



**Civil No. 08-1488 (GAG)**

1 hence, Mr. Rivera-Rosa's claims should be dismissed. The defendant's argument rests on the Civil  
2 Asset Forfeiture Reform Act ("CAFRA"), 18 U.S.C. §§ 981 et seq., which provides a statute of  
3 limitations of five years. The United States contends that the present action was brought after the  
4 effective date of CAFRA (August 23, 2000) and that, therefore, the CAFRA statute should apply.  
5 Thus, given that the forfeiture took place in 1999 and this claim was brought eleven years later, the  
6 government contends that the claim falls outside the five-year statute of limitations. Mr. Rivera-  
7 Rosa, on the other hand, argues that CAFRA does not apply because this action is part of the 1999  
8 administrative forfeiture and, therefore, was not brought after the August 23, 2000 effectivity date  
9 of CAFRA. The plaintiff argues that this action is subject to a six-year statute of limitations under  
10 the old law. See 28 U.S.C. § 2401(a). Furthermore, he posits that the six-year statute of limitations  
11 should begin running in 2003 when he was sentenced in his related criminal case (Cr. No. 96-337).  
12 Accordingly, given that the instant action was brought only five years after he was sentenced, Mr.  
13 Rivera-Rosa submits that the statute of limitations has not expired.

14 The United States argues, alternatively, that the plaintiff had notice of the seizure because  
15 notice was sent to his home address and also published in May 14, 21, and 28, 1997. If the  
16 defendant's assertion that plaintiff had notice is correct, then, according to CAFRA, the plaintiff had  
17 until the date stated in the notice of seizure to file a claim.<sup>1</sup> 18 U.S.C. § 983(a)(2)(B). If the notice  
18 of seizure was not received, then the plaintiff had until no later than 30 days after the date of final  
19 publication of the notice to file a claim. Id. Since the pleadings do not mention whether the notice  
20 of seizure included a deadline, according to the statute, Mr. Rivera-Rosa would have had 30 days  
21 from the date of the final publication to file a claim. Id. Mr. Rivera-Rosa failed to bring a claim  
22 within this time frame. The United States argues, consequently, that it complied with due process  
23 because it notified Mr. Rivera-Rosa of the seizure and Mr. Rivera-Rosa failed to contest it. Mr.  
24 Rivera-Rosa replied stating that the United States knew he was in prison in the Dominican Republic

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26 <sup>1</sup> Such date could not have been earlier than 35 days after the date the notice of seizure was  
27 mailed.

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1 and did not make the appropriate arrangements to send him the notice of seizure there. Therefore,  
2 the plaintiff posits that he did not have either actual notice or constructive notice of the seizure and,  
3 thus, did not have the opportunity to dispute it. The plaintiff submits that this is a violation of his  
4 right to due process.

5 **II. Motion to Dismiss Standard**

6 Rule 12(b)(6) permits a party to move for dismissal for failure to state a claim upon which  
7 relief can be granted. Fed.R.Civ.P. 12(b)(6). When considering a motion to dismiss, the court must  
8 decide whether the complaint alleges enough facts to “raise a right to relief above the speculative  
9 level.” Bell Atl. Corp. v. Twombly, --- U.S. ----, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007).  
10 The court accepts as true all well-pleaded facts and draws all reasonable inferences in the non-  
11 moving party’s favor. Id.; Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008).

12 **III. Discussion**

13 Before the enactment of CAFRA, the statute of limitations for an action to recover forfeited  
14 property was six years. See 28 U.S.C. § 2401(a); see also Arevalo v. United States, 238 F.App’x  
15 869, 871 (3d Cir. 2007). After the enactment of CAFRA, the statute of limitations was changed to  
16 five years. 18 U.S.C. § 983(e)(3). CAFRA’s effectivity date was August 23, 2000. The parties to  
17 this action are in disagreement about which statute of limitations should apply. The United States  
18 argues that this action was filed after August 23, 2000 and, thus, CAFRA’s five-year statute of  
19 limitations should apply. Mr. Rivera-Rosa, on the other hand, argues that this action relates back  
20 to the forfeiture of his property that took place in 1999. Since the forfeiture took place before  
21 August 23, 2000, the plaintiff contends that the six-year statute of limitations should apply. Several  
22 Courts of Appeal have touched upon this issue. See, e.g., United States v. Real Property, Buildings,  
23 Appurtenances and Improvements at 221 Dana Avenue, Hyde Park, Massachusetts, 261 F.3d 65, 71  
24 (1st Cir. 2001); United States v. \$80,180.00, 303 F.3d 1182, 1186 (9th Cir. 2002); United States v.  
25 \$557,933.89, 287 F.3d 66, 76 (2d Cir. 2002); Arevalo, 238 F.App’x at 870. However, only the Third  
26 Circuit has discussed the issue squarely. Said Court, in the case of Arevalo v. United States, held



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1 of the seizure and had the opportunity to dispute it. In order to rule on these issues, they have to be  
2 further developed through discovery.

3 **IV. Conclusion**

4 For the abovementioned reasons, the court **DENIES** the defendant's motion to dismiss  
5 (Docket No. 13).

6 **SO ORDERED.**

7 In San Juan, Puerto Rico this 8th day of December 2008.

8 S/Gustavo A. Gelpí  
9 GUSTAVO A. GELPI  
10 United States District Judge  
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