

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JOSE MANUEL GOYOS, Jr.,

Petitioner,

v.

No. 15-cv-00524-DRH

UNITED STATES OF AMERICA,

Respondent.

ORDER

HERNDON, District Judge:

This matter is before the Court on petitioner's Motion to Expand the Record (Doc. 13). Petitioner's case is presently on appeal. Without citing to any authority, the petitioner asks the Court to "Expand the Record relative to his application for the issuance of a Certificate of Appealability by including the letter, statements of Certified Public Accountant Lori Anderson and the affidavits of Carmen Goyos." (Doc. 13). The referenced documents were not part of the district court proceedings.

The Court interprets petitioner's motion as a motion to supplement the record on appeal in accord with Federal Rule of Appellate Procedure 10(e) and Seventh Circuit Rule 10(b). The Court finds that, under the circumstances present here, supplementation is not permitted.

Generally, modification of a record on appeal is not permitted. “The appellate stage of the litigation process is not the place to introduce new evidentiary materials.” *Berwick Grain Co. v. Illinois Dep't of Ag.*, 116 F.3d 231, 234 (7th Cir. 1997). *See also McClendon v. Indiana Sugars, Inc.*, 108 F.3d 789, 795 (7th Cir. 1997) (“Evidence that was not proffered to the district court in accordance with its local rules is not part of the appellate record; it has no place in an appellate brief.”).

Rule 10(e) is a limited exception to the general rule forbidding modification of the record on appeal and allows modification where the record contains an omission or misstatement of the true occurrences in the district court. Fed. R.App. P. 10(e). However, where the record accurately reflects district court proceedings, Rule 10(e) is not applicable. *See United States v. Alcantar*, 83 F.3d 185, 191 (7th Cir. 1996) (“The materials [the 2255 petitioner] seeks to add to the record were never before the district court, and they cannot therefore be added to the record on appeal pursuant to Fed. R.App. P. 10(e).”).

Here, there is no omission or misstatement of true occurrences in the district court. The records petitioner seeks to include in the record were never before the district court. Accordingly, supplementation is not permitted. The motion to supplement is **DENIED**.

IT IS SO ORDERED.

Signed this 21st day of June, 2015.

Digitally signed by
Judge David R.
Herndon
Date: 2016.06.21
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United States District Judge