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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

MARY JANE QUINATA CRUZ, as the
Administratrix for the Estate of Joseph
Anthony Quinata, also known as Joseph
"Sonny" Quinata,

Plaintiff,

vs.

ROMAN CATHOLIC ARCHBISHOP OF
AGANA, a Corporation Sole;
ANTHONY SABLAN APURON, an
individual; DOE ENTITIES 1-5; and DOE
INDIVIDUALS 6-50, inclusive,

Defendants.

CIVIL CASE NO. 17-00013

REPORT AND RECOMMENDATION

This matter is before the court on Defendant Archbishop Anthony Sablan Apuron's Motion to Dismiss the complaint filed against him by Plaintiff, Mary Jane Quinata Cruz, Administratrix of the Estate of Joseph Anthony Quinata. See ECF No. 19. The said motion was referred to the below-signed Magistrate Judge. See Order re Referral, ECF No. 32. In his motion, Defendant asks the court to dismiss the complaint on the basis that Plaintiff's claims are time-barred, were not revived by the passage of Guam Public Law 33-187, and even if revived by the said law, any retrospective application of the said statute is inorganic. Plaintiff filed her opposition to the motion on August 7, 2017. See ECF No. 53. Defendant filed his reply to the opposition on August 21, 2017. See ECF No. 58. The court heard oral arguments on the motion on August 29, 2017. See ECF No. 61. The court took the matter under advisement and now issues its Report and Recommendation.

1 **Background**

2 On February 1, 2017, Plaintiff filed this complaint on behalf of the decedent, Joseph
3 Anthony Quinata, against Defendant, alleging that Defendant sexually abused the decedent
4 during the 1970's when he was approximately eight or nine years of age while he was serving as
5 an altar boy for the Our Lady of Mt. Carmel Church Parish in Agat, Guam. Defendant was then
6 a priest at the Agat Parish. Decedent Joseph Anthony Quinata died in 2005.

7 Plaintiff further alleges that decedent in May 2005, while hospitalized and prior to a
8 surgery he was advised he may not survive, told his mother a secret that he had kept for decades,
9 specifically that Defendant had abused him while he was an altar boy at the Agat Parish.
10 Decedent did not survive the surgery. *See* ECF No. 1, Paragraph 13.

11 On February 8, 2017, Defendant, through his attorney, filed and entered his appearance
12 in this action and requested service of all pleadings filed herein. *See* ECF No. 8.

13 On April 4, 2017, Defendant moved to dismiss Plaintiff's complaint. *See* ECF No. 19.

14 In his motion, Defendant advances two arguments for dismissal:

15 1. Public Law 33-187 restricted the filing of clergy abuse cases only to those cases
16 which were barred by the previous statute of limitations (Pub. L. 31-07). Plaintiff's action is not
17 barred by the previous statute of limitations but by one prior thereto. Thus, Plaintiff's action is
18 time-barred.

19 2. Assuming that Plaintiff's action is not barred, Pub. L. 33-187 infringes upon
20 Defendant's vested rights and due process guarantees afforded by the Organic Act of Guam.

21 **Discussion**

22 In determining whether Plaintiff's action was revived by Pub. L. 33-187 and how the
23 aforesaid public law has affected the statute of limitations for civil child sexual abuse claims, ,
24 the court finds it important to review prior enactments of the legislature relative to the statute of
25 limitations.

26 a. Before 2011

27 In 1953, Guam's Code of Civil Procedure provided that actions for ". . . assault, battery,
28 false imprisonment, seduction, or for injury to or for the death of one caused by the wrongful act

1 [or] neglect of another” must be commenced within one year. Guam Code Civ. P. § 340(3)
2 (1953). However, if a person entitled to bring an action was a minor at the time the cause of
3 action accrued, “[t]he time of such disability [was] not a part of the time limited for the
4 commencement of the action.” Guan Code Civ. P. § 352(1) (1953).¹

5 In 1980, Pub. L. 15-106 was enacted to amend Guam’s Code of Civil Procedure with
6 regard to the time for commencing actions. This law extended the statute of limitation to two
7 years for any “action for assault, battery, false imprisonment, seduction of a person below the
8 age of legal consent, or for injury to, or for the death of, a person caused by the wrongful act or
9 neglect of another except as provided for in Section 349.”² Pub. L. 15-106 at §5 (1980).

10 In 1977, the Guam Legislature created the “Compiler of Laws” office and tasked said
11 office with the responsibility to “cause to be published, a complete revision of the Codes of
12 Guam[.]” Pub. L. 14-93 at § 2 (1977). Subsequently enacted legislation authorized the
13 Compiler of Laws to “[n]umber and renumber chapters, sections and parts of sections” and to
14 “[r]earrange sections so that they fit harmoniously within the publication being prepared[.]” 1
15 Guam Code Ann. § 1605(a) and (b) (as enacted by Pub. L. 17-6 at § 9 (1983). Accordingly, the
16 provisions of the prior Guam Code of Civil Procedure relating to the time for commencing
17 actions was moved to Chapter 11 of Title 7, Guam Code Annotated.

18 b. 2011 Enactment

19 In 2011, the statute of limitation was again modified with the passage of Pub. L. 31-07.
20 The legislative findings and intent provided as follows:

21 *I Liheslaturan Guahan* finds that child sexual abuse survivors often are disabled
22 from revealing abuse at the time they suffer it and for many years thereafter. For
23 some, the abuser was a parent, stepparent, or relative, a member of the clergy, a
24 teacher or other trusted adult. Some victims blame themselves and fear retribution
if the abuse is revealed. For many, the trauma itself prevents them from coming
forward earlier. As adults, victims may not connect the assault to its long-lasting
impact until they seek therapeutic help years later. Many of the injuries associated

25
26 ¹ The language of Guam Code of Civ. P. §352 is still maintained today and is codified at
27 Guam Code Ann. § 11404 (2017).

28 ² Section 349 dealt with actions to recover damages for injuries arising from any medical,
surgical or dental treatment, omission or operation.

1 with childhood sexual abuse do not manifest themselves until much later in life. The
2 expiration of applicable statute of limitations during this period had the effect of
3 barring many meritorious claims. This has allowed many child sexual abusers to
4 escape civil liability. If evidence is sufficient to prove civil liability, the mere
5 passage of time should not foreclose child sexual abuse survivors from seeking
6 justice. Therefore, *I Liheslatura* finds that justice for child sexual abuse survivors
7 may be achieved by reviving the statute of limitations for civil actions for past child
8 sexual abuse for a two (2) year period.

9 Pub. L. 31-07 at § 1 (2011).

10 The new law amended then Section 11306 of Title 7, Guam Code Annotated. Pertinent
11 to the issues herein are the first two paragraphs of this section, which read:

12 **§ 11306. Within Two Years.**

13 (1) An action for assault, battery, false imprisonment, seduction of a person below
14 the age of legal consent, or for injury to, or for the death of a person caused by the
15 wrongful act or neglect of another, *except* as provided for in § 11308.³

16 (2) Notwithstanding the provision of Subsection (1) of this Section, for a period of
17 two (2) years following the effective date of this Act, victims of child sexual abuse
18 that occurred on Guam who have been barred from filing suit against their abuser
19 by virtue of the expiration of the civil statute of limitations *shall* be permitted to file
20 those claims in the Guam Superior Court.

21 Pub. L. 31-07 at §2⁴ (2011) (emphasis in original).⁵

22 c. 2016 Enactment of Pub. L. 33-187

23 On September 23, 2016, Pub. L. 33-187 was enacted into law. Section 1 of the new law
24 set forth Legislative Findings and Intent in which the 33rd Guam Legislature “wholeheartedly
25 adopt[ed] and republishe[d]” its prior findings as set forth in Pub. L. 31-07. Additionally, the
26 findings stated the following:

27 ³ Section 11308 dealt with the statute of limitations to recover damages for injuries
28 arising from “any medical, surgical or dental treatment, omissions or operation.”

29 ⁴ There was a third subsection added which permitted an individual against whom a suit
30 was brought to recover attorney’s fees and damages if the court determined that a false
31 accusation was made with no basis in fact and with malicious intent. As codified, the Compiler
32 of Laws changed subsections (1) through (3) of the new law to subsections (a) through (c) in
33 order to maintain the general codification scheme of the Guam Code Annotated.

34 ⁵ This public law also imposed certain barriers to suit by requiring would-be plaintiffs to
35 obtain “certificates of merit” regarding their sexual abuse allegations from mental health
36 professionals.” *See* 7 Guam Code Ann. § 11306.1.

1 *I Liheslaturan Guahan* further finds that while the noble intent of Public
2 Law 31-07 was to encourage child sexual abuse survivors to come forward and
3 bring their victimizers to account, provisions in § 11306.1 of Article 3, Chapter 11,
4 Title 7, 21 Guam Code Annotated, served to discourage counsel from undertaking
5 the representation of child sexual abuse survivors, an unintended consequence of
6 Public Law 31-07. The chilling effect of the provisions in Public Law 31-07 was
7 apparently sufficient to dissuade counsel from bringing actions for child sexual
8 abuse no matter how meritorious the claim.

9 It is, therefore, the intent of *I Liheslaturan Guahan* to make it possible for
10 those child sexual abuse survivors to seek justice against their victimizers. Further,
11 it is the intent of *I Liheslaturan Guahan* to remove the current section requiring
12 Certificates of Merit as such information would have a chilling effect on those
13 sexual abuse survivors who choose to seek justice against their victimizers.

14 Pub. L. 33-187 at §1 (2016).

15 The new law repealed subsections (b) and (c) of 7 Guam Code. Ann § 11306 and further
16 repealed 7 Guam Code Ann. § 11306.1. Pub. L. 33-187 at §§ 3-4 (2016). Relevant to the
17 discussions before the court is a new Section 11301.1 added to Article 3 of Chapter 11, Title 7,
18 Guam Code Annotated, which reads in its entirety:

19 **§ 11301.1. No Limit for Child Sexual Abuse**

20 (a) Any claim arising from an incident of child sexual abuse may be commenced
21 against a person, a legal entity, abusers, their enablers, their aiders or abettors, those
22 acting in concert with them and their institutions at any time.

23 (b) Any claim arising from an incident of child sexual abuse that occurred on Guam
24 which has been barred by virtue of the expiration of the previous civil statute of
25 limitations *shall* be permitted to be filed in any court of competent jurisdiction.

26 Pub. L. 33-187 at §2 (2016) (emphasis in original).

27 d. Whether Plaintiff's Cause of Action is Time-Barred

28 In determining whether Plaintiff's action is time-barred, the court must first ask whether
Pub. L. 33-187 has retroactive application?

 In *Landgraf v. Usi Film Products*, 114 S. Ct. 1483 (1994), the U.S. Supreme Court
discussed when a statute has retroactive application.

 While statutory retroactivity has long been disfavored, deciding when a statute
operates "retroactively" is not always a simple or mechanical task. Sitting on Circuit,
Justice Story offered an influential definition in *Society for Propagation of the Gospel v.*
Wheeler, 22 F.Cas. 756 (No. 13,156) (CCNH 1814), a case construing a provision of the
New Hampshire Constitution that broadly prohibits "retrospective" laws both criminal
and civil. Justice Story first rejected the notion that the provision bars only explicitly
retroactive legislation, i.e., "statutes ... enacted to take effect from a time anterior to their
passage." *Id.*, at 767. Such a construction, he concluded, would be "utterly subversive of

1 all the objects” of the prohibition. Ibid. Instead, the ban on retrospective legislation
2 embraced “all statutes, which, though operating only from their passage, affect vested
rights and past transactions.” Ibid. “Upon principle,” Justice Story elaborated,

3 “every statute, which takes away or impairs vested rights acquired under existing
4 laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in
5 respect to transactions or considerations already past, must be deemed
retrospective....” Ibid. (citing *Calder v. Bull*, 3 Dall. 386, 1 L.Ed. 648 (1798), and
Dash v. Van Kleeck, 7 Johns. *477 (N.Y.1811)).

6 A statute does not operate “retrospectively” merely because it is applied in a case
7 arising from conduct antedating the statute’s enactment, see *Republic Nat. Bank of*
Miami v. United States, 506 U.S. 80, 100, 113 S.Ct. 554, 565–566, 121 L.Ed.2d 474
8 (1992) (THOMAS, J., concurring in part and concurring in judgment), or upsets
9 expectations based in prior law. Rather, the court must ask whether the new provision
10 attaches new legal consequences to events completed before its enactment. The
11 conclusion that a particular rule operates “retroactively” comes at the end of a process of
12 judgment concerning the nature and extent of the change in the law and the degree of
13 connection between the operation of the new rule and a relevant past event. Any test of
14 retroactivity will leave room for disagreement in hard cases, and is unlikely to classify
the enormous variety of legal changes with perfect philosophical clarity. However,
retroactivity is a matter on which judges tend to have “sound ... instinct[s],” see
Danforth v. Groton Water Co., 178 Mass. 472, 476, 59 N.E. 1033, 1034 (1901)
(Holmes, J.), and familiar considerations of fair notice, reasonable reliance, and settled
expectations offer sound guidance.
Landgraf, at pp. 1498-1499.

15 Defendant first asserts that “Guam statutes are presumed to have only prospective effect,
16 ‘unless it is made expressly retroactive or is retroactive by virtue that it is necessarily implied
17 that the Legislature intended for the statute to operate as such.’” Mot. Dismiss at 3, ECF No. 19
18 (quoting *People of Guam v. Camacho*, 2013 Guam 3, ¶10 (Guam 2013)). Under Guam law,
19 “[n]o part of the [Guam] Code is retroactive, unless expressly so declared.” 1 Guam Code
20 Ann. § 702.

21 With this starting point, Defendant then argues that under the new Section 11301.1
22 created by Pub. L. 33-187, not all causes of action that were previously time-barred were
23 revived by the new law. Rather, Defendant contends that the retrospective application of
24 subsection (b) of Section 11301.1 is limited to those actions that were time-barred by Pub. L.
25 31-07 (2011) since that is the “previous civil statute of limitations” referenced in Section
26 11301.1. Defendant asserts that “the plain language of the statute would result in a prospective
27 lifting of all civil statutes of limitations [for actions involving child sexual abuse], and a limited
28 retrospective lift from 2011 and forward.” Mot. Dismiss at 7, ECF No. 19.

1 Applying Defendant’s interpretation of the statute to this case, Defendant contends that
2 the decedent had until 1992 to bring an action against his abuser under the two-year statute of
3 limitation created by Pub. L. 15-106 (1980). No such action was filed. Then, in 2011,
4 decedent’s estate was given another opportunity to bring suit by March 9, 2013, pursuant to Pub.
5 L. 31-07 (2011), but no such suit was brought. After the passage of Pub. L. 33-187, Plaintiff
6 filed the instant action, but Defendant argues that a plain reading of the statute does not revive
7 this cause of action because Plaintiff’s cause of action on behalf of the decedent was not time-
8 barred as a result of Pub. L. 31-07 – the “previous civil statute of limitations” – but instead was
9 time-barred based on Pub. L. 15-106 (1980).

10 While Defendant focuses on the phrase “previous civil statute of limitations” in Section
11 11301.1(b), the Plaintiff, on the other hand, focuses on the words “at any time” set forth in
12 subsection (a). The Plaintiff argues that the new law is ambiguous and asserts that “[b]y
13 containing the term ‘at any time,’ the statute contains an express retroactivity provision, thereby
14 making it unnecessary to look beyond its face to address the secondary issue of legislative
15 intent.” Opp’n at 5, ECF No. 53. Furthermore, the Plaintiff contends that

16 the enactment of section 11301.1 in September 2016 re-activated all time-barred
17 actions for child sex abuse, regardless of age, due to the fact that it re-activated all
18 lawsuits time-barred by the “previous civil statute of limitations,” that is
19 section 11306, which in turn had already re-activated all previously time-barred
20 actions when it came into effect in 2011.

21 Opp’n at 6, ECF No. 53.

22 It is a “fundamental canon of statutory construction that the words of a statute must be
23 read in their context and with a view to their place in the overall statutory scheme.” *Davis v.*
24 *Michigan Dept. Of Treasury*, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989). A
25 court must therefore interpret the statute “as a symmetrical and coherent regulatory scheme,”
26 *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569, 115 S. Ct. 1061, 131 L. Ed. 2d 1, (1995), and “fit,
27 if possible, all parts into ma harmonious whole,” *FTC v. Mandel Brothers, Inc.*, 359 U.S. 385,
28 389, 79 S. Ct. 818, 3 L. Ed. 2d 893 (1959).

29 Having reviewed the current statute of limitations statute, the court concurs with
30 Plaintiff’s interpretation of the statute. Section 11301.1(b)’s reference to the “previous civil

1 statute of limitations” pertains to the statute of limitation set forth in now repealed Section
2 11306, enacted by Pub. L. 31-07(2011). Section 11306(b) revived the Plaintiff’s then time-
3 barred actions and required that any action that he wished to bring now be brought no later than
4 March 2013. With the passage of new Section 11301.1(b), the Plaintiff’s claims which were
5 barred if not brought before March 2013, were revived again by the new law. Such an
6 interpretation of the statute is supported by the Legislature’s findings and intent, particularly its
7 statement that “the mere passage of time should not foreclose child sexual abuse survivors from
8 seeking justice.” Pub. L. 33-187 at §1 (2016). The Legislature found that the prior provisions
9 in § 11306.1 “served to discourage abuse survivors,” and the “chilling effect of the provisions in
10 Public law 31-07 was apparently sufficient to dissuade counsel from bringing actions for child
11 sexual abuse no matter how meritorious the claim.” *Id.* Accordingly, by passing the new law,
12 the Legislature intended “to make it possible for those child sexual abuse survivors to seek
13 justice against their victimizers.” *Id.*

14 Plaintiff alleges that decedent was sexually molested by Defendant at the age of
15 approximately eight or nine when he was then an altar boy at Our Lady of Mount Carmel Parish
16 in Agat, Guam. For argument purposes, the court assumes (based upon the allegations in the
17 complaint) that decedent was abused in the year 1979. If he was eight years old then, the statute
18 of limitations contained in the Code of Civil Procedure would have started running against him
19 in 1989. Thus, applying the two-year statute of limitations, decedent had until 1991 to file an
20 action against Defendant under the then two-year statute of limitations contained in the Code of
21 Civil Procedure. Decedent failed to do so and was thus time-barred from filing any type of
22 action against Defendant.

23 In 2011, the statute of limitations was amended and it gave decedent’s estate another
24 opportunity to file decedent’s sexual abuse action against Defendant. Thus, for a period of two
25 (2) years following the effective date of the Act in 2011, decedent’s prior abuse case against
26 Defendant which had previously been barred by the Code of Civil Procedure could have been
27 filed in the Superior Court of Guam. Decedent’s estate, however, did not file any action against
28 Defendant by 2015. Thus, decedent’s estate would have been barred by the provisions of the

1 2011 statute from subsequently filing any child sexual abuse claim against Defendant because
2 decedent's estate had been given an additional two-year window to file decedent's claim and
3 decedent's estate failed to do so.

4 Finally, in 2016, the statute of limitations was further amended. Under the 2016
5 amendment, any claim arising from an incident of child sexual abuse that occurred on Guam
6 which had been barred by virtue of the expiration of the previous civil statute of limitations
7 could again be filed in the Superior Court of Guam. Plaintiff timely filed her current claim on
8 behalf of the decedent under the 2016 amendment since that amendment imposed no time limit
9 for filing a child sexual abuse claim.

10 It is clear that P.L. 33-187 imposes a new duty, or attaches a new disability, in respect to
11 transactions or considerations already past. The statute must be deemed retrospective.

12 It is also clear that the new provision attaches new legal consequences to events
13 completed before its enactment. The statute revives a claim that previously been barred by a
14 prior civil statute of limitations. Thus, the conclusion is inescapable that the above statute
15 operates "retroactively."

16 Because, the statute operates retroactively, the court must find that Plaintiff's claims are
17 not time-barred herein.

18 **2. Whether Pub. L. 33-187 is Unconstitutional and Inorganic**

19 Defendant's second argument is that Pub. L. 33-187 infringes upon his vested rights and
20 due process guarantees afforded by the Organic Act of Guam. Defendant asserts that he has a
21 vested interest in the protections offered by the former statutes of limitation, and the passage of
22 Pub. L. 33-187 impairs this vested right and caused him to suffer significant hardships.

23 As Defendant notes, the Fourteenth Amendment is made applicable to Guam through the
24 Organic Act of Guam. *See* 48 U.S.C. § 1421(e)⁶ and (u).⁷

25
26 ⁶ "No person shall be deprived of life, liberty, or property without due process of law."
27 48 U.S.C. § 1421(e).

28 ⁷ Section 1421(u) extends "the second sentence of section 1 of the [F]ourteenth
[A]mendment" "to Guam to the extent that [it has] not been previously extended to the territory
and shall have the same force and effect there as in the United States[.]" 48 U.S.C. § 1421(u).

1 Defendant appears to assert that the Pub. L. 33-187, as applied to him,⁸ is
2 unconstitutional and inorganic. Specifically, Defendant asserts that he is now of advanced age
3 and “does not have the benefit of a memory to recall specific facts from forty (40) years ago,”
4 nor does he “have the benefit of a memory to recall potential witnesses” nor the “ability to
5 locate potential witnesses due to the passage of time.” Mot. Dismiss at 8-9, ECF No. 19. He
6 further claims that because the alleged sexual assaults occurred over 40 years ago, he does not
7 have the benefit of witnesses who were present during the time frame of the alleged acts since
8 such witnesses are either deceased or incompetent due to advanced age, nor does he have access
9

10 The second sentence of section 1 of the Fourteenth Amendment provides: “No state shall make
11 or enforce any law which shall abridge the privileges or immunities of citizens of the United
12 States; nor shall any state deprive any person of life, liberty, or property, without due process of
13 law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S.
14 CONST., amend. XIV, §1.

14 ⁸ Defendant’s filings are somewhat unclear as to whether he is bringing a facial or an “as
15 applied” challenge to the statute in question.

16 As a general matter, a facial challenge is a challenge to an entire legislative
17 enactment or provision. See *Foti [v. City of Menlo Park]*, 146 F.3d [629], 635
18 [(9th Cir. 1998)] (explaining that a statute is facially unconstitutional if “it is
19 unconstitutional in every conceivable application, or it seeks to prohibit such a
20 broad range of protected conduct that it is unconstitutionally overbroad”) (internal
21 quotation marks omitted). If it does not charge statutory overbreadth, “a facial
22 challenge must fail where the statute has a plainly legitimate sweep.” *Wash. State
23 Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 . . . (2008) (quotation
24 omitted). A paradigmatic as-applied attack, by contrast, challenges only one of
25 the rules in a statute, a subset of the statute’s applications, or the application of the
26 statute to a specific factual circumstance, under the assumption that a court can
27 “separate valid from invalid subrules or applications.” Richard H. Fallon, Jr.,
28 *As–Applied and Facial Challenges and Third–Party Standing*, 113 Harv. L.Rev.
1321, 1334 (2000); see *Legal Aid Serv. of Oregon v. Legal Services Corp.*, 608
F.3d 1084, 1096 (9th Cir.2010) (“Facial and as-applied challenges differ in the
extent to which the invalidity of a statute need be demonstrated.” (quotation
omitted) (emphasis in original)). Because the difference between an as-applied
and a facial challenge lies only in whether all or only some of the statute’s
subrules (or fact-specific applications) are being challenged, the substantive legal
tests used in the two challenges are “invariant.” *Id.* (quotation omitted).

Hoye v. City of Oakland, 653 F.3d 835, 857 (9th Cir. 2011).

1 to any records dating back over 40 years. *Id.* at 9.

2 While the law has made it difficult for Defendant to defend against the allegations levied
3 against him, the alleged oppressive effects of the duly enacted law fall far short of establishing
4 that the law is unconstitutional as applied to him.

5 With regard to Defendant's contention that the new law somehow deprives him of a
6 vested right, cases from the Supreme Court and the Ninth Circuit hold to the contrary. In *Chase*
7 *Securities Corp. v. Donaldson*, the Supreme Court stated:

8 In *Campbell v. Holt*, . . ., this Court held that where lapse of time has not invested
9 a party with title to real or personal property, a state legislature, consistently with the
10 Fourteenth Amendment, may repeal or extend a statute of limitations, even after
11 right of action is barred thereby, restore to the plaintiff his remedy, and divest the
12 defendant of the statutory bar. This has long stood as a statement of the law of the
13 Fourteenth Amendment[.]

14 325 U.S. 304, 312 (1945).

15 Similarly, the Ninth Circuit stated that

16 *Campbell* applies only when the property at issue had vested and had become the
17 defendant's. . . . Accordingly, we have explained that "[w]here a lapse of time has
18 not invested a party with title to real or personal property, a state legislature may
19 extend a lapsed statute of limitations without violating the fourteenth amendment,
20 regardless of whether the effect is seen as creating or reviving a barred claim."

21 *Cassirer v. Thyssen-Bornemisza Collection Found.*, 737 F.3d 613, 619-20 (9th Cir. 2013)
22 (alteration in original) (quoting *Starks v. S.E. Rykoff Co.*, 673 F.2d 1106, 1109 (9th Cir.1982)).

23 The instant case is not about the statute somehow taking or depriving Defendant of a
24 vested right to real or personal property. Instead, "[t]he only thing that has been taken away
25 from him by [Section 11301.1] is his immunity from lawsuits for alleged child sex abuse." *Roe*
26 *v. Ram*, No. 14-00027 LEK-RLP, 2014 WL 4276647, *6 (D. Haw. Aug. 29, 2014). Defendant's
27 immunity was created by the Guam Legislature, and it is the Guam Legislature who took away
28 his immunity from suit by the passage of Pub. L. 33-187. The *Chase* case has determined that
this does not offend an individual's due process rights:

Statutes of limitations always have vexed the philosophical mind for it is
difficult to fit them into a completely logical and symmetrical system of law. There
has been controversy as to their effect. Some are of opinion that like the analogous
civil law doctrine of prescription¹¹ limitations statutes should be viewed as
extinguishing the claim and destroying the right itself. Admittedly it is troublesome
to sustain as a "right" a claim that can find no remedy for its invasion. On the other

1 hand, some common-law courts have regarded true statutes of limitation as doing no
2 more than to cut off resort to the courts for enforcement of a claim. We do not need to
settle these arguments.

3 Statutes of limitation find their justification in necessity and convenience
4 rather than in logic. They represent expedients, rather than principles. They are practical
5 and pragmatic devices to spare the courts from litigation of stale claims, and the citizen
6 from being put to his defense after memories have faded, witnesses have died or
7 disappeared, and evidence has been lost. . . . They are by definition arbitrary, and their
8 operation does not discriminate between the just and the unjust claim, or the voidable and
9 unavoidable delay. They have come into the law not through the judicial process but
through legislation. **They represent a public policy about the privilege to litigate.** Their
shelter has never been regarded as what now is called a “fundamental” right or what used
to be called a “natural” right of the individual. **[A person] may, of course, have the
protection of the policy while it exists, but the history of pleas of limitation shows them
to be good only by legislative grace and to be subject to a relatively large degree of
legislative control.**

10 This Court, in *Campbell v. Holt*, adopted as a working hypothesis, as a
11 matter of constitutional law, the view that statutes of limitation go to matters of
remedy, not to destruction of fundamental rights.

12 *Chase*, 325 U.S. at 314 (footnotes and internal citation omitted) (emphasis added).

13 The Court went on to state:

14 The essential holding in *Campbell v. Holt*, so far as it applies to this case, is sound
15 and should not be overruled. **The Fourteenth Amendment does not make an act
of state legislation void merely because it has some retrospective operation.
What it does forbid is taking of life, liberty or property without due process of
16 law.** Some rules of law probably could not be changed retroactively without
17 hardship and oppression, and this whether wise or unwise in their origin. Assuming
18 that statutes of limitation like other types of legislation could be so manipulated that
their retroactive effects would offend the Constitution, certainly it cannot be said
19 that lifting the bar of a statute of limitation so as to restore a remedy lost through
mere lapse of time is per se an offense against the Fourteenth Amendment. . . .
20 **Whatever grievance appellant may have at the change of policy to its
disadvantage, it had acquired no immunity from this suit that has become a
federal constitutional right.**

21 *Id.* at 315-16 (emphasis added).

22 The *Chase* opinion did note, however, that where the extension or lifting of a statute of
23 limitation creates “special hardships or oppressive effects” on an individual who had come to
24 rely on the original statute of limitations in creating a course of conduct, then said statute may
25 be unconstitutional. *Id.* at 316. Thus, “the Supreme Court left open the possibility that, in
26 certain circumstances, a party might successfully argue that its detrimental reliance on a statute
27 of limitations could . . . created a vested interest.” *Ram*, 2014 WL 4276647, *8. But
28 Defendant’s showing is insufficient. Defendant has not explained how he relied on the shorter

1 statute of limitation to his detriment or how, in the years since 1985, he based his conduct on a
2 short statute of limitation. Accordingly, the court must deny Defendant's motion which
3 challenges the constitutionality of Pub. L. 33-187.

4 The court does note that in his memorandum, Defendant points out that the majority of
5 American jurisdictions reject legislative revival of time-barred claims finding that a defendant
6 has a vested right to rely on a statute of limitations as a defense.

7 Indeed, the Supreme Court of Connecticut in *Doe v. Hartford Roman Catholic Diocesan*
8 *Corporation*, 119 A. 3d 520 (2015), hereinafter referred to as the *Hartford* court, conducted a
9 review of the states which have considered the question whether an extended statute of
10 limitations can be applied retroactively. In its review of those states that have considered the
11 issue, the *Hartford* court determined that 18 states follow the federal approach and allow the
12 retroactive expansion of the statute of limitations to revive otherwise time-barred claims without
13 limitation.

14 The *Hartford* court also found that 24 states support the position that retroactive
15 legislation that amends a statute of limitations that revives a time-barred claim was per se
16 invalid. These courts generally hold that a defense of the statute of limitations is a vested right.

17 Defendant argues that because the Organic Act of Guam forbids deprivation of life,
18 liberty, and property, the court should adopt the majority view.

19 Furthermore, Defendant asks the court not to adopt Plaintiff's minority view position,
20 arguing that the Guam Supreme Court has not adopted the views advocated by Plaintiff.
21 Defendant argues that the Guam Supreme Court has rather "advocated the imposition of statute
22 of limitations as protecting the fundamental rights of due process for its citizens," citing *Taitano*
23 *v. Calvo Finance Corp.*, 2008 Guam 12.

24 The *Hartford* case determined that several states adhere to the majority view because
25 their state constitutions have provisions that prohibit retroactive legislation. Other states have
26 rejected the U.S. Supreme Court's view and hold that an attempt to revive an otherwise time-
27 barred action is a violation of a vested property right and amounts to a violation of their state's
28 due process laws.

1 Guam, however, does not have an independent constitution. Guam's constitution is the
2 Organic Act of Guam, a congressional statute. Guam's due process rights are imbedded in the
3 provisions of the U.S. Constitution that have been made applicable to Guam. As the court has
4 noted above, Section 1421(u) of the Organic Act of Guam extends the second sentence of
5 section 1 of the Fourteenth Amendment of the U.S. Constitution to Guam if it has not been
6 previously extended and it shall have the same force and effect in Guam as in the United States.
7 48 U.S.C. § 1421(u).

8 It is further clear that under the U. S. Supreme Court's approach, the retroactive
9 expansion of the statute of limitations to revive otherwise time-barred claims without limitation
10 is not invalid per se and allows such retroactivity. Thus, there is no violation of the
11 Constitution's due process clause of the Fourteenth Amendment.

12 Despite Defendant's arguments, this court is bound to follow the U.S. Supreme Court's
13 approach because the due process clause of the Fourteenth Amendment has the same force and
14 effect in Guam as in the United States. Guam cannot independently adopt an interpretation of
15 the due process clause that is contrary to or inconsistent with the U.S. Supreme Court's
16 interpretation of the said clause. Thus, this court cannot adopt the majority view of the states
17 within the United States which have considered this issue.

18 Furthermore, the Ninth Circuit Court of Appeals in *Guam v. Guerrero*, 290 F. 3d 210
19 (9th Cir. 2012) held that the Supreme Court of Guam lacked authority to interpret the free
20 exercise clause in Guam's Organic Act's Bill of Rights as conferring greater religious freedom
21 than that provided by the First Amendment since the Bill of Rights were federal statutes that
22 were subject to final interpretation by the United States Supreme Court.

23 Based upon *Guam v. Guerrero*, supra, the Guam Supreme Court lacks the authority to
24 confer a greater due process right to Defendant which would be consistent with the majority
25 view as advocated by Defendant.

26 Finally, the court notes that Defendant places weight on the fact that the Guam
27 Legislature has twice amended the statute of limitations for child sexual abuse and twice has
28 given such amendment a retroactive application. The court finds that the due process clause of

1 the Fourteenth amendment does not limit the number of times the Guam Legislature can amend
2 a civil statute of limitations and provide it retroactive effect. Rather, the only limitation
3 imposed upon the Guam Legislature is that its retroactive legislation not deprive a person of a
4 vested right to real or personal property.

5 **CONCLUSION**

6 Based upon the analysis set forth above and for the reasons stated therein, the court
7 hereby recommends that the Chief Judge of the District Court of Guam deny Defendant
8 Apuron’s motion to dismiss the complaint filed by Plaintiff Mary Jane Quinata Cruz,
9 Administratrix for the Estate of Joseph Anthony Quinata, for the following reasons:

10 1. Pub. L. 33-187 revived Plaintiff’s claim against Defendant which was barred by the
11 previous statute of limitations (Pub. L. 31-07). Because of the statute’s retroactive operation,
12 Plaintiff’s current claim is not time-barred.

13 2. The retroactive application of Pub. L. 33-187 does not infringe upon Defendant’s
14 vested rights and due process guarantees afforded by the Organic Act of Guam. Pub. L. 33-187
15 is not a statute that takes or deprives Defendant of a vested right to real or personal property.
16 Rather, the statute has taken away from Defendant by [Section 11301.1] his immunity from a
17 lawsuit for an alleged child sex abuse.

18 IT IS SO RECOMMENDED.



/s/ **Joaquin V.E. Manibusan, Jr.**
U.S. Magistrate Judge
Dated: Sep 27, 2017

24 **NOTICE**

25 **Failure to file written objections to this Report and Recommendation within**
26 **fourteen (14) days from the date of its service shall bar an aggrieved party**
27 **from attacking such Report and Recommendation before the assigned**
28 **United States District Judge. 28 U.S.C. § 636(b)(1)(B).**