

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALBERT ALANIZ BARRIENTES,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

CASE NO. C15-0593-JCC  
MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable John C. Coughenour, United States District Judge:

This matter comes before the Court on Petitioner Albert Barrientes’s motion for leave to amend his motion to vacate (Dkt. No. 8), motion for default judgment (Dkt. No. 10), and motion for summary judgment (Dkt. No. 7).

**I. Motion for Leave to Amend**

In Mr. Barrientes’s initial motion to vacate his sentence, he argued the following: (1) that he is actually innocent of the crime of possession of a firearm in furtherance of drug trafficking crimes (Dkt. No. 1 at 4); (2) that the factual basis in his guilty plea does not support his firearm conviction, because it does not establish the “in furtherance of” element (Dkt. No. 1 at 2); (3) that the court did not ensure that Mr. Barrientes understood the elements of the crime to which he pleaded guilty (Dkt. No. 1 at 7); and (4) that Mr. Barrientes exercised reasonable

1 diligence by researching his case immediately after conviction and sentencing (Dkt. No. 1 at 17).

2 The Government responded that Mr. Barrientes's motion was (1) untimely;  
3 (2) procedurally defaulted, because he failed to make this challenge on direct appeal; and  
4 (3) meritless, as the plea agreement clearly stated a factual basis to support the "in furtherance  
5 of" element. (Dkt. No. 5 at 2-3.)

6 Mr. Barrientes then filed a motion for leave to amend, seeking to clarify what he  
7 characterized as the Government's misinterpretation of his argument. (Dkt. No. 8 at 1-2.) He  
8 stated that the Government "misconstrued [his] claim of 'actual innocence' into one that attacks  
9 his factual statement." (Dkt. No. 8, Ex. 1 at 3.) But, Mr. Barrientes's initial motion explicitly  
10 argued that the factual basis of his plea was flawed, and this served as his primary argument that  
11 he was actually innocent. (Dkt. No. 1 at 2-8.) Moreover, his motion for leave to amend argues  
12 that the "government's evidence surrounding the firearms listed at Count 10 fails to establish the  
13 requisite nexus between those firearms and the 'underlying conviction' in Count 1"—again  
14 asserting that the factual basis of his plea was insufficient. (*See* Dkt. No. 8, Ex. 1 at 8.) The only  
15 other basis Mr. Barrientes offers to support his innocence is his argument that the court failed to  
16 ensure that he understood the plea, which he raises in both his initial motion and the motion for  
17 leave to amend. (Dkt. No. 8, Ex. 1 at 6, 8.)

18 In sum, Mr. Barrientes has not established that the Government misconstrued his motion  
19 or that he has a separate basis for his claim of actual innocence in addition to those raised in his  
20 initial motion to vacate his sentence. Therefore, his motion for leave to file an amended motion  
21 (Dkt. No. 8) is DENIED.

## 22 **II. Motion for Summary Judgment; Motion for Default Judgment**

23 Next, the Court addresses Mr. Barrientes's motion for summary judgment and motion for  
24 default judgment, both of which seek to resolve this matter based on the Government's alleged  
25 failure to file responses. The Court appreciates Mr. Barrientes's desire to see a resolution in his  
26 case, but these motions are procedurally unnecessary. The Court can interpret the failure to

1 respond as an admission that a motion is meritorious. *See* W.D. Wash. Local Cr. R. 12(b)(4).  
2 However, the Court still consider the merits in reviewing the motions and will rule on the  
3 motions without need for an additional motion from Mr. Barrientes.

4 Moreover, the Government's alleged inaction does not support the requested relief. First,  
5 the Government responded to Mr. Barrientes's motion to vacate on July 23, 2015, four days  
6 before Mr. Barrientes filed his motion for summary judgment. Second, the Court had not yet  
7 ruled on Mr. Barrientes's motion for leave to amend at the time that Mr. Barrientes moved for  
8 default judgment on October 13, 2015. Thus, the Government had no duty to respond at that  
9 point. Therefore, the motion for summary judgment (Dkt. No. 7) and motion for default  
10 judgment (Dkt. No. 10) are DISMISSED. It should be noted, however, that these dismissals have  
11 no impact on the Court's consideration of the merits of Mr. Barrientes's motion to vacate his  
12 sentence. The Court's ruling on that motion shall be forthcoming.

### 13 **III. Conclusion**

14 For the reasons discussed above, Mr. Barrientes's motion for leave to amend (Dkt. No. 8)  
15 is DENIED. Mr. Barrientes's motions for summary judgment (Dkt. No. 7) and default judgment  
16 (Dkt. No. 10) are DISMISSED. This Court's ruling on Mr. Barrientes's motion to vacate his  
17 sentence (Dkt. No. 1) shall be forthcoming.

18 DATED this 19 day of October 2015.

19 William M. McCool  
20 Clerk of Court

21 s/Paula McNabb  
22 Deputy Clerk  
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