

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:14-CV-0863-D
VS.	§	
	§	
\$19,605.00 IN UNITED STATES	§	
CURRENCY and 2008 TOYOTA	§	
TUNDRA, VIN, 5TFEV541X8X042976,	§	
	§	
Defendant Property.	§	

ORDER

In his April 14, 2015 findings, conclusions, and recommendation, the magistrate judge recommends that the court impose an appropriate sanction based on the failure of claimants Misael Gutierrez (“M. Gutierrez”), Andrea Villarreal Najera (“Najera”), and Jose Guadalupe Gutierrez (“J. Gutierrez”) to appear at a settlement conference and a show cause hearing, after being warned that they would be subject to sanctions for failing to appear at the show cause hearing.

Thereafter, Steve Jumes, Esquire (“Jumes”) moved to withdraw as counsel for M. Gutierrez and Najera, and the court granted the motion. (Jumes did not move to withdraw as counsel for J. Gutierrez, so he still represents him. If Jumes intended to move to withdraw as counsel for J. Gutierrez, as well, he must file a separate motion.) Douglas D. Mulder, Esquire moved to withdraw as counsel for all three claimants, and the court granted the motion. In both orders granting leave to withdraw, the court stated that it would not defer acting on the magistrate judge’s recommendation despite permitting claimants’ counsel to withdraw.

Under the circumstances of this case—where both attorneys state in their motions to withdraw that they have been unable to communicate with their clients, which explains their clients’

failure to appear as ordered—the court concludes that the appropriate sanction is simply to call the case for trial. It is currently set on the court’s docket, and trying the case is effectively equivalent—but with arguably greater procedural protections for the government—to entering a default judgment and convening a default prove-up hearing.

Accordingly, the court adopts the April 14, 2015 findings, conclusions, and recommendation of the magistrate judge and concludes that the appropriate sanction is to call this case for trial. The court’s staff will contact counsel for the government and Jumes concerning their availability for trial, which will probably be scheduled for a Friday during the next several weeks. If Jumes intended to move to withdraw as counsel for J. Gutierrez, but neglected to do so, he must promptly file another motion to withdraw; otherwise, he will be expected to appear for trial at the setting made by the court. Due to the nature of the proceeding to be conducted, the government is excused from making the usual pretrial filings, such as a pretrial order, witness and exhibit lists, and proposed findings of fact and conclusions of law.

SO ORDERED.

May 12, 2015.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE