

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Crystal M. Rookard, Administrative Law Judge

Case No. 25-ALJ-15-0027-AP
Appellate Case No. 2025-002487

Theresa Barton Gunter,..... Appellant,

v.

South Carolina Department of Probation, Parole, and
Pardon Services, Respondent.

RECORD ON APPEAL

Travis Dayhuff
travis.dayhuff@nelsonmullins.com
Arslan S. Valimohamed
arslan.valimohamed@nelsonmullins.com
NELSON MULLINS RILEY &
SCARBOROUGH LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000
Attorneys for Appellant

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SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, & ARDON SERVICES
293 Greystone Blvd.
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Columbia, SC 29202
(803) 734-9012

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Theresa Barton Gunter,
Appellant,

Docket No. 25-AIJ-15-0027-AP

v.

ORDER

South Carolina Department of Probation,
Parole and Pardon Services,

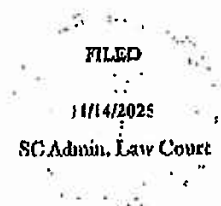
Respondent.

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Theresa Barton Gunter (Appellant). On July 10, 2025, the South Carolina Department of Probation, Parole and Pardon Services (Department) notified Appellant that the Board of Pardons and Paroles (Board) denied Appellant's request for a pardon. On September 15, 2025, Appellant filed a Notice of Appeal challenging this denial.¹ The matter was assigned to the undersigned on October 2, 2025. On October 3, 2025, the Department filed a Motion to Dismiss (Motion) alleging the ALC does not have subject matter jurisdiction or statutory authorization to review the decision of the Board relating to pardons. Appellant filed a response to the Motion on October 17, 2025.

DISCUSSION

The Court's jurisdiction to review this matter is derived from the South Carolina Supreme Court decisions in *Al-Shabazz* and *Furtick*. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (establishing an administrative review process for inmate appeals); *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003) (incorporating final decisions of the Department into that review process). These cases do not recognize this Court's jurisdiction to review discretionary pardon determinations. Absent some statutory or court-recognized grant of jurisdiction to this Court to review pardon determinations, this Court cannot assert jurisdiction over such matters. Even if this Court had jurisdiction to review pardon determinations, *Al-Shabazz* held that "procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property." *Wicker v. S.C.*

¹ Appellant's request for rehearing was denied via email on September 12, 2025.



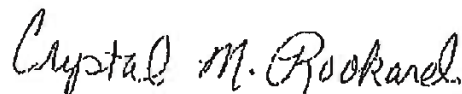
Dep't of Corr., 360 S.C. 421, 424, 602 S.E.2d 56, 58 (2004) (citation omitted). Since parole is a privilege, not a right, the routine denial of parole does not constitute such a liberty interest. See *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 495-96, 661 S.E.2d 106, 109-10 (2008). As with parole, there is no right to a pardon. Thus, in conformity with the Court's rationale in *Cooper*, the denial of a pardon request would not constitute a liberty interest. Since there is no state-created liberty interest in the granting of pardons, there is no right to appeal from decisions denying pardon applications. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (holding an inmate may seek review of a Department decision which deprives the inmate of a state-created liberty interest).

Further, the granting of pardon applications is a matter within the absolute discretion of the Board. See S.C. Code Ann. §§ 24-21-910 to 1000 (2007 & Supp. 2025). "[A] pardon or parole is granted, not as a matter of right, but as a matter of grace bestowed by the government through its duly authorized officers or departments." *Bearden v. State*, 223 S.C. 211, 215 74 S.E.2d 912, 913 (1953). Unlike probation, pardon and commutation decisions have not traditionally been the business of courts and as such, they are rarely, if ever, appropriate subjects for judicial review. *Conn. Bd of Pardons v. Dumschat*, 452 U.S. 458, 464, 101 S.Ct. 2460, 2464 (1981). Further, if the Court had jurisdiction, the review would be limited to violations of statutory procedure or equal protection, and not the Board's substantive decision denying Appellant a pardon. Consequently, this Court does not have jurisdiction to review the Department's denial of a pardon.

ORDER

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

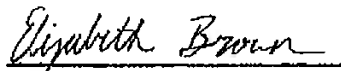


The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

November 14, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Elizabeth Brown, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hercof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Elizabeth Brown
Judicial Law Clerk

November 14, 2025
Columbia, South Carolina



Travis Dayhuff
T: 803.265.9625
travis.dayhuff@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street, 17th Floor
Columbia, SC 29201
T. 803.799.2000 F. 803.260.7600
nelsonmullins.com

December 10, 2024

SCDPPPS
ATTN: Julie Browley
293 Greystone Boulevard
Post Office Box 207
Columbia, SC 29202

RE: Theresa Barton Gunter

Dear Ms. Crowley:

Enclosed for filing please find our client Theresa Barton Gunter's revised and initialed Pardon Application, three support letters and our check in the amount of \$100 for your required filing fee.

Please let me know if you need any additional information.

Very truly yours,



Travis Dayhuff

TD:cdj

Enclosures

South Carolina Department of Probation, Parole and Pardon Services

PARDON APPLICATION

(NOTE: All information provided on application will be verified.)

Present Name Theresa Barton Gunter		Name Indicated Under (If different from Present Name) or Alias Thalma Theresa Barton	
Social Security Number (XXX-XX-XXXX)		Date of Birth (MM-DD-YYYY)	Gender (check) Male or Female <input checked="" type="checkbox"/>
Email Address ttgunter558@gmail.com		Reason for Requesting a Pardon	
Phone Number 803-363-1138		Improve employment opportunities	
County of Residence Richland	Driver's License Number and Issuing State (optional)	Use funds for parole fees to pay health care costs	
Mailing Address (if different from Street Address), City, State, and Zip Code Obtain voting rights			
Street Address 1837 Barbara Drive, Apt. 13G		Facilitate out-of-state travel to see relatives	
City Columbia	State SC	Zip Code 29223	

ADDRESSES FOR THE PAST FIVE YEARS* (Please list previous address(es) if you have resided less than 5 years at the address above)

STREET	CITY	STATE	ZIP CODE
N/A			

LIST ALL EMPLOYMENT FOR THE PAST FIVE YEARS (IF RETIRED, STUDENT, OR UNEMPLOYED, GIVE BEGINNING/ENDING DATES)

Do not leave unexplained gaps. (NOTE: If you do not wish employer to be notified, you must provide documentation of employment)

Company Name	Begin date & End date	Phone number
SC Thrive	10/22 to Present (includes medical leave)	(800) 726-8774
Address 120 Research Drive	City Columbia	State SC Zip code 29203
Company Name Chick-fil-a	Begin date & End date 7/1/22 to 10/7/22	Phone number (803) 563-8448
Address 10136-103 Two Notch Road	City Columbia	State SC Zip code 29229
Company Name Goodwill Industries	Begin date & End date 2/24/18 to 7/5/22	Phone number (864) 351-0100
Address 116 Haywood Road	City Greenville	State SC Zip code 29607
Company Name	Begin date & End date	Phone number
Address	City	State Zip code
Company Name	Begin date & End date	Phone number
Address	City	State Zip code

LIST ALL SOUTH CAROLINA CONVICTIONS

THE BOARD WILL ONLY CONSIDER DOCUMENTED CRIMINAL CONVICTIONS AS LISTED ON THE APPLICATION

CONVICTION	DATE	COUNTY OF CONVICTION
Murder	May 1982	Abbeville, SC
RECEIVED		
DEC 4 2024		
South Carolina Paroles, Pardon and Release Services		

PENDING CHARGES, FEDERAL CONVICTIONS AND/OR OUT OF STATE CONVICTIONS

Please mark "YES" or "NO" for the following questions. (Note that pending charges, federal and out of state convictions are not considered for pardon.)

Pending charges? YES or NO ✓	Federal Convictions? YES or NO ✓	Out of State Convictions? YES or NO ✓
------------------------------	----------------------------------	---------------------------------------

GENERAL RELEASE OF INFORMATION
 To Whom It May Concern:

I hereby authorize any agent or other authorized representative of the South Carolina Department of Probation, Parole and Pardon Services bearing this release, or copy thereof, within one year of its date, to obtain any information in your files pertaining to my grievance records, employment, military, credit, medical or educational records including, but not limited to, academic, job performance, achievement, attendance, athletic, personal history, and disciplinary records. I hereby direct you to release such information upon request of the bearer. This release is executed with full knowledge and understanding that the information will be used in connection with my pardon investigation by the bearer and will be disseminated to those individuals or agencies directly involved in this pardon determination or to fulfill other obligations imposed by law, regulation or executive order. I hereby release you, as the custodian of such records, and any school, college, university or other educational institution, hospital, or other repository of medical records, credit bureau, consumer reporting agency, personnel, both individually and collectively, from any and all liability for damages of whatever kind, which may at any time result to me, my heirs, my family or associates because of compliance with this authorization and request to release information, or any attempt to comply with this release. A photocopy of this release shall be treated as an original. Should there be any question as to the validity of this release, you may contact me as indicated below.

I certify that all the contents of the above application are true and correct. I understand that all information provided on the pardon application will be verified. I further understand that if any of it is of a sensitive nature which might lead to the damaging of my current status (such as contacting neighbors, employers, etc.) that I will take the appropriate steps to minimize this risk.

NOTE: If you are applying on behalf of someone, indicate your authority to file this application below next to your printed full name.

SUPPORT LETTERS List the names and contact information of three people not related by blood or marriage who have written letters supporting you receiving a pardon. Attach a signed, recently dated statement of support from each person. Application will be returned if letters are not included.

Name: Andre Chishom	Phone number: (800) 726-8774
Address: 120 Research Drive City: Columbia	State: SC Zip code: 29203
Name: Tammie M. Pope	Phone number: (803) 237-3049
Address: City: Columbia	State: SC Zip code: 29229
Name: Need another support letter Sharon Cohen Small	Phone Number: (803) 351-1320
Address: City: Lexington	State: SC Zip code: 29073

PARDON ELIGIBILITY: PLEASE CHECK ALL BOXES THAT APPLY

- I have been discharged from probation supervision and any or all restitution has been paid in full.
- I have been discharged from my sentence without having been on probation or parole and any or all restitution has been paid in full.
- I am a parolee and have successfully completed five (5) years under supervision and any or all restitution has been paid in full.
- I have been discharged after successfully completing my maximum parole period and any or all restitution has been paid in full.
- I am an inmate not presently eligible for parole and can produce evidence comprising the most extraordinary circumstances.
- I was previously considered for pardon and rejected on _____, (date of previous hearing)
- I have paid all restitution owed in full. (NOTE: Outstanding restitution will result in the request for a pardon to be denied.)

Full Name (Signature) Theresa B Gunter	Date December 2, 2024
Full Name (Printed) Theresa Barton Gunter	
NOTARY Sworn to this day CAROL D. JONES Notary Public - State of South Carolina My Commission Expires March 21, 2032	Full Name of Notary (Signature) Carol D. Jones Full Name of Notary (Printed) CAROL D. JONES

When completing application, application fee and 3 letters of support to SCDPPPS, P.O. Box 207, Columbia, SC 29202

NOTE: FALSIFICATION OF ANY DOCUMENTATION WILL RESULT IN YOUR PARDON REQUEST TO BE ADMINISTRATIVELY DENIED.

Andre Chishom
Director of Contact Center
SC Thrive
120 Research Drive
Columbia, SC 29203
800-726-8774

June 21, 2024

South Carolina Board of Pardons and Paroles
South Carolina Department of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

Dear Members of the Board:

I am writing to express my support for Theresa Gunter's application for a pardon. I have had the privilege of working closely with Theresa at SC Thrive, a non-profit organization dedicated to helping low and middle-income South Carolinians access vital benefits. As the Director of the Contact Center, I oversee 35 agents who screen calls from individuals seeking assistance from our organization.

Theresa joined SC Thrive in October 2022, and her most recent role was as one of two supervisors in the contact center. In this supervisory capacity, Theresa was responsible for overseeing approximately 15 call agents. Her duties included monitoring phone calls to ensure accurate information was provided and coaching and developing agents to enhance their performance and better serve our clients. Theresa's exemplary work ethic is reflected in her consistent commitment, reliability, and dedication to her job and colleagues. In her role as a supervisor, Theresa has shown that she gets along well with her colleagues and excels in a leadership position. I have known her to be both encouraging and supportive, often sending out motivational emails to inspire the team to maintain high levels of productivity. Her ability to foster a positive and productive work environment has been invaluable to our organization.

Recently, Theresa took leave to address some medical issues. Although she has exhausted her leave time and is no longer working for SC Thrive, she is eligible for rehire. Theresa's professionalism and strong work ethic made her an asset to our team, and I am confident in her ability to continue contributing positively to our mission should she return.

I support Theresa's pardon application because I believe she has demonstrated significant personal growth and a clear understanding of her life priorities—balancing her professional responsibilities and family commitments effectively. Theresa had proven to be a valuable employee and a person of integrity. Granting her a pardon would allow her to continue making meaningful contributions to our community.

Thank you for considering my support for Theresa's pardon application. Please contact me should you require any additional information.

RECEIVED

DEC 4 2024

Sincerely,



Andre Chishom

RECEIVED

DEC 4 2024

South Carolina
Parole, Pardon and Release Services

08

Tammie M. Pope

Columbia, SC 29229
803-237-3049

SC Board of Pardons
c/o SC Department of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202

Dear Board of Pardons Members:

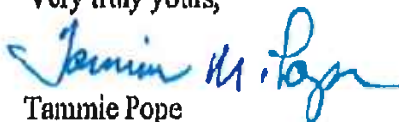
I am writing in support of the application for a pardon submitted by Theresa Gunter (a/k/a Thalma Barton). I have known Ms. Gunter since 2012 and met her through my work as a paralegal. Since Ms. Barton's parole in 2013, I have stayed in regular contact with her and have gotten to know her quite well. She has been diligent in adhering to the restrictions placed upon her as part of her parole and has not had any violations during the eleven years that she has been under supervision. With Ms. Gunter having served over 30 years in prison and over 10 years on parole, I support the Board granting her a pardon to restore her legal rights.

Upon her release on parole, finding an apartment, a job and getting her drivers license while also learning how to use a cellphone and laptop was no easy task, but she persevered. In addition, she has faced additional hardships including losing nearly everything she and her husband owned in the flood of 2015, losing her mother to cancer and losing her younger brother to heart failure. As I write this letter, she is facing her own cancer diagnosis and receiving chemotherapy treatments. The difference in Ms. Gunter at the time of her crime and now is her ability to not turn to drugs or alcohol as a coping mechanism, but instead to rely on her faith and supportive social network as she has overcome the usual obstacles and the additional hardships that have come her way.

Ms. Gunter's time in prison has given her a sense of great gratitude for every day of freedom she experiences. I have not seen the level of generosity she regularly displays toward others in many other people. We attend the same church and she gives back as often as she can by participating in outreach opportunities to help those in need. She has great remorse about her crime and lives her life helping others in order to try to make amends for the pain she caused.

Please feel free to contact me if I can provide any additional information.

Very truly yours,


Tammie Pope

RECEIVED

DEC 4 2024

South Carolina
Paroles, Pardons and Release Services

October 29, 2024

Re: Pardon Consideration for Thalma Theresa Barton (Gunter)

Dear Pardon Board Members:

My name is Sharon Small, I am writing this letter on behalf of Thalma Theresa Barton (Gunter). I have known Theresa since 1989 and I am not surprised by the mature and ambitious woman that she has become. I met Theresa during her incarceration at the then Women's Correctional Center, where I was employed as the Telemarketing Coordinator. Theresa worked under my leadership as the Team Leader.

Shortly after her incarceration, Theresa displayed remorse for her crime and she went into action setting goals and accomplishing them. During her incarceration she obtained her GED, and received numerous certificates and acknowledgements for being an exemplary inmate worker in multiple areas, to name a few: graduated from Secretarial Science, Telemarketing-Top Sales, Jaycee Member of the Year, and received a Certificate of Achievement while working for Omega World Travel. She was also recognized for being the first female Canteen Operator at State Park Correctional Center.

Theresa prepared to be a productive returning citizen to the community with a new vision for her life. Since her release she has taken advantage of many opportunities presented to her. She has remained gainfully employed, excelling in her job roles with excellent customer service skills with employees and the public. If she's granted a pardon this state will not be making a mistake, in fact should she be pardoned, and is therefore allowed to return inside the institutions I believe she could make a positive impact on the women in the Pre-Release Program. I humbly request your approval of pardoning Mrs. Barton (Gunter).

Should you have any questions I may be reached at 803-351-1320.

Thank you so kindly,
Sharon Cohen Small

Sharon Cohen Small

RECEIVED

DEC 4 2024

South Carolina
Paroles, Pardons and Release Services

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

June 3, 2025

Nelson and Mullins Attorneys and Counselors At Law
Travis Dayhuff
1320 Main St Fl 17
COLUMBIA, SC 29201

RE: Ms. Theresa Gunter

The South Carolina Board of Pardons and Paroles will consider your client's case for a pardon on **Wednesday, July 9, 2025**. The hearings will begin at **9:30 AM** at **293 Greystone Boulevard, Suite 100, Columbia, South Carolina 29210**. Please note that only convictions listed on the application will be considered for a pardon.

Hearing attendance is not required, however, the applicant may attend in person with up to two supporters (three persons total including your client and legal representative). Due to limited space, additional supporters will not be allowed in the waiting area nor hearing room.

Please note that all persons who wish to appear before the Board will be subject to search of person and property. All bags, purses and other items may be searched. All persons in attendance may be electronically scanned for weapons or dangerous objects. Note that objects (bags, purses, pocket contents, etc.) deemed potentially dangerous will NOT be allowed into the Board room. Such decisions will be made by SCDPPPS staff only; and all decisions are final.

The outcome of your client's hearing will be mailed to you and your client as well as posted on the SCDPPPS website within 48 hours.

To request special accommodation or additional information, please contact our office at (803) 734-3295.

Sincerely,

A handwritten signature in blue ink, appearing to read "Valerie Suber".

Valerie Suber
Associate Deputy Director for Pardons, Paroles and Release



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."





Department of Probation, Parole and Pardon Services

193 GREYSTONE BOULEVARD
COLUMBIA, SOUTH CAROLINA 29210
Telephone: (803) 734-9220
www.dpps.sc.gov
MAILING ADDRESS: P.O. BOX 207
COLUMBIA, SOUTH CAROLINA 29202

Pardon Hearing Information

LOCATION

Pardon Hearings are conducted at the Central Office location of the SC Department of Probation, Parole and Pardon Services located at 293 Greystone Blvd. Columbia, SC 29202.

ARRIVAL

Arrive at the Hearing Location at the assigned time for your hearing. Due to space limitations, you will not be allowed access into the building prior to the time listed on your notification letter.

ATTENDANCE

You and your supporters should enter the building together as a group of three (3). **REMINDER** – There will be a maximum of three (3) people total allowed into the building for each hearing.

SEARCH

All persons are subject to search of themselves and personal property. All bags, purses, and other items will be searched on entrance. Objects deemed potentially dangerous will **NOT** be allowed into the building. Such decisions will be made by SCDPPPS staff only. All decisions are final.

RESULTS

Results will not be given on the hearing day. Following the hearing, the results will be posted to SCDPPPS website (www.dpps.sc.gov) as well as a written letter mailed to you within 48 hours.

**** If you would like to provide the South Carolina Board Of Pardons & Pardon any additional documentation, it will need to be sent to SCDPPPS three weeks prior to the pardon hearing date. Additional information will not be allowed to be presented to the Board on the day of the hearing****

300402

Theresa Gunter
08/19, 2025

056334/00003



State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
Director

293 Graystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

July 10, 2025

Nelson and Mullins Attorneys and Counselors At Law
Travis Dayhuff
1320 Main St Fl 17
COLUMBIA, SC 29201

RE: Ms. Theresa Gunter

Dear Travis Dayhuff:

After thorough consideration of all the facts in your client's case, the Board at its meeting on 7/9/2025, rejected your client's request for a Pardon. Please be advised that the Board does not provide reasons for the decision to reject and that the Board's decision is final and may not be appealed.

Your client may re-apply one year from the date of the rejection decision. If you have any questions, please call me at 803-734-3505.

Sincerely,

A handwritten signature in cursive script that reads "Katrina Canada".

Katrina Canada
Asst. Deputy Director for Parole Board and Release Services



"Notion's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."



Travis Dayhuff
T: 803.256.9526
travis.dayhuff@nelsonmullins.com

1320 Main Street, 17th Floor
Columbia, SC 29201
T 803.799.2000 F 803.256.7500
nelsonmullins.com

September 15, 2025

Via Hand Delivery

The Honorable Jana Shealy
Clerk, South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RE: Theresa Barton Gunter v. South Carolina Department of Probation,
Parole & Pardon Services, Board of Paroles and Pardons
Our File No. 056334/00003

Dear Ms. Shealy,

Enclosed for filing in the above-referenced matter is the original and one copy of the Notice of Appeal in the above-referenced matter. Please return a clocked-in copy of the Notice of Appeal to us via our courier.

Very truly yours,



Travis Dayhuff

TD:cdj
Enclosures

cc: Matthew Buchanan, General Counsel,
S.C. Dept. of Probation, Parole & Pardon Services
(w/enc., via email matthew.buchanan@ppp.sc.gov)



CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, Theresa Barton Gunter, do hereby certify that I have served a copy of the pleading(s) via U.S. Mail and electronic mail to the following address(es):

Pleadings: **Appellant's Notice of Appeal**

Counsel: Division of Legal Services
Served: c/o Matthew Buchanan
General Counsel
South Carolina Department of Probation, Parole & Pardon Services
293 Greystone Boulevard
P.O. Box 207
Columbia, SC 29202
Matthew.buchanan@ppp.sc.gov



Carol D. Jones
Administrative Assistant

September 15, 2025



COPY

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Theresa Barton Gunter,)
)
 Appellant,)
)
 v.)
)
 South Carolina Department of Probation,)
 Parole, and Pardon Services, Board of)
 Pardons and Pardons,)
)
 Respondent.)
 _____)

Docket No. ___-ALJ-__-____-AP

NOTICE OF APPEAL

Appellant Theresa Barton Gunter ("Ms. Gunter") appeals Respondent's decisions denying her request for a pardon and denying her request for a rehearing of her pardon request. Final Agency Decisions (attached as Exhibits A and B).

Ms. Gunter asserts the following grounds for this appeal:

1. On July 9, 2025, Ms. Gunter appeared before the Board of Pardons and Pardons ("Pardon Board") for a hearing on her request for a pardon.
2. After hearing from Ms. Gunter's counsel, Ms. Gunter, and one of Ms. Gunter's supporters, the Pardon Board had these individuals leave the hearing room so the Board members could vote on the pardon request.
3. In a letter dated July 10, 2025, Ms. Gunter received notice from Respondent that her request for a pardon had been denied.
4. In a letter dated July 10, 2025, Ms. Gunter's counsel requested the audio recording of her hearing before the Pardon Board from Respondent to learn the reasons for denial and to hear how many votes for and against the pardon request were made.



5. In a letter dated August 14, 2025, and received on August 19, 2025, Ms. Gunter's counsel received the audio recording of the pardon hearing from Respondent. 8/14/2025 Ltr. (attached as Exhibit C).

6. The audio recording of the pardon hearing revealed that the Pardon Board's administrator began the voting process by asking one of the Pardon Board members for his vote on Ms. Gunter's pardon request. Before this Board member could vote, however, the Vice Chair of the Pardon Board announced that he wanted to "make a statement" and provide "more information."

7. The Vice Chair then proceeded to provide the Pardon Board information that included the following:

That Ms. Gunter was paroled in 2013, "but it was not because of the Board's vote in 2013 it was because of a prior vote."

"But that whole thing went to the Supreme Court. If you hear us talking about the *Barton* case, this is the *Barton* case."

"We had to change the way we counted our votes because of the *Barton* case . . . We had to pardon [sic] her based on her getting so many votes at a prior time."

"Thought y'all should know that this is the *Barton* case."¹

8. After the Vice Chair's statements, Respondent's counsel said that it would better for him to answer questions about the *Barton* case after the vote, so as not to "color anything."

9. When the Pardon Board's administrator resumed the voting process, she returned to the Board member whom she had previously asked for his vote. The Board Member paused and said, "Hmnn, this kind of clouded things," and then he voted to deny Ms. Gunter's pardon request.

¹ *Barton v. S.C. Dept. of Probation, Parole, and Pardon Servs.*, 404 S.C. 395, 745 S.E.2d 110 (2013) (holding that Respondent's method of counting votes violated both the *ex post facto* clause and the parole statute, and the votes Ms. Barton received at the parole hearing required her to be paroled).

10. Thereafter, the Vice Chair voted to deny Ms. Gunter's pardon request, one Board member voted in favor of a pardon, and three Board members voted to deny the request.

11. After the vote, a Board member said to Respondent's counsel, "Ok, now tell us" – referring to the *Barton* case. The Board members were then asked, and they agreed, that the audio recording should be terminated before Respondent's counsel commented on the *Barton* case.

12. The Vice Chair's statements about the *Barton* case were inappropriate, improper, inaccurate, and/or irrelevant. The Vice Chair's statements about the *Barton* case evinced unfair bias against Ms. Gunter and/or created the appearance of unfair bias against Ms. Gunter. The Vice Chair's statements about the *Barton* case, and the failure of Respondent's counsel to properly address these statements and take appropriate remedial actions before the voting, unfairly prejudiced Ms. Gunter.

13. On September 10, 2025, Ms. Gunter's counsel requested a rehearing of Ms. Gunter's request for a pardon.

14. On September 12, 2025, Respondent denied the request for a rehearing.

15. Respondent's final agency decisions denying Ms. Gunter's request for a pardon and denying her request for a rehearing were accomplished through constitutionally and/or statutorily deficient procedure and process.

16. Respondent's final agency decisions denying Ms. Gunter's request for a pardon and denying her request for a rehearing are: (i) in violation of constitutional or statutory provisions, including procedural due process; (ii) in excess of the statutory authority of the agency; (iii) made upon unlawful procedure; (iv) affected by other error of law; (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Pursuant to the grounds set forth above and any additional or revised grounds set forth in Ms. Gunter's appellate brief, Ms. Gunter respectfully requests that the Administrative Law Court reverse Respondent's final agency decisions and provide all such other and further relief as is just and appropriate.

Respectfully submitted,



Travis Dayhuff
Nelson Mullins Riley and Scarborough LLP
1320 Main Street - 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000
travis.dayhuff@nelsonmullins.com

Attorney for Appellant Theresa Barton Gunter

September 15, 2025

Columbia, South Carolina

EXHIBIT A

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
Director

293 Graystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

July 10, 2025

Nelson and Mullins Attorneys and Counselors At Law
Travis Dayhuff
1320 Main St Fl 17
COLUMBIA, SC 29201

RE: Ms. Theresa Gunter

Dear Travis Dayhuff:

After thorough consideration of all the facts in your client's case, the Board at its meeting on 7/9/2025, rejected your client's request for a Pardon. Please be advised that the Board does not provide reasons for the decision to reject and that the Board's decision is final and may not be appealed.

Your client may re-apply one year from the date of the rejection decision. If you have any questions, please call me at 803-734-3505.

Sincerely,

A handwritten signature in cursive script that reads 'Katrina Canada'.

Katrina Canada
Asst. Deputy Director for Parole Board and Release Services



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)"



EXHIBIT B

Carol Jones

From: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Sent: Friday, September 12, 2025 2:22 PM
To: Travis Dayhuff
Cc: Carol Jones
Subject: RE: Theresa Gunter -- Pardon Hearing

External Source/Sender notice

Use caution responding or clicking links/attachments

Report Suspicious

Good afternoon Travis,

I have had some discussions about this. Unfortunately, the Board or Department does not grant rehearings for pardon denials, and we're not inclined to make an exception in this instance.

Matt

From: Travis Dayhuff <travis.dayhuff@nelsonmullins.com>
Sent: Friday, September 12, 2025 9:30 AM
To: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Cc: Carol Jones <carol.jones@nelsonmullins.com>
Subject: RE: Theresa Gunter -- Pardon Hearing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Matt,

Any news for me re rehearing?

Thank you.

TD

Travis Dayhuff
Nelson Mullins
803-255-9525

From: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Sent: Wednesday, September 10, 2025 9:44 AM
To: Travis Dayhuff <travis.dayhuff@nelsonmullins.com>
Cc: Carol Jones <carol.jones@nelsonmullins.com>
Subject: RE: Theresa Gunter -- Pardon Hearing

Good morning Travis,

I can take a call now if you're available. Otherwise, I've got court this afternoon but I have a lot of open spots Thursday.
Matt



Matthew Buchanan

General Counsel

O: 803-734-9012 • M: 803-240-7321 • E: Matthew.Buchanan@ppp.sc.gov

South Carolina Department of Probation, Parole & Pardon Services
Central Office
293 Greystone Blvd, Columbia SC 29210
P.O. Box 207, Columbia, SC 29202



From: Travis Dayhuff <travis.dayhuff@nelsonmullins.com>
Sent: Tuesday, September 9, 2025 4:42 PM
To: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Cc: Carol Jones <carol.jones@nelsonmullins.com>
Subject: Theresa Gunter -- Pardon Hearing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Matt,

Hope you are doing well.

Listened to the CD from my pardon hearing w/ Ms. Gunter. Could we please schedule a short call to discuss? I have lots of availability on Wed., Thurs., if that works for you.

Please let me know when I could give you a call.

Thank you.

TD



TRAVIS DAYHUFF **PARTNER**
travis.dayhuff@nelsonmullins.com

^{kn} MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.266.9626 F 803.266.7600
NELSONMULLINS.COM **V**CARD **V**IEW **B**IO

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EXHIBIT C



Travis Dayhuff
T: 803.255.0625
travis.dayhuff@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street, 17th Floor
Columbia, SC 29201
T: 803.799.2000 F: 803.255.7500
nelsonmullins.com

July 10, 2025

VIA U.S. MAIL

SCDPPPS

ATTN: Patricia Gunter
Post Office Box 207
Columbia, SC 29202

RE: Theresa Barton Gunter
Our File No. 056334/00003

Dear Ms. Gunter:

I am writing to request a copy of the CD of the audio recording of the pardon hearing held on 07/09/2025 for Theresa Barton Gunter. I have enclosed a check in the amount of \$17.50 to cover the cost of the CD.

If you need any additional information, please let me know.

Thank you for your assistance.

Very truly yours,

Travis Dayhuff

TD:cdj

Enclosure

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN JR.
Director

293 DREYSTONE BOULEVARD
COLUMBIA, SOUTH CAROLINA 29210
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dpps.sc.gov
MAILING ADDRESS: P.O. BOX 207
COLUMBIA, SOUTH CAROLINA 29202

August 14, 2025

Mr. Travis Dayhuff
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street
Columbia, SC 29201

To whom this letter may concern:

Please find enclosed the requested duplicate audio CD of the PARDON hearing held in reference to Theresa Gunter #360462 held on July 9, 2025.

Should you have any concerns or issues, please feel free to contact me at the numbers listed below.

Sincerely,

Rhea Hunter

Parole Program Assistant
Office of Parole and Pardon Services

Enclosure



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."




NOTES

RECEIPT

DATE 7/14/25 NO. 579918

RECEIVED FROM Travis Dayhuff
ADDRESS 1320 Main Street
Columbia, SC 29201 \$ 17.50
FOR CD Fee

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	
AMT. PAID	<u>17.50</u>	CHECK	<input checked="" type="checkbox"/>
BALANCE DUE		MONEY ORDER	

BY Synovus Bank
1106270


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State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

October 2, 2025

The Honorable Crystal M. Rookard
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Theresa Barton Gunter v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Rookard:

Please find enclosed for filing Respondent's Motion to Dismiss, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", followed by a horizontal line.

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures
cc: Travis Dayhuff, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 25-ALJ-15-0027

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

THERESA BARTON GUNTER.....APPELLANT

v.

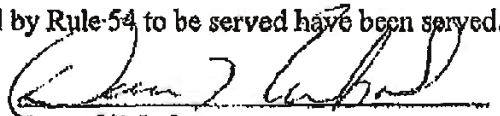
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Motion to Dismiss* on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 2nd day of October, 2025, addressed to:

Travis Daynuff, Esquire
NELSON MULLINS
1320 Main Street, 17th Floor
Columbia, SC 29201

I further certify that all parties required by Rule 54 to be served have been served.



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202

STATE OF SOUTH CAROLINA
In the Administrative Law Court
Docket Number 25-ALJ-15-0027

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

THERESA BARTON GUNTER.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES.....RESPONDENT

RESPONDENT'S MOTION TO DISMISS

Comes now Matthew Buchanan, General Counsel for the Respondent the South Carolina Department of Probation, Parole and Pardon Services (the Department) to respectfully request the Appellant's appeal be dismissed due to lack of subject matter jurisdiction or statutory authorization. Appellant is requesting a review of the decision denying her a pardon. Pursuant to South Carolina law, the Administrative Law Court does not have the ability to review the decision of the Department or Board of Pardons and Paroles relating to pardon decisions.

The Appellant, serving a life sentence for murder from 1982, was paroled in 2013. Appellant qualified to be considered for a pardon under S.C. Code §24-21-950(A)(3), which allows parolees to request a pardon after the successful completion of five years of supervision. Appellant appeared before the Board on July 9, 2025 requesting a pardon. In a letter dated the next day, the Board informed her that her request had been denied.

ARGUMENT

The ALC's jurisdiction to review a final decision of the Department is derived from the decisions of the South Carolina Supreme Court in *Al-Shabbaz v. State*, 338 S.C. 334, 537 S.E.2d 724 (2000) and *Furtick v. S.C. Dept. of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2002). In *Al-Shabbaz*, the South Carolina Supreme Court created an avenue through which an inmate could seek review of a final decision by a state agency in "non-collateral" matters related to a conviction or sentence. The Court held that inmates could appeal those final agency decisions to the ALC, and ultimately to the Court of Appeals pursuant to the Administrative Procedures Act. *Al-Shabbaz*, at 376. In *Al-Shabbaz*, the Court recognized that "these administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed; and, (2) when an inmate believes prison officials have erroneously calculated his sentence related credits or custody status. *Id.*, at 369.

The Court noted that the appealable final decision in *Furtick* arises in the latter manner, where the inmate alleges that the Department erroneously determined he was not eligible for parole. The review by the ALC under the procedures set forth in *Al-Shabbaz* is necessary to determine whether the inmate has a liberty interest in gaining access to the Parole Board. *Furtick*, at 149. In *Furtick*, the Supreme Court ultimately determined that, "the permanent denial of parole eligibility implicates a liberty interest sufficient to require at least minimal due process." *Id.*

The Appellant, however, requests the ALC reverse and/or remand the decision of the Board regarding a pardon. According to *Furtick*, the ALC only has jurisdiction over parole cases because the denial of parole eligibility implicates a liberty interest, which does not apply to the current cause of action. The Department respectfully submits that the ALC does not have jurisdiction to review the Board's decision as it relates to pardons. The above-referenced cases only apply to

parole. This is due to the fact there involves a liberty interest, albeit a limited one, in the denial of parole eligibility. However, there is no liberty right inherent in the grant or denial of a pardon.

The General Assembly has not provided for appellate review of pardon denials. Instead, an applicant is allowed to apply again after one year. S.C. Code §24-21-960(B).

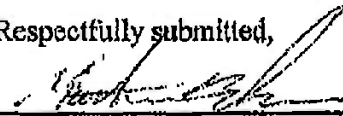
Neither this Court, nor any other court, has been given the ability to review a decision regarding a pardon. No one has a right to a pardon, as the granting of a pardon is the act of forgiveness for a prior conviction. It restores a person's civil rights lost due to the conviction, which would include Appellant's obligations to the conditions of parole. *See*, S.C. Code §24-21-1000. Parole, on the other hand, is a lessening of a sentence by converting confinement in prison to supervised release in the community which triggers limited due process considerations. *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (2008).

"The General Assembly has the authority to limit the subject matter jurisdiction of a court it has created; therefore, it can prescribe the parameters of the ALC's powers." *Amisub of S.C., Inc., v. S.C. Dep't of Health & Envtl. Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013).

CONCLUSION

Respectfully, the ALC does not have the statutory authorization to review a decision of the Department relating to a decision on whether to grant or deny a pardon. Therefore, Respondent respectfully requests this appeal be dismissed.

Respectfully submitted,



Matthew C. Buchanan
General Counsel

S.C. Department of Probation, Parole and
Pardon Services
P.O. Box 207
Columbia, South Carolina 29202

(803) 734-9220

Columbia, South Carolina
October 2, 2025

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Theresa Barton Gunter,)
)
 Appellant,)
)
 v.) MEMORANDUM IN OPPOSITION
) TO MOTION TO DISMISS
 South Carolina Department of Probation,)
 Parole, and Pardon Services, Board of)
 Pardons and Pardons,)
)
 Respondent.)

Docket No. 25-ALJ-15-0027-AP

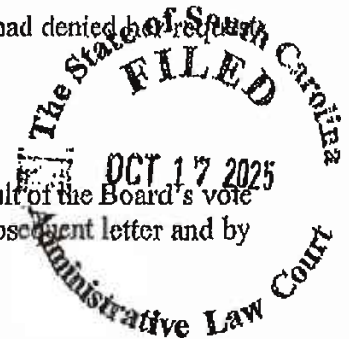
Appellant Theresa Barton Gunter ("Gunter") hereby responds to the motion to dismiss filed by Respondent South Carolina Department of Probation, Parole, and Pardon Services, Board of Pardons and Pardons.

FACTS

On July 9, 2025, Gunter appeared before the Board of Pardons and Pardons (the "Board") for a hearing on her request for a pardon. At the hearing, Gunter's counsel, Gunter, and one of her supporters offered comments for the Board's consideration. Hearing Recording at 01:20 – 05:02 (Track 1), 00:00 – 05:02 (Track 2), and 00:00 – 02:11 (Track 3) (provided with memorandum as Exhibit A). After these comments and a Board member's remark to Gunter, Gunter, her counsel, and her supporter were asked to leave the hearing room so the Board members could vote on the pardon request. *Id.* at 02:49 – 02:55 (Track 3)¹

In a letter from the Department of Probation, Parole, and Pardon Services (the "Department") dated July 10, 2025, Gunter received notice that the Board had denied her request for a pardon.

¹ The Board votes in private, and the Department does not announce the result of the Board's vote at the hearing. The Department provides notice of the hearing result via subsequent letter and by posting the result on its website. *Id.*



for a pardon. Pardon Denial Ltr. (attached as Exhibit B). The Department's letter provided, in pertinent part, as follows:

"After thorough consideration of all the facts in your client's case, the Board at its meeting on 7/9/2025, rejected your client's request for a Pardon. Please be advised that the Board does not provide reasons for the decision to reject and that the Board's decision is final and may not be appealed."

Id. (emphasis added).

In a letter to the Department dated July 10, 2025, Gunter's counsel requested the audio recording of her pardon hearing. Recording Request Ltr. (attached as Exhibit C). It is the practice of Gunter's counsel to request the audio recordings from hearings when the Board denies a pardon request or a parole request because these recordings reveal which Board members voted for and against the request, and the recordings, at times, provide information about why the request was denied, both of which can be helpful.² In a letter from the Department dated August 14, 2025, Gunter's counsel received the audio recording of the pardon hearing. Recording Production Ltr. (attached as Exhibit D).

Listening to the recording revealed that the Board had considered something more than just "all the facts in your client's case . . ." as reported by the Department's letter. The recording revealed that a member of the Department's staff attempted to begin the voting process by asking one of the Board members for his vote on Gunter's pardon request. Hearing Recording at 03:14 – 03:14 (Track 3). Before this Board member could vote, however, the Vice Chair of the Pardon Board announced that he wanted to "make a statement" and provide "more information." *Id.* The Vice Chair then proceeded to provide the Board members information that included the following:

That Ms. Gunter was paroled in 2013, "but it was not because of the Board's vote in 2013 it was because of a prior vote."

² Knowing that one or more Board members voted in favor of a pardon or parole request can encourage an individual to continue efforts to better themselves in hopes of getting the votes of the other Board members at a subsequent hearing, and information regarding why a pardon or parole request was denied can help guide those self-improvement efforts.

"But that whole thing went to the Supreme Court. If you hear us talking about the *Barton* case, this is the *Barton* case."

"We had to change the way we counted our votes because of the *Barton* case . . . We had to pardon [sic] her based on her getting so many votes at a prior time."

"Thought y'all should know that this is the *Barton* case."

Id.

The *Barton* case was brought by Gunter (then Barton) in the Administrative Law Court against the Department and was ultimately resolved by the South Carolina Supreme Court. *Barton v. S.C. Dep't of Probation, Parole, and Pardon Servs.*, 404 S.C. 395, 745 S.E.2d 110 (2013). This case arose from a 2012 parole hearing at which Gunter (Barton) received enough votes to receive parole, but she was nonetheless denied parole because the Department's method of counting votes violated the law. *Id.* In 2013, the Supreme Court unanimously held that the Department's vote counting method violated the *ex post facto* clauses of the United States and South Carolina constitutions and violated the parole statute, and that Gunter had received enough votes to receive parole. *Id.* Because of this case, Gunter and other similarly-situated inmates whose parole requests had been illegally denied had to be paroled by the Department and the Board.

After the Vice Chair's comments about the *Barton* case, the Department's counsel said that it would better for him to answer questions about the *Barton* case after the vote, so as not to "color anything." *Id.* at 04:29 -- 04:38 (Track 3). When the Department's staff member resumed the voting process, she returned to the Board member whom she had previously asked for his vote. *Id.* This Board member paused and said, "Hmm, this kind of clouded things," and then he voted to deny Gunter's pardon request. *Id.* Thereafter, the Vice Chair voted to deny Gunter's pardon request, one Board member voted in favor of a pardon, and three Board members voted to deny the request. *Id.*

After the vote, a Board member said to the Department's counsel, "Ok, now tell us" – referring to the *Barton* case. *Id.* The Board members were then asked, and they agreed, that the audio recording should be terminated before counsel commented on the *Barton* case. *Id.*

The Vice Chairman's comments were inappropriate, inaccurate, and irrelevant. More concerning, these comments evinced retaliatory bias against Gunter for exercising her constitutional right to seek redress in court against the Department and Board for illegally denying her parole in 2012. As evidenced by the comments of the first Board member to vote on Gunter's pardon request, the Vice Chair's comments about the *Barton* case and the absence of remedial measures to address this situation resulted in Gunter not receiving a fair hearing on her pardon request. In an attempt to rectify these violations of law and process, Gunter's counsel requested a rehearing of Gunter's pardon request. On September 12, 2025, the Department denied this request. Rehearing Request & Denial Emails (attached as Exhibit E).

On September 15, 2025, Gunter filed this appeal, and on or about October 2, 2025, the Department moved to dismiss Gunter's appeal. For the reasons set forth below, the Court should deny the Department's motion to dismiss and allow Gunter's appeal to be adjudicated on the merits.

ARGUMENT

I. THE COURT HAS SUBJECT MATTER JURISDICTION AND APPELLATE JURISDICTION OVER GUNTER'S APPEAL.

The Department claims that Gunter's appeal should be dismissed "due to a lack of subject matter jurisdiction or statutory authorization." Mot. to Dismiss at 1. The Department is mistaken on both accounts. This Court has subject matter jurisdiction to hear challenges to final decisions of state agencies and boards – including the Department's final decisions – and this jurisdiction arises from statute.

The Administrative Procedures Act (“APA”) provides that “[a]n administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of South Carolina, 1895, or another law. . .” S.C. Code Ann. § 1-23-600(D). The Supreme Court recently described the nature of the Administrative Law Court’s subject matter jurisdiction and appellate jurisdiction.

Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.

...

The ALC has subject matter jurisdiction to review a final decision of an administrative agency.

...

The ALC has appellate jurisdiction over any matter where the procedural requirements for perfecting an appeal have been met.

Allen v. S.C. Dep’t of Corrections, 439 S.C. 164, 167-68, 886 S.E.2d 671, 672 (2023). Because the Department is a state agency, because its decisions to deny Gunter’s pardon request and her rehearing request are final decisions, and because Gunter has satisfied the procedural requirements for perfecting her appeal, this Court has subject matter jurisdiction and appellate jurisdiction over this appeal.

The Department’s claim of no jurisdiction is also belied by the existence of many cases in which the Administrative Law Court has adjudicated appeals of the Department’s final decisions and where appellate courts have held that the Administrative Law Court had jurisdiction and should have adjudicated the appeals. *Rose v. S.C. Dep’t of Probation, Parole, and Pardon Servs.*, 429 S.C. 136, 838 S.E.2d 505 (2020); *Barton*, 404 S.C. 395, 745 S.E.2d 110; *Cooper v. S.C. Dep’t of Prob., Parole and Pardon Servs.*, 377 S.C. 489, 661 S.E.2d 106 (2008); *Furtick v. S.C. Dep’t of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003); *Kelsey v. S.C. Dep’t of Probation,*

Parole, and Pardon Servs. 441 S.C. 373, 893 S.E.2d 588 (Cl. App. 2023); *Steele v. Benjamin*, 362 S.C. 66, 72, 606 S.E.2d 499 (Cl. App. 2004).³ The Department's motion to dismiss for lack of jurisdiction should, therefore, be denied.

II. THE DEPARTMENT'S ARGUMENTS ABOUT LIBERTY INTERESTS AND PARDON BEING A PRIVILEGE ARE OF NO MOMENT.

The Department claims that the Court does not have subject matter jurisdiction over Gunter's appeal because her appeal does not implicate a liberty interest. Mot. to Dismiss at 2. The *Allen* decision refutes this claim. In *Allen*, the Supreme Court made it clear that a liberty interest is not a prerequisite for the Administrative Law Court's subject matter jurisdiction. *Allen*, 439 S.C. at 171, 886 S.E.2d at 674 ("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").⁴

Even if it were necessary for Gunter's appeal to implicate a deprivation of a liberty interest for the Administrative Law Court to have jurisdiction, which it is not, the manner in which Gunter's pardon request was considered and denied clearly implicates an important constitutional right – the right not to be punished, retaliated against, or otherwise disadvantaged for having sought redress from the court. *See infra* at p.8.

Gunter agrees with the Department that receiving a pardon, like being paroled, is a privilege and not a right. Mot. to Dismiss at 3. The effect of pardon and parole being privileges is that routine denials of requests for pardons and parole – for failing to demonstrate sufficient qualifications or rehabilitation to receive these privileges -- cannot be reversed by the courts. *Cooper*, 377 S.C. at 500, 661 S.E.2d at 112 (denial of parole through application of the appropriate criteria is a routine

³ While the decisions in these cases involve parole, there is no basis in either the APA or in *Allen* for treating the Department's pardon decisions any differently than its parole decisions with respect to subject matter jurisdiction.

⁴ While not jurisdictionally relevant, if an inmate's appeal does not involve the deprivation of a liberty interest, it may affect the relief the Administrative Law Court can provide when it ultimately adjudicates the appeal. *Allen*, 439 S.C. at 171, 886 S.E.2d at 674.

denial "and the A.I.C would have limited authority to review the decision to determine whether the Board followed proper procedure."). That pardon and parole are privileges does not, however, grant the Department *curte blanche* to disregard constitutional rights or violate the law.

It is well-established that when the Department or Board violates the law, it is not a routine denial, and the Administrative Law Court and appellate courts will remedy the violations. *Barton*, 404 S.C. at 419, 745 S.E.2d at 123 (Department/Board violations of *ex post facto* and the parole statute); *Cooper*, 377 S.C. at 498-99, 661 S.E.2d at 111 (Department/Board violation of the parole statute). Our courts remedy violations of law, even though the relief sought is a privilege, because otherwise we'd have the obviously unacceptable situation that the Department and Board could engage in illegal conduct with impunity.⁵ *Cooper*, 377 S.C. at 499, 661 S.E.2d at 111 ("[T]he Legislature created this Board to operate within certain parameters. We do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability.")⁶

Both the United States Constitution and the South Carolina Constitution guarantee the right to freedom of speech, which includes the right to petition the government for redress. U.S. Const. Amend. 1 ("Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to . . . petition the Government for a redress of grievances."); S.C. Const. Art. I, § 2 ("The General Assembly shall make no law . . . abridging the freedom of speech. . . or the right of the people . . . to petition the government or any department thereof for a redress of grievances."). The right to petition the government for redress includes the right to seek redress in the courts. *Smartt v. Avery*, 370 F.2d 788, 790 (6th Cir. 1967) ("[T]he right to petition the courts of the United

⁵ If it were otherwise, for example, the Court could not review and provide relief if pardon requests were being denied based upon clearly impermissible factors like race, gender, or religion.

⁶ While the violations of law in these cases involve parole decisions and process, courts clearly have the same duty and power to remedy violations of law involving the pardon process.

States is a constitutional right"); *In re Addleman*, 991 P.2d 1123, 1124 (Wash. Sup. Ct. 2000) ("The right of access to the courts is rooted in the petition clause of the First Amendment to the United States Constitution.").

Actions and decisions by state actors that punish or retaliate against individuals for seeking legal redress violate the First Amendment.

Official reprisal for protected speech "offends the Constitution [because] it threatens to inhibit exercise of the protected right," *Crawford-El v. Britton*, 523 U.S. 574, 588, n. 10, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998), and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecutions, for speaking out, *id.*, at 592, 118 S.Ct. 1584; see also *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (noting that the government may not punish a person or deprive him of a benefit on the basis of his "constitutionally protected speech").

Hurtman v. Moore, 547 U.S. 250, 256 (2006); *Crawford-El v. Britton*, 523 U.S. 574, 588 n. 10 (1998) ("Retaliation is thus akin to an 'unconstitutional condition' demanded for the receipt of a government-provided benefit.") (citation omitted).

It can hardly be doubted that it would be a flagrant violation of the Fourteenth Amendment for a state trial court to follow an announced practice of imposing a heavier sentence upon every reconvicted defendant for the explicit purpose of punishing the defendant for his having succeeded in getting his original conviction set aside. Where, as in each of the cases before us, the original conviction has been set aside because of a constitutional error, the imposition of such a punishment, 'penalizing those who choose to exercise' constitutional rights, 'would be patently unconstitutional.'

North Carolina v. Pearce, 395 U.S. 711, 723-24 (1969) (internal citations omitted); *State v. Fletcher*, 322 S.C. 256, 259, 471 S.E.2d 702, 704 (Ct. App. 1996) ("It is a due process violation to punish a person for exercising a protected statutory or constitutional right.") (citations omitted).

Agencies like the Department are not immune from the constitutional prohibition on retaliating against individuals for bringing cases to court. *In re Addleman*, 991 P.2d at 1125-26 (vacating parole denial because inmate's litigation and grievance activities are protected by the

First Amendment and Board's consideration of those activities impermissibly chills right of access to courts); *Smartt*, 370 F.2d at 791 (parole board regulation delaying parole consideration for one year for filing a *habeas corpus* action violates the constitutional right to petition the courts).

Retaliating against an individual for exercising the constitutional right to seek redress in court also violates the APA.

A reviewing court may reverse the decision of an administrative agency if substantial rights of the appellant have been prejudiced because the agency's findings, inferences, conclusions or decisions (1) violate constitutional or statutory provisions, (2) exceed the statutory authority of the agency, (3) are based upon unlawful procedure, (4) are affected by other error of law, (5) are clearly erroneous in light of the reliable, probative and substantial evidence on the entire record, or (6) are either arbitrary, capricious, or reflect abuse of discretion or the obvious unwarranted exercise of discretion.

Weaver v. S.C. Coastal Council, 309 S.C. 368, 374, 423 S.E.2d 340, 343 (1992) (citing S.C. Code Ann. § 1-23-380) (emphasis added).

In this appeal, Gunter asserts that the Department's decisions denying her pardon request and denying her a rehearing should be reversed because the Board's consideration of her pardon request and its decision were marred by unconstitutional and retaliatory bias against her for the *Barton* case. Gunter also asserts that these decisions violate due process and the APA. Because Gunter's appeal seeks to remedy the Department's violations of the law, Gunter's appeal is not an appeal of a routine pardon denial, and the Court has jurisdiction over this appeal.

CONCLUSION

For the reasons set forth above and any additional reasons offered at a hearing on this motion, Gunter respectfully requests that the Court deny the Department's motion to dismiss

[Signature block on next page]

Respectfully submitted,



Travis Dayhuff

Arslan Valimohamed

Nelson Mullins Riley and Scarborough LLP

1320 Main Street - 17th Floor (29201)

Post Office Box 11070

Columbia, SC 29211-1070

(803) 799-2000

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arslan.valimohamed@nelsonmullins.com

Attorneys for Appellant Theresa Barton Gunter

October 17, 2025

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, Theresa Barton Gunter, do hereby certify that I have served the below counsel in this action with a copy of the pleading(s) hereinbelow specified by hand-delivery to the following address:

Pleadings: MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

**Counsel Served: Matthew Buchanan, Esq.
S.C. Department of Probation, Parole & Pardon Services
General Counsel
293 Greystone Blvd.
Columbia, SC 29210**



Carol D. Jones
Administrative Assistant

October 17, 2025



EXHIBIT A

EXHIBIT B

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN, JR.
Director

293 Graystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

July 10, 2025

Nelson and Mullins Attorneys and Counselors At Law
Travis Dayhuff
1320 Main St Fl 17
COLUMBIA, SC 29201

RE: Ms. Theresa Gunter

Dear Travis Dayhuff:

After thorough consideration of all the facts in your client's case, the Board at its meeting on 7/9/2025, rejected your client's request for a Pardon. Please be advised that the Board does not provide reasons for the decision to reject and that the Board's decision is final and may not be appealed.

Your client may re-apply one year from the date of the rejection decision. If you have any questions, please call me at 803-734-3505.

Sincerely,

A handwritten signature in cursive script that reads "Katrina Canada".

Katrina Canada
Asst. Deputy Director for Parole Board and Release Services



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)"



EXHIBIT C



NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

Travis Dayhuff
T: 803.256.9526
travis.dayhuff@nelsonmullins.com

1320 Main Street, 17th Floor
Columbia, SC 29201
T: 803.799.2000 F: 803.256.7500
nelsonmullins.com

July 10, 2025

VIA U.S. MAIL

SCDPPPS

ATTN: Patricia Gunter
Post Office Box 207
Columbia, SC 29202

RE: Theresa Barton Gunter
Our File No. 056334/00003

Dear Ms. Gunter:

I am writing to request a copy of the CD of the audio recording of the pardon hearing held on 07/09/2024 for Theresa Barton Gunter. I have enclosed a check in the amount of \$17.50 to cover the cost of the CD.

If you need any additional information, please let me know.

Thank you for your assistance.

Very truly yours,

Travis Dayhuff

TD:cdj

Enclosure

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW
PO BOX 11070
COLUMBIA, SC 29211-1070

SYNOVUS BANK
COLUMBIA, SC

1106270

07-11R
630

Date July 10, 2025

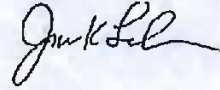
Pay: Seventeen and 50/100***** \$***17.50***

PAY
TO THE
ORDER
OF:

SC Dept. of Probation, Parole and Pardon Services

NELSON MULLINS RILEY & SCARBOROUGH LLP
ORIGINAL SIGNATURE REQUIRED IF OVER \$600
VOID AFTER 180 DAYS

Memo:



⑈01106270⑈ ⑆061100606⑆ 1002720611⑈

Payee: SC Dept. of Probation, Parole and Pardon Services
Vendor ID: 12394 Vendor Assigned Customer#:

Check #: 1106270
Check Date: Jul 10/25

Inv #	Inv Date	G/L Acct	Client	Material	Narrative	Amount	Inv Total
07102025	Jul 10/25		056334	00003		\$17.50	\$17.50

Vendor: SC Dept. of Probation, Parole and Pardo Invoice#: 07102025
Date: 7/10/2025 - CRINV - - 07/10/25 - Request CD of audio recording of
pardon hearing on 07/09/2025

Invoice Totals: \$17.50 \$17.50

EXHIBIT D

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor



JAKE GADSDEN JR.
Director

293 GREYSTONE BOULEVARD
COLUMBIA, SOUTH CAROLINA 29210
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dpps.sc.gov
MAILING ADDRESS: P.O. BOX 207
COLUMBIA, SOUTH CAROLINA 29202

August 14, 2025

Mr. Travis Dayhuff
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street
Columbia, SC 29201

To whom this letter may concern:

Please find enclosed the requested duplicate audio CD of the **PARDON** hearing held in reference to Theresa Gunter #360462 held on July 9, 2025.

Should you have any concerns or issues, please feel free to contact me at the numbers listed below.

Sincerely,

Rhea Hunter

Parole Program Assistant
Office of Parole and Pardon Services

Enclosure



"Nation's First Probation Agency accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA)."



NOTES

RECEIPT

DATE

7/14/25

NO.

579918

RECEIVED FROM

Travis Dayhuff

ADDRESS

1320 Main Street

Columbia, SC 29201

\$

17.50

FOR

CD Fee

	ACCOUNT		HOW PAID	
AMT. OF ACCOUNT			CASH	
AMT. PAID	17	50	CHECK	✓
BALANCE DUE			MONEY ORDER	

Synovus Bank

1104270

BY



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EXHIBIT E

Carol Jones

From: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Sent: Friday, September 12, 2025 2:22 PM
To: Travis Dayhuff
Cc: Carol Jones
Subject: RE: Theresa Gunter -- Pardon Hearing

External Source/Sender notice

Use caution responding or clicking links/attachments

Report Suspicious

Good afternoon Travis,

I have had some discussions about this. Unfortunately, the Board or Department does not grant rehearings for pardon denials, and we're not inclined to make an exception in this instance.

Matt

From: Travis Dayhuff <travis.dayhuff@nelsonmullins.com>
Sent: Friday, September 12, 2025 9:30 AM
To: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Cc: Carol Jones <carol.jones@nelsonmullins.com>
Subject: RE: Theresa Gunter -- Pardon Hearing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Matt,

Any news for me re rehearing?

Thank you.

TD

Travis Dayhuff
Nelson Mullins
803-255-9525

From: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>
Sent: Wednesday, September 10, 2025 9:44 AM
To: Travis Dayhuff <travis.dayhuff@nelsonmullins.com>
Cc: Carol Jones <carol.jones@nelsonmullins.com>
Subject: RE: Theresa Gunter -- Pardon Hearing

Good morning Travis,

I can take a call now if you're available. Otherwise, I've got court this afternoon but I have a lot of open spots Thursday.
Matt



Matthew Buchanan

General Counsel

O: 803-734-9012 • M: 803-240-7321 • E: Matthew.Buchanan@ppp.sc.gov

South Carolina Department of Probation, Parole & Pardon Services

Central Office

293 Greystone Blvd, Columbia SC 29210

P.O. Box 207, Columbia, SC 29202



From: Travis Dayhuff <travis.dayhuff@nelsonmullins.com>

Sent: Tuesday, September 9, 2025 4:42 PM

To: Matthew Buchanan <Matthew.Buchanan@ppp.sc.gov>

Cc: Carol Jones <carol.jones@nelsonmullins.com>

Subject: Theresa Gunter -- Pardon Hearing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Matt,

Hope you are doing well.

Listened to the CD from my pardon hearing with Ms. Gunter. Could we please schedule a short call to discuss? I have lots of availability on Wed., Thurs., if that works for you.

Please let me know when I could give you a call.

Thank you.

TD



TRAVIS DAYHUFF **PARTNER**
travis.dayhuff@nelsonmullins.com

¹⁰¹ MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
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