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 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
 14)
 Plaintiff,) GOVERNMENT'S SENTENCING MEMORANDUM
 15) RE: THREE MOST INSTRUCTIVE FCPA
 v.) CASES; EXHIBITS; APPENDICES OF
 16) CASES (AS AMENDED)
 GERALD GREEN and)
 17 PATRICIA GREEN,) Sent. Date: June 3, 2010
) Sent. Time: 9:30 a.m.
 18 Defendants.)
)
 19)
 20)

21 Plaintiff United States of America, through its counsel of
 22 record, the United States Attorney's Office for the Central
 23 District of California, and the Fraud Section, United States
 24 Department of Justice, Criminal Division, hereby submits the
 25 attached sentencing memorandum and exhibits re: the three most
 26 instructive cases sentenced under the Foreign Corrupt Practices
 27 Act ("FCPA") for purposes of sentencing defendants GERALD GREEN
 28 and PATRICIA GREEN ("defendants") in this case.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 At the sentencing hearing in this case on April 29, 2010,
5 this Court ordered each side to brief the three most instructive
6 cases to guide the Court in determining appropriate sentences in
7 this matter for defendants GERALD GREEN and PATRICIA GREEN so as
8 to avoid unwarranted sentencing disparities. While the
9 sentencing landscape with respect to individuals in the Foreign
10 Corrupt Practices Act ("FCPA") context is rather limited, as
11 further discussed below, the government submits that the
12 following three FCPA cases, taking into account the respective
13 posture of the case in each instance, the facts and circumstances
14 of each case, and the resulting sentence imposed, are the most
15 illuminating guideposts for the Court to follow in this matter:
16 United States v. Kay, et al., 01-CR-914 (S.D. Tex. 2002); United
17 States v. Jumet, 09-CR-397 (E.D. Va. 2009); and United States v.
18 Salam, 06-CR-157 (D.D.C. 2006).

19 The cases in which individuals have been sentenced for
20 violations of the FCPA fall into three groups in terms of their
21 procedural posture: (1) defendants who went to trial and were
22 found guilty; (2) defendants who pleaded guilty and did not
23 cooperate; and (3) defendants who pleaded guilty and cooperated.
24 The above three cases, which consist of one example of each of
25 the three procedural postures, are fairly representative of the
26 broader landscape of FCPA sentencing of individuals. They
27 illustrate the norm of imprisonment in FCPA cases, even while
28 many defendants have earned credit for pleading guilty and for

1 cooperating.¹

2 As previously argued, the Court should also consider
3 sentences in comparable domestic bribery cases.²

4 On the other hand, dispositions of FCPA-related charges
5 against inanimate corporate entities are not comparable. Nor
6 should the Court entertain defendants' speculation about what
7 corporate executives could have been charged in those cases.³

8 Therefore, the sentences in Kay, Jumet, and Salam support
9 the government's conclusion that each defendant in this case
10 should receive a sentence of ten years in prison.

11 _____
12 ¹ The government has briefed the Court on the broader
13 FCPA landscape with respect to individuals in the government's
14 supplemental sentencing memorandum filed on March 12, 2010 ("Gov.
15 Supp. Sent. Mem."), Docket No. 334, at 20-28, and in the FCPA
16 case appendices attached thereto (as amended and reattached
17 hereto for ease of reference). This briefing shows that, first,
18 in every case where a defendant has been convicted at trial, the
19 defendant has been sentenced to a term of imprisonment, and most
20 sentences have been to a term of a significant number of years.
21 Second, with an occasional exception, those defendants that
22 pleaded guilty instead of going to trial (almost all of whom
23 cooperated with the government) similarly received terms of
24 imprisonment -- notwithstanding their cooperation.

25 ² The government's discussion of relevant domestic
26 bribery cases includes those where defendants sought a sentencing
27 reduction because they claimed they had performed the contracts
28 obtained by bribery or had otherwise not caused any loss to the
victim government, where the defendant allegedly had conferred
great benefits upon the local economy, where corrupt contracts
had been awarded without solicitation of competitive bids under
"sole-source" or "no-bid" procedures, and where the defendants
were old and in poor health. (Gov. Supp. Sent. Mem., Docket No.
334, at 3-7, 14-15, 28-31.)

29 ³ See United States v. Spoerke, 568 F.3d 1236, 1252 (11th
30 Cir. 2009) (a defendant cannot frame an unwarranted sentence
31 disparity argument by comparing his case to someone who was
32 "never convicted of any conduct and was never sentenced.") The
33 government has responded more generally to defendants' erroneous
34 comparison of this case with FCPA dispositions as to corporate
35 entities in the government's reply to defendants' supplemental
36 sentencing memorandum filed on March 25, 2010 ("Gov. Reply Supp.
37 Sent. Mem."), Docket No. 336, at 10-12.

1 II.

2 DISCUSSION

3 A. THE TRIAL SETTING: UNITED STATES v. KAY, ET AL.

4 The government submits that United States v. Kay, et al.,
5 01-CR-914 (S.D. Tex. 2002),⁴ is very comparable to the case at
6 bar, both in terms of the case's posture and the arguments raised
7 at sentencing. Kay illustrates how defendants convicted at trial
8 receive significant prison terms, and how their claims to have
9 benefitted the victim through their actions are unavailing.⁵ The
10 government summarizes the main points of this case (discussed at
11 length in Gov. Supp. Sent. Mem., Docket No. 334, at 23-25) below.

12 Defendants Douglas Murphy and David Kay, executives at
13 American Rice, Inc. ("ARI"), a U.S. company that exported rice to
14 Haiti in the 1990s, were convicted at trial of conspiracy, FCPA,
15 and obstruction violations in connection with bribing Haitian
16 customs officials to reduce duties and taxes on ARI rice. From
17 1991 through 1999, defendants Kay and Murphy paid roughly
18 \$528,000 in bribes. These payments amount to less than 1/3 of
19 the bribes paid by defendants in this case.

20
21 _____
22 ⁴ United States v. Kay, 513 F.3d 432 (5th Cir.
23 2007) (holding did not focus on sentence itself, but rather on
issues relating to the convictions).

24 ⁵ Other examples, as cited in Gov. Supp. Sent. Mem.,
25 Docket No. 334, at 25-26, and in Appendix A attached hereto,
26 include United States v. King, 01-CR-190, 2003 WL 22938694 (8th
27 Cir. 2003) (sentence of 30 months; pre-guidelines change); United
28 States v. Jefferson, 07-CR-209 (E.D. Va. 2007) (sentence of 13
years). As noted in Gov. Supp. Sent. Mem., Docket No. 334, at
25, the case of United States v. Bourke, 05-CR0518 (S.D.N.Y.
2004) (sentence of a year and a day), does not have comparable
facts as defendant Bourke was a passive investor guilty largely
of willful blindness.

1 Defendant Murphy, president of ARI during the time of
2 illegal conduct, was sentenced in June 2005 to a post-Booker
3 sentence of 63 months imprisonment, which was at the low end of
4 the then-advisory guideline range of 63 to 78 months based on a
5 total offense level of 26. (Transcript of Murphy Sentencing,
6 attached as Exhibit 1 hereto, at 31). Defendant Kay, vice
7 president of ARI, was sentenced in June 2005 to a post-Booker
8 sentence of 37 months, which was the low end of the then-advisory
9 guideline range of 37-46 months based on a total offense level of
10 21.⁶ (Transcript of Kay Sentencing, attached as Exhibit 2
11 hereto, at 16-17.)

12 In 2002, the Sentencing Commission amended the statutory
13 index of offenses located at U.S.S.G. Appendix A to re-key the
14 FCPA's anti-bribery violations from U.S.S.G. §2B4.1 to U.S.S.G.
15 §2C1.1, the same guideline used for domestic bribery offenses, in
16 accordance with the United States' international treaty
17 obligations. Accordingly, the base offense level for an FCPA
18 violation went from 8 to 12 and other specific offense
19 characteristic enhancements now apply. Assuming that all other
20 guideline factors remained the same, if sentenced under today's
21 version of the guidelines manual, defendant Murphy would have a
22 total offense level of 30 and an advisory guideline range of 97-
23 121 months. Similarly, defendant Kay would have a total offense
24 level 25 and an advisory guideline range of 57-71 months.

25 The government submits that these advisory guideline
26 analyses, especially as to defendant Murphy, are consistent with

27
28 ⁶ Defendant Kay had a lower total offense level due to
lack of enhancements for abuse of trust and obstruction.

1 the government's sentencing recommendations for defendants GERALD
2 GREEN and PATRICIA GREEN of ten years apiece. This is especially
3 true given the significantly larger amount of bribes defendants
4 here paid (more than three times as much) as well as the
5 government's recommendation in this case of an approximate 50%
6 reduction from guideline calculations set forth in the Pre-
7 Sentence Reports.

8 Further, the defendants' scheme in the instant case was much
9 more sophisticated and egregious than were the actions of
10 defendants Kay and Murphy. Defendants Kay and Murphy bribed low
11 level customs officials in order to secure higher profits from
12 their rice exports. However, they did not, as the defendants in
13 this case did, charge higher prices to cover these bribe
14 payments; on the contrary, as a result of their bribe payments to
15 customs officials, the cost of rice in Haiti fell. As set forth
16 in a letter from defendant Murphy's father: "In 1988, rice was a
17 luxury item selling at \$1 per # [pound], by 1998, as you know
18 from trial, Doug [Murphy] had made rice affordable for all people
19 with prices at 35 cents per # [pound] or less." (Exhibit 3
20 attached hereto.) This point resembles defendants' argument that
21 they should receive a benefit at sentencing for the stimulus they
22 allegedly helped to bring to the Thai economy. While defendants
23 in the FCPA context, like defendant Murphy, have attempted to
24 sway the Court towards leniency by pointing out the positive
25 effects their business dealings have created, the government
26 knows of no sentencing where a court has actually found such
27 facts to be a mitigating factor.

28

1 If the defendants in Kay did not receive the sentencing
2 benefit they requested for their accomplishment in reducing rice
3 prices in a hungry nation,⁷ nor should defendants GERALD GREEN
4 and PATRICIA GREEN receive a benefit here. Defendants here
5 concocted and set in place a plan to bribe a high ranking
6 government official with the proceeds of inflated project budgets
7 that the corrupt official herself determined. With defendants'
8 help, the Thai official thereby "essentially stole" the money of
9 the Thai taxpayer (to use the words of the probation officer's
10 letter, Docket No. 311, at page 6). Defendant PATRICIA GREEN
11 then falsely subscribed corporate tax returns that illegally
12 deducted those very payments from the taxable income of
13 defendants' various companies here in the United States.

14 In addition, unlike Kay, which consisted of one very
15 specific setting for bribes (rice imports), the defendants in
16 this case had bribe payments that spanned seven different types
17 of service contracts, and involved several third parties in their
18 scheme as prime contractors to hide the flow of money to them.
19 This latter characteristic of the bribery scheme occurred in the
20 PR contract, the website contract, the video contract, certain
21 calendar contracts, the book contract, and the last film festival
22 contract in 2007.

23 Given the complexity, breadth, duration, and high dollar
24 amount of defendants GERALD GREEN's and PATRICIA GREEN's scheme,
25 the government submits that its recommended sentences of ten
26 years is entirely appropriate, and that the Court should not

27
28 ⁷ See Exhibit K to Gov. Supp. Sent. Mem., Docket No. 334.

1 entertain a sentence that is less severe than the sentences
2 defendants Kay and Murphy received.

3 B. THE PLEA/NO COOPERATION SETTING: UNITED STATES v. JUMET

4 Courts and the sentencing guidelines have always recognized
5 that defendants who accept responsibility for their actions and
6 plead guilty rather than going to trial are deserving of a lesser
7 sentence than those that insist of putting the government to its
8 burden and taking up the valuable time and resources of the
9 judicial system. See U.S.S.G. §3E1.1. This principle is
10 reflected clearly in United States v. Jumet, 09-CR-397 (E.D. Va.
11 2009), which nonetheless illustrates that significant prison
12 sentences are the norm in cases against individuals under the
13 FCPA even in guilty pleas.⁸ Further, similar to defendant
14 PATRICIA GREEN in this case, defendant Jumet argued that he
15 should receive a lenient sentence as he is the caretaker of his
16 83-year old mother who has cancer. At a minimum, this Court
17 should view the sentence in the Jumet case as a floor.

18 In Jumet, the defendant, a United States citizen, bribed
19 Panamanian government officials to obtain contracts to maintain
20 lighthouses and buoys along Panama's waterways. From 1997
21 through 2003, defendant Charles Jumet assisted in making
22 approximately \$212,00 in bribe payments. This amount is **nine**
23 times less than the bribe payments defendants GERALD GREEN and
24 PATRICIA GREEN paid. Like in other FCPA and domestic bribery
25 cases summarized in the government's filings, the defendant in

26
27 ⁸ Other examples, as cited in Gov. Supp. Sent. Mem.,
28 United States v. Shu Quan Sheng, 08-CR-194 (E.D. Va. 2008)
(prison term of 51 months in case of guilty plea).

1 Jumet had evidently performed the contracts obtained by bribery;
2 there was no evidence of any intent to run off with the contract
3 proceeds and not perform.

4 Defendant Jumet pled guilty to a two-count information
5 charging the defendant with conspiracy to violate the FCPA as
6 well making a false statement. In April 2010, defendant Jumet
7 received a sentence of 87 months, at the **low-end** of the advisory
8 guidelines range of 87-108 months based on an offense level of
9 29).⁹ While defendant Jumet's plea agreement allows for a
10 sentence reduction based on cooperation, the government filed no
11 motion under U.S.S.G. §5K1.1 for substantial assistance in that
12 case and the sentence imposed did not reflect credit for
13 cooperation.

14 Defendant Jumet's sentence did, however, take into account
15 his acceptance of responsibility, for which he received a three-
16 point reduction in offense levels. (Government's Sentencing
17 Memorandum, attached as Exhibit 4 hereto, at 2.) Consequently,
18 if defendant Jumet had proceeded to trial, his resulting total
19 offense level, at a minimum, would be a level 32 with an advisory
20 guideline range of 121-151 months. Again, this is at or above
21 the sentence that the government is recommending for defendants
22 GERALD GREEN and PATRICA GREEN (notwithstanding the fact that
23 scope of the conduct in the defendants' case, in terms of both
24 bribe monies, and breadth of scheme, is far larger and more

25
26 ⁹ On April 29, 2010, defense counsel stated that the
27 sentence in the Jumet case, was imposed by a judge whose initials
28 are HEH "who is well known in that district to be called High End
Henry." It is therefore noteworthy that Judge Hudson actually
sentenced defendant Jumet at the low-end of the guideline range.

1 serious) and is consistent with the type of sentence to which
2 defendant Murphy would be subject if sentenced under the current
3 advisory guidelines for FCPA violations.¹⁰

4 Like the defendants in this case, defendant Jumet took issue
5 with the advisory guidelines' change in base offense level to
6 mirror the offense level in domestic bribery cases. Judge Hudson
7 in Jumet rejected defense counsel's arguments and stated that the
8 "Sentencing Commission just realized the Guidelines were too low
9 based upon the harmful effect the conduct had." (Jumet
10 Sentencing Transcript, attached as Exhibit 5 hereto, at 18.) As
11 stated previously to the Court, and echoing the statements of
12 Judge Hudson as well as the letters transmitted to this Court by
13 the Thai Consulate, the harmful effects of foreign bribery are
14 quite serious and go beyond mere financial harm. The effects,
15 more importantly, are found in the harm to world-wide reputation
16 and confidence in the government itself. These are harms that
17 the defendants GERALD GREEN and PATRICIA GREEN committed for well
18 over five years across several projects related to Thailand's
19 tourism industry, the very face of the nation to the world.

20 In addition to the similar advisory guideline arguments that
21 were made and rejected in Jumet, the defendant in that case also
22 pointed out to the Court that his mother of 83 years of age was
23 in ill-health, suffering from cancer. Defendant Jumet asserted:

24
25 ¹⁰ At the April 29, 2010 hearing, United States v. Self,
26 08-CR-110 (C.D. Cal. 2008), was brought up as an example of a
27 defendant that pled guilty, did not cooperate, and received
28 probation. That case is not analogous to the case at bar. Defendant Self pled guilty to willful blindness, he was a bit participant in the overall scheme, which was orchestrated by defendant Leo Smith (who has not been sentenced yet). In addition, the amount of bribes at issue were less than \$100,000.

1 "My incarceration would adversely impact my 83-year old
2 mother whom I tend to weekly...[S]he has cancer. She's
3 fallen several times breaking her ankles, and shoulder,
4 and hand. I am her only child, and she depends on me
for physical and financial support. She has been
unable to sell her house in this market, and can't
afford to move to assisted living."

5 (Exhibit 5, at 44.) However, the court in Jumet still sentenced
6 the defendant to 87 months imprisonment.

7 Defendant PATRICIA GREEN's caretaker claim is not even as
8 strong as defendant Jumet's. Emphysema is a well-known disease
9 that defendant GERALD GREEN is able to attend to, without the
10 assistance of defendant PATRICIA GREEN. This is evidenced most
11 succinctly by his history of multiple trips per year overseas,
12 without defendant PATRICIA GREEN, for extended periods of time.¹¹

13 One primary difference in the Jumet case, is that unlike
14 defendants GERALD and PATRICIA GREEN, defendant Jumet accepted
15 responsibility for his actions in open court and stated: "Your
16 honor, I would like to express my remorse for my actions...I'm
17 truly sorry for what I've done." (Exhibit 5, at 42.) This Court
18 has heard nothing remotely similar from defendants here.

19 Defendant Jumet, someone who pleaded guilty, accepted
20 responsibility, and paid nine times less in bribes than
21 defendants GERALD and PATRICIA GREEN, now owes a debt to society
22 of 87 months, at the low end of the advisory guideline range. In
23 order to avoid unwarranted sentencing disparities, and to give

24
25 ¹¹ The care-giver leniency argument is successful only in
26 circumstances that are truly and extraordinarily unique. See
27 United States v. Bueno, 549 F.3d 1176, 1178-79 (8th Cir. 2008)
28 (the court, in granting a departure from 37-46 months to home
confinement, noted that the wife of the defendant had lupus and a
host of mental issues that required, due to the unique nature of
the disease, very specific individualized attention -- all
corroborated by the wife's rheumatologist and psychologist).

1 effect to the other recent FCPA sentences, this Court, at a
2 minimum, should not sentence the defendants below the 87 months
3 defendant Jumet received.

4 C. THE PLEA AND COOPERATION SETTING: UNITED STATES v. SALAM

5 Consistent with common sense, common practice in almost all
6 other criminal cases, and the goals of encouraging cooperation,
7 those defendants in the FCPA context that pleaded guilty and
8 cooperated in general receive even lighter sentences.¹² However,
9 even in such FCPA cases involving cooperation, prison terms are
10 normal.¹³ In particular, the government directs the Court to
11 United States v. Salam, 06-CR-157 (D.D.C. 2006).

12 Defendant Salam, a United States citizen, was employed as a
13 translator by a United states contractor and lived in Iraq. In
14 addition to being a translator, defendant Salam sold other
15 various items, such as supplies, telephone cards, and food
16 products to persons in Iraq. In 2005, defendant Salam attempted
17 to bribe an Iraqi official to facilitate the purchase of a
18 printer and armored vests. The amount of bribes at issue (but
19 never ultimately paid) was \$60,000. Defendant Salam pleaded
20 guilty to a one-count information charging him with violating the
21 FCPA and agreed to cooperate with law enforcement. (Government

22
23 ¹² There would be considerably less cooperation-and thus
24 more crime-if those who assist prosecutors could not receive
25 lower sentences compared to those who fight to the last. United
States v. Bartlett, 567 F.3d 901, 907 (7th Cir. 2009) (disparity
was justified by material differences in offenders' conduct and
acceptance of responsibility).

26 ¹³ Other examples, as cited in Gov. Supp. Sent. Mem.,
27 Docket No. 334, at 27-28, and in Appendix B attached hereto,
28 include United States v. Sapsizian, et al., 06-CR-702 (S.D. Fla.
2006) (prison term of 30 months in case of guilty plea and
cooperation).

1 Sentencing Memorandum, attached as Exhibit 6 hereto, at 1, 3.)
2 Taking into account acceptance of responsibility, defendant Salam
3 had a total offense level of 21 and an advisory guideline range
4 of 37-46 months. (Id. at 5-6.) The government, in recognition
5 of defendant Salam's cooperation, requested a sentence of 30
6 months. (Id. at 6.) Defendant Salam was sentenced in February
7 2007 to 36 months in prison, a one-month departure from the
8 advisory guidelines range.

9 Setting aside defendant Salam's plea (pre-indictment),
10 acceptance of responsibility, and cooperation, defendant Salam,
11 unlike the defendants in the case at hand, did not even
12 ultimately pay the bribe money. In addition, defendant Salam is
13 an isolated incident of one bribe attempt, as opposed to
14 defendants GERALD GREEN's and PATRICIA GREEN's intricate pattern
15 of bribery over five-year span to the tune of \$1.8 million.

16 The FCPA sentencing landscape with respect to individuals is
17 in fact consistent when one looks at the facts and posture of the
18 cases. Those that plead guilty and do not cooperate in general,
19 receive a benefit, and those that plead guilty and cooperate, in
20 general, receive a greater benefit. Defendants GERALD GREEN and
21 PATRICIA GREEN, however, do not have facts and circumstances in
22 their favor that weigh in favor of a sentence lighter than
23 defendants Kay and Murphy, defendant Jumet, or defendant Salam.
24 Indeed, defendants' request for probation in this matter turns
25 the entire sentencing landscape in the FCPA context, indeed, the
26 criminal context generally, on its head. Given the posture of
27 this case and the defendants' conduct, no more than an
28 extraordinary reduction of 50% off the advisory guideline range

1 is appropriate and reasonable. The resulting sentences of ten
2 years in prison would ensure that the severity of defendants'
3 conduct is recognized and that there is no unwarranted disparity
4 in sentencing.

5 III.

6 CONCLUSION

7 For the foregoing reasons, the Court should sentence the
8 defendants to ten years in prison in line with the current FCPA
9 sentencing landscape.

10 The government respectfully requests leave to supplement its
11 sentencing position as necessary, and at the time for hearing.

12 DATED: May 6, 2010

Respectfully submitted,

13 ANDRÉ BIROTTE JR.
United States Attorney

14 CHRISTINE C. EWELL
15 Assistant United States Attorney
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17 _____
/s/
18 BRUCE H. SEARBY
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APPENDIX A
SENTENCES OF PERSONS CONVICTED AT TRIAL OF FCPA VIOLATIONS

	DEFENDANT	CASE NUMBER	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	William Jefferson (Congressperson)	<u>United States v. Jefferson</u> , 07-CR-209 (E.D. Va. 2007)	~ 500K + Equities	13 years' imprisonment
2	Frederick Bourke, Jr. (Investor)	<u>United States v. Kozeny, et al</u> , 05-CR-518 (S.D.N.Y. 2005)	~ Millions	1 year and 1 day's imprisonment
3	David Kay ¹ (Vice President)	<u>United States v. Kay, et al</u> , 01-CR-914 (S.D. Tex. 2002)	~ 528K	37 months' imprisonment
4	Douglas Murphy ¹ (President)	<u>United States v. Kay, et al</u> , 01-CR-914 (S.D. Tex. 2002)	~ 528K	63 months' imprisonment
5	Robert R. King ¹ (Employee)	<u>United States v. King, et al</u> , 01-CR-190 (W.D. Mo. 2001)	~ 1.5M ²	30 months' imprisonment
6	David H. Mead ^{1,2} (President, CEO, and Executive Vice President)	<u>United States v. Mead, et al</u> , 98-Cr-240 (D. N.J. 1998)	~ 50K	4 months' imprisonment; 4 months' home detention
7	Richard H. Liebo ¹ (Vice President)	<u>United States v. Liebo</u> , 89-CR-076 (D. Minn. 1989)	~ 131K	18 months' imprisonment (suspended); 60 days' home detention

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 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 In addition, corporate guilty pleas to FCPA violations resulted in over \$2.2 million in fines.

APPENDIX B
SENTENCES OF PERSONS WHO PLED GUILTY TO FCPA VIOLATIONS SINCE 2000

	DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	Charles Paul Edward Jumet (Vice President; President)	<u>United States v. Jumet</u> , 09-CR-397 (E.D. Va. 2009)	NO	~ 200K	87 months' imprisonment
2	Misao Hioki (General Manager)	<u>United States v. Hioki</u> , 08-CR-795 (S.D. Tex. 2008)	YES	~ 1M	24 months' imprisonment
3	Shu Quan-Sheng (President, Secretary, and Treasurer)	<u>United States v. Quan-Sheng</u> , 08-CR-194 (E.D. Va. 2008)	NO	~ 189K	51 months' imprisonment
4	Martin Eric Self ¹ (CEO)	<u>United States v. Self</u> , 08-CR-110 (C.D. Cal. 2008)	NO	~ 70K	2 years' probation
5	Jason Edward Steph (General Manager)	<u>United States v. Steph</u> , 07-CR-307 (S.D. Tex. 2007)	YES	~ 6M	15 months' imprisonment
6	Jim Bob Brown (Managing Director)	<u>United States v. Brown</u> , 06-CR-316 (S.D. Tex. 2006)	YES	~ 6M	1 year and 1 day's imprisonment
7	Steven J. Ott (Executive Vice President)	<u>United States v. Ott</u> , 07-CR-608 (D. N.J. 2007)	YES	~ 267K	6 months' home confinement; 5 years' probation
8	Yaw Osei Amoako ² (Regional Director)	<u>United States v. Amoako</u> , 06-CR-702 (D. N.J. 2006)	YES	~ 267K	18 months' imprisonment
9	Roger Michael Young (Managing Director)	<u>United States v. Young</u> , 07-CR-609 (D. N.J. 2007)	YES	~ 267K	3 months' home confinement; 5 years' probation
10	Christian Sapsizian (Vice President)	<u>United States v. Sapsizian, et al.</u> , 06-CR-20797 (S.D. Fla. 2006)	YES	~ 2.4M	30 months' imprisonment
11	Steven Lynwood Head ³ (Program Manager)	<u>United States v. Head</u> , 06-CR-1380 (S.D. Cal. 2006)	YES	~ 2M	6 months' imprisonment

¹ "Willful blindness" aspect of the FCPA.

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]

³ Pled to falsification of books and records portion of the FCPA; not anti-bribery.

APPENDIX B
SENTENCES OF PERSONS WHO PLED GUILTY TO FCPA VIOLATIONS SINCE 2000

	DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
12	Richard John Novak (Employee)	<u>United States v. Randock, et al,</u> 05-CR-180 (E.D. Wash. 2005)	YES	~ 30K-70K	3 years' probation
13	Faheem Mousa Salam (Translator/Contractor)	<u>United States v. Salam,</u> 06-CR-157 (D.D.C. 2006)	YES	~ 60K	36 months' imprisonment
14	Richard G. Pitchford ⁴ (Vice President; Country Manager)	<u>United States v. Pitchford,</u> 02-CR-365 (D.D.C. 2002)	YES	~ 400K	1 year and 1 day's imprisonment
15	Gautam Sengupta ⁴ (Task Manager)	<u>United States v. Sengupta,</u> 02-CR-040 (D.D.C. 2002)	YES	~ 50K ⁵	2 months' imprisonment; 4 months' home confinement
16	Ramendra Basu ⁴ (Trust Funds Manager)	<u>United States v. Basu,</u> 02-CR-475 (D.D.C. 2002)	NO	~ 50K ⁵	15 months' imprisonment
17	Richard K. Halford ⁴ (CFO)	<u>United States v. Halford,</u> 01-CR-221 (W.D. Mo. 2001)	YES	~ 1.5M	5 years' probation
18	Albert Reitz ⁴ (Vice President and Secretary)	<u>United States v. Reitz,</u> 01-CR-222 (W.D. Mo. 2001)	YES	~ 1.5M	6 months' home confinement; 5 years' probation
19	Daniel Ray Rothrock ^{3, 4} (Vice President)	<u>United States v. Rothrock,</u> 01-CR-343 (W.D. Tex. 2001)	-- ⁶	~ 300K	1 year's probation
20	Albert Jackson "Jack" Stanley ⁷ (Officer/Director)	<u>United States v. Stanley,</u> 08-CR-597 (S.D. Tex. 2008)	--	~ 10.8M	84 months' imprisonment; Rule 11(c)(1)(C)

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 No indication on docket.

⁷ Not yet sentenced; however, included in this chart since plea was pursuant to Rule 11(c)(1)(C) with an agreed upon sentence of 84 months. Plea agreement provides for the possibility of a sentence reduction below 84 months.

EXHIBIT 1
TO
GOVERNMENT'S SENTENCING MEMORANDUM
RE: THREE MOST INSTRUCTIVE FCPA CASES

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA .
VERSUS . Criminal Action
DOUGLAS ANDREW MURPHY, . No. H-01-914
 . Houston, Texas
 . June 29, 2005
 . 3:02 p.m.
Defendant. .
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID HITTNER
SENTENCING

APPEARANCES:

FOR THE UNITED STATES OF AMERICA:

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Assistant United States Attorney
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FOR THE DEFENDANT:

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PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

1 plenty high enough if the Court is going to go into that
2 range. I just -- I urge the Court to stay --

3 THE COURT: All right. The prior -- the prior range
4 was 57 to 71 months before the mathematical error was located.
03:42:14PM 5 The range now, the low end is 63 months and the high end is 78
6 months. The Government's position is it should be the high
7 end; is that correct?

8 MR. ATKINSON: That's correct, Judge.

9 THE COURT: All right. Counsel, do you know of any
03:42:26PM 10 reason why your client should not be sentenced at this time?

11 MR. SUSSMAN: No, sir.

12 THE COURT: The Court has considered the guidelines
13 and finds that the sentence within the guidelines is
14 consistent and takes into account the purposes of 18 United
03:42:42PM 15 States Code Section 3553(a). I will not go to the high end of
16 the guidelines.

17 It's -- the Defendant is hereby committed to
18 the custody of the Bureau of the Prisons to be imprisoned for
19 a term of 63 months. Upon release from imprisonment, the
03:42:58PM 20 Defendant shall be placed on -- I need to say 63 months as to
21 each of Counts 1SS through 14SS to be served concurrently for
22 a total term of 63 months.

23 THE PROBATION OFFICER: Your Honor, each of those
24 counts has a 60-month cap on it. So, if the Court -- if it's
03:43:16PM 25 the Court's intent for a total sentence of 63 months, at least

**EXHIBIT 2
TO
GOVERNMENT'S SENTENCING MEMORANDUM
RE: THREE MOST INSTRUCTIVE FCPA CASES**

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA .
5 VERSUS . Criminal Action
6 DAVID GARRISON KAY, . No. H-01-CR-914
7 . Houston, Texas
8 . June 29, 2005
9 Defendant. . 2:30 p.m.
10

9 TRANSCRIPT OF PROCEEDINGS
10 BEFORE THE HONORABLE DAVID HITTNER
11 SENTENCING

11 APPEARANCES:

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21 Mr. David M. Fragale
22 Mr. Reid H. Weingarten
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25 PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

1 abroad and do it? And the jury clearly rejected the excuse that
2 this was -- that it was the fault of the Haitian government
3 officials.

4 He continues to deny any responsibility. He puts
5 the blame on other people, and he just -- he had -- no one ever
6 gave him legal authority to make those payments.

7 THE COURT: All right. So what's your -- what's your
8 position relative to sentencing in this case?

9 MR. ATKINSON: The Government agrees with the Court's
10 total offense level of 21. The Government recommends the low
11 end of that range but a minimum of 37 months incarceration.

12 THE COURT: All right. Counsel, do you know any
13 reason why your client should not be sentenced at this time?

14 MR. BENNETT: No, your Honor. Could I be heard as to
15 one --

16 THE COURT: Sure.

17 MR. BENNETT: -- one thing?

18 THE COURT: Absolutely.

19 MR. BENNETT: I'm not here to relitigate the case.

20 THE COURT: No. Go on.

21 MR. BENNETT: But I would point out to the Court that
22 the jury did not necessarily reject everything that Mr. Kay
23 said. The jury could have believed everything that David Kay
24 said in this case and, under the charge of the law as the Court
25 gave it to them, still convicted him if they felt that payment

1 to customs officials was a violation of the FCPA. They could
2 have believed everything he said, not rejected his testimony and
3 still convicted him.

4 So the fact that he got convicted by the jury
5 doesn't mean that the jury found that he was lying to them,
6 trying to deceive them; and that ought not to be considered as a
7 -- as a factor in the Court's determination of the appropriate
8 punishment.

9 THE COURT: Thank you.

10 Do you know any reason why your client should not
11 be sentenced at this time?

12 MR. BENNETT: No, your Honor.

13 THE COURT: It's hereby ordered that the Defendant is
14 hereby committed to the custody of the Bureau of the Prisons to
15 be imprisoned for a term of 37 months as to each of Counts 1SS
16 through Counts 13SS to be served concurrently -- that's at the
17 same time -- for a total of 37 months.

18 Upon release from imprisonment, the Defendant
19 will be placed on supervised release for a term of two years.
20 The term consists of two years as to each of the counts, 1
21 through 13, all such terms to run concurrently.

22 Within 72 hours of release from the custody of
23 the Bureau of the Prisons, the Defendant shall report in person
24 to the probation office in the district to which he's released.
25 The Court waives the mandatory drug testing condition based upon

EXHIBIT 3
TO
GOVERNMENT'S SENTENCING MEMORANDUM
RE: THREE MOST INSTRUCTIVE FCPA CASES

May 12, 2005

Judge David Hittner
United State District Court
Southern District of Texas
Houston Division

Criminal No. H-01-914-S

Dear Judge Hittner:

I am Douglas Murphy's father. My son stands before you convicted of violating the Foreign Corrupt Practice Act and awaits your sentence. This is hard stuff for this father to acknowledge. I am probably the person who knows Doug best. I admire my son's character and integrity. I am also a person who is personally knowledgeable of the facts surrounding the circumstances that finds my son now facing sentencing for having been convicted of a Federal crime.

For 35 years as chief executive while building Early California Industries (which included American Rice) (ARI) I prided myself on being objective...even hard nosed when it came to having a son as an employee. In fact when the Board of Directors strongly urged that he become the president of the parent company, I refused to vote. It was their judgment of Doug's honesty, integrity, hard work, skills in business and working relationship with the employees that forced the situation to a vote that elected him. I understand that even today, year's later, these independent individuals have come forward to provide testimonial of Doug's character.

From a family standpoint there is no better testimony than his three children who each are acknowledged student leaders in many of the scholastic, athletic, and artistic programs they participate in their classes at Kingwood High School. He is the dad I wish I had been.

Doug has been a coach and a mentor to scores of young people for years. He and his wife, Lee Ann, are involved in every aspect of their children's lives be it in the community, at church or in their schools. Doug and Lee Ann have been married 22 years...a testimony to commitment and love through circumstances that could easily tear a family apart.

My first trip to Haiti occurred in 1999. After this case was returned to your court, I was motivated to get to the bottom of the charges of criminality against Doug. I discovered information (including materially all of the receipts

documenting payment of the alleged non paid taxes) that I believe would have cleared my son that was not allowed at trial. I, of course, believe my son should have been found innocent of all charges. Doug never benefited personally, not a dime, by anything he was convicted for and had RCH make good on every penny owed the Haitian government by itself and ARI. I hope you will consider this information in you new trial and sentencing deliberations.

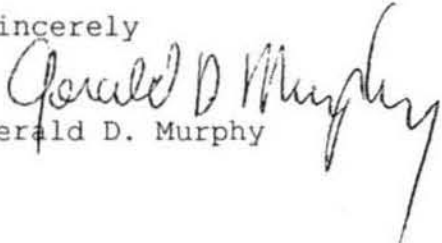
Doug Murphy is a hero in Haiti for creating Rice Corporation of Haiti in 1988. He revolutionized to the benefit of an entire nation how rice, the staple of the Haitian diet could be produced in enough quantity by Haitian farmers and Haitian workers at prices the people in the street could afford. In 1988, rice was a luxury item selling at \$1 per #, by 1998, as you know from trial, Doug had made rice affordable for all people with prices at 35 cents per # or less.

My investigation left me extremely proud of the job that Doug did in developing the Haiti situation for the benefit of all parties. The integrity, the concern for the community, the effort, the team he built when he was personally involved, and the consistent profitability of RCH is a model for any US international development.

Your Honor, Doug has already¹ paid a tremendous price for this crime. He and his family have been subject to humiliation both in the Houston business community and in their local Kingwood community. Doug's career has been irreparable damaged. And, Doug has seen the loss of his life savings in the payment of expenses and legal fees.

His mother and I hope that his request for a new trial and/or appeal will be successful. However we are aware that the reality is that our son was convicted by a jury of his peers. We do pray that the court will consider the positive impact our son has had on his family, his peers and the community here and aboard. That the court will consider the exemplary life my son has led. And most of all, that the court will allow my son to continue to work and to support his family and to be allowed to rebuild his life.

Sincerely


Gerald D. Murphy

**EXHIBIT 4
TO
GOVERNMENT'S SENTENCING MEMORANDUM
RE: THREE MOST INSTRUCTIVE FCPA CASES**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 3:09CR397
)	
CHARLES PAUL EDWARD JUMET,)	
)	
Defendant.)	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, through its attorneys, Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Denis J. McNerey, Chief of the Fraud Section of the United States Department of Justice’s Criminal Division, Rina Tucker Harris, Trial Attorney, and Michael S. Dry, Assistant United States Attorney, hereby submits its position with respect to sentencing factors. The United States concurs with the Probation Officer’s determination that the defendant’s Total Offense Level is 29, and that his Criminal History Category is I. *See* Pre-Sentence Report (“PSR”), Part D. The defendant’s guideline range is 87 to 108 months. *Id.* Pursuant to the factors contained in 18 U.S.C. § 3553(a) and for the reasons set forth below, the United States respectfully requests that this Court sentence the defendant to 87 months of incarceration.

Argument

“[I]n imposing a sentence after *Booker*, the district court must engage in a multi-step process. First, the court must correctly determine, after making appropriate findings of fact, the

applicable guideline range.” *United States v. Moreland*, 437 F.3d 424, 432 (4th Cir. 2006).

“Next, the court must ‘determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence [within statutory limits] that does serve those factors.’”

Id. (quoting *United States v. Green*, 436 F.3d 449, 455 (4th Cir. 2006)). Thus,

a sentencing court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant” and the need “to reflect the seriousness of the offense,” provide “just punishment,” “afford adequate deterrence,” “protect the public,” and “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.”

United States v. Hampton, 441 F.3d 284, 287 (4th Cir. 2006) (quoting 18 U.S.C. § 3553(a)).

I. The Applicable Guideline Sentence

The Government has no objections to the PSR.¹ The PSR calculates the defendant’s Offense Level Total as 29. This calculation includes: (a) a base offense level of 12; (b) a 2-level enhancement for an offense involving more than one bribe; (c) a 12-level enhancement for the value of the payment is more than \$200,00 but not greater than \$400,000; (d) a 4-level enhancement based on the offense involving an elected public official or any public official in a high-level decision-making; (e) a 2-level enhancement for obstruction or impeding administration of justice; and (f) a 3-level reduction for acceptance of responsibility. The defendant’s criminal history category is I. Defendant Jumet’s applicable guideline range is 87 to 108 months. (*See* PSR, Part D.)

¹The PSR mentions the defendant’s bankruptcy petitions filed in May 2003, October 2003, and September 2004 in the Eastern District of Virginia. (*See* PSR ¶ 68.) The Government would like to note that the Statement of Financial Affairs for the defendant’s September 2004 bankruptcy petition indicates that the defendant had no income in 2004, 2003, and 2002. The Statement of Financial Affairs for the defendant’s October 2003 bankruptcy filing, however, states that the defendant’s income was \$34,800, \$49,000, and \$225,000 in 2003, 2002, and 2001, respectively.

EXHIBIT 5
TO
GOVERNMENT'S SENTENCING MEMORANDUM
RE: THREE MOST INSTRUCTIVE FCPA CASES

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA	}	
	}	
v.	}	Criminal Case No.:
	}	3:09 CR 397
CHARLES PAUL EDWARD JUMET	}	

April 19, 2010

**COMPLETE TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE HENRY E. HUDSON
UNITED STATES DISTRICT COURT JUDGE**

APPEARANCES:

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Counsel on behalf of the Defendant

KRISTA M. LISCIO, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 they upped the Guidelines.

2 MR. WAGNER: Well, I believe there were provisions
3 in the 2X guidelines for both the amount of payments
4 made and for the elected officials. There was an
5 8-level enhancement if the money were to go to elected
6 officials. So clearly that was anticipated by the
7 Sentencing Commission in the crafting of the
8 guidelines.

9 THE COURT: Well, I think the Sentencing
10 Commission just realized the Guidelines were too low
11 based upon the harmful effect the conduct had.

12 MR. WAGNER: Well, nonetheless, we don't have that
13 data in front of us.

14 THE COURT: All right.

15 MR. WAGNER: There is no rationale. And frankly,
16 the government failed to provide the Court with any
17 historical information, with any data, with any
18 empirical information about why those guidelines
19 changed. And the change in the Guidelines should be
20 tethered to some rationale that the government or that
21 the Court can put its finger on it and say this is why
22 the Guidelines changed, and that's why those
23 guidelines, and change in guidelines, apply to
24 Mr. Jumet. They can't do that here.

25 So what you're left with here, Judge --

1 Anything you would like to add before I decide
2 what sentence is appropriate?

3 MR. JUMET: Yes, Your Honor. I have a statement,
4 if I may.

5 THE COURT: Yes, sir. You go right ahead.

6 MR. BOWLES: Your Honor, I would like to express
7 my remorse for my actions, and express my hope that you
8 will understand my current situation and show
9 compassion towards me and my family. I'm truly sorry
10 for what I've done.

11 Initially, I had no idea that I was breaking the
12 law, nor did I know the role that the Panamanians were
13 playing in the company; however, it soon became clear
14 that they were involved, and I failed to withdraw from
15 the company, and continued to be involved.

16 My wife's health at that time was not good. We
17 had a huge mortgage, three children, one on the way.
18 Although those are not excuses for bad or illegal
19 behavior, that explains why I remained involved.

20 When I worked for the Allen administration, some
21 of the happiest days of my life, my wife, now ex-wife,
22 complained to me to go get a real job. Public service
23 simply did not pay enough to support her, even though I
24 was extremely happy, so I left and became involved with
25 the enterprise through a local Virginia company who

1 him. I can just encourage it once he sees it.

2 Moreover, he is in those impressionable years
3 where he can make good choices or poor ones. I want to
4 be there to help him make those right choices.

5 I am a good man, an educated man, and a trusted
6 family man. I made a bad set of choices years ago, but
7 I've recognized them as bad and have told my children
8 that you can learn as much from your mistakes as you
9 can from your successes, and perhaps even more.

10 My incarceration would adversely impact my 83-year
11 old mother whom I tend to weekly. She has difficulty
12 getting out. I do her grocery shopping at times, I
13 help her with maintenance as she cannot afford help on
14 her fixed income. I assist with her mortgage and her
15 car insurance, among other bills for her.

16 She has cancer. She's fallen several times
17 breaking her ankles, and shoulder, and hand. I am her
18 only child, and she depends on me for physical and
19 financial support. She has been unable to sell her
20 house in this market, and can't afford to move to
21 assisted living. She has no options.

22 My wife needs my support to run the farm. We're a
23 farm for retired horses. We have about 50-acres we own
24 next to the Bowles. We support the Thoroughbred
25 Retirement Foundation, as well as other abandoned and

EXHIBIT 6
TO
GOVERNMENT'S SENTENCING MEMORANDUM
RE: THREE MOST INSTRUCTIVE FCPA CASES

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Number: 06-157 (RJL)
	:	
FAHEEM MOUSA SALAM,	:	
	:	
Defendant.	:	

GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING

The United States, by and through its attorneys, G. Bradley Weinsheimer and Stacey K. Luck, respectfully submit this Memorandum in Aid of Sentencing. For the reasons set forth below and further explained in the government’s 5K1.1 Motion, the government respectfully recommends that the Court sentence defendant to a sentence consistent with a two level downward departure from the applicable guidelines range, from an offense level of 21 to an offense level of 19, with an imprisonment range of 30 to 37 months. Further, the government recommends a sentence of incarceration at the low end of that guideline range, 30 months.

I. BACKGROUND

A. The Violation

On August 4, 2006, Salam entered a guilty plea to a one-count Information charging him with violating the Foreign Corrupt Practices Act, Title 15, United States Code, Section 78dd-2. As set forth in the signed Statement of Offense, from on or about October 16, 2004 until on or about March 24, 2006, Salam was employed as a translator by a United States government contractor and lived in Iraq. From a date unknown, but beginning at least by on or about December 12, 2005, and continuing until on or about March 24, 2006, Salam engaged in business transactions in Iraq with individuals unrelated to his employment as a translator. On or

about December 12, 2005, Salam met with and offered a senior Iraqi official with the Iraqi Police, the Iraqi Border Guard, and the Iraqi Special Police (collectively referred to as the "Iraqi Police Force") a \$60,000 "gift" if the Iraqi official would arrange for the Iraqi Police Force to purchase from the defendant a large-scale map printer and 1,000 armored vests. The defendant suggested the total cost for the proposed transaction would be \$1,090,000 (\$90,000 for the printer and \$1,000 for each of the vests). The defendant understood that the materials requisitioned by the Iraqi Police Force would be acquired on its behalf by the Civilian Police Assistance Training Team (hereinafter, "CPATT"), a U.S.-led multinational organization responsible for purchasing materials for the Iraqi Police Force.

On or about January 2, 2006, in an effort to secure the contract, Salam contacted the Iraqi official by telephone and offered to reduce the total cost of the armored vests to \$800,000 (i.e., \$800 for each vest). The defendant added that as a result of the reduction in the cost of the vests, his "gift" to the Iraqi official would be reduced to \$50,000.

On or about January 3, 2006, Salam again spoke with the Iraqi official regarding the proposed contract and "gift." With the consent of the Iraqi official, the telephone conversation between the official and Salam was monitored and tape recorded by United States law enforcement officials from the Office of the Special Inspector General for Iraq Reconstruction (SIGIR). During the conversation, Salam again requested that the Iraqi official arrange for the purchase of the large-scale map printer and the armored vests. In an attempt to finalize the transaction, Salam suggested he could further reduce the price of the vests and similarly reduced his proposed "gift" to the Iraqi official to \$30,000.

Thereafter, on or about February 6, 2006, Salam met with a United States law enforcement officer from SIGIR who was posing as a procurement officer for CPATT. At the time, it was Salam's understanding that the SIGIR agent would be able to facilitate the transaction the defendant had previously proposed to the Iraqi official. During the conversation, the defendant offered the SIGIR agent \$28,000 to \$35,000 to process the contract for the map printer and the armored vests. Soon thereafter, on or about February 16, 2006, Salam abruptly terminated the proposed contract.

B. Post-Arrest Assistance and Acceptance of Responsibility

Following the meeting with the undercover SIGIR agent, Salam returned to the United States at the request of his employer. On or about March 24, 2006, defendant Salam was placed under arrest by SIGIR agents while he was at Dulles International Airport located in Dulles, Virginia. Within twenty-four hours, Salam met with law enforcement officials, admitted his involvement in the offer to bribe the Iraqi official, and identified other individuals involved in the proposed sale of the armored vests and the map printer. Salam has remained cooperative in the investigation, entered a pre-indictment plea agreement, and has fulfilled the terms of his plea agreement.

As part of his plea agreement, Salam agreed to meet with government investigators on several occasions. Over the past ten (10) months, Salam has explained his involvement in offering bribes in Iraq to government officials and provided additional information regarding individuals involved in the instant matter. Salam also indicated his willingness to assist law enforcement officials in the investigation of corruption in Iraq; however, those efforts ended when Salam's co-workers and other individuals in Iraq learned of his arrest thereby preventing

Salam from being able to act covertly on behalf of the government. Since Salam's arrest, additional individuals have not been charged in the matter thus far due to circumstances beyond Salam's control. Nevertheless, Salam's assistance has been useful, appears to be reliable and credible based upon corroborating evidence, and was timely provided by the defendant during the course of the government's investigation.

II. SENTENCING STANDARDS

Pursuant to United States v. Booker, 125 S. Ct. 738 (2005), the Sentencing Guidelines are no longer mandatory. In Booker, the Supreme Court held that the mandatory application of the United States Sentencing Guidelines violated the Sixth Amendment principles articulated in Blakely v. Washington, 124 S. Ct. 2531 (2004), and consequently invalidated the statutory provision that made the Guidelines mandatory, Title 18, United States Code, Section 3553(b)(1). Booker, 125 S. Ct. at 764. Subsequently, courts have noted that "Booker requires judges to engage in a two-step analysis to determine a reasonable sentence." United States v. Doe, 412 F. Supp.2d. 87, 90 (D.D.C. 2006). This process has been described as follows:

[A] district court shall first calculate (after making the appropriate findings of fact) the range prescribed by the guidelines. Then, the court shall consider that range as well as other relevant factors set forth in the guidelines and those factors set forth in [18 U.S.C.] § 3553(a) before imposing the sentence.

Id. (quoting United States v. Hughes, 401 F.3d 540, 546 (4th Cir. 2005)). As for the second step of the Booker sentencing analysis, the court in imposing sentence must as well consider the other factors of Section 3553(a). United States v. Price, 409 F.3d 436, 442 (D.C. Cir. 2005). Section 3553(a) 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: (a) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (b) to afford adequate deterrence to criminal conduct; (c) to protect the public from further crimes of the defendant; and (d) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
3. the kinds of sentences available;
4. the range established for the conduct under the Guidelines;
5. the policies promulgated by the Sentencing Commission;
6. the need to avoid unwarranted sentencing 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.

III. SENTENCING CALCULATION

The government has no objection to the sentencing guidelines calculation presented in the Presentence Investigation Report. The calculation is based upon the 2006 United States Sentencing Guidelines Manual and is as follows:

Base Offense Level USSG § 2C1.1(a)(2)	12
Specific Offense Characteristic Offense involved intention to provide more than one bribe USSG § 2C1.1(b)(1)	2
Specific Offense Characteristic Value of bribe more than \$30,000 And less than \$70,000.	6
Specific Offense Characteristic Offense involves of a public official in a	4

high-level decision-making or sensitive position)	
Total	24
Acceptance of Responsibility USSG § 3E1.1.(a)	(-3)
FINAL ADJUSTED OFFENSE LEVEL	21

See PSR, at ¶¶ 26-38. This calculation also is consistent with the calculation agreed to by the parties in the plea agreement. In making its recommendation, the government is mindful that defendant Salam entered an early plea, assisted in the investigation, accepted responsibility for his conduct, and has shown remorse. Because of these circumstances, the government agrees that it is appropriate for defendant Salam to receive the three level reduction in offense level for acceptance of responsibility. This reduction already has been calculated in the final offense level of 21.

Based upon a guideline offense level of 21 and the defendant's criminal history category of I, the applicable imprisonment range is 37 to 46 months. See PSR at ¶ 65.

IV. SENTENCING RECOMMENDATION

Taking into consideration the nature and seriousness of the offense, the policies of the sentencing guidelines, the defendant's substantial assistance, and being mindful of the need to fashion a sentence which promotes deterrence and a just punishment, the government recommends a two level departure from the applicable guidelines offense level of 21 to a guidelines offense level of 19 with an imprisonment range of 30 to 37 months. Further, the government recommends a sentence of incarceration at the low end of the guidelines. Applying

the factors of 18 U.S.C., § 3553(a), we believe this would be both an appropriate and reasonable sentence.

A. Evaluation of the 3553(a) Factors

1. Nature, circumstances and seriousness of the offense.

The sentence imposed by the court should reflect the nature, circumstances and seriousness of the offense. 18 U.S.C. §§ 3553(a)(1), 3553(a)(2)(A). The nature and seriousness of the instant offense is significant – an attempt to bribe a senior Iraqi official to obtain a contract to sell armored vests and a map printer during a time of war. As an employee of a United States government contractor who held a security clearance, the defendant should have realized the error in the choice he made to potentially undermine the integrity and operations of the Iraqi government and U.S. military operations by attempting to bribe a senior Iraqi Police Force official.

2. History and characteristics of the defendant.

The sentence imposed by the Court should reflect the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). Despite the defendant's serious and potentially dangerous conduct, Salam's criminal history evinces no prior criminal proclivities. In addition, subsequent to his arrest, Salam immediately accepted responsibility for his actions, agreed to cooperate with government officials, abided by all of the terms of his pre-trial release, met with law enforcement officials on numerous occasions, and provided detailed information regarding other individuals involved in the proposed sale to the Iraqi official.

3. Deterrence.

In determining the sentence in this case, the Court should also consider the importance of imposing a sentence that affords adequate deterrence. 18 U.S.C. § 3553 (a)(2)(B). The need for deterrence in FCPA cases is important as the laws are intended to combat a culture of corruption that could otherwise undercut the development and good governance of nations around the world. As in the present matter, FCPA cases are typically very difficult to investigate and prosecute because documents and witnesses are located outside the United States' jurisdiction. The most effective deterrent for the type of crime committed by Salam is imprisonment. Unlike a fine, which may be paid and considered a mere cost of doing business overseas, incarceration provides a just punishment for the offense.

Those who engage in the type of bribery scheme in which Salam participated must realize that punishment in the form of incarceration will be meted out once their illegal activities are uncovered. This is not a case where just one bribe was offered nor where the amounts offered were small. Defendant Salam offered bribes on several occasions to finalize the contract and offered substantial amounts of money to the Iraqi official, and then to the SIGIR agent, each time. A sentence below the otherwise applicable guideline range including a period of incarceration would account for defendant Salam's cooperation but also would send a strong message that those who engage in this sort of illegal activity should think twice, given the prospect of imprisonment.

4. Evaluation of the United States Sentencing Guidelines Policy

To the extent defendant Salam seeks a probationary sentence, such a sentence would be inappropriate in this case. Section 3553(a) directs the Court to consider policies promulgated by

the Sentencing Commission. 18 U.S.C. § 3553(a)(5). To that end, the official commentary is of relevance in evaluating the sentencing guidelines policies. Under the Sentencing Guidelines, the defendant's sentencing range falls in Zone D of the Sentencing Table, which requires that "the minimum term. . . be satisfied by a sentence of imprisonment." U.S.S.G. Ch. 5, Pt. C1.1(f). The official commentary to this section states that when the sentencing guideline range is in Zone D, imprisonment substitutes (such as probation or community service) are not appropriate. See U.S.S.G. Ch. 5, Pt. C1.1(f), comment. 8. The departure recommended by the United States in this case, pursuant to U.S.S.G. §5k1.1, appropriately balances defendant's cooperation with the need for just punishment and deterrence.

V. CONCLUSION

For all of the foregoing reasons, the government respectfully requests that the Court sentence defendant Salam to a sentence consistent with a downward departure of two levels from the applicable guidelines calculations from an offense level of 21 to an offense level of 19, with an imprisonment range of 30 to 37 months. Further, the government recommends a sentence of incarceration at the low end of that guideline range, 30 months.

Respectfully submitted,

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