

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA	§	
	§	
vs.	§	5:15cv735-XR
	§	JURY TRIAL DEMANDED
REAL PROPERTY KNOWN AS A SINGLE-	§	
FAMILY RESIDENCE LOCATED AND	§	
SITUATED AT 19211 GREY BLUFF COVE,	§	
SAN ANTONIO, BEXAR COUNTY, TEXAS	§	

CLAIMANT’S MOTION AND MEMORANDUM OF LAW TO DISMISS PLAINTIFF’S  
VERIFIED COMPLAINT FOR FORFEITURE FOR LACK OF JURISDICTION AND/OR FOR  
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

I. Introduction

The United States seeks to forfeit a single family residence located at 19211 Grey Bluff Cove, San Antonio, Bexar County, Texas. The basis of the forfeiture cannot be gleaned from the Complaint because the “facts in support of the forfeiture” are contained in a document “filed separately under seal as Exhibit A”. Therefore, Claimant is left to speculate on the purported grounds for forfeiture.<sup>1</sup> However, “googling” Claimant’s name reveals a newspaper article that presumably relates to the grounds for forfeiture. It states in pertinent part, “U.S. authorities are trying to seize a San Antonio home linked to former Mexican Governor Humberto Moreira as part of an investigation into millions of dollars that were reportedly stolen from the coffers of the border state of Coahuila. In a civil forfeiture filing this week, the U.S. Attorney’s office in San Antonio alleges that the home in the 19000 block of Grey Bluff Cove was acquired with laundered money. Tax rolls list Herminia L. Martinez DelaFuente as the owner of the \$602,000 home since 2009...Prosecutors sealed an affidavit citing more details of the allegedly illicit funds used to purchase the home, but in June, they made public a plea agreement of Mexican businessman Rolando Gonzalez Trevino that appears to link

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<sup>1</sup> Undersigned counsel requested a copy of “Appendix A” via a cover letter to Plaintiff’s counsel dated September 23, 2015. As of the filing of this motion, it has not been received.

Moreira to at least some of the stolen money...The plea agreement also revealed a years-long investigation into money stolen from Coahuila and laundered in the United States...It is estimated that the funds stolen from the State of Coahuila by (co-conspirator 1) approximates hundreds of millions of dollars the [plea agreement] states. Co-Conspirator 1, or CC1, is Moreira, according to sources.”

## II. Argument and Citation of Authority

Upon information and belief, the alleged “specified unlawful activity” occurred within the Republic of Mexico. Specifically, an allegation that Humberto Moreira, the former Governor of the Mexican State of Coahuila, stole/misappropriated millions of dollars from the State of Coahuila. Furthermore, upon information and belief, the Mexican government has conducted an investigation and has not substantiated that a crime was committed. Nevertheless, the United States government seeks to extend its reach into a foreign country, and determine money was in fact stolen/misappropriated, notwithstanding a contrary determination reached by the foreign government. Obviously, this raises serious questions regarding the extra-territorial jurisdiction of the United States.

The starting point for this analysis is *Morrison v. Nat’l. Australia Bank, Ltd.*, 561 U.S. 247 (2010). The issue before the Court was “whether § 10(b) of the Securities Act of 1934 provides a cause of action to foreign plaintiffs suing foreign and American defendants for misconduct in connection with securities traded on foreign exchanges.” 561 U.S. at 250. At trial, the “Respondents moved to dismiss for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6).” *Id.* at 252. Justice Scalia quoting prior Supreme Court precedent stated, “[i]t is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.” *Id.* at 255. “When a statute gives no clear indication of an extraterritorial

application, it has none.” *Id.* The Court determined, “There is no affirmative indication in the Exchange Act that § 10(b) applies extraterritorially, and we therefore conclude it does not.” The Court concluded, “[t]his case involves no securities listed on a domestic exchange, and all aspects of the purchase complained of by those petitioners have therefore failed to state a claim on which relief can be granted.” *Id.* at 273.

Thus, in the case presently before the Court, it is necessary to examine the statutes in question, 18 U.S.C. §§ 1956 and 1957, and determine whether they provide for extra-territorial jurisdiction. 18 U.S.C. § 1956 defines “knowingly” as that term is used in that section to mean “that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal or *foreign law...*”. (Emphasis added). Therefore, 18 U.S.C. § 1956 is not silent as to the issue of extra-territorial application. However, the statute is silent as to the ability of the United States to confer extra-territorial jurisdiction by determining a crime has occurred in a foreign country, when the foreign country has made a contrary determination. Therefore, extra-territorial jurisdiction should not be conferred.

Turning to 18 U.S.C. § 1957, the statute does not even purport to confer extra-territorial jurisdiction under the circumstances of this case. It states in pertinent part:

- (1) that the offense under this section takes place in the United States or in the special maritime or territorial jurisdiction of the United States; or
- (2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section.

The Claimant in this case is not a “United States person”, and therefore extra-territorial jurisdiction does not apply.

VII. Conclusion

Because Plaintiff's claims do not fall within the extra-territorial jurisdiction of the United States, Plaintiff has failed to state a claim on which relief can be granted. Therefore, Plaintiff's Verified Complaint for Forfeiture should be dismissed with prejudice.

Respectfully submitted,

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Attorney For Claimant

**CERTIFICATE OF SERVICE**

It is hereby certified that on this the 12<sup>th</sup> day of October, 2015 service of the foregoing Motion has been made electronically or by U.S. Mail to:

Ms. Mary Nelda G. Valadez  
Assistant United States Attorney  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216

/s/ Richard Kuniansky  
Richard Kuniansky

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ORDER ON CLAIMANT’S MOTION TO DISMISS FOR LACK OF JURISDICTION  
AND/OR FAILURE TO STATE A CLAIM

After considering Claimant’s Motion to Dismiss for Lack of Jurisdiction and/or Failure to Sate a Claim, the Court GRANTS the motion, and dismisses Plaintiff’s suit with prejudice.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE