

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 2:06-cv-671-FtM-29SPC

ONE 2004 26' ANGLER VESSEL; ONE 2005  
26' ANGLER VESSEL; ONE 2004 FORD  
F250; ONE 2005 FLOAT-ON DUEL AXLE  
TRAILER,

Defendants.

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**OPINION AND ORDER OF FORFEITURE**

\_\_\_\_\_ This matter comes before the Court on the government's Motion for Default Against Eduardo Balbosa-Mendilusa and Order of Forfeiture (Doc. #56), filed on December 6, 2007. No response has been filed, and the time to do so has now expired.

The Complaint for Forfeiture *In Rem* (Doc. #1) seeks to forfeit properties used to facilitate the smuggling of aliens into the United States of America by Noel Lopez and Juan Gonzalez-Hernandez. The properties include a 2004 angler vessel<sup>1</sup>, a 2005 angler vessel, a Ford truck, and a trailer. On August 6, 2007, the Court entered an Opinion and Order of Forfeiture (Doc. #42) as to the 2004 Angler

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<sup>1</sup>The Preliminary Orders of Forfeiture (Docs. #102, #103) entered in the criminal case, Case Number 2:06-cr-98-FTM-29SPC, became final upon the entry of the Judgments in a Criminal Case thereby forfeiting any interest of the defendants in the 2004 angler vessel.

vessel. In the current motion the government seeks forfeiture of funds in lieu of the 2004 Ford F-250 (hereinafter vehicle).

The 2004 Ford F-250 had been purchased by Eduardo Balbosa-Mendilusa and a lien was held on the vehicle by Caridad Auto Sales, Inc. The government has entered into a Stipulated Settlement Agreement Between the United States of America and Caridad Auto Sales, Inc. (Doc. #48) agreeing that the lien holder's claim on the vehicle was valid and accepting \$5,413.83 in exchange for the return of the vehicle. On November 13, 2007, the government filed an Application to Clerk for Entry of Default as to Eduardo Balbosa-Mendilusa (Doc. #51) noting his failure to plead, answer, or otherwise defend. On November 20, 2007, the Magistrate Judge granted the application, Doc. #52, and on November 23, 2007, a Clerk's Entry of Default (Doc. #53) was entered against Eduardo Balbosa-Mendilusa. A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact. Nishimatsu Constr. Co., Ltd., v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975) (citations omitted).<sup>2</sup>

Under 8 U.S.C. § 1324(b) (1), "[a]ny conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a) of this section, the gross proceeds of such violation, and any property traceable to

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<sup>2</sup>In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) the Eleventh Circuit adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

such conveyance or proceeds, shall be seized and subject to forfeiture." In a civil forfeiture action, "the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture . . . the Government shall establish that there was a substantial connection between the property and the offense." 18 U.S.C. § 983(c).

The Affidavit of Steven C. Christopher, Senior Border Patrol Agent, Department of Homeland Security, Customs and Border Protection (Doc. #1-2) provides that on August 15, 2006, Agent Christopher observed two Collier County Sheriff Deputies (MacAllister and Marvin) with three subjects on the 951 Boat Ramp parking lot. The three subjects were initially observed operating the 2005 angler vessel at a high rate of speed, and then loading the 2005 angler vessel onto a trailer. They were stopped when they were attempting to drive off in the Ford F-250 with the 2005 angler vessel. Deputy Marvin stated that he observed a second vessel at the Addison Bay Channel during the stop with several dark objects that looked like heads. The second vessel was gone 10 minutes later. Thereafter, Deputy Marvin notified by dispatch that 20 Cuban immigrants had landed near Jolley Bridge, and later observed the same second vessel coming out of a shadow are one quarter mile from the bridge without the "dark round objects." Deputy Marvin stopped the boat, identified the captain (Noel Lopez) and crew member (Juan Gonzalez-Hernandez), and towed the 2004 angler vessel back to the 951 Boat Ramp where Senior Border Patrol Agents were

present. After taking statements, Lopez and Gonzalez-Hernandez were eventually indicted for knowingly and willfully conspiring and aiding and abetting to bring aliens into the United States. During an inventory search, receipts were found referencing Noel Lopez, captain of the 2004 angler vessel, therefore the individuals using the 2004 Ford F-250 and 2005 angler vessel were found to be acquainted with the individuals on board the 2004 angler vessel.

The Court finds that the government has met its burden that it is more likely than not that the 2004 Ford F-250 is subject to forfeiture and a substantial connection between the vessel and the indicted offenses exists. Additionally, the Court finds that notice and publication issued and no other claims have been filed including by the defaulted owner of the vehicle Eduardo Balbosa-Mendilusa. The motion for a default judgment and for forfeiture of \$5,413.82 in lieu of the vehicle will be granted.

Accordingly, it is hereby

**ORDERED AND ADJUDGED:**


1. The government's Motion for Default Against Eduardo Balbosa-Mendilusa and Order of Forfeiture (Doc. #56) is **GRANTED**. Pursuant to the provisions of 8 U.S.C. § 1324(b), \$5,413.83 in United States currency in lieu of One 2004 Ford F-250, VIN: 1FTNW20P44EB84283 is hereby forfeited to the United States for disposition according to law.

2. The Clerk shall enter a default judgment against Eduardo Balbosa-Mendilusa and terminate this claimant on the docket.

3. The Clerk is further directed to terminate Caridad Auto Sales, Inc. pursuant to the Stipulated Settlement Agreement Between the United States of America and Caridad Auto Sales, Inc. (Doc. #48).

4. The Clerk is directed to terminate the properties forfeited: One 2004 26' Angler Vessel and One 2004 Ford F-250 Truck.

**DONE AND ORDERED** at Fort Myers, Florida, this 8th day of February, 2008.

  
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**JOHN E. STEELE**  
United States District Judge

Copies:  
Parties of record