

**The Grose Law Firm, LLC**  
404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.  
Phone: 864-538-4466 Fax: 864-538-4405  
E-mail: charles@groselawfirm.com  
Web: GroseLawFirm.com

February 11, 2015

The Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

**RECEIVED**

FEB 13 2015

**S.C. SUPREME COURT**

Re: Anthony Nations v. State of South Carolina

Dear Mr. Harris:

Enclosed please find for filing, along with certificate of filing by mail and certificate of service by mail, the original and ten (10) copies of Mr. Nation's Reply to Brief and Opposition.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,

  
E. Charles Grose, Jr.

Enclosures

cc: Matthew C. Buchanan, Esquire  
S.C. Department of Probation, Parole & Pardon Services

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2014

**RECEIVED**

FEB 13 2015

**S.C. Supreme Court**

\_\_\_\_\_  
No. 14-7894  
\_\_\_\_\_

ANTHONY NATION

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

\_\_\_\_\_  
PETITIONER'S REPLY TO BRIEF IN OPPOSITION  
\_\_\_\_\_

E. Charles Grose, Jr.  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: [charles@groselawfirm.com](mailto:charles@groselawfirm.com)

*Attorney of Record for Petitioner*

TABLE OF CONTENTS

TABLE OF AUTHORITIES .....2  
PETITIONER'S REPLY TO BRIEF IN OPPOSITION .....3

## TABLE OF AUTHORITIES

### CASES

<i>Cunningham v. California</i> , 549 U.S. 270 (2007).....	5
<i>Doe v. Pataki</i> , 120 F.3d 1263 (2d Cir. 1997).....	4
<i>Kellar v. Fayetteville Police Dep't</i> , 339 Ark. 274, 5 S.W.3d 402 (1999).....	3
<i>Jamison v. People</i> , 988 P.2d 177 (Colo. App. 1999).....	4
<i>Kitze v. Com.</i> , 23 Va. App. 213, 475 S.E.2d 830 (1996).....	4
<i>Meinders v. Weber</i> , 2000 S.D. 2, 604 N.W.2d 248 (2000).....	4
<i>People v. Langdon</i> , 258 A.D.2d 937, 685 N.Y.S.2d 877 (1999).....	4
<i>Smith v. Doe</i> , 538 U.S. 84 (2003).....	3
<i>State v. Burr</i> , 1999 ND 143, 598 N.W.2d 147 (1999).....	4
<i>State v. Costello</i> , 138 N.H. 587, 643 A.2d 531 (1994).....	4
<i>State v. Kelly</i> , 256 Conn. 23, 770 A.2d 908 (2001).....	3
<i>State v. Manning</i> , 532 N.W.2d 244 (Minn. Ct. App. 1995).....	4
<i>State v. Noble</i> , 171 Ariz. 171, 829 P.2d 1217 (1992).....	4
<i>State v. Walls</i> , 348 S.C. 26, 558 S.E.2d 524 (2002).....	3

### STATUTES

S.C. Code Ann. §24-13-40.....	4
S.C. Code Ann. § 24-21-440.....	3

## PETITIONER'S REPLY TO BRIEF IN OPPOSITION

1) One of the cases cited in footnote five, on p. 5, of South Carolina's Brief in Opposition, further supports Mr. Nation's petition for writ of *certiorari*. Although *State v. Kelly*, 256 Conn. 23, 94, 770 A.2d 908, 954 (2001) held Connecticut's Sex Offender Registry "is regulatory and not punitive" and does not violate the *Ex Post Facto* clause, that case also held a separate statutory provision "which increased the fixed probationary term beyond the scope of the statute in effect [at the time of the offense], the trial court improperly imposed 'additional punishment,' more than that which was prescribed at the time of the offense, in violation of the *ex post facto* clause of the United States constitution." *Id.* 256 Conn. At 90, 770 A.2d at 952. Because satellite monitoring extends beyond the period of probation that was allowed at the time of Nation's sentence, *see* S.C. Code Ann. § 24-21-440 ("period of probation or suspension of sentence shall not exceed a period of five years"), *Kelley* actually support's his petition for writ of *certiorari*.

2) South Carolina contends, "[T]he vast majority of jurisdictions follow this Court's guidance in *Smith v. Doe*, [538 U.S. 84 (2003)] as does South Carolina." Brief in Opposition, p. 5. In footnote five its Brief in Opposition, also on p. 5, Respondent identifies twelve states it contends applies *Smith v. Doe* in the same manner as South Carolina did in *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002). South Carolina, however, overlooks that fact that the modern version of its Sex Offender Registry is very different than the registries approved by this Court in *Smith v. Doe* and South Carolina in *Walls*. Nine of the twelve state court cases cited in footnote five, in fact, merely interpreted the basic requirement that sex offenders register, a requirement that Nation does not challenge. *Kellar v. Fayetteville Police Dep't*, 339 Ark. 274, 284-85, 5 S.W.3d 402, 408 (1999) ("dissemination of information regarding criminal conduct, without

more, is not punishment when done to advance a legitimate government purpose or objective”); *Jamison v. People*, 988 P.2d 177, 179 (Colo. App. 1999); *State v. Noble*, 171 Ariz. 171, 175, 829 P.2d 1217, 1221 (1992) (“sole question we must decide is whether registration under [A.R.S.] §13-3821 constitutes punishment”); *State v. Manning*, 532 N.W.2d 244, 247 (Minn. Ct. App. 1995); *State v. Costello*, 138 N.H. 587, 588, 643 A.2d 531, 532 (1994); *People v. Langdon*, 258 A.D.2d 937, 685 N.Y.S.2d 877 (1999) citing *Doe v. Pataki*, 120 F.3d 1263, 1282 (2d Cir. 1997) (“although the Act technically subjects even low risk offenders to public notification, the extent of such notification is extremely limited”); *State v. Burr*, 1999 ND 143, ¶ 16, 598 N.W.2d 147, 154 (1999) (“The registration requirement alone imposes no additional burdens on offenders. Although offenders must give notice if they relocate, this requirement alone does not restrain their movement. An offender's conviction is a matter of public record regardless of registration.”); *Meinders v. Weber*, 2000 S.D. 2, 604 N.W.2d 248 (2000); and *Kitze v. Com.*, 23 Va. App. 213, 475 S.E.2d 830 (1996).

3) South Carolina argues, “GPS monitoring is frequently used as a condition of bond, which cannot be considered punitive because it is imposed in a pre-adjudicatory context.” Brief in Opposition, p. 9. This assertion overlooks S.C. Code Ann. §24-13-40, which provides that “credit against a sentence . . . may be given for any time spent under monitored house arrest.” South Carolina’s General Assembly, therefore, recognizes satellite monitoring imposed as a condition of bond can be part of the sentence and, therefore, punishment if the person is ultimately convicted.

4) South Carolina contends that application of satellite monitoring to Nation is constitutional because the condition “was imposed because of a violation of his probation, which occurred *after* the enactment of the Sex Offender Accountability and Protection of Minors Act.”

Brief in Opposition, p. 6 (emphasis original). To be clear, Nation does not contend that South Carolina—under its statutes existing at the time of the offense—could not impose satellite monitoring as condition of Nation’s probation. Nation has completed his probation, but the satellite monitoring continues. Nation contests the extension of the monitoring beyond the end of his probation. To the extent that South Carolina suggests satellite monitoring is a penalty for a new violation committed while on probation, Nation was entitled to have a jury—not a judge—determine those facts. *Cunningham v. California*, 549 U.S. 270 (2007).

### Conclusion

This Court’s guidance is needed so states will know the limits of expanding sex offender registries without funning afoul of the Constitution. This Court, accordingly, should grant the writ.

Respectfully submitted,

By



E. Charles Grose, Jr.  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: [charles@groselawfirm.com](mailto:charles@groselawfirm.com)

*Attorney of Record for Petitioner*

February 11, 2015.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2014

**RECEIVED**

FEB 13 2015

\_\_\_\_\_  
No. 14-7894  
\_\_\_\_\_

**S.C. SUPREME COURT**

ANTHONY NATION

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

\_\_\_\_\_  
CERTIFICATE OF FILING BY MAIL  
\_\_\_\_\_

I hereby certify that I am a member of the Bar of this Court and that on February 11, 2015, I filed the petitioner's reply to brief in opposition, by causing the originals and ten copies of the same to be deposited in the United States Mail, postage prepaid, and properly addressed to the Clerk of this Court.

By 

E. Charles Grose, Jr.

*Attorney of Record for Petitioner*

SUBSCRIBED TO AND SWORN TO before me  
This 11th day of February, 2015.



Notary Public for South Carolina

My Commission Expires: May 31, 2023

My Commission Expires May 31, 2023

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2014

\_\_\_\_\_  
No. 14-7894  
\_\_\_\_\_

ANTHONY NATION

PETITIONER

v.

STATE OF SOUTH CAROLINA

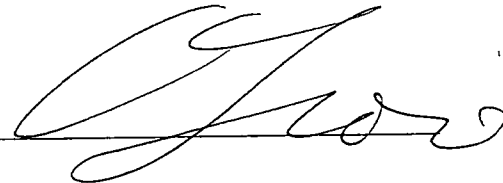
RESPONDENT.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the petitioner's reply to brief in opposition has been served upon opposing counsel by mailing one (1) copy in an envelope properly addressed with postage prepaid this 11<sup>th</sup> day of February, 2015, to:

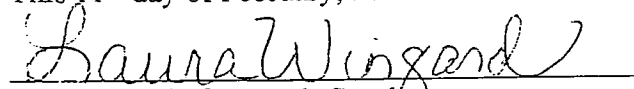
Matthew C. Buchanan, Esquire  
S. C. Department of Probation, Parole & Pardon Services  
PO Box 50666  
Columbia, SC 29250

By



E. Charles Grose, Jr.  
*Attorney of Record for Petitioner*

SUBSCRIBED TO AND SWORN TO before me  
This 11<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: May 31, 2023

My Commission Expires May 31, 2023