

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MARCIAL L. CHAIREZ,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.  
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ORDER

02-C-0456-C

After defendant filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 in his criminal case, USA v. Chairez, 00-CR-48-C-01, and before I had ruled on the motion, defendant filed a document titled “Defendant’s Voluntary Withdrawal of Motion.” In the latter document, defendant states that on the advice of his lawyer he is choosing not to pursue his § 2255 motion that he “hereby voluntarily withdraw[s] that motion and agree[s] that the motion be dismissed.” No further action was taken on defendant’s § 2255 motion.

This case was brought by Marcial Chairez seeking the return of property seized by the government in connection with his criminal proceedings. It is presently on appeal following entry of judgment denying Chairez’s request. However, at the time the parties were filing

the pleadings in this case, they were docketed erroneously in defendant's criminal case. Although the error was caught eventually and a new civil case number assigned to the proceedings relating to Chariez's property, the record on appeal includes portions of the criminal case file. Recently, the court of appeals requested clarification of the status of defendant's § 2255 motion.

To clarify the record on appeal, I have accepted defendant's notice of voluntary withdrawal of his motion pursuant to 28 U.S.C. § 2255. The motion is DISMISSED as moot.

Entered this 11th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge