IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

ORDER

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

The Court finds as follows:

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

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

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

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

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

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

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

BY THE COURT:

HONORABLE TIMOTHY J. SAVAGE
Judge, United States District Court

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

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

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

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

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

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

I. BACKGROUND

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

II. SENTENCING CALCULATION

A. Statutory Maximum Sentences

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

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

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

B. Sentencing Guidelines Calculation

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

1. Offense Level

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

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

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

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

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

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

2. Sentencing Range

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

III. MOTION FOR DOWNWARD DEPARTURE FROM GUIDELINE SENTENCING RANGE

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

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

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

In this case, the relevant factors are as follows:

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

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

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

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

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

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

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

IV. ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

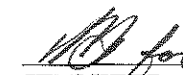
V. CONCLUSION

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

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

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney



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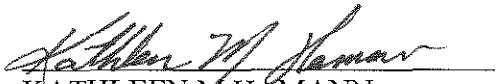

KATHLEEN M HAMANN
Anticorruption Policy Counsel and Trial Attorney
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CERTIFICATE OF SERVICE

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

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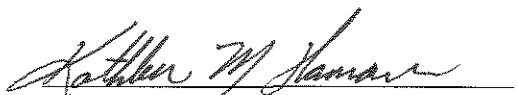

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Anticorruption Policy Counsel and Trial Attorney

Date: September 8, 2010