

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

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

GOVERNMENT'S SENTENCING MEMORANDUM

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

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

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

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

I. BACKGROUND

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

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

II. SENTENCING CALCULATION

A. Statutory Maximum Sentences

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

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

B. Sentencing Guidelines Calculation

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

1. Offense Level

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

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

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

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

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

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

2. Criminal History Calculation

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

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

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

3. Sentencing Range

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

III. ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

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

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

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney



JENNIFER ARBITTIER WILLIAMS
Assistant United States Attorney

DENIS J. MCINERNEY
Chief, Fraud Section
Criminal Division, Department of Justice



KATHLEEN M HAMANN
Anticorruption Policy Counsel and Trial Attorney
Fraud Section, Criminal Division
Department of Justice

CERTIFICATE OF SERVICE

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

Defense Counsel

Catherine M. Recker, Esquire
Amy B. Carver, Esquire
Welsh & Recker, P.C.
2000 Market Street
Suite 2903
Philadelphia, PA 19103

Daniel J. Tann, Esquire
Law Offices of Daniel J. Tann
1420 Walnut Street
Suite 1012
Philadelphia, PA 19102

Jeffrey M. Miller, Esquire
Nasuti and Miller
The Public Ledger Building, Suite 1064
150 South Independence Mall West
Philadelphia, PA 19106

Michael J. Engle, Esquire
1600 Market Street
Suite 2650
Philadelphia, PA 19103

Probation Officer

Mark B. Hassinger
Senior U.S. Probation Officer
U.S. Probation Office, E.D. Pa.
600 Arch Street
Suite 2400
Philadelphia, PA 19106



KATHLEEN M HAMANN

Anticorruption Policy Counsel and Trial Attorney

Date: September 8, 2010