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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 TIEN TAN VO,

14 Defendant.

Case No.: 23-CR-1700-AHG

Date: October 19, 2023

Time: 10:00 a.m.

The Honorable Allison H. Goddard

**UNITED STATES' SENTENCING  
MEMORANDUM**

15  
16  
17 **TO: Jeremy Warren & Michael Aguirre, Attorneys for Defendant TIEN TAN VO**

18 The UNITED STATES OF AMERICA, by and through its counsel, TARA K.  
19 MCGRATH, United States Attorney, and Nicholas W. Pilchak, Assistant U.S.  
20 Attorney, hereby files its Sentencing Memorandum.

21 **I.**

22 **INTRODUCTION**

23 Over almost four years, Dr. Tien Vo treated well over 100 patients with foreign,  
24 unapproved cosmetic drugs and devices: specifically, botulinum toxin and lip fillers  
25 smuggled into the United States from Mexico by his accomplice. While this conduct  
26 was undeniably serious, given the other equities discussed below, the Court should  
27 impose the jointly recommended sentence: three years of probation with community  
28 service, plus a \$201,534 fine and a \$100,767 forfeiture judgment.

1 The parties also jointly request the Court to set a subsequent restitution hearing  
2 for finalizing a restitution order to identifiable victims at a later date.

3 **II.**

4 **STATEMENT OF THE CASE**

5 On August 24, 2023, Tien Tan Vo waived indictment and pleaded guilty to a  
6 criminal information charging him with two misdemeanors: accessory after the fact to  
7 entry of goods by means of false statement, in violation of Title 18, United States Code,  
8 Sections 542 and 3, and receipt in interstate commerce of misbranded drugs and devices,  
9 in violation of Title 21, United States Code, Sections 331(c) and 333(a)(1).<sup>1</sup>

10 **III.**

11 **STATEMENT OF FACTS**

12 **A. Background**

13 This investigation was begun by Homeland Security Investigations after they  
14 noticed Flor Sileing Cham, charged in 23-cr-1926-JLS, posting dozens of boxes of  
15 “Xeomeen” for sale on an online marketplace. “Xeomeen” is a botulinum toxin product  
16 that is not authorized by the FDA for use in the United States, although a related product  
17 from the same manufacturer (trade name “Xeomin”) is approve for such use.

18 An HSI undercover agent bought several rounds of unapproved drugs and devices  
19 from Ms. Cham. At a meeting, Cham told the undercover agent that she regularly  
20 supplied Dr. Tien Vo with his botulinum toxin.

21 **B. Dr. Vo’s Purchase History**

22 Facebook communications and financial records establish that Cham sold  
23 Xeomeen to Dr. Vo beginning in November 2016. The messages demonstrate that  
24 Dr. Vo knew that Cham was bringing the product in from Mexico. Cham also rapidly  
25 began selling Dr. Vo a foreign unapproved product called Probcel—a Brazilian lip filler  
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27 <sup>1</sup> This memorandum references “devices” because, under the Food, Drug and  
28 Cosmetic Act, lip fillers are most accurately classified as devices and not drugs.

1 that is also not authorized for use in the United States. Between November 2016 and  
2 February 2020, Cham sold Vo tens of thousands of dollars of Xeomeen and Probcel.

3 Dr. Vo also sourced Xeomeen from another supplier. In his written  
4 communications, that supplier informed Vo that the product was “from the Mexico  
5 distributor” and that it was “getting more difficult because of the new re[s]trictions.”  
6 The supplier added that “we will cross 5 [vials] a day” because it “makes it easy for  
7 delivery for distributor.” Weeks later, the supplier texted Vo: “I got a call from the  
8 Xeomin rep. He has it with the English labels already. In case you need some more.”  
9 Vo replied, “Ok I will let you know. I just got 20 bottles in english...”

10 In total, Dr. Vo purchased \$48,530 of cosmetic drugs and devices from Cham  
11 and the other supplier between November 2016 and February 2020—not including the  
12 final shipment of Xeomeen, which was seized on October 5, 2020, as discussed below.  
13 In his plea agreement, Vo admitted that he obtained \$100,767.00 of gross receipts for  
14 use of those unapproved drugs and devices during that period.

15 **C. Undercover Consult With Dr. Vo**

16 An undercover HSI agent visited Dr. Vo’s practice for a cosmetic consultation  
17 on September 30, 2020. When the agent asked what “Botox” product he used for his  
18 cosmetic procedures, Vo cleared his throat, hedged a bit, and ultimately said they use  
19 the “generic name” product. He did not disclose that the product was unapproved or  
20 sourced from Mexico. Brochures provided to the undercover agent during the agent’s  
21 visit described the treatment offered as “Xeomin Botox® Injections.”

22 **D. Warrant Search & Statement**

23 Agents conducted a warrant search of Dr. Vo’s El Centro and Calexico clinics on  
24 October 5, 2020, in connection with a final delivery of 10 boxes of Xeomeen that Vo  
25 had ordered from Cham. During the search agents discovered boxes of Xeomeen and  
26 Probcel in Vo’s clinic. Agents searching Dr. Vo’s Calexico clinic also recovered blank  
27 consent forms for “Botox®.” The forms explicitly noted that “BOTOX has been FDA  
28

1 approved to treat certain conditions,” including cosmetic conditions such as crow’s feet.  
 2 No FDA-approved cosmetic drugs were located during the search.

3 In a post-*Miranda* interview,<sup>2</sup> Dr. Vo admitted that he used cosmetic drugs from  
 4 Mexico and not FDA-approved drugs from the United States. He explained that part of  
 5 his rationale for doing so was to save his patients money. However, Dr. Vo also said  
 6 that he told “most of” his patients that he was using Mexican products during their  
 7 procedures, which was inconsistent with patient interviews later conducted by agents.

8 **IV.**

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **A. Guidelines Calculations.**

11 ***1. Introduction***

12 The parties have agreed to jointly recommend the following guidelines  
 13 calculations:

14	Base offense level [USSG § 2B1.1(a)(2)]	6
15	Loss over \$40,000 [USSG § 2B1.1(b)(1)(D)]	+6
16	More than 10 victims [USSG § 2B1.1(b)(2)(A)(i)]	+2
17	Abuse of trust and special skill [USSG § 3B1.3]	+2
18	Acceptance of responsibility [USSG § 3E1.1]	-3
19	Combination of circumstances [USSG § 5K2.0]	-2

20 The parties have agreed to jointly recommend the downward departure for combination  
 21 of circumstances based on Dr. Vo’s disposition of the case and waiver of appeal.  
 22 Additionally, the United States intends to recommend at sentencing a further variance  
 23 equivalent to two levels to reflect the imminent amendment for “zero-point” offenders,  
 24 in exchange for confirmation from defense counsel that Vo waives his right to seek  
 25 retroactive application of that provision after it goes into effect.

26 \_\_\_\_\_  
 27 <sup>2</sup> Dr. Vo was not placed under arrest but was given *Miranda* warnings out of an  
 28 abundance of caution.

1 Based on the parties' plea agreement, and for the reasons set out below, the Court  
 2 should follow these recommended guidelines. Based on the equities presented by Vo  
 3 and his overall resolution of the case, the United States submits that a sentence of  
 4 probation, coupled with the jointly recommended and significant financial penalties, is  
 5 a sufficient sentence in this case.

6 **2. The loss amount is \$48,530.**

7 The Court should calculate the guidelines at sentencing with reference to USSG  
 8 § 2B1.1, as all parties and Probation all recommend. The sentencing guidelines for  
 9 violations of the Food, Drug and Cosmetic Act (i.e., Count 2) are contained in USSG  
 10 § 2N2.1, which provides for a base offense level 6, with no applicable adjustments. In  
 11 certain cases, however, the guidelines direct the application of Section 2B1.1, where the  
 12 sentence is determined based on the loss amount. *See* USSG § 2N2.1(c)(1); USSG  
 13 § 2B1.1 Application Note 3(F)(v) (“In a case involving a scheme in which . . . goods  
 14 were falsely represented as approved by a governmental regulatory agency . . . loss shall  
 15 include the amount paid for the . . . goods transferred, rendered, or misrepresented, with  
 16 no credit provided for the value of those items or services.”); *see also United States v.*  
 17 *Munoz*, 430 F.3d 1357, 1373 (11th Cir. 2005); USSG § 2B1.1 cmt. n. 3(B).

18 Under Section 2B1.1., the parties have agreed to jointly recommend loss over  
 19 \$40,000. This is based on Dr. Vo's payment of \$48,530 for the unapproved cosmetic  
 20 drugs and devices he used in his practice.<sup>3</sup>

21 \_\_\_\_\_  
 22 <sup>3</sup> As to Count 1, the same guidelines would ultimately apply, although for different  
 23 reasons. The sentencing guidelines for violations of Section 545 are contained in USSG  
 24 § 2T3.1. The base offense level is computed with reference to the duty avoided while  
 25 smuggling in the property. *See* USSG § 2T3.1(a). Applying a tax loss model to this  
 26 conduct is virtually impossible, however, since the subject merchandise (Xeomeen or  
 27 unapproved lip fillers) is not cleared for commercial or bulk importation, and there is  
 28 no assessed duty for personal-use quantity importation of these products. On the other  
 hand, since the products smuggled were contraband—prohibited foreign  
 pharmaceuticals—an alternative measure of the duty evaded should apply, such as the  
 increase in value of the merchandise smuggled. *See, e.g., United States v. Montano*,  
 250 F.3d 709, 713 n.5 (9th Cir. 2001); *see also* USSG § 2T3.1 cmt. n.2. Some authority

1           **3. Numerous victims.**

2           Dr. Vo’s cosmetic practice provided services to well over 100 patients during the  
3 indicated period; the complete list is estimated at 178 individuals. By Vo’s own  
4 admission, each was treated with unapproved foreign drugs and devices. Accordingly,  
5 the parties jointly recommend the enhancement for more than 10 victims.

6           **4. Role.**

7           Concurring with Probation, the United States recommends no role adjustment.

8           **5. Abuse of trust and special skill.**

9           The parties jointly recommend an adjustment for abuse of trust and use of a  
10 special skill, together with Probation. The United States believes both apply to Dr. Vo’s  
11 conduct in this case. Indeed, doctors are one of the prototypical examples of a “special  
12 skill” warranting the adjustment. *See* USSG 3B1.3 n. 4. The United States also notes  
13 that imposition of a “special skill” adjustment would block the application of an  
14 aggravating role adjustment, per the guidelines. *See* USSG § 3B1.3.

15           **6. Acceptance of responsibility.**

16           By pleading guilty, Dr. Vo has demonstrated acceptance of responsibility for his  
17 conduct and should receive a three-point reduction.

18 **B. Sentencing Factors.**

19           **1. Aggravation.**

20           Dr. Vo treated well over 100 patients with unapproved drugs from Mexico. It  
21 does not appear that he told at least a significant fraction of them about the drugs he  
22 was using. In fact, his clinics’ literature and advertising—and his own statements in a  
23

24  
25 suggests that the value of such pharmaceutical products doubles once they are imported,  
26 *see Montano*, 250 F.3d at 709, which would create a proxy tax loss of a little over  
27 \$40,000.00—i.e., the wholesale value of the smuggled merchandise, which is a base  
28 offense level 14 on the tax table. This is equivalent to the 2B1.1 calculations, before  
the abuse of trust and use of special skill enhancement.

1 recorded undercover consultation—indicate that he claimed or suggested the opposite:  
2 that his practice used approved, legitimate drugs in its procedures.

3 **2. Mitigation.**

4 At the same time, his cosmetic practice was a very small fraction—likely less  
5 than 2%, and perhaps substantially less—of Dr. Vo’s overall medical practice. It does  
6 not appear that he used unapproved drugs or devices in the other services offered at his  
7 clinic. Moreover, many doctors who use unapproved drugs do it to cut costs, charging  
8 their customers market rate and saving on their own supplies while pocketing the  
9 (substantial) difference. While he admitted to profiting from the practice, Dr. Vo  
10 appears to have largely passed the savings on to his customers and charged less than the  
11 market rate for approved cosmetic drugs. That said, there was clearly a business  
12 purpose for this conduct as well, since it allowed Dr. Vo to undercut the market and  
13 likely bring a modest number of additional patients to his practice.<sup>4</sup>

14 **3. Conclusion.**

15 Weighing the factors together, in light of the guidelines, it does not appear that a  
16 custodial sentence is necessary in this case, for several reasons. First, Dr. Vo operates  
17 a busy medical practice in a severely underserved area, and (as noted) the bulk of his  
18 practice was unaffected by this offense conduct. Second, sentencing Dr. Vo to prison  
19 would have significant collateral consequences on his ability to practice medicine.  
20 While those consequences are often warranted for offenders whose criminal conduct  
21 permeated their entire medical practice, the United States submits that guaranteeing  
22 those consequences to Vo’s practice here is unwarranted, since most of it was not  
23 associated with the crimes of conviction. Third, Dr. Vo has agreed to a rather speedy  
24  
25

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26 <sup>4</sup> The United States concurs with Dr. Vo’s factual contention in footnote 2 of his  
27 sentencing memorandum. ECF 12 at 5. That is, there is no evidence that Dr. Vo billed  
28 Medicare or Medi-Cal for the cosmetic services at issue in this case.

1 resolution of his case, and to voluntarily pay significant financial penalties (relative to  
2 the scope of the crime) as outlined below.

3 Taking these factors together, the United States recommends a sentence of three  
4 years of probation, coupled with 100 hours of community service.

5 **C. Forfeiture.**

6 In his plea agreement, Dr. Vo agreed that his gross proceeds from his offense  
7 conduct were \$100,767.00. He has agreed to forfeit this amount via a money judgment.  
8 The United States tendered a proposed forfeiture order to chambers, to which the  
9 defense has assented, on October 17, 2023.

10 **C. Fine.**

11 In his plea agreement, the parties agreed to jointly recommend a statutory  
12 maximum fine of \$201,534, which is twice Dr. Vo's pecuniary gain from the offense.  
13 *See* 18 U.S.C. § 3571(d). Probation also recommends such a fine.

14 **D. Restitution.**

15 Restitution is mandatory for this offense. 18 U.S.C. §§ 3663A(a)(1). Moreover,  
16 Dr. Vo agreed in his plea agreement to make restitution for all relevant conduct,  
17 specifically including restitution outside of the offenses of conviction. The plea  
18 agreement in this case also provides that Dr. Vo shall receive credit against his forfeiture  
19 judgment for any amounts voluntarily paid in restitution.

20 The United States will submit separately a proposed restitution order. At this  
21 time, however, the government is still compiling information about potential victims  
22 who may have been affected by Dr. Vo's conduct. Accordingly, the United States  
23 requests that the Court set a separate restitution hearing to occur at least thirty (30) days  
24 after sentencing. *See* 18 U.S.C. § 3664(d)(5). The defense is in agreement to set a  
25 hearing to follow the sentencing. ECF 12 at 8.

V.

**CONCLUSION**

For the reasons stated above, the United States respectfully requests that this Court impose a sentence of three years of probation, including 100 hours of community service as a condition. The United States does not recommend a condition of home confinement or electronic monitoring.

The parties also jointly recommend forfeiture of \$100,767.00 via a money judgment, a fine of \$201,534.00, and restitution in an amount to be determined at a subsequent hearing.

DATED: October 18, 2023

Respectfully submitted,

TARA K MCGRATH  
United States Attorney

*/s/ Nicholas W. Pilchak*  
NICHOLAS W. PILCHAK  
Assistant United States Attorney