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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM THE ADMINISTRATIVE LAW COURT**

**Sebastian P. Lenski, Administrative Law Judge**

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**Appellate Case No. 2023 – 001291**

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John Garvin..... Appellant,

v.

South Carolina Department of Corrections ..... Respondent.

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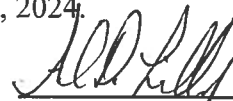
**AFFIDAVIT OF SERVICE BY MAIL**

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I, Alan Lilly, being first duly sworn, deposes and says:

1. That deponent is a person not less than 18 years of age and is not a party to the above-entitled action.
2. On December 29, 2023, I served the attached filed date-stamped copy of Appellant’s Initial Brief and Designation of Matter to be Included in Record on Appeal, (see Exhibit – A), on Mr. Joseph R. Shakibanasab, the attorney for the Respondent, by placing a copy of it in an envelope, that was properly addressed to the South Carolina Department of Corrections Office of General Counsel, P.O. Box # 21787, Columbia, S.C., 29221-1787. Whereas, the envelope was marked certified mail, return receipt requested, and was deposited by deponent at the United States Post Office at 201 Watchung Ave., Plainfield, N.J. 07060, Postage paid. (See Exhibit – B).
3. The certified mail tracking number 7022-1670-0001-2279-6820 shows acceptance of Appellant’s Initial Brief and Designation of Matter to be Included in Record on Appeal by the Respondent’s on January 4, 2024, as evidenced and confirmed on the United States Postal Service website from the attached printout. (See Exhibit – C).

**RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of January, 2024.



**Alan Lilly  
1140 Hillside Avenue  
Plainfield, N.J. 07060**



# **EXHIBIT**

**A**

**John Garvin  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C. 29936**

**ATTN: Mr. Joseph R. Shakibanasab, General Counsel  
SCDC Office of General Counsel  
P.O. Box # 21787  
Columbia, S.C. 29221-1787**

**RE: John Garvin v. SCDC, Case No.: 2023 – 001291, Initial Brief and Designation of Matter  
to be Included in Record on Appeal**

Dear Mr. Shakibanasab:

Enclosed please find Appellant's filed date stamped copy of his Initial Brief and Designation of Matter to be Included on Appeal, along with a Certificate of Service that was filed in the South Carolina Court of Appeals on December 28, 2023.

**Dated: December 29, 2023**

  
Respectfully,  

---

John Garvin, #355509, Pro-se.

JG/  
Enclosure  
cc: Joseph R. Shakibanasab, SCDC General Counsel

**RECEIVED**

**Dec 28 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM THE ADMINISTRATIVE LAW COURT**

**Sebastian P. Lenski, Administrative Law Judge**

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**Appellate Case No. 2023 – 001291**

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John Garvin..... Appellant,

v.

South Carolina Department of Corrections ..... Respondent.

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**INITIAL BRIEF OF APPELLANT**

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**John Garvin # 355509, Pro-se  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C., 29936**

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## **QUESTION PRESENTED**

Does Appellant, John Garvin, an inmate confined to the South Carolina Department of Corrections have a liberty interest to visit with family members, to whereas, SCDC'S denial of Appellant's grandchildren visitation forms was an arbitrary and capricious act of a government agency and a denial of his Fourteenth Amendment rights to due process?

## **STATEMENT OF THE CASE**

This matter is before the South Carolina Court of Appeals pursuant to the appeal of John Garvin ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections, ("SCDC").

On July 17, 2023, the Hon. Sebastian P. Lenski, Admin. Law Judge with the South Carolina Administrative Law Court granted SCDC's Motion to Dismiss Appellant's appeal of his inmate grievance complaint with that Court about SCDC's denial of Appellant grandchildren's visitation forms for failing to provide their social Security numbers. On August 11, 2023, Appellant filed a Notice of Appeal in the South Carolina Court of Appeal.

## **STATEMENT OF FACTS**

During the month of September, 2022, Appellant mailed to his son, JaJuan Garvin four SCDC request for visitation privileges forms. That was filled out and mailed to SCDC Visitation Department. On September 23, 2022, Yolande Wesley, Program Assistant of SCDC's Division of Visitation & Inmate Drug Testing, denied the visitation forms of Appellant's grandchildren for failing to provide their social security number for identification purposes.

On November 8, 2022, Appellant's son was contacted by phone and e-mail from SCDC and has stated unto him:

Good afternoon Mr. Garvin,

This is just a follow-up to the conversation we just had. As I stated, while we can process adults with their driver's license/state I.D. this is not possible with minors as they have neither.

Since you do not want to provide the social security numbers for the children the applications will be denied and returned to you within the next week.

Should you change your mind, just enter the social security numbers on the denied forms and return them to us. You can resubmit the denied applications to the address on the routing slip that way it will bypass the wait of new application.

Respectfully,

Yolande Wesley,  
Program Assistant  
Div. of Visitation & Inmate Drug Testing

See R. \*.

On November 9, 2022, Appellant's son responded to SCDC's e-mail:

Dear Ms. Wesley:

I send you this e-mail in regards to your e-mail, about your reasons for denying my kids SCDC 19-127 visitation forms, due to my refusal to provide their social security number to confirm their identity. Your reason for denying my kids visitation forms is an arbitrary one.

Because pursuant to SCDC policy OP-22.09 § 5.3: Identification Documents for Visitors Age Nine (9) and under, states that:

“Prior to entering the visiting area, all visitors nine (9) years of age and under will be required to show a Department of Public Safety (DPS) identification card, a long form birth certificate showing the appropriate parents' names, student identification card, passport, or green card, as long as the name and date of birth are listed.”

Therefore a social security number is not needed to identify who my kids are pursuant to SCDC policy OP-22.09 § 5.3.

I would also like for you to know that, the Social Security Act (SSA) does not list South Carolina Department of Corrections as a state agency that permits a state agency to use a social security number for the purpose of identifying an individual. See 42 U.S.C. § 405(c)(2)(C)(i) (2018).

In addition, your denial of my kids visitation forms are unlawful pursuant to section 7 of the Privacy Act of 1974, as amended, 5 U.S.C. § 552a note (Disclosure of Social Security Number. Because section 7 of Pub.L. 93-579 provide[s] that:

“(a)(1) It shall be unlawful for any Federal, State or Local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.

Please provide me with a written denial of my kids visitation forms, so that I may take the appropriate legal recourse.

Respectfully,  
JaJuan Garvin

See R. \*.

Then on November 11, 2022, Appellant, John Garvin, sent a kiosk Request to Staff Member (kiosk request number: 22-02887365) stating:

Attention: Ms. Leggings,

I send you this kiosk request in regards to the denial of my grandkids visitation forms by the SCDC Visitation Department, for failing to provide their social security number for identification purposes. I would like to state that the reason given for the denial of my grandkids visitation forms are arbitrary and capricious me. Pursuant to SCDC policy OP-22.09 § 5.3, a social security number is not listed or needed as a requirement for identification purposes for all visitors nine (9) years of age and under. The Social Security Administration (SSA) does not list the South Carolina Department of Corrections as a state agency that it allows to utilize a social security number for the purposes of identifying an individual. See 42 U.S.C. § 405(c)(2)(C)(i) (2018). SCDC’s denial of my grandkids visitation forms is unlawful pursuant to section 7 of Pub.L. 93-579(a)(1), of social security number).

Respectfully,  
John Garvin

See R. \*.

On November 13, 2022, SCDC responded:

The directives for visitation are approved by Director Sterling. The institution has no authority to change policy directives.

See R. \*.

On November 17, 2022, Appellant submitted step-1 Inmate Grievance Form stating:

I, John Garvin, do hereby makes this grievance in regards to the response to my kiosk request No. 22-02887365, that was about the denial of my grandkids visitation forms by the SCDC Visitation Department, for failing to provide their

social security number for identification purposes. The reason given for the denial of my grandkids visitation forms is an arbitrary and capricious one.

According to SCDC policy OP-22.09 § 5.3, a social security number is not listed or needed for identification purposes for all visitors nine (9) years of age and under. The Social Security Act (SSA) does not list the South Carolina Department of Corrections as a State Agency that permits a state agency to utilize a social security number for the purpose of identifying an individual. See 42 U.S.C. § 405(c)(2)(C)(i) (2018). SCDC's denial of my grandkids visitation forms is unlawful pursuant to section 7 of Pub.L. 93-579(a)(1), the Privacy Act of 1974, as amended, 5 U.S.C. § 552a note (Disclosure of social security number).

See R. \*.

On November 30, 2022, SCDC responded by stating:

"I have reviewed your concern. In your grievance, you stated that you would like your grandkids to be added to your visitation list because social security numbers are not needed, pursuant to SCDC policy OP-22.09 – 5.3. Visitation is a privilege and is not considered to be a guaranteed right. Per SCDC policy OP-22.09, "Inmate Visitation," dated August 1, 2006, it is the practice of the South Carolina Department of Corrections to enable and encourage inmates, consistent with security and classification requirements to visit with family members and friends, however, before visitation privileges are bestowed upon a family member or friends, certain precautions must be considered. Before applications are approved, we try to ensure that all applicants meet the necessary requirements set forth by the South Carolina Department of Corrections' standards and the "Inmate Visitation" policy OP-22.09. No evidence can be found in this instance where staff failed to perform their job duties properly.

Therefore, your grievance is resolved.

See R. \*.

On December 2, 2022, Appellant submitted a Step-2 Inmate Grievance Form pointing out:

The reason for my appeal of the Warden's decision, is that the Warden's decision does not address the merits of my step-1 Inmate grievance form. Whereas, on November 2, 2022, the SCDC Visitation Department denied my grandkids, Lauren and Joel Garvin's SCDC's visitation forms, for failing to provide their social security numbers for identification purposes. Inasmuch as, my grievance does not address SCDC staff's failure to perform their job duties properly. But addresses the reason given for the denial of my grandkids visitation forms is an arbitrary and capricious one. That violates my first amendment constitutional rights and my grandkids first amendment constitutional rights. SCDC policy OP-

22.09 section 5.3, does not list social security number for identification purposes.

See R. \*.

On March 3, 2023, SCDC denied Appellant Garvin's grievance and cited its policy and stated:

I have reviewed your concern. You state your grandkids were denied visitation for failing to provide their social security number for identification purposes. You also stated according to SCDC policy OP-22.09 (5.3), a social security number is not listed or needed for identification purposes for all visitors nine (9) years of age and under. You also state the Social Security Act (SSA) does not list the South Carolina Department of Corrections as a State Agency to utilize a social security number for the purpose of identifying an individual. The Warden responded to your concern on November 30, 2022. Be advised that visitation is a privilege, and SCDC reserves the right to suspend, restrict, deny, or terminate visitation privileges. SCDC policy OP-22.09 Inmate Visitation, provides a clear purpose for the policy "to enable and encourage inmates, consistent with security and classification requirements, to visit with family members and friends. Visiting will be conducted in an accommodating manner keeping with the need to maintain Order and provide for the security and safety of persons and of each institution. Inmate visitation will be conducted in accordance with the provisions of said policy/procedure, related Agency policies/procedures, and all applicable state and federal statutes." The Policy also provides guidance on how, who, when and other conditions under which inmate may receive visit. Lastly, an applicant may be asked for additional information, and it's up to the applicant to provide the requested information.

Therefore, your grievance is denied.

See R. \*.

On April 4, 2023, Appellant appealed to the South Carolina Administrative Law Court, and gave a general statement of the grounds for his appeal:

"[Appellant] Appeals the denial of his step-2 inmate grievance form, because SCDC used an arbitrary and capricious unwritten policies and procedures to disapprove and denied my grandkids, Lauren Garvin and Joel Garvin's SCDC visitation forms, for failing to provide their social security numbers for identification purposes. SCDC has disregarded and overlooked its written policy regarding identification purposes for all visitors nine (9) years of age and under. SCDC's denial of my grandkids form, deprives Appellant of a State created liberty interest to visit with family members, pursuant to SCDC policy OP-22.09.

See R. \*.

SCDC would file a Motion to Dismiss on June 28, 2023, pursuant to *Slezak v. S.C. Dep't. of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) and *Skipper v. S.C. Dep't. of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006). Because “[t]his appeal is based on Appellant’s allegation that his grandchildren’s visitation forms were denied for failing to provide their social security numbers. Appellant’s claim does not implicate a State-created liberty or property interest.” See R. \*.

Appellant Garvin replied, by pointing out that the “threshold facts in this case has not been established” yet. See *Wilkins v. United States*, No. 21-1164, --- U.S. ---, 143 S.Ct. 870 (U.S. Mar. 28, 2023) (“If a decision simply states that ‘the court is dismissing “for lack of jurisdiction” when some threshold fact has not been established, it is understood as a ‘drive-by jurisdictional rul[ing]’....” (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511, 126 S.Ct. 1235 (2006))). Appellant argued that SCDC’s denial of his grandchildren’s visitation form for failing to provide their social security numbers was done with an arbitrary and capricious unwritten policy and procedure. Appellant pointed out, that “SCDC has disregarded and overlooked its own written policy and has created an arbitrary and capricious one regarding identification purposes for all visitors nine (9) years of age and under. See SCDC policy OP-22.09 § 5.3. SCDC’s visitation department’s approval and denial process of Appellant grandchildren’s visitation forms, has deprived him of proper due process by arbitrary and capricious means. In addition, to depriving him of a State-created liberty interest to visit with family members, pursuant to SCDC policy OP-22.09.” see R. \*.

The Administrative Law Judge granted SCDC’s Motion to Dismiss, relying in large part, on *Slezak v. S.C. Dep't. of Corr.*, 361 S.C. 327, 605 S.E.2d 506 (2004) and *Skipper v. S.C. Dep't. of Corr.*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006), to conclude “that where a state-created

liberty interest is not implicated in a prisoner appeal, a judge “should” dismiss the appeal.” The Court below reasoned:

Per department policy, visitation is a privilege, not a right. Therefore, there is no state created liberty or property interest implicated here. Consequently, the court is without jurisdiction to hear this matter. As such, this is a case in which this Court must adhere to the traditional “hands off” doctrine regarding judicial involvement in prison disciplinary procedure and other internal prison matter. See *Pruitt v. State*, 274 S.C. 565, 266 S.E.2d 779 (1980) and *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (emphasis supplied). See. R. \*.

This appeal now follows.

### STANDARD OF REVIEW

The review of the administrative law judge’s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- a) In violation of constitutional or statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by other error of law;
- e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610 (B); see also *Howard v. S. Carolina Dep’t. of Corr.*, 399 S.C. 618, 625, 733 S.E.2d 211, 215 (2012).

### ARGUMENT

**APPELLANT, JOHN GARVIN, AN INMATE CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS A LIBERTY INTEREST TO VISIT WITH FAMILY MEMBERS AND FRIENDS, TO WHEREAS, SCDC’S DENIAL OF APPELLANT GRANDCHILDREN’S VISITATION FORMS WAS AN ARBITRARY AND CAPRICIOUS ACT OF A GOVERNMENT AGENCY AND A DENIAL OF HIS DUE PROCESS**

As seen, the Administrative Law Judge has relied on *Slezak* and *Skipper*, in upholding SCDC’s unwritten policy of denying Appellant’s visitation with family members – who did not provide their social security number for identification purposes. Therefore, it is important to understand the holding in *Slezak* and *Skipper*. In *Skipper*, this Court appropriately cited *Slezak* stating, “we believe the [ALC] improperly dismissed [the inmate’s] appeal on the ground that it lacked subject matter jurisdiction. In light of our decision that [the inmate’s] grievance did not implicate a state-created liberty interest, we find the [ALC] had jurisdiction to dismiss the appeal on merits.” See also *S.C. Dep’t. of Corr. v. Mitchell*, 377 S.C. 256, 259, 659 S.E.2d 233, 235 (Ct. App. 2008) (rejecting SCDC’s contention that the ALC should have dismissed the appeal because the claim did not implicate a state-created liberty or property interest and holding the ALC “clearly had subject matter jurisdiction to hear [the inmate’s] appeal” and could have summarily dismissed the case if it determined the claim did not implicate a state-created interest or could have, in its discretion, heard the appeal.).

Now, based on the South Carolina Supreme Court’s recent clarification in *Allen v. S.C. Dep’t. of Corr.*, *supra.*, this Court should find that the ALC erred in determining it did not have subject matter jurisdiction over Appellant Garvin’s claim. See 439 S.C. 164, 171, 886 S.E.2d 671, 674 (2023) (“A claim that implicates a state-created liberty or property interest is not required for the ALC to have subject matter jurisdiction over the appeal.”).

The issue that’s before this Court, accordingly, involves “[t]he denial of prison access to a particular visitor” which has long been held to be “well within the terms of confinement ordinarily contemplated by a prison sentence.” *Kentucky Dep’t. of Corr. v. Thompson*, 490 U.S. 454, 461, 109 S.Ct. 1904 (1989) (quoting *Hewitt v. Helms*, 459 U.S. 460, 468, 103 S.Ct. 864 (1983)). The United States Supreme Court has “examine procedural due process questions in two steps; the first asks

whether there exists a liberty or property interest that has been interfered with by the state[;] the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Id.*, 490 U.S. at 460; see also *Wilkinson v. Austin*, 545 U.S. 209, 221 – 22, 125 S.Ct. 2384 (2005). The issue at this stage of the proceeding centers on the first step - whether Appellant Garvin has alleged a liberty interest.

Liberty interests may arise either from the Due Process Clause or from State law. *Meachum v. Fans*, 427 U.S. 215, 225 – 27, 96 S.Ct. 2532 (1976). However, Appellant does understand that the Due Process Clause does not provide an inmate with a liberty interest or a right to “unfettered visitation.” See *Thompson*, 490 U.S. at 460 – 61 (finding that “[t]he denial of prison access to a particular visitor ... is not independently protected by the Due Process Clause”). But viewing Appellant’s allegations in the light most favorable to him, as this Court must, Appellant has alleged a violation of a liberty interest protected by the Due Process Clause of its own force. Nevertheless, taking Appellant’s allegations that SCDC used an arbitrary and capricious unwritten policy and procedures to disapprove and denied his grandchildrens SCDC visitation forms, for failing to provide their social security numbers for identification purposes as true, this Court should find that the denial of his grandkids visitation forms, particularly when imposed, as he has asserted, indefinitely and arbitrarily, rise to a liberty interest under State law. This Court has stated in *Allen v. S.C. Dep’t. of Corr.*:

“An inmate claiming a protected interest must have a legitimate claim of entitlement to it. Protected liberty interests may arise from two sources: the Due Process Clause itself and the laws of the States. In order to establish a state-created liberty, a regulation must “contain ‘explicitly mandatory language,’ i.e., specific directives to the decision maker that if the regulations’ substantive predicates are present, a particular outcome must follow.”

“Stated simply, ‘a state creates a protected liberty interest by placing substantive limitations on official.’” This language means if the regulation explicitly

mandates an outcome based on the existence of relevant criteria then the state has created a liberty interest.

See 434 S.C. 114, 118 – 19, 862 S.E.2d 268 (2021)(citations omitted).

Based on the above-mentioned language, this Court must examine whether SCDC’s policy mandates SCDC to permit an inmate visitation with family members and friends when relevant criteria are met. The South Carolina Supreme Court has adopted the standard articulated in *Sandin v. Conner, supra.*<sup>1</sup> to determine whether a claim implicates a state-created liberty interest that affords due process protections.<sup>2</sup> See *Sullivan v. SCDC*, 355 S.C. 437, 442, 586 S.E.2d 124, 126 (2003) (“[s]tates may create liberty interests which are protected by the Due Process Clause, but .... ‘these interests will be generally limited to freedom from restraint which ... imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.’” (emphasis in original) (quoting *Sandin*, 515 U.S. at 484)).

S.C. Code Ann. § 24-1-90 and SCDC Policy OP-22.09 creates a liberty interest to visit with family members and friends. Section 24-1-90 provides, the director of SCDC the “authority to make and promulgate rules and regulations necessary for the proper performance of the department’s functions.” The purpose of SCDC Policy OP-22.09 is “to establish [a] uniform and consistent policies/procedures for the implementation and management of the inmate visitation program,” that SCDC offers to it’s inmates. “It is the practice of the South Carolina Department of Corrections to enable and encourage inmates, consistent with security and classification requirements, to visit with family members and friends.” This established liberty interest in visitation with family members and friends is designed to instruct SCDC’s administrators and to curtail arbitrary use of State power in denying and/or restricting that liberty interest. SCDC Policy

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<sup>1</sup> *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293 (1995)

<sup>2</sup> The ALC relied on South Carolina Supreme Court’s holding in *Slezak* to find Appellant Garvin's claim did not implicate a state-created liberty interest.

OP-22.09 outlines what justifies the denial or restriction of a prisoner's visitation privileges. A close examination of whether SCDC's policy mandates SCDC to permit an inmate visitation with family members and friends, when relevant criteria are met. This Court should find that it does.

Because SCDC's visitation policy states explicit mandatory language requiring a particular outcome for visitation with family members and friends and for all visitors nine (9) years of age and under. See SCDC policy OP-22.09 § 5.3. SCDC's policy expressly states that "[e]ach institution will provide adequate visiting areas for inmates and their visitors." "Inmate visitation is considered to be a privilege and is not considered a guaranteed right. Therefore, [] SCDC reserves the right to suspend, restrict, deny, or terminate an inmate's or visitor's visitation privileges and/or telephone privileges due to legitimate concerns regarding the security and safety of the institution." See S.C. Dep't. of Corr. Policy/Procedure, No. OP-22.09, Inmate Visitation §§ 1.1 and 1.4 (Aug. 1, 2006). This policy instructs SCDC on visitation provisions and on additional approval for visitor identification documents for visitors age nine (9) and under. *Id.* at §§ 1.1, 1.4, 5.3, and 5.3.1. Thus, SCDC Policy OP-22.09 does mandate an outcome for an inmate's visitation with family members and friends. Since there is a mandated outcome, there is a state-created liberty interest in visitation with family members and friends.

Appellant Garvin would also like to state that he has not committed any offense justifying the denial or prohibition of his visitation privileges under SCDC Policy OP-22.09. Inasmuch as, SCDC has arbitrarily denied his grandchildren's visitation forms and has deprived him of visitation with his grandchildren, for failing to provide their social security numbers for identification purposes without no hearing or notification unto him about the denial of his grandchildren's visitation forms and was denied simply on their whim. SCDC does not consider him a security threat because they allow him to participate in open yard time without restrictions, Appellant is

not confined to a security cell, and he is otherwise given the same privileges as other inmates that are not considered security threats except with having his grandchildren's visitation forms denied, for failing to provide their social security number for identification purposes. The reason given for the denial of Appellant grandchildren's visitation forms is an arbitrary and capricious one. cf. *Wyndham Enterprises, LLC v. City of North Augusta*, 401 S.C. 144, 735 S.E.2d 659 (2013) (Board of Zoning Appeal's (BZA) denial of landowners' special exception request to sell fireworks was arbitrary and capricious.).

According to SCDC Policy OP-22.09 § 5.3, a social security number is not listed or needed as a form of identification for visitors nine (9) years of age and under. The Social Security Act (SSA) does not list the South Carolina Department of Corrections as a state agency that permits a state agency to utilize a social security number for the purpose of identifying an individual. See 42 U.S.C. § 405(c)(2)(C)(i) (2018). SCDC's denial of Appellant grandchildren's visitation forms is unlawful pursuant to Section 7 of Pub.L. 93-579(a)(1), the Privacy Act of 1974, as amended, 5 U.S.C. § 552a note (Disclosure of Social Security number).

To constitute a violation of Section 7, an agency must not only request that an individual disclose a social security number, but also deny a "right, benefit, or privilege" to that individual because of the individual's refusal to disclose the social security number. See, e.g., *Ingerman v. Del. River Port Auth.*, 630 F.Supp.2d 426, 445 (D.N.J. 2009) (ruling that Delaware River Port Authority's requirement that social security number had to be submitted to receive a senior citizen "E-Z Pass" violated section 7, which was enforceable under *Ex Parte Young*<sup>3</sup>).

SCDC Policy OP-22.09 is a State created liberty interest that's protected by the Due Process Clause by limiting an inmate's freedom from restraint in such a way that "imposes atypical

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<sup>3</sup> *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441 (1908)

and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sullivan*, 355 S.C. at 442, 586 S.E.2d at 126 (quoting *Sandin*, 515 U.S. at 484, 115 S.Ct. 2293). The denial of Appellant’s visitation with family members and friends is a violation of his right to freedom from restraint that is atypical, and it creates a significant hardship on Appellant Garvin in relation to ordinary prison life because the record does indicate that SCDC did deny Appellant’s grandchildrens visitation forms in an arbitrary and capricious way for failing to provide their social security numbers for identification purposes. Thus, depriving him of a privilege to visit with family members in violation of Section 7 of Pub.L. 93-579(a)(1), the Privacy Act of 1974, as amended, 5 U.S.C. § 552a.

Nevertheless, taking Appellant’s allegations that SCDC did use an arbitrary and capricious unwritten policy and procedures to disapprove and deny his grandchildren’s visitation forms, for failing to provide their social security numbers for identification purposes as true, this Court should find that the denial of his grandchildren’s visitation forms, particularly when imposed, as he has asserted, indefinitely and arbitrarily, give rise to a liberty interest. Whereas, “[t]he ALC may [] grant an inmate relief from an erroneous administrative decision by SCDC, ...[if] the inmate demonstrates the error deprived him of due process.” quoting *Allen*, 439 S.C. at 171.

### CONCLUSION

For the foregoing reasons, this Court should reverse the Administrative Law Judge’s Order and remand for a determination on the merits because Appellant, John Garvin has a liberty interests in visitation with family members and friends.

**DATED: December 28, 2023**

**RESPECTFULLY SUBMITTED,**



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**John Garvin # 355509, Pro-se.  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C., 29936**

RECEIVED

Dec 28 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Sebastian P. Lenski, Administrative Law Judge

Appellate Case No. 2023 – 001291

John Garvin..... Appellant,

v.

South Carolina Department of Corrections ..... Respondent.


DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant, John Garvin, designates the following matter to be included in the Record on Appeal.

1. The South Carolina Department of Corrections Motion to Dismiss;
2. Appellant’s Reply to the Respondent’s Motion to Dismiss, including all attachments;
3. Order of the Administrative Law Court dated July 17, 2023;
4. A blank copy of the SCDC Request for Visiting Form Privileges; and
5. A copy of the SCDC policy OP-22.09.

Pursuant to Rule – 209(c), SCACR, I certify the Designation, contains no matter which is irrelevant to the appeal.

Date: December 28, 2023

Respectfully Submitted,  


John Garvin, # 355509, Pro-se  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C. 29936

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM THE ADMINISTRATIVE LAW COURT**

**Sebastian P. Lenski, Administrative Law Judge**

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**Appellate Case No. 2023 – 001291**

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John Garvin..... Appellant,

v.

South Carolina Department of Corrections ..... Respondent.


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**CERTIFICATE OF SERVICE**

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I, John Garvin, certify that I have serve a filed date stamped copy of Appellant’s **INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL** on the Respondent’s to be delivered by depositing a copy of it in the United States Mailbox to be delivered via United States First Class Postage Priority Mail on December 29, 2023, addressed to Mr. Joseph R. Shakibanasab, of SCDC Office of General Counsel at P.O. Box # 21787, Columbia, S.C. 29221-1787.

**DATED: December 29, 2023**

  
\_\_\_\_\_  
**John Garvin , # 355509, Pro-se.  
Ridgeland Correctional Institution  
P.O. Box # 2039  
Ridgeland, S.C. 29936**

**EXHIBIT**

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January 2, 2024, 2:35 pm

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January 1, 2024

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December 29, 2023, 8:52 pm

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