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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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MICHAEL ALEXANDER BACON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM DECISION AND  
ORDER FOR PAYMENT OF  
TRANSCRIPT FEES AND  
PERMITTING PETITIONER TO  
SUPPLEMENT HIS REPLY**

Civil No. 2:16-CV-724-DN  
(Crim. No. 2:14-CR-563-DN)

District Judge David Nuffer

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Petitioner Michael Alexander Bacon requests that his fees for obtaining a transcript of the June 5, 2015 hearing in his underlying criminal case be waived.<sup>1</sup> Mr. Bacon is currently an inmate at the Central Utah Correctional Facility in Gunnison, Utah, and is challenging his conviction and sentence in his underlying criminal case pursuant to [28 U.S.C. § 2255](#).<sup>2</sup> The charge and collection of fees for transcripts in a § 2255 proceeding is governed by [28 U.S.C. § 753\(f\)](#), which provides:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.<sup>3</sup>

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<sup>1</sup> Request for Waiver of Fees, [docket no. 29](#), filed Feb. 16, 2017.

<sup>2</sup> Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (“§ 2255 Motion”), [docket no. 1](#), filed June 27, 2016.

<sup>3</sup> [28 U.S.C. § 753\(f\)](#).

It has already been determined that Mr. Bacon's § 2255 Motion is not frivolous,<sup>4</sup> and the government has conceded that Mr. Bacon is entitled to relief on one of his claims.<sup>5</sup> Additionally, having reviewed the claims within Mr. Bacon's § 2255 Motion,<sup>6</sup> a transcript of the June 5, 2015 hearing in his underlying criminal case is needed to discern the merits of Mr. Bacon's arguments and factual assertions regarding the propriety of his conviction. Therefore, it is appropriate that the fees for the preparation of a transcript of the June 5, 2015 hearing in Mr. Bacon's underlying criminal case be paid by the court out of money appropriated for this purpose.

Mr. Bacon also seeks leave under Rule 15(d) of the Federal Rules of Civil Procedure to supplement his Reply to the government's Response to his § 2255 Motion.<sup>7</sup> Rule 15(d) permits "a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented" on terms that are "just."<sup>8</sup>

Mr. Bacon filed his Reply to the government's Response to his § 2255 Motion on February 22, 2017.<sup>9</sup> Mr. Bacon asserts that after filing his Reply, he received copies of the transcripts for the June 29, 2015 and April 20, 2016 hearings in his underlying criminal case.<sup>10</sup> Mr. Bacon maintains that supplementation of his Reply is necessary to properly support his factual assertions and present his case.<sup>11</sup> Presumably, Mr. Bacon also seeks to supplement his

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<sup>4</sup> Order for Government to Respond, [docket no. 10](#), filed Sept. 12, 2016.

<sup>5</sup> United States' Response to Michael Alexander Bacon's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 ("Response"), [docket no. 20](#), filed Jan. 17, 2017.

<sup>6</sup> § 2255 Motion, [docket no. 1](#), filed June 27, 2016.

<sup>7</sup> Motion for Permission to Allow Supplemental Pleading, [docket no. 31](#), filed Feb. 23, 2017.

<sup>8</sup> *FED. R. CIV. P. 15(d)*.

<sup>9</sup> Answer to the Government's Response on Petitioner's Motion to Vacate Dated 1/17.2017 ("Reply"), [docket no. 30](#), filed Feb. 22, 2017.

<sup>10</sup> Motion for Permission to Allow Supplemental Pleading, [docket no. 31](#), filed Feb. 23, 2017.

<sup>11</sup> *Id.*

Reply with the transcript of the June 5, 2015 hearing in his underlying criminal case after it is prepared and received.

Given Mr. Bacon's assertions and arguments,<sup>12</sup> it is appropriate that leave be given for Mr. Bacon to supplement his Reply to make the transcripts of the hearings in his underlying criminal case part of the record in this case. However, supplementation is unnecessary with regard to the transcript of the June 29, 2015 hearing because this transcript is already part of the record in this case.<sup>13</sup> Therefore, Mr. Bacon is given leave to supplement his Reply to make the transcripts of the June 5, 2015 and April 20, 2016 hearings in his underlying criminal case part of the record in this case.

Therefore, IT IS HEREBY ORDERED that:

(1) The fees for the preparation of a transcript of the June 5, 2015 hearing in Mr. Bacon's underlying criminal case shall be paid by the court out of money appropriated for this purpose; and

(2) Leave is given for Mr. Bacon to supplement his Reply to make the transcripts of the June 5, 2015 and April 20, 2016 hearings in his underlying criminal case part of the record in this case.

Signed March 9, 2017.

BY THE COURT



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District Judge David Nuffer

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<sup>12</sup> Motion for Permission to Allow Supplemental Pleading, [docket no. 31](#), filed Feb. 23, 2017.

<sup>13</sup> Reporter's Transcript of Proceedings, [docket no. 5](#), filed Aug. 10, 2016.