

**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

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UNITED STATES OF AMERICA :
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**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
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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
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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 sentencing 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 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.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.

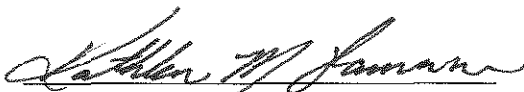
For all of the above reasons, the government recommends a substantial sentence of imprisonment below the advisory guidelines range.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney


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DENIS J. MCINERNEY
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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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Date: September 8, 2010