of 15 U.S.C. §§ 78dd-1 through 78dd-3 are now similarly referenced to § 2C1.1.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2002), at p. 3 (emphasis added); see also Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), Art. 3, § 1 ("The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials."), reprinted in 37 I.L.M. 1 (1998).

[4] At the time Lukas began cooperating, the government had uncovered bribes totaling more than $120,000, but less than $200,000 during the period of Lukas' affiliation with Nexus. Thus, Lukas' plea agreement holds him responsible for that amount. Plea Agreement ¶ 11(c). The government is standing by the plea agreement. All additional bribes uncovered by the government (for which the other defendants are being held accountable) were uncovered with Lukas' assistance and after he entered his plea, and fall within the parameters of U.S.S.G. §1B1.8.

Although the PSR advocates a four-level enhancement under U.S.S.G. § 2C1.1(b)(3) (offense involved a public official in a high-level decision-making or sensitive position), the government is not pursuing this enhancement for Joseph Lukas, because Lukas had already left the company (and disavowed the conspiracy) prior to the payments to public official at issue. Thus, in Lukas' plea agreement, he and the government reached certain stipulations under the U.S. Sentencing Guidelines which did not include the § 2C1.1(b)(3) enhancement, and which did include an agreement that Joseph Lukas "qualifies for an adjusted offense level of 21." Plea Agreement ¶ 11(4). The government stands by this agreement.

2. Sentencing Range

With an offense level of 21 and a criminal history category of I, the defendant qualifies for an advisory guideline range of 37-46 months of incarceration.

III. MOTION FOR DOWNWARD DEPARTURE FROM GUIDELINE SENTENCING RANGE

The United States of America, by its attorneys Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania; Jennifer Arbittier Williams, Assistant United States Attorney for the District; Denis J. McInerney, Chief, Fraud Section, Criminal Division, U.S. Department of Justice; and Kathleen M Hamann, Anticorruption Policy Counsel and Trial Attorney, Fraud Section, Criminal Division, U.S. Department of Justice, hereby files a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, in support of a downward departure below the sentencing range recommended by the Sentencing Guidelines, based upon the defendant's substantial assistance in the investigation and prosecution of other persons. In support of this motion, the government submits this memorandum.

In United States v. Torres, 251 F.3d 138 (3d Cir. 2001), the Court stated:

> We strongly urge sentencing judges to make specific findings regarding each factor and articulate thoroughly whether and how they used any proffered evidence to reach their decision. In sum, it is incumbent upon a sentencing judge not only to conduct an individualized examination of the defendant's substantial assistance, but also to acknowledge § 5K1.1's factors in his or her analysis.

In this case, the relevant factors are as follows:

1. Nature of assistance. Section 5K1.1 lists as a relevant factor "the nature and extent of the defendant's assistance." In this case, the defendant Joseph Lukas provided assistance in many ways over an extended period of time. He met with the government on approximately seven separate occasions over the course of approximately 1 ½ years and explained everything he knew about his co-defendants, their criminal conduct, their personal histories, and their business records. Lukas also created spreadsheets of information for the government, voluntarily turned over his computer for government analysis, and spent hours upon hours poring through documents in order to explain the business practices of Nexus Technologies and the Nguyen siblings. In addition, Lukas was prepared to testify as a government witness at trial, and he still may be called to testify at the sentencings of his co-defendants.

2. Significance of cooperation. Section 5K1.1 lists as a relevant factor "the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered." In this case, Joseph Lukas's cooperation was very significant. He gave the government valuable insight into the workings of Nexus Technologies and his individual co-defendants, explained the meaning of various documents and emails, and provided the government with critical details regarding the

bribery logistics and amounts, which played a key role in preparing the superseding indictment. In addition, had this case gone to trial, Lukas would have served as a critical witness for the government regarding the inner-workings of Nexus Technologies.

3. Reliability of information. Section 5K1.1 lists as a relevant factor "the truthfulness, completeness, and reliability of any information or testimony provided by the defendant." In this case, the government has concluded that Joseph Lukas provided truthful, complete, and reliable information, as his information was consistent with Nexus' documents and with information provided by cooperating co-defendant Kim Nguyen.

4. Danger to defendant. Section 5K1.1 lists as a relevant factor "any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance." Although the government has no information about any danger or risk to Joseph Lukas as a result of his cooperation, there is always some danger associated with cooperating with the government in a criminal case.

5. Timeliness. Section 5K1.1 lists as a relevant factor "the timeliness of the defendant's assistance." In this case, Joseph Lukas began cooperating quickly after indictment, which allowed the government ample time to use his information to obtain a superseding indictment, to prepare his testimony for trial, and to calculate solid bribe totals prior to sentencing. The government therefore deems Lukas' cooperation timely.

For these reasons, the government respectfully files this motion in support of a departure below the sentencing range recommended by the Sentencing Guidelines based upon the defendant's substantial assistance in the investigation and prosecution of other persons.

IV. ANALYSIS

The Third Circuit has set forth a three-step process which the district courts must follow in compliance with the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005):

> (1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before Booker.
>
> (2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-Booker case law, which continues to have advisory force.
>
> (3) Finally, they are to exercise their discretion by considering the relevant § 3553(a) factors in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing United States v. King, 454 F.3d 187, 194, 196 (3d Cir.2006); United States v. Cooper, 437 F.3d 324, 329-30 (3d Cir. 2006)). See also United States v. Smalley, 517 F.3d 208, 211 (3d Cir. 2008) (stating that the Gunter directive is consistent with later Supreme Court decisions). In calculating the guideline range, this Court must make findings pertinent to the guideline calculation by applying the preponderance of the evidence standard, in the same fashion as was employed prior to the Booker decision. United States v. Grier, 475 F.3d 556 (3d Cir. 2007) (en banc). The failure to properly calculate the advisory guideline range will rarely be harmless error. United States v. Langford, 516 F.3d 205, 214-18 (3d Cir. 2008).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent considerations of sentencing outlined in 18 U.S.C. § 3553(a) in determining the final sentence. "The record must demonstrate the trial court gave

meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises 'a ground of recognized legal merit (provided it has a factual basis)' and the court fails to address it." Cooper, 437 F.3d at 329. See also Rita v. United States, 127 S. Ct. 2456, 2468 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."); United States v. Schweitzer, 454 F.3d 197, 205-06 (3d Cir. 2006).

Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the

offense. 18 U.S.C. § 3553(a).[5] In this case, consideration of the 3553(a) factors supports a sentence of incarceration below the advisory guideline range.

As explained above, Joseph Lukas deserves substantial credit for his timely and thorough cooperation with the government. Lukas made the decision to start cooperating with the government almost immediately upon his indictment. Since that time, Lukas met repeatedly with government agents over a 1 1/2-year period and explained everything he knew about his co-defendants, their criminal conduct, their personal histories, and their business records. Lukas showed up to these meetings with spreadsheets he had prepared in advance regarding relevant communications and business transactions. Lukas also searched through his records and computer for information that would prove helpful to the government, and he even voluntarily gave his computer to the government for further analysis. Lukas spent hours upon hours poring through documents (both on his own and with government agents), in order to explain the business practices of Nexus Technologies and the Nguyen siblings. Lukas would have been a critical trial witness for the government, and the government may still ask him to testify at his co-defendants' sentencings. For all of these reasons, the government is advocating for a below-guidelines sentence.

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[5] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

However, it cannot be ignored that these offenses were very serious ones. By way of explanation, the FCPA was enacted by Congress in 1977 (and amended in 1988) to combat corruption harmful to foreign economies and governments, to enhance the United States' public image worldwide, and to allow legitimate businesses to compete against corrupt businesses. Revelations of bribery by American businesses, the Senate's investigation determined, had produced:

> severe adverse effects. Foreign governments friendly to the United States in Japan, Italy, and the Netherlands have come under intense pressure from their own people. The image of American democracy abroad has been tarnished. . . . Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality, and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business. Managements which resort to corporate bribery and the falsification of records to enhance their business reveal a lack of confidence about themselves. Secretary of the Treasury Blumenthal, in appearing before the committee in support of the criminalization of foreign corporate bribery testified that: 'paying bribes – apart from being morally repugnant and illegal in most countries – is simply not necessary for the successful conduct of business here or overseas.' The committee concurs in Secretary Blumenthal's judgment. Many U.S. firms have taken a strong stand against paying foreign bribes and are still able to compete in international trade. Unfortunately, the reputation and image of all U.S. businessmen has been tarnished by the activities of a sizable number, but by no means a majority of American firms. A strong antibribery law is urgently needed to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system.

S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N. 4098 (emphasis added).

Since its passage, the FCPA has been at the forefront of a spreading international norm that has now been adopted in most developed countries to level the playing field for legitimate businesses. Prohibitions against bribery of foreign officials in international business transactions have been made binding through international conventions sponsored by the United

Nations, the Council of Europe, the Organization for Economic Cooperation and Development, and the Organization of American States, and through the policies of other multilateral institutions like the World Bank and the International Chamber of Commerce. See Stuart H. Deming, The Foreign Corrupt Practices Act and the New International Norms (American Bar Association Section of International Law 2005), at 93-94. As discussed above in footnote 3, the Sentencing Commission's 2002 change in treatment of the FCPA to the punitive public corruption guideline implemented the mandate of one such international treaty to which the United States is party to provide serious punishment equivalent to sentences in domestic bribery cases.

The point of these anti-bribery laws is that sound government decisions can only be made by honest, unbiased procurement officials. Thus, those who would excuse a business committing bribery of a foreign official as simply adhering to a developing country's "local business custom" are fundamentally wrong. Such a statement not only shows a lack of respect for U.S. and international law, but also expresses a cultural condescension toward foreign nationalities. Most important, the assertion is false – contradicted by the anti-bribery laws on foreign countries' books, by their public institutions specifically organized to combat corruption, by the public protests of their citizens against official corruption, and by their interference of scandal with the growth of democratic institutions. Vietnam is no exception. Recognizing the problems caused by past government corruption in Vietnam, in recent years the country has pursued a high-visibility campaign to end corruption. Not only have laws been passed to increase fiscal transparency in public management, but corruption involving more than a few thousand dollars is now punishable in Vietnam with the death penalty. Combating global

corruption is a high priority for the United States, Vietnam, and the international community at large.

At sentencing, the government will present the testimony of Brent Omdahl, the former U.S. Commercial Attaché to the U.S. embassy in Vietnam. Mr. Omdahl is prepared to testify about the nature and structure of the Vietnamese economy, including the role of state-owned enterprises and government ownership, control, and centrality to the government of Vietnam of extractive industry operations. He will further testify about the engagement of U.S. businesses in the Vietnamese economy and the role of the U.S. Commercial Service in assisting such U.S. businesses, including, but not limited to, the Commercial Service's interactions with representatives of Nexus Technologies. Finally, Mr. Omdahl is prepared to explain the use, operation, and government control of procurement arms, entering into contracts on behalf of the Vietnamese Ministry of Defense and Ministry of Public Security, including the use of brokers acting at the direction of, under the control of, and on behalf of, those ministries. As Mr. Omdahl will make clear, American businesses could and did legitimately, legally, and successfully operate in Vietnam without bribing Vietnamese government officials.

Further, while any bribery of a foreign government official by an American hurts our international reputation and relations, the Nexus bribery was particularly egregious. Vietnam is one of the poorest countries in the world, with a per-capita income of less just over $1,000 per year, according to the U.S. Department of State.[6] Vietnam relies on the exploitation

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[6] "Background Note: Vietnam," available at http://www.state.gov/r/pa/ei/bgn/4130.htm. Figure is for 2009.

of its natural resources by companies like PetroVietnam Gas Company and VietSovPetro to fuel its economy and fund public services. Nexus' other clients provided critical public safety services.

Moreover, this is not a case of an isolated incident. This is not a case of providing officials with gift baskets or entertainment that crossed some fine line. Nor is this a case of defendants finding one corrupt government official and taking advantage of the situation. In this instance, Joseph Lukas participated for six years in the payment of bribes that influenced many different Vietnamese government agencies. In essence, Nexus systematically embezzled a developing country's public funds by acting as an accomplice to various Vietnamese public officials' theft of money from a wide range of agencies, all while depriving other potential legitimate bidders of business opportunities.

The defendants' efforts to cover up their bribes also contributes to the serious nature of these crimes, including: (1) funneling the bribe payments through a Hong Kong bank account belonging to a company that was controlled by Nam Nguyen and Nexus Technologies; (2) falsifying paperwork; and (3) making efforts to disguise the bribe payments in Nexus books and records.

The need for this sentence to promote general deterrence is also particularly strong here. Corrupt procurement schemes are both profitable and very hard to detect and to prove against individuals. Many cannot restrain themselves merely knowing that the illegal nature of their actions carries some vague risk of prosecution. In fact, the defendants in this very case responded to this knowledge not with obedience to the law but by adopting methods to avoid detection. To the extent that conduct such as defendants' is in fact not unique in the U.S.

business community, it will hardly be deterred by sending the message that the consequence of such conduct is at worst several months of imprisonment. On the other hand, word that violation of the FCPA carries serious prison time should discourage some of those who do not respect the law, or those who by nature or circumstance are strongly tempted by profit.

And unlike many cases where a deterrent effect of a sentence is more theoretical, this case has appropriately garnered the attention of many in Vietnam and the U.S. corporate and legal communities who will now see how defendants (both defendants who cooperate with the government and those who do not cooperate) are actually punished after conviction of these charges.

Finally, the history and characteristics of Joseph Lukas favor a below-guidelines sentence of incarceration. Not only does Lukas appear to have otherwise led a law-abiding life, but he ended his joint venture with Nexus specifically because he could no longer abide by Nam Nguyen's criminal conduct. Lukas observed that Nam Nguyen's bribes were becoming more aggressive, and that he seemed less and less concerned about the legal constraints on foreign contracting and exports. At the same time, Nguyen began compounding his criminal conduct with money laundering (using off-shore companies to funnel and disguise the bribes). Lukas' decision to leave the business, coupled with his quick cooperation after indictment, should serve as mitigating factors at sentencing. They certainly do not erase the seriousness of Lukas' criminal conduct or the need for punishment and deterrence, but they are considerations in favor of a below-guidelines sentence of incarceration.

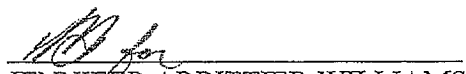
V. CONCLUSION

Individuals who do business in foreign countries must see that foreign bribery is a serious crime with serious consequences. At the same time, the government understands the importance of giving credit to defendants who provide substantial cooperation to the government, particularly in the case of FCPA violations which are otherwise very hard to detect and prove. The government thus respectfully submits that a sentence of incarceration below the advisory guideline range will properly recognize Joseph Lukas's cooperation while at the same time adequately deter others in this industry from committing similar crimes, punish Joseph Lukas sufficiently for his criminal conduct, promote respect for the law and for U.S. treaty obligations, and advance all of the other goals of sentencing.

For all of the above reasons, the government recommends a substantial sentence of imprisonment below the advisory guidelines range.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney



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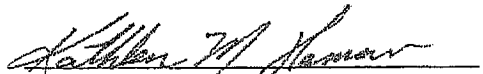

KATHLEEN M HAMANN
Anticorruption Policy Counsel and Trial Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Government's Sentencing Memorandum and Motion for Downward Departure from Guideline Sentencing Range to be served by e-mail upon the following:

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KATHLEEN M HAMANN
Anticorruption Policy Counsel and Trial Attorney

Date: September 8, 2010

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 08-522
AN QUOC NGUYEN	:	

GOVERNMENT'S SENTENCING MEMORANDUM

Throughout his employment at Nexus Technologies, Inc. ("Nexus"), defendant An Quoc Nguyen, on probation for a federal offense, paid bribes to multiple Vietnamese government officials in exchange for contracts for his family's business. Nexus literally offered a bribe on every single contract bid, and in exchange Nexus secured valuable negotiating advantages as well as government contracts on which it did not provide the best equipment or the lowest bid. An's brother Nam Nguyen had worked out a simple but effective mechanism for paying the bribes – he and his co-defendants calculated Nexus' bid amounts to include enough money to pay the bribes, so that the ultimate bribe money was charged back to the Vietnamese government itself once a bid was accepted, taking money away from the public fisc of one of the poorest nations in the world. As a result, the people of Vietnam paid for the defendants' criminal greed.

An Nguyen's role in this scheme was to bring in the goods at a low enough price to leave enough money to pay the bribes, and for Nexus to profit. If he had to use substandard products to do so, he did. Further, email correspondence between the defendants makes it very clear that An Nguyen knew exactly what he was doing, and why. Thus, in total, An Nguyen is responsible for the $324,310.65 in bribes that were paid during the period he worked at Nexus.

Vietnam is a poor country that is struggling to overcome a severe economic crisis caused in part by government corruption. The Vietnamese government has, in recent years, launched a significant effort to clean up that corruption, and it is working together with the United States to combat corruption, as well as to promote, protect, and support legitimate American business in Vietnam. Nonetheless, An Nguyen and his co-defendants greedily chose to bypass legitimate business options and instead exploit Vietnam's vulnerabilities by bribing its government officials in exchange for contracts. This is especially troubling because the bribes won Nexus contracts to provide particularly sensitive technology to Vietnam, including computer systems, air traffic control systems, underwater mapping equipment, and bomb detection equipment – devices which should have been vetted, purchased, and provided on the basis of quality and price, without the taint and influence of bribes.

For all of the above reasons, as well as the other sentencing factors discussed below, the government recommends a sentence of incarceration within the advisory guideline range of 87-108 months.

I. BACKGROUND

On March 16, 2010, the defendant pled guilty to the following counts of the Superseding Indictment: (a) Count One, conspiracy to violate the Foreign Corrupt Practices Act and the Travel Act, and to launder money; (b) Count Eight, a substantive violation of the Foreign Corrupt Practices Act; (c) Count Seventeen, a substantive violation of the Travel Act; and (d) Count Twenty-Six, money laundering. During his plea colloquy, the defendant admitted that he knowingly participated in a conspiracy to pay bribes to Vietnamese government officials in order to secure contracts to provide technology and equipment to Vietnamese government agencies.

Nguyen also admitted that he was responsible for securing the equipment in the United States to fulfill the contracts in Vietnam.

II. SENTENCING CALCULATION

A. Statutory Maximum Sentences

The defendant faces the following maximum possible sentences: (a) Count One (conspiracy), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; (b) Count Eight (FCPA), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; (c) Count Seventeen (Travel Act), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; and (d) Count Twenty-Six (money laundering), twenty years' imprisonment, a three-year period of supervised release, a fine of $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, and a $100 special assessment.

The Total Possible Maximum Sentence is: 35 years' imprisonment; a three-year period of supervised release; a fine of $1,648,621.30, and a $400 special assessment. Finally, supervised release may be revoked if its terms and conditions are violated.

B. Sentencing Guidelines Calculation

It is the government's position that An Nguyen qualifies for the following Sentencing Guidelines calculation:

1. Offense Level

Base offense level	U.S.S.G. § 2C1.1(a)(2)[1]	12
More than one bribe	U.S.S.G. § 2C1.1(b)(1)	+2
Value of bribes exceeded $200,000[2]	U.S.S.G. §§ 2C1.1(b)(2), 2B1.1(b)(1)(G)	+12
Conviction under § 1956	U.S.S.G. § 2S1.1(b)(2)(B)	+2
Sophisticated laundering	U.S.S.G. § 2S1.1(b)(3)	+2
Acceptance of responsibility	U.S.S.G. § 3E1.1	-3
	TOTAL	27

[1] Pursuant to international treaty, the United States must impose comparable sentences in both domestic and foreign bribery cases. Thus, in 2002, the Sentencing Commission amended the statutory index of offenses located at U.S.S.G. Appendix A to specifically key FCPA's anti-bribery violations to U.S.S.G. § 2C1.1, the same guideline used for domestic bribery offenses. The Sentencing Commission stated that such amendment was necessary:

> to comply with the mandate of a multilateral treaty entered into by the United States, the Convention on Combating Bribery of Foreign Public Officials in International business Transactions. In part this Convention requires signatory countries to impose comparable sentences in both domestic and foreign bribery cases. Domestic public bribery cases are referenced to § 2C1.1 To comply with the treaty, offenses committed in violation of 15 U.S.C. §§ 78dd-1 through 78dd-3 are now similarly referenced to § 2C1.1.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2002), at p. 3 (emphasis added); see also Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), Art. 3, § 1 ("The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials."), reprinted in 37 I.L.M. 1 (1998).

[2] Because An Nguyen worked at Nexus Technologies from 2005 - 2007, he is responsible for bribes paid only during those years, as follows: (a) in 2005, Nexus paid $97,996.92 in bribes; (b) in 2006, Nexus paid $135,663.46 in bribes; and (c) in 2007, Nexus paid $90,650.27 in bribes. Therefore, in total, An Nguyen is responsible for $324,310.65 in bribes. In comparison, the lead defendant Nam Nguyen is responsible for bribes dating back to 1999, totaling $689,116.04.

Although the PSR advocates a four-level enhancement under U.S.S.G. § 2C1.1(b)(3) (offense involved a public official in a high-level decision-making or sensitive position), the government is not pursuing this enhancement for An Nguyen. Unlike his brother Nam Nguyen (for whom the government is pursuing this enhancement), An Nguyen was unaware of the nature, position, or role of the specific officials who received the bribe payments.

2. Criminal History Calculation

The government agrees with the criminal history calculation in the PSR.

4/11/06	Conspiracy to transport and harbor aliens, employing ten or more unauthorized aliens	§ 4A1.1(b) § 4A1.2(k)(1)	2 points
4/11/06	Driving under the influence of alcohol	§ 4A1.1(b)	2 points

Because the defendant was on probation in the Eastern District of Pennsylvania at the time of the instant offense, pursuant to U.S.S.G. § 4A1.1(d), two points are added, for a total of criminal history points of 6. This is a criminal history category of III.

3. Sentencing Range

With an offense level of 27 and a criminal history category of III, the defendant qualifies for an advisory guideline range of 87-108 months of incarceration.

III. ANALYSIS

The Third Circuit has set forth a three-step process which the district courts must follow in compliance with the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005):

(1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before Booker.

(2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-Booker case law, which continues to have advisory force.

(3) Finally, they are to exercise their discretion by considering the relevant § 3553(a) factors in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing United States v. King, 454 F.3d 187, 194, 196 (3d Cir.2006); United States v. Cooper, 437 F.3d 324, 329-30 (3d Cir. 2006)). See also United States v. Smalley, 517 F.3d 208, 211 (3d Cir. 2008) (stating that the Gunter directive is consistent with later Supreme Court decisions). In calculating the guideline range, this Court must make findings pertinent to the guideline calculation by applying the preponderance of the evidence standard, in the same fashion as was employed prior to the Booker decision. United States v. Grier, 475 F.3d 556 (3d Cir. 2007) (en banc). The failure to properly calculate the advisory guideline range will rarely be harmless error. United States v. Langford, 516 F.3d 205, 214-18 (3d Cir. 2008).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent considerations of sentencing outlined in 18 U.S.C. § 3553(a) in determining the final sentence. "The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises 'a ground of recognized legal merit (provided it has a factual basis)' and the court fails to address it." Cooper, 437 F.3d at 329. See also Rita v. United States, 127 S. Ct. 2456, 2468 (2007)

("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."); United States v. Schweitzer, 454 F.3d 197, 205-06 (3d Cir. 2006).

Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).[3] In this case, consideration of the 3553(a) factors supports a significant sentence of incarceration within the advisory guideline range.

First, these offenses were very serious ones. By way of explanation, the FCPA was enacted by Congress in 1977 (and amended in 1988) to combat corruption harmful to foreign economies and governments, to enhance the United States' public image worldwide, and to allow

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[3] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

legitimate businesses to compete against corrupt businesses. Revelations of bribery by American businesses, the Senate's investigation determined, had produced:

> severe adverse effects. Foreign governments friendly to the United States in Japan, Italy, and the Netherlands have come under intense pressure from their own people. The image of American democracy abroad has been tarnished. . . . Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality, and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business. Managements which resort to corporate bribery and the falsification of records to enhance their business reveal a lack of confidence about themselves. Secretary of the Treasury Blumenthal, in appearing before the committee in support of the criminalization of foreign corporate bribery testified that: 'paying bribes – apart from being morally repugnant and illegal in most countries – is simply not necessary for the successful conduct of business here or overseas.' The committee concurs in Secretary Blumenthal's judgment. Many U.S. firms have taken a strong stand against paying foreign bribes and are still able to compete in international trade. Unfortunately, the reputation and image of all U.S. businessmen has been tarnished by the activities of a sizable number, but by no means a majority of American firms. A strong antibribery law is urgently needed to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system.

S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N. 4098 (emphasis added).

Since its passage, the FCPA has been at the forefront of a spreading international norm that has now been adopted in most developed countries to level the playing field for legitimate businesses. Prohibitions against bribery of foreign officials in international business transactions have been made binding through international conventions sponsored by the United Nations, the Council of Europe, the Organization for Economic Cooperation and Development, and the Organization of American States, and through the policies of other multilateral institutions like the World Bank and the International Chamber of Commerce. See Stuart H. Deming, The Foreign Corrupt Practices Act and the New International Norms (American Bar

Association Section of International Law 2005), at 93-94. As discussed above in footnote 1, the Sentencing Commission's 2002 change in treatment of the FCPA to the punitive public corruption guideline implemented the mandate of one such international treaty to which the United States is party to provide serious punishment equivalent to sentences in domestic bribery cases.

The point of these anti-bribery laws is that sound government decisions can only be made by honest, unbiased procurement officials. Thus, those who would excuse a business committing bribery of a foreign official as simply adhering to a developing country's "local business custom" are fundamentally wrong. Such a statement not only shows a lack of respect for U.S. and international law, but also expresses a cultural condescension toward foreign nationalities. Most important, the assertion is false – contradicted by the anti-bribery laws on foreign countries' books, by their public institutions specifically organized to combat corruption, by the public protests of their citizens against official corruption, and by their interference of scandal with the growth of democratic institutions. Vietnam is no exception. Recognizing the problems caused by past government corruption in Vietnam, in recent years the country has pursued a high-visibility campaign to end corruption. Not only have laws been passed to increase fiscal transparency in public management, but corruption involving more than a few thousand dollars is now punishable in Vietnam with the death penalty. Combating global corruption is a high priority for the United States, Vietnam, and the international community at large.

At sentencing, the government will present the testimony of Brent Omdahl, the former U.S. Commercial Attaché to the U.S. embassy in Vietnam. Mr. Omdahl is prepared to

testify about the nature and structure of the Vietnamese economy, including the role of state-owned enterprises and government ownership, control, and centrality to the government of Vietnam of extractive industry operations. He will further testify about the engagement of U.S. businesses in the Vietnamese economy and the role of the U.S. Commercial Service in assisting such U.S. businesses, including, but not limited to, the Commercial Service's interactions with representatives of Nexus Technologies. Finally, Mr. Omdahl is prepared to explain the use, operation, and government control of procurement arms, entering into contracts on behalf of the Vietnamese Ministry of Defense and Ministry of Public Security, including the use of brokers acting at the direction of, under the control of, and on behalf of, those ministries. As Mr. Omdahl will make clear, American businesses could and did legitimately, legally, and successfully operate in Vietnam without bribing Vietnamese government officials.

Further, while any bribery of a foreign government official by an American hurts our international reputation and relations, An Nguyen's bribery was particularly egregious. Vietnam is one of the poorest countries in the world, with a per-capita income of less just over $1,000 per year, according to the U.S. Department of State.[4] Vietnam relies on the exploitation of its natural resources by companies like PetroVietnam Gas Company and VietSovPetro to fuel its economy and fund public services. Nexus' other clients provided critical public safety services.

Moreover, this is not a case of an isolated incident. This is not a case of providing officials with gift baskets or entertainment that crossed some fine line. Nguyen participated

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[4] "Background Note: Vietnam," available at www.state.gov/r/pa/ei/bgn/4130.htm. Figure is for 2009.

directly in this scheme, constantly trying to secure cheaper and cheaper equipment to fulfill the contracts and make a greater profit, notwithstanding the fact that the equipment at issue often related directly to the public safety and security of the people of Vietnam.

Nor is this a case of a defendant finding one corrupt government official and taking advantage of the situation. In this instance, An Nguyen's conduct permeated every aspect of his work for Nexus, touching every bid he prepared and every deal he negotiated. He deliberately hid the destination of these products to prevent U.S. companies from competing directly - and legitimately - for the contracts he helped secure through bribes. In essence, Nguyen systematically exploited a corrupt system to try to generate profits for his siblings, all while depriving other potential legitimate bidders of business opportunities. Nguyen faces a guideline range of 87-108 months in large part because of the scale, scope, and potential harm of his offense conduct.[5]

Moreover, the history and characteristics of An Nguyen counsel strongly in favor of a sentence within the advisory guideline range. Nguyen attended the Wharton School of the University of Pennsylvania, consistently ranked among the top five undergraduate business schools in the country, and nearly achieved his degree. Rather than completing his degree and leveraging it to secure lucrative, gainful employment, Nguyen has consistently taken the easy way out, following his siblings into criminal activities. Nguyen had the benefit of opportunities that are unavailable to the great majority of defendants before this Court, but never took

[5] The Supreme Court has declared: "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 128 S. Ct. 586, 596 (2007). Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

advantage of them. Nguyen himself says in his sentencing memorandum that he is described as a "lazy employee," and this laziness led him into criminal activity not once, but twice. In the Ohio matter, where he was convicted of conspiring with another brother to smuggle illegal aliens, he made the same claims. Nguyen clearly failed to learn his lesson the first time, simply repeating his prior pattern.

Nguyen's assertion that he did not know he was violating the law and was merely a "low level clerk" is clearly refuted by the evidence in this case. This was not an enormous corporation where he was distant from the decision-making. Nguyen was engaged in the day-to-day operations of the business and in daily communication with Nam Nguyen, the president and owner of the company. Nguyen was responsible for contracting with suppliers in the United States and ensuring that he secured the required items at a cheap enough price to leave room for the bribes, a significant role in the conspiracy. On at least one occasion, Nguyen substituted cheaper equipment that what was specified in the contract to ensure there was enough money to pay the bribe. Nguyen knew that the bribes were eating into Nexus' profits and questioned them - when his brother provided him with a detailed explanation, he acknowledged that it was a kickback scheme. Nguyen explained to investigators in his interview in September 2008 that the way Nexus worked was that "commissions are paid as 'kickbacks' for deals in Vietnam."

Nguyen claims that he would never have knowingly committed a crime while on probation for his Ohio offense, but the circumstances belie that assertion. Nguyen not only committed a separate crime, driving under the influence of alcohol, but he failed to report the offense to Probation in Ohio, as he was required to do. He also tested positive for cocaine at the time of his arrest for the instant offense. These are not the characteristics of an individual who

has learned his lesson and "gone straight." Clearly, the deterrent impact of his Ohio experience was insufficient.

The need for this sentence to promote general deterrence is also particularly strong here. Corrupt procurement schemes are both profitable and very hard to detect and to prove against individuals. Many cannot restrain themselves merely knowing that the illegal nature of their actions carries some vague risk of prosecution. In fact, the defendants in this very case responded to this knowledge not with obedience to the law but by adopting methods to avoid detection. To the extent that conduct such as defendants' is in fact not unique in the U.S. business community, it will hardly be deterred by sending the message that the consequence of such conduct is at worst several months of imprisonment. On the other hand, word that violation of the FCPA carries serious prison time should discourage some of those who do not respect the law, or those who by nature or circumstance are strongly tempted by profit.

And unlike many cases where a deterrent effect of a sentence is more theoretical, this case has appropriately garnered the attention of many in Vietnam and the U.S. corporate and legal communities who will now see how defendants are actually punished after conviction of these charges.

IV. CONCLUSION

Individuals who do business in foreign countries must see that foreign bribery is a serious crime with serious consequences, especially when accompanied by money laundering and Travel Act violations. The government respectfully submits that only a sentence of incarceration within the advisory guideline range will adequately deter others in this industry from committing similar crimes, will punish An Nguyen sufficiently for his criminal conduct, will discourage him

from committing such crimes yet again, will sufficiently promote respect for the law and for U.S. treaty obligations, and will advance all of the other goals of sentencing.

For all of the above reasons, the government recommends a sentence of imprisonment within the advisory guidelines range.

Respectfully submitted,

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JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

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Chief, Fraud Section
Criminal Division, Department of Justice

KATHLEEN M HAMANN
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CERTIFICATE OF SERVICE

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KATHLEEN M HAMANN
Anticorruption Policy Counsel and Trial Attorney

Date: September 8, 2010

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 08-522
KIM ANH NGUYEN	:	

ORDER

AND NOW, this day of , 2010, upon consideration of the government's motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, for a downward departure, the Court enters this Order.

The Court finds as follows:

1. Nature of assistance. Section 5K1.1 lists as a relevant factor "the nature and extent of the defendant's assistance." In this case, the defendant Kim Anh Nguyen met with the government on approximately two occasions to explain the business practices and financial records of Nexus Technologies. Most importantly, Kim Nguyen explained various entries in the Nexus books which allowed the government accurately to calculate the total amount of bribes paid by the defendants during the four years Kim Nguyen worked at Nexus. In addition, the government may call Nguyen to testify at the sentencings of her co-defendants.

2. Significance of cooperation. Section 5K1.1 lists as a relevant factor "the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered." In this case, Kim Nguyen's cooperation was significant in that it allowed the government accurately to calculate

the total amount of bribes paid by the defendants during her tenure at Nexus. Although defendant Joseph Lukas (who began cooperating 1 ½ years prior to Kim Nguyen) also provided loss-calculation information to the government, he could not provide any information about bribes paid after he left Nexus Technologies in 2005. Kim Nguyen was able to pick up where Lukas left off, as she remained at Nexus until the conspiracy ended.

3. Reliability of information. Section 5K1.1 lists as a relevant factor "the truthfulness, completeness, and reliability of any information or testimony provided by the defendant." In this case, the government has concluded that Kim Nguyen provided truthful, complete, and reliable information, as her information was consistent with Nexus' documents and with information provided by cooperating co-defendant Joseph Lukas.

4. Danger to defendant. Section 5K1.1 lists as a relevant factor "any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance." Although the government has no information about any danger or risk to Kim Nguyen as a result of her cooperation (particularly because she is cooperating against siblings), there is always some danger associated with cooperating with the government in a criminal case.

5. Timeliness. Section 5K1.1 lists as a relevant factor "the timeliness of the defendant's assistance." In this case, even though Kim Nguyen did not begin providing information to the government until shortly before trial, the government deems it timely. First, Nguyen's cooperation appeared to play a role in her siblings' decisions to plead guilty. Second, Nguyen's cooperation did occur well in advance of sentencing, which allowed the government ample time to use her information regarding bribe totals in preparation for sentencing.

Upon considering and balancing all of these factors, the Court determines that the defendant provided important and timely information in a matter of public significance, at some personal risk, and accordingly is entitled to a downward departure at sentencing. Therefore, the government's motion under Section 5K1.1 is hereby granted, based on the defendant's substantial assistance in the investigation and prosecution of others.

BY THE COURT:

HONORABLE TIMOTHY J. SAVAGE
Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 08-522
KIM ANH NGUYEN	:	

GOVERNMENT'S SENTENCING MEMORANDUM AND MOTION
FOR DOWNWARD DEPARTURE FROM GUIDELINE SENTENCING RANGE

For approximately four years, defendant Kim Anh Nguyen paid bribes to multiple Vietnamese government officials in exchange for contracts for her family's business Nexus Technologies, Inc. ("Nexus"). Nexus literally offered a bribe on every single contract bid, and in exchange it secured valuable negotiating advantages as well as government contracts on which it did not provide the best equipment or the lowest bid. Kim Nguyen's brother Nam Nguyen had worked out a simple but effective mechanism for paying the bribes – the defendants calculated Nexus' bid amounts to include enough money to pay the bribes, so that the ultimate bribe money was charged back to the Vietnamese government itself once a bid was accepted, taking money away from the public fisc of one of the poorest nations in the world. As a result, the people of Vietnam paid for the defendants' criminal greed.

Kim Nguyen played a critical role in this conspiracy, as she was the person responsible for handling the finances and maintaining the books and records of Nexus. Thus, it was Kim Nguyen who funneled the bribe payments to an off-shore company controlled by Nexus, which then forwarded the bribe payments to the Vietnamese officers, and it was Kim

Nguyen who falsified the associated wire-transfer documents to cover their tracks. Further, email correspondence between the defendants makes it very clear that Kim Nguyen knew exactly what she was doing, and why. Thus, in total, Kim Nguyen is responsible for the $399,885 in bribes that were paid during the four-year period she worked at Nexus.

Vietnam is a poor country that is struggling to overcome a severe economic crisis caused in part by government corruption. The Vietnamese government has, in recent years, launched a significant effort to clean up that corruption, and it is working together with the United States to combat corruption, as well as to promote, protect, and support legitimate American business in Vietnam. Nonetheless, Kim Nguyen and her co-defendants greedily chose to bypass legitimate business options and instead exploit Vietnam's vulnerabilities by bribing its government officials in exchange for contracts. This is especially troubling because Nguyen's bribes won Nexus contracts to provide particularly sensitive technology to Vietnam, including computer systems, air traffic control systems, underwater mapping equipment, and bomb detection equipment – devices which should have been vetted, purchased, and provided on the basis of quality and price, without the taint and influence of bribes.

To her credit, Kim Nguyen made the decision to start cooperating with the government shortly before trial was scheduled to begin. On more than one occasion, Kim Nguyen met with government agents to explain Nexus' business practices and its books and records. As the party responsible for Nexus' financial books from 2004 - 2007, Kim Nguyen was able to provide valuable information to the government regarding the bribe payments, as well as the money laundering and Travel Act violations committed by these defendants. Most importantly, Kim Nguyen's information permitted the government accurately to calculate the

bribe totals for which these defendants are responsible. Thus, the government has included below a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, for a downward departure.

For all of the above reasons, as well as the other sentencing factors discussed below, the government recommends a significant sentence of incarceration below the advisory guideline range of 70-87 months.

I. BACKGROUND

On March 16, 2010, the defendant pled guilty to the following counts of the Superseding Indictment: (a) Count One, conspiracy to violate the Foreign Corrupt Practices Act and the Travel Act, and to launder money; (b) Count Six, a substantive violation of the Foreign Corrupt Practices Act; and (c) Count Twenty-Four, money laundering. During her plea colloquy, the defendant admitted that she participated in a conspiracy to pay bribes to Vietnamese government officials in order to secure contracts to provide technology and equipment to Vietnamese government agencies. Kim Nguyen also admitted that she is the one who wired the bribe payments to an off-shore account to hide the origin and purpose of the funds.

II. SENTENCING CALCULATION

A. Statutory Maximum Sentences

The defendant faces the following maximum possible sentences: (a) Count One (conspiracy), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the defendant or loss to the victim, whichever is greater, and a $100 special assessment; (b) Count Six (FCPA), five years' imprisonment, a three-year period of supervised release, a fine of $250,000 or twice the gross pecuniary gain to the

defendant or loss to the victim, whichever is greater, and a $100 special assessment; (c) Count Twenty-Four (money laundering), twenty years' imprisonment, a three-year period of supervised release, a fine of $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, and a $100 special assessment.

The Total Possible Maximum Sentence is: 30 years' imprisonment; a three-year period of supervised release; a fine of $1,549,769, and a $300 special assessment. Finally, supervised release may be revoked if its terms and conditions are violated.

B. Sentencing Guidelines Calculation

It is the government's position that Kim Nguyen qualifies for the following Sentencing Guidelines calculation:

1. Offense Level

Base offense level	U.S.S.G. § 2C1.1(a)(2)[1]	12

[1] Pursuant to international treaty, the United States must impose comparable sentences in both domestic and foreign bribery cases. Thus, in 2002, the Sentencing Commission amended the statutory index of offenses located at U.S.S.G. Appendix A to specifically key FCPA's anti-bribery violations to U.S.S.G. § 2C1.1, the same guideline used for domestic bribery offenses. The Sentencing Commission stated that such amendment was necessary:

> to comply with the mandate of a multilateral treaty entered into by the United States, the Convention on Combating Bribery of Foreign Public Officials in International business Transactions. In part this Convention requires signatory countries to impose comparable sentences in both domestic and foreign bribery cases. Domestic public bribery cases are referenced to § 2C1.1 To comply with the treaty, offenses committed in violation of 15 U.S.C. §§ 78dd-1 through 78dd-3 are now similarly referenced to § 2C1.1.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2002), at p. 3 (emphasis added); see also Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), Art. 3, § 1 ("The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials."), reprinted in 37 I.L.M. 1 (1998).

More than one bribe	U.S.S.G. § 2C1.1(b)(1)	+2
Value of bribes exceeded $200,000[2]	U.S.S.G. §§ 2C1.1(b)(2), 2B1.1(b)(1)(G)	+12
Conviction under § 1956	U.S.S.G. § 2S1.1(b)(2)(B)	+2
Sophisticated laundering	U.S.S.G. § 2S1.1(b)(3)	+2
Acceptance of responsibility	U.S.S.G. § 3E1.1	-3
	TOTAL	27

Although the PSR advocates a four-level enhancement under U.S.S.G. § 2C1.1(b)(3) (offense involved a public official in a high-level decision-making or sensitive position), the government is not pursuing this enhancement for Kim Nguyen. Unlike her brother Nam Nguyen (for whom the government is pursuing this enhancement), Kim Nguyen was unaware of the nature, position, or role of the specific officials who received the bribe payments. Thus, in Kim Nguyen's plea agreement, she and the government reached certain stipulations under the U.S. Sentencing Guidelines which did not include the § 2C1.1(b)(3) enhancement, and which did include an agreement that Kim Nguyen "qualifies for an adjusted offense level of 27." Plea Agreement ¶ 11(i). The government stands by this agreement.

[2] Because Kim Nguyen worked at Nexus Technologies from 2004 - 2007, she is responsible for bribes paid only during those years, as follows: (a) in 2004, Nexus paid $75,573.97 in bribes; (b) in 2005, Nexus paid $97,996.92 in bribes; (c) in 2006, Nexus paid $135,663.46 in bribes; and (d) in 2007, Nexus paid $90,650.27 in bribes. Therefore, in total, Kim Nguyen is responsible for $399,884.62 in bribes. In comparison, the lead defendant Nam Nguyen is responsible for bribes dating back to 1999, totaling $689,116.04.

2. Criminal History Calculation

12/16/92	Simple assault Shoplifting	§ 4A1.2(e)(3)	0 points
		TOTAL:	0 points (Category I)

3. Sentencing Range

With an offense level of 27 and a criminal history category of I, the defendant qualifies for an advisory guideline range of 70-87 months of incarceration.

III. MOTION FOR DOWNWARD DEPARTURE FROM GUIDELINE SENTENCING RANGE

The United States of America, by its attorneys Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania; Jennifer Arbittier Williams, Assistant United States Attorney for the District; Denis J. McInerney, Chief, Fraud Section, Criminal Division, U.S. Department of Justice; and Kathleen M Hamann, Anticorruption Policy Counsel and Trial Attorney, Fraud Section, Criminal Division, U.S. Department of Justice, hereby files a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, in support of a downward departure below the sentencing range recommended by the Sentencing Guidelines, based upon the defendant's substantial assistance in the investigation and prosecution of other persons. In support of this motion, the government submits this memorandum.

In United States v. Torres, 251 F.3d 138 (3d Cir. 2001), the Court stated:

> We strongly urge sentencing judges to make specific findings regarding each factor and articulate thoroughly whether and how they used any proffered evidence to reach their decision. In sum, it is incumbent upon a sentencing judge not only to conduct an individualized examination of the defendant's substantial assistance, but also to acknowledge § 5K1.1's factors in his or her analysis.

In this case, the relevant factors are as follows:

1. Nature of assistance. Section 5K1.1 lists as a relevant factor "the nature and extent of the defendant's assistance." In this case, the defendant Kim Anh Nguyen met with the government on approximately two occasions to explain the business practices and financial records of Nexus Technologies. Most importantly, Kim Nguyen explained various entries in the Nexus books which allowed the government accurately to calculate the total amount of bribes paid by the defendants during the four years Kim Nguyen worked at Nexus. In addition, the government may call Nguyen to testify at the sentencings of her co-defendants.

2. Significance of cooperation. Section 5K1.1 lists as a relevant factor "the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered." In this case, Kim Nguyen's cooperation was significant in that it allowed the government accurately to calculate the total amount of bribes paid by the defendants during her tenure at Nexus. Although defendant Joseph Lukas (who began cooperating 1 ½ years prior to Kim Nguyen) also provided loss-calculation information to the government, he could not provide any information about bribes paid after he left Nexus Technologies in 2005. Kim Nguyen was able to pick up where Lukas left off, as she remained at Nexus until the end of the conspiracy period.

3. Reliability of information. Section 5K1.1 lists as a relevant factor "the truthfulness, completeness, and reliability of any information or testimony provided by the defendant." In this case, the government has concluded that Kim Nguyen provided truthful, complete, and reliable information, as her information was consistent with Nexus' documents and with information provided by cooperating co-defendant Joseph Lukas.

4. Danger to defendant. Section 5K1.1 lists as a relevant factor "any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance." Although the government has no information about any danger or risk to Kim Nguyen as a result of her cooperation (particularly because she is cooperating against siblings), there is always some danger associated with cooperating with the government in a criminal case.

5. Timeliness. Section 5K1.1 lists as a relevant factor "the timeliness of the defendant's assistance." In this case, even though Kim Nguyen did not begin providing information to the government until shortly before trial, the government deems it timely. First, Nguyen's cooperation appeared to play a role in her siblings' decisions to plead guilty. Second, Nguyen's cooperation did occur well in advance of sentencing, which allowed the government ample time to use her information regarding bribe totals in preparation for sentencing.

For these reasons, the government respectfully files this motion in support of a departure below the sentencing range recommended by the Sentencing Guidelines based upon the defendant's substantial assistance in the investigation and prosecution of other persons.

IV. ANALYSIS

The Third Circuit has set forth a three-step process which the district courts must follow in compliance with the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005):

> (1) Courts must continue to calculate a defendant's Guidelines sentence precisely as they would have before Booker.
>
> (2) In doing so, they must formally rule on the motions of both parties and state on the record whether they are granting a departure and how that departure affects the Guidelines calculation, and take into account our Circuit's pre-Booker case law, which continues to have advisory force.

> (3) Finally, they are to exercise their discretion by considering the relevant § 3553(a) factors in setting the sentence they impose regardless whether it varies from the sentence calculated under the Guidelines.

United States v. Gunter, 462 F.3d 237, 247 (3d Cir. 2006) (quotation marks, brackets, and citations omitted) (citing United States v. King, 454 F.3d 187, 194, 196 (3d Cir.2006); United States v. Cooper, 437 F.3d 324, 329-30 (3d Cir. 2006)). See also United States v. Smalley, 517 F.3d 208, 211 (3d Cir. 2008) (stating that the Gunter directive is consistent with later Supreme Court decisions). In calculating the guideline range, this Court must make findings pertinent to the guideline calculation by applying the preponderance of the evidence standard, in the same fashion as was employed prior to the Booker decision. United States v. Grier, 475 F.3d 556 (3d Cir. 2007) (en banc). The failure to properly calculate the advisory guideline range will rarely be harmless error. United States v. Langford, 516 F.3d 205, 214-18 (3d Cir. 2008).

At the third step of the sentencing process, the Court must consider the advisory guideline range along with all the pertinent considerations of sentencing outlined in 18 U.S.C. § 3553(a) in determining the final sentence. "The record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. . . . [A] rote statement of the § 3553(a) factors should not suffice if at sentencing either the defendant or the prosecution properly raises 'a ground of recognized legal merit (provided it has a factual basis)' and the court fails to address it." Cooper, 437 F.3d at 329. See also Rita v. United States, 127 S. Ct. 2456, 2468 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."); United States v. Schweitzer, 454 F.3d 197, 205-06 (3d Cir. 2006).

Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).[3] In this case, consideration of the 3553(a) factors supports a sentence of incarceration below the advisory guideline range.

As explained above, Kim Nguyen deserves credit for her acceptance of responsibility as well as her cooperation with the government. She sat down with government agents and explained line-item after line-item in Nexus' books and records, which allowed the government accurately to calculate the total amount of bribes paid by the defendants during her tenure at Nexus. Kim Nguyen's cooperation is particularly significant because it pertains to the time-period after the other cooperating defendant Joseph Lukas had left the company. Further,

[3] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

had this case gone to trial, Kim Nguyen would have been a significant witness for the government because she is the individual who took Nam Nguyen's directions to wire the bribe payments to the off-shore company controlled by Nexus, and to falsify the accompanying wire-transfer paperwork. In fact, the government may still call Kim Nguyen to testify at the sentencings of her co-defendants. The government recognizes how difficult it must have been for Kim Nguyen to decide to cooperate against her siblings. For all of these reasons, the government is advocating for a below-guidelines sentence.

However, it cannot be ignored that these offenses were very serious ones. By way of explanation, the FCPA was enacted by Congress in 1977 (and amended in 1988) to combat corruption harmful to foreign economies and governments, to enhance the United States' public image worldwide, and to allow legitimate businesses to compete against corrupt businesses. Revelations of bribery by American businesses, the Senate's investigation determined, had produced:

> severe adverse effects. Foreign governments friendly to the United States in Japan, Italy, and the Netherlands have come under intense pressure from their own people. The image of American democracy abroad has been tarnished. . . . Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality, and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business. Managements which resort to corporate bribery and the falsification of records to enhance their business reveal a lack of confidence about themselves. Secretary of the Treasury Blumenthal, in appearing before the committee in support of the criminalization of foreign corporate bribery testified that: 'paying bribes – apart from being morally repugnant and illegal in most countries – is simply not necessary for the successful conduct of business here or overseas.' The committee concurs in Secretary Blumenthal's judgment. Many U.S. firms have taken a strong stand against paying foreign bribes and are still able to compete in international trade.

> Unfortunately, the reputation and image of all U.S. businessmen has been tarnished by the activities of a sizable number, but by no means a majority of American firms. A strong antibribery law is urgently needed to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system.

S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N. 4098 (emphasis added).

Since its passage, the FCPA has been at the forefront of a spreading international norm that has now been adopted in most developed countries to level the playing field for legitimate businesses. Prohibitions against bribery of foreign officials in international business transactions have been made binding through international conventions sponsored by the United Nations, the Council of Europe, the Organization for Economic Cooperation and Development, and the Organization of American States, and through the policies of other multilateral institutions like the World Bank and the International Chamber of Commerce. See Stuart H. Deming, The Foreign Corrupt Practices Act and the New International Norms (American Bar Association Section of International Law 2005), at 93-94. As discussed above in footnote 1, the Sentencing Commission's 2002 change in treatment of the FCPA to the punitive public corruption guideline implemented the mandate of one such international treaty to which the United States is party to provide serious punishment equivalent to sentences in domestic bribery cases.

The point of these anti-bribery laws is that sound government decisions can only be made by honest, unbiased procurement officials. Thus, those who would excuse a business committing bribery of a foreign official as simply adhering to a developing country's "local business custom" are fundamentally wrong. Such a statement not only shows a lack of respect for U.S. and international law, but also expresses a cultural condescension toward foreign

nationalities. Most important, the assertion is false – contradicted by the anti-bribery laws on foreign countries' books, by their public institutions specifically organized to combat corruption, by the public protests of their citizens against official corruption, and by their interference of scandal with the growth of democratic institutions. Vietnam is no exception. Recognizing the problems caused by past government corruption in Vietnam, in recent years the country has pursued a high-visibility campaign to end corruption. Not only have laws been passed to increase fiscal transparency in public management, but corruption involving more than a few thousand dollars is now punishable in Vietnam with the death penalty. Combating global corruption is a high priority for the United States, Vietnam, and the international community at large.

At sentencing, the government will present the testimony of Brent Omdahl, the former U.S. Commercial Attaché to the U.S. embassy in Vietnam. Mr. Omdahl is prepared to testify about the nature and structure of the Vietnamese economy, including the role of state-owned enterprises and government ownership, control, and centrality to the government of Vietnam of extractive industry operations. He will further testify about the engagement of U.S. businesses in the Vietnamese economy and the role of the U.S. Commercial Service in assisting such U.S. businesses, including, but not limited to, the Commercial Service's interactions with representatives of Nexus Technologies. Finally, Mr. Omdahl is prepared to explain the use, operation, and government control of procurement arms, entering into contracts on behalf of the Vietnamese Ministry of Defense and Ministry of Public Security, including the use of brokers acting at the direction of, under the control of, and on behalf of, those ministries. As Mr.

Omdahl will make clear, American businesses could and did legitimately, legally, and successfully operate in Vietnam without bribing Victnamese government officials.

Further, while any bribery of a foreign government official by an American hurts our international reputation and relations, the Nexus bribery was particularly egregious. Vietnam is one of the poorest countries in the world, with a per-capita income of less just over $1,000 per year, according to the U.S. Department of State.[4] Vietnam relies on the exploitation of its natural resources by companies like PetroVietnam Gas Company and VietSovPetro to fuel its economy and fund public services. Nexus' other clients provided critical public safety services. Just the single substantive bribe to which Kim Nguyen pled guilty represents the yearly income of more than 60 Vietnamese citizens, the equivalent of a $2,300,000 bribe in the United States, funded at direct cost to the Vietnamese public.

Moreover, this is not a case of an isolated incident. This is not a case of providing officials with gift baskets or entertainment that crossed some fine line. Nguyen was fully aware that she was systematically violating the law. Nor is this a case of defendants finding one corrupt government official and taking advantage of the situation. In this instance, Kim Nguyen participated for four years, and paid bribes that influenced many different Vietnamese government agencies. In essence, Nguyen systematically embezzled a developing country's public funds by acting as an accomplice to various Vietnamese public officials' theft of money

[4] "Background Note: Vietnam," available at http://www.state.gov/r/pa/ei/bgn/4130.htm. Figure is for 2009.

from a wide range of agencies, all while depriving other potential legitimate bidders of business opportunities.

Nguyen's efforts to cover up the defendants' conduct also contributes to the serious nature of these crimes. Acting on Nam Nguyen's direction, Kim Nguyen took steps to conceal the bribes, including: (1) funneling the bribe payments through a Hong Kong bank account belonging to a company that was controlled by Nam Nguyen and Nexus Technologies; (2) falsifying paperwork; and (3) making efforts to disguise the bribe payments in Nexus books and records.

The history and characteristics of Kim Nguyen also favor a sentence of incarceration below the advisory guideline range. With an undergraduate degree from Drexel University, Kim Nguyen had the benefit of opportunities that are unavailable to the great majority of defendants before this Court. Her intelligence and ingenuity is further illustrated by the fact that she has spent the last few years accruing real estate worth more than $1.3 million (which brings in rental income totaling more than $10,000 per month). In fact, since her indictment, Kim Nguyen has purchased more than a dozen properties using multiple banks, has qualified as a Section 8 landlord, and has located and housed dozens of tenants. Thus, it is clear that her crimes arose not from need or the lack of ability to earn an honest living, but from rational deliberation and calculated choice.[5]

[5] To the extent Kim Nguyen is attempting to minimize her conduct based on the claim that she did not make money off of the scheme, it cannot be ignored that she and her co-defendants were slowly working their way from small contracts to big ones, as they reliably offered and paid the promised bribes. In other words, the defendants were working their way towards big money.

The need for this sentence to promote general deterrence is also particularly strong here. Corrupt procurement schemes are both profitable and very hard to detect and to prove against individuals. Many cannot restrain themselves merely knowing that the illegal nature of their actions carries some vague risk of prosecution. In fact, the defendants in this very case responded to this knowledge not with obedience to the law but by adopting methods to avoid detection. To the extent that conduct such as defendants' is in fact not unique in the U.S. business community, it will hardly be deterred by sending the message that the consequence of such conduct is at worst several months of imprisonment. On the other hand, word that violation of the FCPA carries serious prison time should discourage some of those who do not respect the law, or those who by nature or circumstance are strongly tempted by profit.

And unlike many cases where a deterrent effect of a sentence is more theoretical, this case has appropriately garnered the attention of many in Vietnam and the U.S. corporate and legal communities who will now see how defendants (both defendants who cooperate with the government and those who do not cooperate) are actually punished after conviction of these charges.

V. CONCLUSION

Individuals who do business in foreign countries must see that foreign bribery is a serious crime with serious consequences, especially when accompanied by money laundering and Travel Act violations. At the same time, the government understands the importance of giving credit to defendants who provide substantial cooperation to the government, particularly in the case of FCPA violations which are otherwise very hard to detect and prove. The government thus respectfully submits that only a substantial sentence of incarceration below the advisory

guideline range will properly recognize Kim Nguyen's cooperation while at the same time adequately deter others in this industry from committing similar crimes, punish Kim Nguyen sufficiently for her criminal conduct, promote respect for the law and for U.S. treaty obligations, and advance all of the other goals of sentencing.

For all of the above reasons, the government recommends a substantial sentence of imprisonment below the advisory guidelines range.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing Government's Sentencing Memorandum and Motion for Downward Departure from Guideline Sentencing Range to be served by e-mail upon the following:

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