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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
HOANG AI LE, et. al.  
Defendants.

NO. CR. S-99-0433 WBS

MEMORANDUM AND ORDER RE  
DEFENDANT HOANG AI LE'S MOTION  
TO DISMISS BASED ON DOUBLE  
JEOPARDY AND DUE PROCESS

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Defendant Hoang Ai Le is one of seven defendants named in this indictment. Le now moves to dismiss his indictment on the grounds that his rights have been violated under the Double Jeopardy Clause and the Due Process Clause.<sup>1</sup>

I. Procedural Background

In the indictment currently before this court, Le has been charged with the following:

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<sup>1</sup> Co-defendant John That Luong has joined this motion to dismiss. Luong has adopted Le's arguments in full and brings no additional arguments of his own. Luong also notes that there are no factual differences between his case and Le's case that are material to the analysis of this motion.

- 1 • Count One: Conspiracy to commit a robbery affecting  
2 interstate commerce in violation of 18 U.S.C. §  
3 1951(a),<sup>2</sup> during the robbery of Phnom Pich Jewelry on  
4 January 25, 1996.
- 5 • Count Two: Use of a firearm during a crime of violence  
6 in violation of 18 U.S.C. § 924(c)(1), during the  
7 robbery of Phnom Pich.
- 8 • Count Three: Causing a death through the use of a  
9 firearm during a crime of violence in violation of 18  
10 U.S.C. § 924(i)(1) and (2), during the robbery of Phnom  
11 Pich.
- 12 • Count Eight: Conspiracy to commit a robbery affecting  
13 interstate commerce in violation of 18 U.S.C. §  
14 1951(a), during the robbery of Diamond Flower Electric  
15 Instruments ("DFI") on January 20, 1996.
- 16 • Count Nine: Use of a firearm during a crime of violence  
17 in violation of 18 U.S.C. § 924(c)(1), during the  
18 robbery of DFI.

19 In an earlier case in the Northern District of  
20 California, CR 96-0094, Le was indicted and tried on seven  
21 counts. Counts One and Two are as follows:

- 22 • Count One: Participating in the affairs of a  
23 racketeering enterprise through a pattern of  
24 racketeering activity in violation of 18 U.S.C. §  
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26 <sup>2</sup> 18 U.S.C. § 1951(a) is part of the Hobbs Act, which  
27 prohibits robbery or extortion, or an attempt or conspiracy to  
28 rob or extort, causing the obstruction or delay of, or an effect  
upon, interstate commerce.

1 1962(c).

- 2 • Count Two: Conspiracy to participate in the affairs of  
3 the enterprise through a pattern of racketeering  
4 activity in violation of 18 U.S.C. § 1962(d).

5 Count One of the Northern District indictment charged  
6 that Le "unlawfully and knowingly did conduct and participate,  
7 directly and indirectly, in the conduct of the affairs of the  
8 below described enterprise, through a pattern of racketeering  
9 activity . . . consisting of racketeering acts one through  
10 fifteen . . . ." Racketeering Act One describes a conspiracy to  
11 commit Hobbs Act robberies of computer chip companies:

12 Beginning at a time unknown but no later than January  
13 1, 1995 and up until approximately April 9, 1996, in  
14 the Northern District of California, the Eastern  
15 District of California, the Central District of  
16 California, the Southern District of California, the  
17 District of Oregon, and the District of Minnesota, and  
18 elsewhere, . . . Hoang Ai Le . . . did knowingly agree  
19 and conspire to obstruct, delay, and affect commerce,  
and the movement of United States currency and  
merchandise in commerce, by armed robbery and by  
threatening physical violence against another person,  
to wit: employees of various computer chip companies,  
which do business in foreign and interstate commerce as  
defined under 18 U.S.C. Section 1951(b)(3) in violation  
of 18 U.S.C. Sections 1951(a).

20 Count Two incorporates the racketeering acts one through fifteen  
21 by reference.

22 II. Discussion

23 A. Double Jeopardy

24 Under the Double Jeopardy Clause, no person shall be  
25 twice put in jeopardy of life or limb for the same offense. U.S.  
26 Const. amend V. The Double Jeopardy Clause has been interpreted  
27 to contain two prongs. First, double jeopardy prohibits  
28 successive prosecution of the same offense. Blockburger v.

1 United States, 284 U.S. 299, 304 (1932). Second, double jeopardy  
2 prohibits multiple punishment for the same offense. See United  
3 States v. Ursery, 518 U.S. 267, 273 (1996). Two crimes do not  
4 constitute the same offense if each crime requires proof of an  
5 additional element that the other crime does not require, even  
6 though some of the same facts may be necessary to prove both  
7 crimes. See Blockburger, 284 U.S. at 304 ("A single act may be  
8 an offense against two statutes; and if each statute requires  
9 proof of an additional fact which the other does not, an  
10 acquittal or conviction under either statute does not exempt the  
11 defendant from prosecution and punishment under the other.")  
12 (internal quotation omitted).

13 1. Successive prosecution

14 First, Le seeks a dismissal of Counts One and Eight on  
15 the grounds that this indictment is a successive prosecution  
16 barred by the Double Jeopardy Clause. Specifically, Le argues  
17 that Counts One and Eight of this indictment "charge[]  
18 conspiracies to commit Hobbs Act robberies which are the same  
19 conspiracy charged in Counts One, Two, and Three" of the Northern  
20 District indictment. (Def.'s Mot. at 13:13-15.)

21 This argument is fundamentally unsound. At the outset,  
22 Le was not charged in Count Three of the indictment in the  
23 Northern District, making that count irrelevant to this  
24 successive prosecution analysis. More important, Counts One and  
25 Two of the Northern District indictment did not charge Le with  
26 "conspiracy to commit Hobbs Act robberies." Rather, Counts One  
27 and Two of the Northern District indictment charged Le with  
28 committing a RICO violation "through a pattern of racketeering

1 activity . . . consisting of racketeering acts one through  
2 fifteen." "Conspiracy to commit Hobbs Act robberies" is merely  
3 one of those fifteen predicate acts constituting the pattern of  
4 racketeering activity in the RICO violation.

5           The cases are clear that the Fifth Amendment "allow[s]  
6 prosecution of a defendant once for a RICO conspiracy and  
7 thereafter for the predicate offenses constituting a pattern of  
8 racketeering activity." Saccoccia, 18 F.3d at 798; see also  
9 Rone, 598 F.2d at 571-72; Esposito, 912 F.2d at 65 ("A  
10 consequence of our conclusion that the prosecution for the RICO  
11 charge does not signify that defendant was prosecuted for the  
12 conduct constituting the predicate acts of racketeering activity  
13 . . . is that the two offenses may be the subject of successive  
14 prosecutions.").

15           Applying the rule in Rone and Saccoccia, Le is not  
16 being subjected to impermissible successive prosecution for the  
17 same offense. In the Northern District, Le was prosecuted for  
18 the offense of racketeering. Here, Le is being prosecuted for  
19 the offense of conspiracy to commit robberies of Phnom and DFI in  
20 violation of the Hobbs Act. Even if these conspiracies to rob  
21 Phnom and DFI are predicate acts to the Northern District RICO  
22 charge, and it is not entirely clear that they are, the  
23 government may still constitutionally prosecute those predicate  
24 acts.

25           United States v. Stoddard, 111 F.3d 1454 (9th Cir.  
26 1997) does not compel a different result. Le cites Stoddard for  
27 the proposition that "double jeopardy bars the government from  
28 dividing a single conspiracy into separate charges and pursuing

1 successive prosecutions against a defendant." Stoddard, however,  
2 is distinguishable. In Stoddard, the defendant faced multiple  
3 conspiracy counts charging violations of the same conspiracy  
4 statute. In that case, the defendant was first charged with  
5 conspiring to distribute cocaine between 1989 and 1990 in  
6 violation of 21 U.S.C. § 846. Thereafter, the defendant was  
7 charged with conspiring to distribute cocaine between 1985 and  
8 1995, also in violation of 21 U.S.C. § 846. Thus, the Stoddard  
9 court faced the task of determining whether, for double jeopardy  
10 purposes, the two section 846 conspiracy counts constitute the  
11 "same offense." Here, Le is not facing counts charging  
12 violations of the same statute. The Northern District indictment  
13 charged Le with violations of 18 U.S.C. § 1962, while the Eastern  
14 District indictment charges Le with violations of 18 U.S.C. §  
15 1951(a). Hence, this court is not facing a Stoddard situation.

16 Accordingly, the prosecution of Counts One and Eight in  
17 the instant indictment does not constitute a successive  
18 prosecution barred by the Double Jeopardy Clause.

19 2. Multiple Punishment

20 Le also contends that "he has already been punished for  
21 the overall Hobbs Act conspiratorial conduct which was charged  
22 [in the Northern District], and which is also charged in this  
23 case." Specifically, Le contends that his sentence in the  
24 Northern District case was calculated based on his role in the  
25 "overall conspiracy to commit Hobbs Act robberies."

26 This claim is susceptible to essentially the same  
27 analysis as Le's successive prosecution claim. The Ninth Circuit  
28 has held that "there is nothing in the RICO statutory scheme

1 which would suggest that Congress intended to preclude . . .  
2 consecutive sentences for a RICO offense and the underlying or  
3 predicate crimes which make up the racketeering activity." Rone,  
4 598 F.2d at 571-72. In Rone, the court rejected the defendants'  
5 argument that they were subject to multiple punishment because  
6 they were serving consecutive sentences for a substantive RICO  
7 violation and for the extortion offenses that were predicate acts  
8 in that RICO violation. The court noted that "Congress clearly  
9 intended the [RICO] Act to provide for new penal prohibitions and  
10 enhanced sanctions. If we were to accept appellants' theory that  
11 sentences imposed under RICO and those imposed for the predicate  
12 offenses may not run consecutively, then Congress' purpose would  
13 be thwarted." Id. at 572.

14 Similarly, Le's argument that he is facing multiple  
15 punishment is unavailing. Even assuming that the robberies at  
16 issue in this indictment were considered in Le's sentencing in  
17 the Northern District, the punishment in that case was for the  
18 offense of racketeering, not the offense of conspiring to commit  
19 Hobbs Acts. Accordingly, the instant indictment does not subject  
20 Le to the possibility of multiple punishment for the same  
21 offense.

### 22 3. Collateral Estoppel

23 Finally, Le argues that the government is collaterally  
24 estopped from prosecuting him on Counts Eight and Nine due to his  
25 acquittal of a RICO violation in the Northern District. The rule  
26 of collateral estoppel "is embodied in the Fifth Amendment  
27 guarantee against double jeopardy." Ashe v. Swenson, 397 U.S.  
28 436, 443 (1970). Establishing collateral estoppel analysis in

1 criminal cases require a three-step inquiry:

2 First, the issues in the two actions are identified so  
3 that we may determine whether they are sufficiently  
4 similar and material to justify invoking the doctrine.  
5 Second, we examine the first record to determine  
6 whether the issue was fully litigated. Finally, from  
7 our examination of the record, we ascertain whether the  
8 issue was necessarily decided.

9 United States v. Schwartz, 785 F.2d 673, 681 (9th Cir. 1986)  
10 (citing United States v. Hernandez, 572 F.2d 218, 220 (9th Cir.  
11 1978)). “[T]he criminal defendant claiming that collateral  
12 estoppel applies has the burden of proving what issues were  
13 decided in his favor at the prior trial. Since the doctrine of  
14 collateral estoppel applies only to matters actually litigated,  
15 it is imperative that the party claiming estoppel adequately show  
16 the controlling facts of the prior litigation.” United States v.  
17 Lasky, 600 F.2d 765, 769 (9th Cir. 1979).

18 Here, Le fails to carry his analytical burden at the  
19 very first step. Specifically, Le has failed to identify the  
20 issues litigated in the Northern District action that are  
21 allegedly identical to the issues raised in Counts Eight and  
22 Nine. Because Le has failed to identify any such issues, the  
23 court is also unable to determine whether those issues were fully  
24 litigated in the previous action, and whether those issues were  
25 decided in his favor. Accordingly, the court must deny Le’s  
26 motion to dismiss on the basis of collateral estoppel.

27 B. Due Process

28 1. “Unlawful Manipulation” of Charges

Le argues that his indictment should be dismissed on  
due process grounds because “the government has unlawfully  
manipulated the offenses to charge multiple indictments.”

1 According to Le, "rather than proceeding on one indictment in the  
2 Northern District of California, the government [has] broken up  
3 the conduct into separate conspiracies and charged these separate  
4 conspiracies in the Northern District of California, Eastern  
5 District of California, and Central District of California."  
6 Le also contends that the government should have "proceed[ed] on  
7 one indictment of conspiracy in the Northern District" so that Le  
8 need not go through a second trial and be "far from his family  
9 members who reside in San Francisco." The court is aware of no  
10 authority indicating that the Due Process Clause requires the  
11 United States Attorney in this district to refer alleged criminal  
12 violations committed within its boundaries to the United States  
13 Attorney in another district for prosecution as a single overall  
14 Hobbs Act conspiracy charge. This government is fully entitled  
15 to separately prosecute alleged criminal violations committed in  
16 different districts, even at the expense of separate indictments  
17 and separate trials. Accordingly, the court will deny this due  
18 process claim.

19           2.    Prejudicial Pre-Indictment Delay

20           Le also contends that his due process rights have been  
21 violated as a result of excessive pre-indictment delay. The Due  
22 Process Clause guarantees criminal defendants a right against  
23 oppressive and prejudicial pre-indictment delay. See United  
24 States v. Lovasco, 431 U.S. 783, 789-90 (1977). To show a due  
25 process violation resulting from pre-indictment delay, the  
26 defendant must satisfy a two prong test. Id. at 789. First, the  
27 defendant must have suffered actual, non-speculative prejudice  
28 from the delay. Id. Second, the pre-indictment delay, when

1 weighed against the government's reasons for it, must "offend[]  
2 those fundamental conceptions of justice which lie at the base of  
3 our civil and political institutions." Id.; United States v.  
4 Sherlock, 962 F.2d 1349, 1353 (9th Cir. 1989).

5 To establish prejudice, Le claims that 1) "his defense  
6 has been prejudiced by the fact that he suffered related felony  
7 convictions in the Northern District of California"; 2) "witness  
8 memories have faded making it exceedingly difficult to prepare a  
9 defense"; and 3) "delay has contributed to locating [sic]  
10 independent witnesses to the events in question." These  
11 generalities are insufficient to establish actual prejudice. See  
12 United States v. Moran, 759 F.2d 777, 782 (9th Cir. 1985) ("The  
13 defendant has a heavy burden to prove that a pre-indictment delay  
14 caused actual prejudice: the proof must be definite and not  
15 speculative, and the defendant must demonstrate how the loss of a  
16 witness and/or evidence is prejudicial to his case."). As to  
17 Le's first claim, Le does not explain specifically how the  
18 Northern District felony convictions will prejudice his defense.  
19 Nor can Le reasonably argue that the pre-indictment delay caused  
20 him to be convicted in another jurisdiction. As to Le's second  
21 and third claims, he fails to describe with specificity the  
22 identities of the alleged missing witnesses, the nature of the  
23 loss of memory of witnesses, and how this loss of evidence  
24 impacts his case. Without more, Le cannot establish that pre-  
25 indictment delay caused him to suffer actual, non-speculative  
26 prejudice.

27 Second, Le has not shown that the delay in this case  
28 offends "fundamental conceptions of justice" when weighed against

1 the government's reasons for the delay. Here, forty-four months  
2 passed between the commission of the last act charged in the  
3 indictment and the indictment. Le claims that the government had  
4 no justification for this delay other than to "gain a tactical  
5 advantage over the defendants." The government submits, however,  
6 that this delay was due to the government's need to conduct a  
7 thorough investigation in light of the number of defendants, the  
8 number of victims, the complexity of the alleged crimes, and the  
9 severity of the charges. Weighing the government's reasons  
10 against the length of this delay, the court concludes that this  
11 delay does not violate any "fundamental conceptions of justice."  
12 Accordingly, Le is unable to show a due process violation as a  
13 result of pre-indictment delay.

14 IT IS THEREFORE ORDERED that:

15 1. defendant Hoang Ai Le's motion to dismiss indictment  
16 based on double jeopardy be, and the same hereby is, DENIED.

17 2. defendant Le's motion to dismiss indictment based on  
18 violation of due process be, and the same hereby is, DENIED.<sup>3</sup>

19 DATED: February 13, 2003

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WILLIAM B. SHUBB  
21 UNITED STATES DISTRICT JUDGE  
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3 Accordingly, these motions are also denied as to co-  
28 defendant Luong.