

WILLIAM L. OSTERHOUDT, ESQ. (SBN043021)  
LAW OFFICES OF WILLIAM OSTERHOUDT  
135 Belvedere Street  
San Francisco, CA 94117  
Telephone: (415) 664-4600  
Facsimile: (415) 664-4691  
[Osterhoudt@aol.com](mailto:Osterhoudt@aol.com)

Attorney for Defendant,  
Bao Lu

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

	)	<b>No. CR 99-0433 WBS</b>
	)	
UNITED STATES OF AMERICA,	)	
	)	<b>MOTION TO CONTINUE</b>
Plaintiff,	)	<b>SENTENCING DATE; [PROPOSED]</b>
	)	<b>ORDER THEREON</b>
vs.	)	
	)	
BAO LU, et al.,	)	
	)	
Defendants.	)	
	)	

Defendant Bao Lu, by and through counsel of record, respectfully moves the Court for an Order continuing the date presently set for Mr. Lu's re-sentencing, December 17, 2007, to February 25, 2008.

The reasons for this continuance are that:

(1) Undersigned defense counsel for Mr. Lu did not represent the defendant at his trial or original sentencing, or on direct appeal from his conviction in this Court. Therefore, in view of the *Booker* remand requiring that Mr. Lu be resentenced, new counsel has had to familiarize himself with all of the proceedings leading up to sentencing, including the facts regarding the defendant's alleged participation in the underlying offense. While counsel has been diligent, he is new to the

1 sentencing issues, and requires additional time to fully and adequately present Mr. Lu's sentencing  
2 position to this Court.

3 (2) Undersigned counsel for Mr. Lu was only able to access the original presentence report  
4 today, December 7, 2007. Although counsel's substitution was filed on December 3, 2007, the  
5 probation office has declined to make the report available until today because the Court had not  
6 formally approved the substitution. It is essential that counsel have a full opportunity to review the  
7 report so that he can prepare for Mr. Lu's resentencing and make an effective presentation to the  
8 Court. This will require, at a minimum, that counsel meet with Mr. Lu, who is incarcerated at CSP-  
9 Solano – Vacaville. Such a meeting has been scheduled for December 11, 2007, and will likely  
10 result in counsel filing a sentencing memoranda in connection with Mr. Lu's resentencing.  
11

12 (3) Defendant Bao Lu has filed, through undersigned counsel, a motion to vacate his  
13 conviction and sentence pursuant to 28 U.S.C. §2255, and the Court has Ordered the parties to  
14 brief the issues raised therein. The government has been directed to respond to defendant's motion  
15 on or before January 25, 2008; and the defendant has been directed to file any reply by February  
16 15, 2008. Because the issues raised in the Section 2255 motion go directly to the validity of Mr.  
17 Lu's conviction and, assuming he was properly convicted, to the sentencing factors in his case, it  
18 would serve the interest of judicial economy to defer resentencing until the Section 2255 motion  
19 has been decided, or at least considered with appropriate input from the parties.  
20

21 (4) Mr. Lu is incarcerated, and will remain so during any period of continuance ordered by  
22 this Court.  
23

24 For these reasons, counsel for defendant Lu respectfully asks the Court to grant a  
25 continuance until February 25, 2008, to allow him enough time to adequately prepare for Mr. Lu's  
26 sentencing and to consult with his client.  
27  
28

Counsel for defendant Lu has attempted, unsuccessfully, to reach Assistant United States Attorney, William Wong, to ascertain his position in regard to this continuance. Counsel will continue to attempt to contact Mr. Wong for the purpose of entering a stipulation mutually agreeable to the parties, but in an abundance of caution hereby files the foregoing motion for continuance.

Respectfully submitted,

Dated: December 7, 2007

/s/ William L. Osterhoudt (signature on file)  
WILLIAM L. OSTERHOUDT  
Attorney for Bao Lu

**ORDER**

The motion is DENIED, without prejudice. Counsel shall appear with the defendant at the sentencing hearing on December 17, 2007.

DATED: December 12, 2007



WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE

**PROOF OF SERVICE**

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 135 Belvedere Street, San Francisco, California 94117.

On December 7, 2007, I caused to be served the foregoing **Stipulation and Proposed Order Continuing Sentencing Date; [Proposed] Order Thereon** on all interested parties in this action by causing same to be served by electronic transmission to the following:

William Sze Wong  
Assistant United States Attorney, Eastern District of California  
501 I Street, Suite 10-100  
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 7, 2007 in San Francisco, California.

/s/ Christopher Choy  
Christopher Choy