

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED  
MAR 30 2026  
SC Court of Appeals

---

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Sebastien Phillip Lenski, Administrative Law Judge

---

Administrative Law Court Docket No. 25-ALJ-04-0147-AP

Appellate Case No. 2025-002443

Vincent Allen, #194611,

Appellant,

V.

South Carolina Department of Corrections,

Respondent.

---

APPELLANT'S INITIAL REPLY BRIEF

---

Vincent Allen, #194611  
Tyger River Correctional  
Institution Unit 1-B-228A  
200 Prison Road  
Enoree, S.C. 29335

Appellant, Pro Se

TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

STATEMENT OF THE CASE ..... 2

ARGUMENT ..... 2

I. SCDC HAS NOT DEMONSTRATED THAT THE ALC PROPERLY AFFIRMED THE DEPARTMENT'S AGENCY DECISION WHERE FEDERAL LAW DOES NOT PREEMPT THE STATE LAW WHICH NOW PERMITS INMATES TO BE PAID THE FEDERAL MINIMUM WAGE ..... 2

    A. FEDERAL PIECP WAGE REQUIREMENTS ARE DETERMINED USING OBJECTIVE LABOR-MARKET DATA ..... 5

II. SCDC MISCHARACTERIZES APPELLANT'S CLAIM ..... 7

III. SCDC HAS NOT DEMONSTRATED THAT THE ALC PROPERLY AFFIRMED THE DEPARTMENT'S AGENCY DECISION WHERE APPELLANT PREVIOUSLY SETTLED A BACKPAY CLAIM FOR PREVAILING WAGES EXTINGUISHED FUTURE CLAIMS ..... 10

CONCLUSION ..... 11

**TABLE OF AUTHORITIES**

**CASES**

Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 135 S.Ct. 1378 (2015) .....	8
Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981)....	11
Bazemore v. Friday, 478 U.S. 385 (1986) .....	10
B.P.J. by Jackson v. West Virginia State Board of Education, 98 F.4th 542 (4th Cir. 2024) .....	4
Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1945) .....	11
Cooper v. Aaron, 358 U.S. 1, 18 - 19 (1958) .....	4
Ex parte Young, 209 U.S. 123, 28 S.Ct. 441 (1908) .....	8
Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990) .....	10
Gorrie v. Brown, 809 F.2d 508, 55 (8th Cir. 1987) .....	11
Harker v. State Use Industries, 990 F.2d 131, 134 (4th Cir. 1993).....	8-12
Haywood v. Drown, 556 U.S. 729, 129 S.Ct. 2108 (2009) .....	7
Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988) .....	10
Hines v. Davidowitz, 312 U.S. 52, 67 (1941) .....	4
Jordan v. Security Group, Inc., 311 S.C. 227, 428 S.E.2d 705 (1993) .....	10
McMaster v. State of Minn., 819 F.Supp. 1429 (D. Minn. 1993).....	8, 10, 12
McMaster v. State of Minn., 30 F.3d 976 (8th Cir. 1994) .....	8, 10, 12
Northern Virginia Hemp and Agriculture, LLC v. Virginia, 125 F.4th 472 (4th Cir. 2025) .....	3
State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (February 7, 2000) .....	3
Testa v. Katt, 330 U.S. 386, 67 S.Ct 810 (1947) .....	7
U.S. v. South Carolina, 720 F.3d 518 (4th Cir. 2013) .....	3
United States v. Winstar Corp., 518 U.S. 839 (1996) .....	11
Weston v. Kim's Dollar Store, 385 S.C. 520, 684 S.E.2d 769 (July 15, 2009) .....	3

TABLE OF AUTHORITIES

STATUTES

U.S.C.A. Const. Art. VI, cl. 2 ..... 3, 4, 7  
18 U.S.C. § 1761(a) ..... 1  
18 U.S.C. § 1761(c) ..... passim  
42 U.S.C. § 1983 ..... 7, 8  
S.C. Code Ann. § 24-3-430(D) ..... 1-4, 6, 7, 12

OTHER AUTHORITIES

64 Fed. Reg. 17000, et seq., (Apr. 7, 1999) ..... 1, 4, 5, 6, 9

## INTRODUCTION

This appeal presents a straightforward question of federal Supremacy: Whether the South Carolina Department of Corrections ("SCDC" or "Department") may shield itself with a state law authorizing wages that federal law forbids as a condition of participation in a federally regulated prison labor program.

Congress enacted the Ashurst-Sumners Act to prevent unfair competition caused by prison-made goods entering interstate commerce at artificially low labor costs. See 18 U.S.C. § 1761(a).

Although the statute generally prohibits the interstate transportation of prison-made goods, Congress enacted legislation that created a very limited exception through the Prison Industry Enhancement Certification Program ("PIECP"), 18 U.S.C. § 1761(c). That exception is available only if participating jurisdictions comply with specific safeguards established by federal law, including the requirement that PIECP inmate workers be paid wages comparable to those paid for similar work in the locality where the work is performed. 18 U.S.C. § 1761(c).

Additionally, the Bureau of Justice Assistance ("BJA"), a component of the United States Department of Justice, likewise issued Guidelines for State participation in the PIECP program pursuant to the the enactment of 18 U.S.C. § 1761(c). The BJA Guidelines, also mandates "PIECP inmate workers must receive wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed." 64 Fed. Reg. 17009.

The Department, nevertheless argues that S.C. Code Ann. § 24-3-430(D)(as amended), allows the SCDC to pay inmates participating in the PIECP only federal minimum wage. That position cannot be reconciled with the governing federal statute or the BJA's implementing PIECP Guidelines.

## STATEMENT OF THE CASE

The Appellant Vincent Allen, ("Appellant"), is an inmate incarcerated with SCDC. Following Appellant and SCDC settling Appellant's prior wage claim for backpay for SCDC's failure to pay him the prevailing wage for work he performed in the PIECP, Appellant filed a new and distinct grievance, challenging SCDC's failure to pay him the prevailing wage for his current work performed in the PIECP under the governing federal statute 18 U.S.C. § 1761(c). After SCDC denied Appellant's grievance on the grounds that the state's former prevailing wage statute, S.C. Code Ann. § 24-3-430(D)(2007), was amended effective May 21, 2024, eliminating SCDC's requirement to pay inmates the prevailing wage for work performed in the PIECP, Appellant then filed his Step Two Grievance. In his Step Two Grievance, Appellant strongly emphasized that the preemption doctrine is rooted in the Supremacy Clause of the United States Constitution, and provides that any state law that conflicts with federal law is "without effect." Thus, S.C. Code Ann. § 24-3-430(D)(as amended) is preempted by 18 U.S.C. § 1761(c). SCDC once again denied Appellant's Step 2 grievance on the grounds that the language of S.C. Code Ann. § 24-3-430(D) was amended, effective May 21, 2024, eliminating SCDC's requirement to pay PIECP inmate workers the prevailing wage. Thereafter, Appellant appealed the Department's final decision to the South Carolina Administrative Law Court ("ALC") on March 27, 2025. On November 12, 2025, the ALC issued a Final Order affirming the Department's decision. This appeal followed.

## ARGUMENT

- I. SCDC HAS NOT DEMONSTRATED THAT THE ALC PROPERLY AFFIRMED THE DEPARTMENT'S AGENCY DECISION WHERE FEDERAL LAW DOES NOT PREEMPT THE STATE LAW WHICH NOW PERMITS INMATES TO BE PAID THE FEDERAL MINIMUM WAGE

The Supremacy Clause of the United States Constitution provides that

federal law "shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S.C.A. Const. Art. VI, cl. 2. See Weston v. Kim's Dollar Store, 385 S.C. 520, 684 S.E.2d 769 (July 15, 2009).

Federal law may preempt a state law when: (1) Congress expressly preempts state law; (2) Congress indicate an intent to occupy an entire field of regulation; or (3) State law conflicts with the federal law, such that compliance with both is impossible or the state law hinders the accomplishment of the federal law's purpose. See State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (February 7, 2000); U.S. v. South Carolina, 720 F.3d 518 (4th Cir. 2013). Here, **conflict preemption** applies.

"Assessing a conflict preemption claim requires a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question of whether they are in conflict." See Northern Virginia Hemp and Agriculture, LLC v. Virginia, 125 F.4th 472 (4th Cir. 2025). The amended South Carolina Statute, specifically S.C. Code Ann. § 24-3-430(D)(2024) allows inmates working in the federally certified PIECP to be paid only the federal minimum wage rather than the prevailing local wage required by federal law. While the federal statute authorizing the PIECP nationwide, expressly states that PIECP workers must "received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed". 18 U.S.C. § 1761(c).

In its Respondent's Brief, dated March 11, 2026, under the heading **Federal Preemption Doctrine Analysis**, the Department erroneously argues that under the principles of federal law supremacy, 18 U.S.C. § 1761 does not preempt S.C. Code § 24-3-430(D). Clearly, the federal prevailing wage requirement of 18 U.S.C. § 1761(c), and the state statute authorizing payment

of minimum wage, specifically S.C. Code Ann. § 24-3-430(D)(2024), creates a classic case of conflict preemption.

Congress enacted the prevailing wage requirement specifically as a safeguard to prevent prison labor programs from undercutting private businesses. See 64 Fed. Reg. 17000-14 (PIECP Guideline)(Apr. 7, 1999). Allowing states to pay only minimum wage would directly undermine that congressional objective. See Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Accordingly, S.C. Code Ann. 24-3-430(D)(as amended), stands as an obstacle to federal policy and must yield to federal law. U.S. Const. Art. VI, cl. 2.

Furthermore, the Fourth Circuit forcefully reaffirmed in B.P.J. by Jackson v. West Virginia State Board of Education, 98 F.4th 542 (4th Cir. 2024), "Federal law trumps state law, not vice versa, and those who violate federal law cannot defend on the ground that they were simply following state law."

The ALC's acceptance of SCDC's defense inverted the Supremacy Clause. State agencies are bound first and always by federal law. See Cooper v. Aaron, 358 U.S. 1, 18 - 19 (1958).

Most importantly, the Fourth Circuit's recent decision in B.P.J. by Jackson v. West Virginia State Board of Education, forecloses SCDC's position entirely. The ALC'S ruling directly contradicts the principle that "those who violate federal law cannot defend on the ground that they were simply following state law." By endorsing that defense, the ALC authorized an ongoing violation of federal law and cannot stand. The Supremacy Clause does not permit states to nullify federal mandates through legislative revision or agency convenience. Thus, the ALC's decision is an error of law that requires reversal.

A. FEDERAL PIECP WAGE REQUIREMENTS ARE DETERMINED USING OBJECTIVE LABOR-MARKET DATA

The prevailing wage requirement governing the PIECP is not an abstract standard. Federal authorities require participating jurisdictions to determine prevailing wages by reference to objective labor-market data reflecting wages paid for comparable work in the relevant locality. In administering this requirement, the BJA directs participating eligible jurisdictions that "[s]ection 1761(c) requires that the PIECP wage amount be set exclusively in relation to the amount of pay received by similarly situated non-inmate workers. In deriving the appropriate PIECP wage 18 U.S.C. 1761(c)(2) does not allow other cost variables to be taken into consideration, such as unique expenses incurred as a result of undertaking production within the prison environment." 64 Fed. Reg. 17000-14 (Apr. 7, 1999). "Prevailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security)." Id. In South Carolina the state wage setting agency would now be the Department of Employment and Workforce ["DEW"]. In the absence of such verification, the program participant is "responsible for establishing a reasonable prevailing wage." Id. The participant must then retain on file for the BJA's review "relevant wage data from a sufficient number of competitors in the locality," "data analysis for determining a reasonableness of the result," and "if possible, a written assessment of the reasonableness of the resulting prevailing wage determination by an appropriate state agency which normally determines wage rates." Id. The prevailing wage "can not be set below the Federal minimum wage, as defined in the Fair Labor Standard Act." Id. "Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement **unless** the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum

wage." Id.

The use of wage data provided by the DEW reflects the wages actually paid to workers performing comparable work within the relevant geographical location of South Carolina. SCDC recognizes that as a participant in the federally certified PIECP program, it is required to use such data in determining PIECP inmate workers' wages and agreed to do so under the express terms of its contractual agreement with the private industry Shaw Industries Group, Inc. SCDC/Shaw Contract, p. 6 § 3.2.1; p. 7 at paragraph 4, and p. 15.

Furthermore, the use of objective labor-market data serves a critical function within the statutory scheme created by the Ashurst-Sumners Act. By tying inmate wages to real market wages in the locality, the federal program prevents prison labor from gaining an unfair competitive advantage over the private sector. The federal minimum wage does not serve this function. The minimum wage establishes only the lowest lawful wage that may be paid in the national economy; it does not reflect wages actually paid for comparable work in the a particular locality. Thus, it is unlawful to pay PIECP workers the federal minimum wage, "unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage." (emphasis added). 64 Fed. Reg. 17000-14 (Apr. 7, 1999).

Consequently, paying inmate PIECP workers the federal minimum wage cannot satisfy the federal requirement that PIECP participants receive wages comparable to those paid for similar work in the locality. Allowing states to substitute the federal minimum wage for the prevailing wage standard would defeat the federal program's core safeguard against unfair competition and would undermine the regulatory structure Congress created. For all the reasons stated above, any interpretation of S.C. Code Ann. § 24-3-430(D) that permits payment of only the federal minimum wage in a PIECP program conflicts with

federal law and cannot be given effect under the Supremacy Clause.

## II. SCDC MISCHARACTERIZES APPELLANT'S CLAIM

In the Respondent's Brief, the Department argues that Appellant lacks a "private right of action" under federal law. This argument mischaracterizes the nature of Appellant's claim. Appellant has not asserted a claim under 42 U.S.C. § 1983. Instead, Appellant asserts that the state statute, S.C. Code Ann. 24-3-430(D), conflicts with and is therefore preempted by federal law, specifically, the prevailing wage requirement contained in 18 U.S.C. § 1761(c).

The Supremacy Clause of the US Constitution provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S.C.A. Const. Art. VI, cl. 2. Under the Supremacy Clause, state courts are obligated to decline enforcement of state laws that conflict with federal law. See Haywood v. Drown, 556 U.S. 729, 129 S.Ct. 2108 (2009)(State courts have a constitutional duty to enforce federal law); Testa v. Katt, 330 U.S. 386, 67 S.Ct. 810 (1947)(State courts cannot refuse to give effect to federal law).

Accordingly, the appropriate question before this Court is not whether Appellant can sue under 42 U.S.C. § 1983, but whether the South Carolina statute conflicts with federal law governing PIECP wages.

The Department argues that Appellant cannot obtain relief because 18 U.S.C. § 1761(c) allegedly affords him no private right of action. Even assuming arguendo that 18 U.S.C. § 1761(c) does not create an independent damages remedy, that argument is irrelevant to the case at bar.

The Supreme Court has repeatedly recognized that regulated parties may seek equitable relief to prevent enforcement of state laws preempted by

federal statutes, even when Congress has not created a private cause of action. See Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 135 S.Ct. 1378 (2015); Ex parte Young, 209 U.S. 123, 28 S.Ct. 441 (1908). These cases establish that the Supremacy Clause itself provides a basis for Courts to invalidate conflicting state laws.

Thus, the absence of a statutory damages remedy does not prevent courts from granting relief where a state law conflicts with federal law.

#### **MCMASTER v. STATE OF MINNESOTA DOES NOT CONTROL THIS CASE**

The Department relies heavily on McMaster v. State of Minn., 819 F.Supp. 1429, 1440 (D. Minn. 1993), aff'd, 30 F.3d 976 (8th Cir. 1994) to argue that inmates cannot enforce the prevailing wage provision of 18 U.S.C. § 1761(c). However, McMaster, addressed a fundamentally different issue.

The current and former inmate plaintiffs in the McMaster case attempted to enforce the prevailing wage provision of 18 U.S.C. § 1761(c) through a civil rights action under § 1983. The Eight Circuit held that 18 U.S.C. § 1761(c) did not create an individual federal right enforceable under 42 U.S.C. § 1983 because the statute was primarily intended to prevent unfair competition with private business.

Crucially, the McMaster court did not address federal preemption and did not hold that states may enact laws contradicting the prevailing wage requirement. Thus, McMaster stands only for the limited proposition that 18 U.S.C. § 1761(c) does not create a § 1983 damages remedy for inmates. It does not authorize states to disregard federal statutory conditions governing PIECP participation.

#### **HARKER V. STATE USE INDUS. DOES NOT SUPPORT SCDC'S POSITION**

SCDC relies on Harker v. State Use Industries, 990 F.2d 131, 134 (4th Cir. 1993), to define or limit PIECP wage obligations. However, the

Department's reliance is misplaced. Harker addressed whether incarcerated individuals are "employees" under the Fair Labor Standards Act ("FLSA") and held that they are not entitled to minimum wage protections under that statute. The decision did not interpret 18 U.S.C. § 1761(c) or define the meaning of "prevailing wage."

Significantly, while the Harker Court referenced the PIECP in its discussion of Congress's efforts to address unfair competition, those references were contextual, not dispositive. The court did not hold that payment of federal minimum wage satisfies 18 U.S.C. § 1761(c), nor did it authorize substitution of federal minimum wage for the prevailing wage required by statute.

SCDC's argument improperly conflates the minimum wage requirements of the FLSA with the distinct statutory mandate imposed by 18 U.S.C. § 1761(c).

The federal minimum wage establishes the lowest lawful rate that may be paid to non-incarcerated workers. It does not define the wages paid for similar work in a given locality and therefore cannot, standing alone, satisfy the prevailing wage requirement. As the BJA stated in its PIECP Guidelines, "Payment of the Federal minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private sector industries is, in fact, the Federal minimum wage." See 64 Fed. Reg. 17000-14 (PIECP Guideline)(Apr. 7, 1999).

Thus, consistent the BJA Guideline, if the prevailing wage equals the federal minimum wage, payment at that rate complies with the statute, 18 U.S.C. § 1761(c). However, if the prevailing wage exceeds the federal minimum wage, the statute, 18 U.S.C. § 1761(c), requires payment of the higher rate. Any arbitrary interpretation would read the prevailing wage requirement out of the statute. Therefore, the federal minimum wage functions only as a floor and

does not satisfy 18 U.S.C. § 1761(c), when it is absent of proof that it equals the prevailing wage.

Accordingly, Harker does not support the Department's position.

**III. SCDC HAS NOT DEMONSTRATED THAT THE ALC PROPERLY AFFIRMED THE DEPARTMENT'S AGENCY DECISION WHERE APPELLANT PREVIOUSLY SETTLED A BACKPAY CLAIM FOR PREVAILING WAGES EXTINGUISHED FUTURE CLAIMS**

The ALC committed legal error by affirming that Appellant's claim for post-settlement prevailing wages is barred by a settlement agreement that, by its plain language, applies only to claims "up to and including the date of this Release." See Settlement Agreement, p. 1.

Settlement agreements are interpreted under ordinary contract principles. A release that is expressly limited in time cannot extinguish future, unaccrued claims. South Carolina law recognizes that a release applies only to matters within the parties' intent and its express scope. See Jordan v. Security Group, Inc., 311 S.C. 227, 428 S.E.2d 705 (1993)(release limited to claims contemplated by the parties); Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990)(scope of release controlled by its language). Here, Appellant's claim arises from work performed after the settlement date. These claims had not accrued and thus, could not have been released.

SCDC's failure to pay Appellant the legal wages as mandated by 18 U.S.C. § 1761(c), constitutes a continuing violation, creating a new claim with each underpayment. The Bazemore court recognized that each paycheck that reflects unlawful compensation is a separate actionable wrong. Bazemore v. Friday, 478 U.S. 385 (1986). Also, in Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988), the court recognizes continuing violations in employment-related contexts. Thus, even if the settlement resolved past wage disputes, it cannot bar new violations occurring afterward.

Additionally, the ALC further erred by allowing a state-level settlement

agreement to circumvent federally imposed conditions under the PIECP. Under 18 U.S.C. § 1761(c), States participating in the PIECP must ensure that inmates are paid the prevailing wages for their work. Thus, participation is voluntary, but compliance is mandatory once accepted.

When a state accepts federal benefits, it must comply with federal requirements. Gorrie v. Brown, 809 F.2d 508, 55 (8th Cir. 1987)(once a state voluntarily accepts the conditions imposed by Congress and, once it chooses to do so, the Supremacy clause obligates it to comply with federal requirements).

Even if the settlement were read broadly (which it should not be), it cannot waive future compliance with federal law. Brooklyn Savings Bank v. O'Neil, 324 U.S. 697 (1945)(employees cannot waive statutory wage protections where doing so would undermine federal policy); Barrentine v. Arkansas-Best Freight System, 450 U.S. 728 (1981)(wage rights under federal law are independent and cannot be contractually abridged).

By analogy, PIECP wage requirements, like FLSA protections, serve a public policy purpose that cannot be contractually circumvented. The ALC's ruling produces an illogical and unlawful result. Under the ALC's reasoning, SCDC could enter a one-time settlement agreement, then permanently avoid paying federally required wages, simply by invoking that agreement. This result: 1) Conflicts with federal statutory mandates; 2) Violates the Supremacy Clause; and 3) Undermines the ongoing nature of wage obligations. Courts reject interpretations producing such outcomes. See United States v. Winstar Corp., 518 U.S. 839 (1996)(government cannot contract away its obligation to comply with federal law).

#### CONCLUSION

The statutory text, governing framework and relevant case law all lead to the same conclusion: 1) General wage law establishes a minimum floor, not a governing standard for the PIECP; 2) 18 U.S.C. § 1761(c) requires payment of

prevailing local wages; and 3) The McMaster and Harker cases do not alter that requirement.

Because SCDC has failed to demonstrate that the wages paid to Appellant reflect the prevailing local rate for comparable work, its wage practices do not satisfy federal law.

Therefore, Appellant respectfully asks this Honorable Court to:

- 1) Reverse the ALC's November 12, 2025 Final Order;
- 2) Hold that federal law, 18 U.S.C. § 1761(c) preempts the 2024 amendment to S.C. Code Ann. § 24-3-430(D) as applied to inmate participants in SCDC's PIECP program;
- 3) Hold that prior settlement for PIECP backpay cannot extinguish any right to challenge underpayment of wages earned after settlement period;
- 4) Remand with instructions that SCDC pay Appellant the prevailing wage required by 18 U.S.C. § 1761(c) from his post-settlement date of September 9, 2024 forward, using the proper SOC Code and DEW locality wage data; and
- 5) Grant any further relief the Court deems just and appropriate.

Respectfully Submitted,

*/s/ Vincent Allen*  
Vincent Allen, #194611  
Tyger River Correctional  
Institution Unit 1-B-228A  
200 Prison Road  
Enoree, S.C. 29335

Appellant, Pro Se

March 23, 2026