

**United States District Court  
Western District of Washington**

**No. 2:17-cv-00561-RAJ**

Dui Mai, Plaintiff,

vs.

United States, et al., Defendant.

**Reply Brief**

**I. ARGUMENT**

The Government argues that Mr. Mai has not “demonstrate[d] both injury and circumstances beyond his control that prevented him from proceeding with the prosecution or defense of the action in a proper fashion.” *Cnty v. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002). Mr. Mai is obviously injured because he brought a claim against the United States and various entities, and this Court dismissed his claims. The Court based its dismissal, at least in part, on a deficient complaint. The clerk of the Court then immediately issued a judgment. Mr. Mai had no ability to file any motions before the clerk issued the judgment. Therefore, given the clerk’s actions, the circumstances were beyond Mr. Mai’s control.

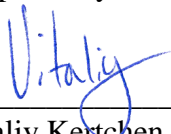
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1 The Ninth Circuit has a longstanding rule that “leave to amend should be granted if it  
2 appears at all possible that the plaintiff can correct the defect.” *Lopez v. Smith*, 203 F.3d 1122,  
3 1130 (9th Cir. 2000). Here, the Court based its dismissal, at least in part, on a deficient  
4 complaint. However, the Court did not include a finding that amendment would be futile. If the  
5 Court had ruled that Mr. Mai’s claim fails categorically under Ninth Circuit and Supreme Court  
6 precedent and ended the analysis, that would be sufficient for a finding of futility. However, the  
7 Court continued the analysis and found the complaint deficient. All of the deficiencies identified  
8 by the Court can be corrected with the filing of an amended complaint.

9 The Government also argues that Mr. Mai has engaged in undue delay because “[l]ate  
10 amendments to assert new theories are not reviewed favorably when the facts and the theory  
11 have been known to the party seeking amendment since the inception of the cause of action.”  
12 *Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994). Mr. Mai is not seeking to assert any new  
13 theories. The theory is the same now as it was at the inception of this litigation: Mr. Mai is not  
14 mentally ill and the Second Amendment protects his right to keep and bear arms. The proposed  
15 amendments would cure the identified deficiencies presented in the complaint, but would not add  
16 new theories or facts.

17 The Court should grant the motion for relief from judgment and should grant leave to file  
18 an amendment complaint.

19 Respectfully submitted,

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23 Vitaliy Kertchen WSBA#45183

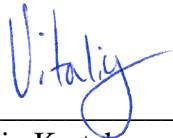
24 Attorney for Mr. Mai

25 Date: 3/12/18

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1 I hereby certify that on 3/12/18, I electronically filed the foregoing with the clerk of the  
2 court using the CM/ECF System, which in turn automatically generated a Notice of Electronic  
3 Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF  
4 for the foregoing specifically identifies recipients of electronic notice. I hereby certify that I have  
5 mailed by United States Postal Service the document to the following non-CM/ECF participants:  
6 None.

7  
8 Respectfully submitted,

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