

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERARDO VALTIERRA,

Defendant.

ORDER

13-cv-499-bbc

06-cr-126-bbc

Defendant Gerardo Valtierra has filed a motion for reconsideration of the denial of his motion for post conviction relief. In an order entered on July 16, 2013, I denied the motion as untimely under 28 U.S.C. § 2255(f)(1). (Defendant's conviction became final on October 21, 2008; he filed his motion for post conviction relief on July 3, 2013.) In his motion for reconsideration, defendant argues that it was error to deny the motion because he is raising a claim under Alleyne v. United States, 133 S. Ct. 420 (2013). That claim was not apparent in his initial motion, but it is sufficient to justify his request for reconsideration. If defendant has a valid claim under Alleyne, his July 3, 2013 motion for post conviction relief would not be untimely.

ORDER

IT IS ORDERED that the United States may have until August 21, 2013, in which

to respond to defendant's motion for post conviction relief as it relates to his claim that judicial factfinding in his case increased the mandatory minimum sentence to which he was subject. Defendant may have until September 11, 2013 in which to file his reply brief.

Entered this 31st day of July, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge