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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,
Plaintiff,
v.
BAO LU, et. al.
Defendants.

NO. CR. S-99-0433 WBS

MEMORANDUM AND ORDER RE
DEFENDANT BAO LU'S MOTION TO
DISMISS FOR DENIAL OF SPEEDY
TRIAL

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This is defendant Bao Lu's second motion to dismiss his indictment for violation of his rights under the Speedy Trial Act and the Sixth Amendment. This court denied Lu's original motion in a Memorandum and Order filed on October 18, 2002.

Lu's legal arguments in this motion are essentially identical to the arguments advanced in his previous motion. In this Speedy Trial Act claim, Lu again challenges the reasonableness of the delay excluded from his speedy trial clock based on the continuances granted to his co-defendants. See 18 U.S.C. § 3161(h) (7). As this court noted in the previous order, all of Lu's co-defendants urged that the trial date in this case

1 be continued until February 20, 2003. The only new development
2 is that the trial has been continued again upon the joint request
3 of all other defendants. The court has found good cause for that
4 continuance. This court granted that continuance in order to
5 give Lu's co-defendants an opportunity to file pre-trial motions,
6 conduct discovery, and prepare for trial. In addition, Lu has
7 yet to present specific evidence that he will suffer prejudice as
8 a result of the delay. All motions for severance in this case
9 have been denied for good cause. Accordingly, the court finds
10 that Lu's speedy trial clock has been, and continues to be,
11 properly tolled under section 3161(h)(7).

12 Lu also renews his claim that the post-indictment delay
13 in this case has violated his Sixth Amendment right to a speedy
14 trial. The court's finding that there has been no violation of
15 the Speedy Trial Act "raises a strong presumption of compliance
16 with the Constitution." United States v. Baker, 63 F.3d 1478,
17 1498 (9th Cir. 1982). That presumption has not been overcome.

18 IT IS THEREFORE ORDERED that defendant Bao Lu's motion
19 to dismiss indictment based on post-indictment delay be, and the
20 same hereby is, DENIED.

21 DATED: February 13, 2003

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WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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