

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from The Administrative Law Court
Ralph King Anderson, III, Chief Administrative Law Judge

Court of Appeals' Order filed July 20, 2017
Supreme Court Case Tracking No. 2017-002010

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Rudy Cassady, #238732, Sheldon Clark, #264772,
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Gladstone Cummings, #267450, Patrick Curtis, #175139,
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Hampton, #286427, James Hartman, #219770, Gary
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#260855, Stephen Lease, #137016, Harry Leonard,
#249996, Herbert McFadden, #184297, Michael
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#300424, Vondell Sanders, #241308, James Sattler,
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#251957, Jerome Scott, #153381, Roosevelt Scott,
#275631, Archie Simmons, #161419, Robert Smith,
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#258972, Harlon Edger, #261866, Johnny Holden,
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Archie Lee, #226354, Isaac Richardson, #232574,
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v.

South Carolina Department of Corrections, Respondent.

**THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS'
RETURN TO PETITION FOR WRIT OF CERTIORARI**

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Under the authority of South Carolina Appellant Court Rule [“SCACR”] 242(f), the South Carolina Department of Corrections [“SCDC”] respectfully submits its instant return to the petition for writ of certiorari filed by the Petitioners concerning the final order issued July 20, 2017 by the Court of Appeals in the matter styled as *Francis Ackerman, et al., Appellants, v. S.C. Dep’t of Corr., Respondent*, Appellate Case No. 2017-001560 (July 20, 2017) (Apx. pp. 7 – 10).

I. QUESTION PRESENTED

Lead by Francis Ackerman, the Petitioners are current and former inmates who participated in a prison industries service work project operated by SCDC at Lieber Correctional Institution, and they presented the following sole question for review in their instant petition:¹

Did the Court of Appeals err in deciding the [Administrative Law Court’s June 13, 2017 “Order of Remand”] was not appealable under the rule in [*Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Envtl. Control*, 692 S.E.2d 894 (S.C. 2010)]?

II. SUMMARY OF SCDC’S OPPOSITION TO THE PETITION

Under SCACR 242(a), this Court, or any two (2) of its justices, “may, in its discretion ... issue a writ of certiorari to review a final decision of the Court of Appeals.” As provided by SCACR 242(b)’s first sentence, such a writ “is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.”

No such “special and important reasons” exist in the instant matter, because the June 13, 2017 “Order of Remand” issued by the Administrative Law Court [“ALC”] is, as determined by the Court of Appeals, obviously interlocutory.

SCDC respectfully asserts that the inmates’ arguments and analysis, which they previously articulated to both the ALC and the Court of Appeals in a myriad of filings, border on the nonsensical, and, by extension, their instant petition borders on the frivolous.

¹ See Petition, p. 1.

III. SCDC'S COUNTER-STATEMENT OF THE CASE

A. ORDERS ISSUED BY THE COURT OF APPEALS AND THE ALC

The entirety of the July 20, 2017 order issued by the Court of Appeals and challenged by the inmates read as follows (Apx. pp. 9 – 10):

This appeal arises out of an order from the [ALC] remanding the case to [SCDC]. **Because the order of the ALC is not a final order, we dismiss this appeal as interlocutory.** See [*Charlotte-Mecklenburg Hosp. Auth.*, 692 S.E.2d at 895] (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.”). The remittitur will be sent pursuant to [SCACR 221(b)]. [emphasis supplied].

The order referenced by the Court of Appeals consisted of an “Order of Remand” issued by the ALC June 13, 2017 (Apx. pp. 18 – 22), which, in its entirety, read as follows (Apx. p. 21):

This matter is before the [ALC] on remand from the [Court of Appeals]. The case originally came before the ALC on an appeal filed [by] multiple [inmates] concerning the Prevailing Wage Statute. The [ALC] denied the appeal, stating that [the inmates] failed to timely file their grievances. The Court of Appeals subsequently reversed and remanded the cases for processing of the grievances. See [*Ackerman, et al., v. S.C. Dep't of Corr.*, 782 S.E.2d 757 (S.C. Ct. App. 2016), cert. denied (May 30, 2017)]. Accordingly,

IT IS THEREFORE ORDERED that these cases are remanded to [SCDC] for consideration of [the inmates'] grievances on the merits in keeping with [the Court of Appeals'] decisions in *Ackerman* and [*Gatewood v. S.C. Dep't of Corr.*, 785 S.E. 2d 60 (2016)].

[emphasis supplied by the ALC].

The inmates challenged the Court of Appeals' July 20, 2017 order by filing a petition for rehearing dated July 31, 2017 (Apx. pp. 55 – 76), and the Court of Appeals, by the order it issued September 14, 2017, denied their petition for rehearing. (Apx. pp. 11 – 14).

B. FLAWS IN THE INMATES' "STATEMENT OF THE CASE"

In the section of their petition entitled "Statement of the Case," the inmates chronicled the procedural history associated with the litigation of the instant controversy.²

1. The inmates inaccurately summarized *Adkins* and *Wicker*.

In chronicling the instant controversy, the inmates offered inaccurate summaries of two (2) decisions by this Court addressing prison industries pay claims by asserting as follows in their "Statement of the Case:"³

On August 23, 2004, the Supreme Court issued decisions in [*Adkins, et al. v. S.C. Dep't of Corr.*, 602 S.E. 2d 51 (S.C. 2004)] and [*Wicker v. S.C. Dep't of Corr.*, 602 S.E. 2d 56 (S.C. 2004)]. **These decisions held inmates could file prevailing wage grievances with SCDC and appeal to the [ALC].** [emphasis supplied].

This Court did not hold in either *Adkins* or *Wicker* that inmates "could file prevailing wage grievances with SCDC" and then appeal SCDC's denial of such grievances to the ALC.

In *Adkins*, 602 S.E.2d at 54, this Court noted that SCDC's "failure to pay a certain wage simply does not constitute a tort so as to be cognizable under the Tort Claims Act," and it also noted that even if the inmates' claims animated "a Tort Claims case, the circuit court correctly ruled that [SCDC] was immune from liability under S.C. Code Ann. § 15-78-60(5)."⁴

These notes aside, this Court's essential ruling in *Adkins* consisted of its conclusion that the statutes upon which the inmates relied (i.e. § 24-3-430 and, specifically, § 24-3-430(D)) "do not give rise to a private, civil cause of action." *Id.*

This Court then referenced *Wicker* in the final paragraph of *Adkins*, 602 S.E.2d at 55:

² See Petition, pp. 1 – 2.

³ *Id.*, p. 1.

⁴ In a parenthetical, the *Adkins* court summarized § 15-78-60(5) as follows: "governmental entity not liable for loss resulting from the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee."

... , notwithstanding our holding that Inmates have no private civil cause of action, they are not without a remedy. In accordance with the companion case of [*Wicker*], we hold Inmates may file an inmate grievance to protest [SCDC's] failure to pay wages in accordance with the mandatory statutory provisions.

In *Wicker*, 602 S.E.2d at 57 – 58, this Court invoked *Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000) when it recognized the reality that the ALC could review final decisions rendered by SCDC concerning grievances filed by inmates under SCDC Policy Number GA-01.12 in which the inmates articulated prison industries pay claims:

We are not unmindful of our opinion in [*Sullivan v. S.C. Dep't of Corr.*, 586 S.E.2d 124 (S.C. 2003)], in which we held the [ALC] has jurisdiction to review [SCDC] grievance proceedings only if they involve the denial of “state created liberty interests.” There, we recognized that our opinion in [*Al-Shabazz*, 527 S.E.2d at 750], held that 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, sentence-related credits, or custody status. However, we did not limit *Al-Shabazz* to these two instances. The *Al-Shabazz* Court explained 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. [527 S.E.2d at 750].

We find the state’s statutory mandate that inmates be paid the prevailing wage creates such an interest, which may not be denied without due process. [*Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985)]. Accordingly, in this very limited circumstance, **we hold [SCDC’s] failure to pay in accordance with the statutes is reviewable by the [ALC].**

[emphasis supplied].

In the footnote associated with above-quoted passage from *Wicker*, 602 S.E.2d at 58, this Court explicitly noted “that our holding today is extremely limited and is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance.”

Thus, contrary to the inmates’ assertion, SCDC respectfully submits that neither *Adkins* nor *Wicker* explicitly or implicitly “opened the door” for inmates to file prison industries pay

grievances with SCDC. Instead, *Adkins* and *Wicker* confirmed that inmates had already possessed the right to do so.

2. The Court of Appeals summarily dismissed the inmates' appeal of the ALC's June 13, 2017 "Order of Remand."

In the final two (2) paragraphs of their "Statement of the Case,"⁵ the inmates addressed the June 13, 2017 "Order of Remand" issued by the ALC after this Court issued the remittitur to the ALC's Clerk of Court on June 2, 2017 (Apx. pp. 18 – 22 and 16):

On June 13, 2017, the ALC remanded the case back to SCDC "... for consideration of [inmates'] grievances on the merits in keeping with [the Court of Appeals'] decisions in [*Ackerman*] and [*Gatewood*]." [Apx. p. 21].⁶

On July 14, 2017, inmates filed [a] notice of appeal in the Court of Appeals of the ALC's [June 13, 2017 "Order of Remand"]. [Apx. pp. 42 – 54]. **Before the parties filed [any] briefs and [the Record on Appeal],** the Court of Appeals on July 20, 2017 issued an order dismissing the appeal as interlocutory. [Apx. pp. 7 – 10].⁷ On July 31, 2017, inmates filed a petition for rehearing. [Apx. pp. 55 – 76]. On September 14, 2017, the Court of Appeals issued an order denying the petition. [Apx. pp. 11 – 14].

[emphasis supplied].

SCDC respectfully submits that in the second of the above-quoted paragraphs, the inmates ignored the reality that the Court of Appeals summarily dismissed their appeal of the ALC's June 13, 2017 "Order of Remand" *before* they even filed their initial brief and designation of matter to be included in the record on appeal.

SCDC further respectfully submits that the Court of Appeals, given that the ALC's June 13, 2017 remand order is obviously interlocutory, acted appropriately.

⁵ See Petition, p. 2.

⁶ The entirety of the ALC's June 13, 2017 "Order of Remand" appears above on page 2.

⁷ The entirety of the Court of Appeals' July 20, 2017 order summarily dismissing the inmates' appeal of the ALC's June 13, 2017 "Order of Remand" appears above on page 2.

3. **The inmates omitted a myriad of filings they submitted to both the Court of Appeals and the ALC after the ALC issued its June 13, 2017 “Order of Remand.”**

The inmates also failed to discuss or even mention in their “Statement of the Case” a myriad of filings they submitted to both the Court of Appeals and the ALC after the ALC issued its June 13, 2017 “Order of Remand.”

a) **The inmates’ “Petition for Writ of Mandamus.”**

The inmates failed to mention in their “Statement of the Case” or anywhere else in their instant petition their “Petition for Writ of Mandamus” dated July 13, 2017 to the Court of Appeals concerning the ALC’s June 13, 2017 “Order of Remand.”⁸

Pursuant to S.C. Code § 14-8-290, [inmates request the Court of Appeals] to issue a Writ of Mandamus compelling [the ALC] to consider [their] grievances on the merits, as required by [the Court of Appeals’] judgment of February 10, 2016 and remittitur of June 2, 2017, as more particularly described in the attached memorandum.⁹

In the conclusion of their July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, the inmates articulated the following request:¹⁰

For the above reasons, **inmates request that the [ALC’s June 13, 2017 “Order of Remand”] be declared null and void**, and that a writ of mandamus be issued to [the ALC] compelling him to consider [their] grievances on the merits, as required by the February 10, 2016 Court of Appeals’ opinion and judgment, and June 2, 2017 remittitur. [emphasis supplied].

⁸ SCDC respectfully submits a copy of the inmates’ July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, along with its supporting memorandum, and proof of service, as Exhibit A in support of its instant return. *See* Exhibit A, pp. 3 – 4.

⁹ The inmates’ instant petition includes many of the same arguments and much of the same analysis from the supporting memorandum to their July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals. *See* Exhibit A, pp. 5 – 13.

¹⁰ *See* Exhibit A, p. 13.

In their instant petition,¹¹ the inmates also erroneously asserted that the ALC's June 13, 2017 "Order of Remand" was "null and void:"

Finally, because the ALC's [June 13, 2017 "Order of Remand"] was outside its jurisdiction to issue, inmates contend **it was null and void, and the proceeding is as if the remand had not occurred** (Am Jur 2d (2007), App. Rev., §740; 20 Am Jur 2d (2015), Courts, §63).

Inmates submit the [ALC's June 13, 2017 "Order of Remand"] was inconsistent with and did not enforce the Court of Appeals' remand to the ALC, and **the ALC remand was outside the ALC's jurisdiction and thus null and void.**

[bold emphasis supplied by SCDC].

The inmates likewise failed to mention in their "Statement of the Case" or anywhere else in their instant petition that by correspondence from its Clerk dated July 17, 2017, the Court of Appeals summarily rejected their July 13, 2017 "Petition for Writ of Mandamus":¹²

Your petition for writ of mandamus was received July 14, 2017. The remittitur was filed in this appeal on June 2, 2017. This Court no longer has jurisdiction over this case. The Court is returning your petition for writ of mandamus to you and no further action will be taken.

The inmates' July 13, 2017 "Petition for Writ of Mandamus" to the Court of Appeals and the Court of Appeals' rejection of it directly impacts the following paragraph from the next to last page of their instant petition:¹³

As a final consideration governing review, if the Court finds the [ALC's remand] order was not appealable, inmates request the Court to consider this petition **as an application for mandamus** to the ALC to merits consider [their] grievances, thus rendering this Court's review of the Court of Appeals' [decision] appropriate (Appellate Practice in South Carolina, 3rd Ed., 2016, page 165). [emphasis supplied].

¹¹ See Petition, p. 6. See also note 29 below.

¹² SCDC respectfully submits a copy of the Clerk's July 17, 2017 letter as Exhibit B in support of its instant return.

¹³ See Petition, p. 11.

Just as the Court of Appeals summarily rejected their July 13, 2017 “Petition for Writ of Mandamus,” this Court should also summarily reject the inmates’ request for it to issue a writ of mandamus to the ALC to compel the ALC to consider the merits of their grievances.

b) **Gatewood’s challenges to the ALC’s June 13, 2017 “Order of Remand” in his case.**

In their instant petition, the inmates reference SCDC’s “response to Gatewood’s ALC petition for attorney fees,¹⁴” but they did not include “Gatewood’s ALC petition for attorney fees” in their Appendix.¹⁵ Moreover, the filing by SCDC described by the inmates as its “response to Gatewood’s ALC petition for attorneys fees” consisted of a filing to the ALC dated July 13, 2017 and entitled “[SCDC’s] Response to Gatewood’s Filings dated June 30, 2017 and its Motion to Strike Gatewood’s Filings dated June 30, 2017.” (Apx. pp. 77 – 94).

As reflected in SCDC’s July 13, 2017 filing, Gatewood submitted three (3) items to the ALC, each of them dated June 30, 2017 (Apx. p. 78):

1. A “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest” and allied “Time Sheets” kept by Gatewood’s counsel, which support Gatewood’s “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest;”¹⁶
2. A “Motion and Memorandum for Appointment of Special Referee,”¹⁷ and
3. A “Motion and Memorandum to Supplement the Record.”¹⁸

¹⁴ See Petition, p. 7.

¹⁵ Fred Gatewood is also a petitioner in the instant matter, and his name appears in the instant matter’s caption.

¹⁶ Gatewood’s filing to the ALC entitled “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest” totaled 94 pages, and the allied “Time Sheets” kept by Gatewood’s counsel totaled 215 pages. For clarity’s sake, Gatewood’s counsel has served and continues to serve as counsel for the inmates in the instant matter. For brevity’s sake, SCDC does not submit either of these two (2) items as exhibits in support of its instant return.

¹⁷ Gatewood’s filing to the ALC entitled “Motion and Memorandum for Appointment of Special Referee” totaled 11 pages, and SCDC respectfully submits it as Exhibit C in support of its instant return.

¹⁸ Gatewood’s filing to the ALC entitled “Motion and Memorandum to Supplement the Record” totaled 155 pages, and, again for brevity’s sake, SCDC does not submit it as an exhibit in support of its instant return.

In his June 30, 2017 filing to the ALC entitled “Motion and Memorandum for Appointment of Special Referee,” Gatewood offered many of the same arguments offered by the inmates in their instant petition.

For example, the inmates asserted in their instant petition that “after 13 years of contesting liability, it appears SCDC has developed a ‘will to win’ in these cases.¹⁹” In his June 30, 2017 “Motion and Memorandum to Supplement the Record” to the ALC,²⁰ Gatewood asserted “that SCDC’s litigation of this matter since 2004 demonstrates its ‘will to win’ to avoid paying statutory wages, and thus, its partiality.²¹”

As reflected by SCDC’s filing to the ALC in *Gatewood* dated July 13, 2017 and entitled “[SCDC’s] Response to Gatewood’s Filings dated June 30, 2017 and its Motion to Strike Gatewood’s Filings dated June 30, 2017” (Apx. p. 81), Gatewood, just like the inmates in their instant petition, asserted that the ALC’s June 13, 2017 “Order of Remand” in his case (Apx. p. 23) was “null and void:”

In the footnote at the bottom of the first page of his “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest,²²” Gatewood addressed the [ALC’s] June 13, 2017 remand order as follows:

Gatewood respectfully contends [the ALC’s] June 13, 2017 remand to [SCDC] is not consistent with, and does not enforce, the Court of Appeals’ judgment of March 9, 2016 and remittitur of June 2, 2017 requiring [the ALC] to reconsider Gatewood’s entitlement to costs, attorney fees, pre and post-judgment interest in light of the Court of Appeals’ opinion [*Muller*

¹⁹ See Petition, p. 8.

²⁰ See Exhibit C, p. 3.

²¹ The inmates and Gatewood both invoked *Ross v. MUSC*, 492 S.E.2d 62, 72 (S.C. 1997) to support their assertion that SCDC has purportedly developed a “will to win” in these matters. See Petition, p. 8, and Exhibit C, pp. 2 – 3.

²² In the footnote associated with this passage, SCDC observed that Gatewood also asserted elsewhere in his “Petition for Attorney Fees, Costs, and Pre and Post-Judgement Interest” that the ALC’s June 13, 2017 remand order in his case “was **null and void.**” [emphasis supplied].

v. Myrtle Beach Golf & Yacht Club, 438 S.E. 2d 248, 249 – 250 (S.C. 1993)] (Once remittitur is sent down from Supreme Court, Circuit Court acquires jurisdiction to enforce judgment and take any action consistent with Supreme Court’s ruling); Am Jur 2d (2007), App. Review, §§ 734-737, 740, 744). Gatewood further contends [the ALC’s] remand was outside its jurisdiction, null and void, and the proceeding is as if the remand had not occurred (Id., § 740; 20 Am Jur 2d (2015), Courts, § 63). Thus, Gatewood contends [the ALC] has jurisdiction to consider the within petition for attorney fees.

[bold emphasis supplied by SCDC].

Contrary to the assertion by the inmates in their instant petition, SCDC’s July 13, 2017 filing to the ALC entitled “[SCDC’s] Response to Gatewood’s Filings dated June 30, 2017 and its Motion to Strike Gatewood’s Filings dated June 30, 2017” did not exclusively or even primarily serve as SCDC’s response to Gatewood’s “ALC petition for attorneys fees.” Instead, it served as the mechanism by which SCDC moved the ALC to strike all three (3) of Gatewood’s filing dated June 30, 2017.

As of the date of SCDC’s instant return, the ALC has not ruled on SCDC’s motion to strike all three (3) of Gatewood’s filings dated June 30, 2017 or any of Gatewood’s filings dated June 30, 2017, because, Gatewood, like the inmates in the instant matter, appealed the June 13, 2017 “Order of Remand” issued by the ALC in his case to the Court of Appeals.²³

Just as it did in the instant matter, the Court of Appeals, by an order dated July 20, 2017, ruled that the ALC’s June 13, 2017 “Order of Remand” in Gatewood’s case was interlocutory, and it summarily dismissed Gatewood’s appeal *before* Gatewood even filed his initial brief and designation of matter.²⁴

²³ SCDC respectfully submits Gatewood’s July 14, 2017 Notice of Appeal to the Court of Appeals regarding the ALC’s June 13, 2017 “Order of Remand” in his case as Exhibit D in support of its instant return.

²⁴ SCDC respectfully submits Court of Appeals’ July 20, 2017 order summarily dismissing Gatewood’s appeal as Exhibit E in support of its instant return.

Gatewood, just like the inmates, filed a petition for rehearing with the Court of Appeals dated July 31, 2017,²⁵ and the Court of Appeals, just as it did instant matter, dismissed Gatewood's petition for rehearing by an order dated September 14, 2017.²⁶

Gatewood also, just like the inmates, filed a "Petition for Writ of Mandamus" with the Court of Appeals dated July 13, 2017 challenging the ALC's June 13, 2017 "Order of Remand" in his case (Apx. p. 23):²⁷

Pursuant to [§ 14-8-290], [Gatewood requests the Court of Appeals] to issue a Writ of Mandamus compelling [the ALC] to reconsider [his] entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest in light of [the Court of Appeals'] March 9, 2016 opinion and judgment, and remittitur of June 2, 2017, as more particularly, described in the attached memorandum.

In the section of the memorandum in support of his July 13, 2017 "Petition for Writ of Mandamus" to the Court of Appeals, Gatewood articulated the following request:²⁸

For the above reasons,²⁹ **Gatewood requests that [the ALC's June 13, 2017 "Order of Remand"] be declared null and void**, and that a writ of mandamus be issued to [the ALC] compelling [it] to reconsider Gatewood's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest, in light of the March 9, 2016 Court of Appeals' opinion and judgment, and June 2, 2017 remittitur. [emphasis supplied].

²⁵ SCDC respectfully submits Gatewood's July 31, 2017 Petition for Rehearing to the Court of Appeals regarding the ALC's June 13, 2017 "Order of Remand" in his case as Exhibit F in support of its instant return.

²⁶ SCDC respectfully submits Court of Appeals' September 14, 2017 order denying Gatewood's Petition for Rehearing as Exhibit G in support of its instant return.

²⁷ SCDC respectfully submits a copy of Gatewood's July 13, 2017 "Petition for Writ of Mandamus" to the Court of Appeals, along with its supporting memorandum, and proof of service, as Exhibit H in support of its instant return. The inmates omitted any referenced to Gatewood's July 13, 2017 "Petition for Writ of Mandamus" in their "Statement of the Case" or anywhere else in their instant petition. *See* Exhibit H, p. 1.

²⁸ *See* Exhibit H, p. 8.

²⁹ Earlier in his "Petition for Writ of Mandamus," Gatewood asserted that the ALC did not possess subject matter jurisdiction by which it could have issued its June 13, 2017 "Order of Remand" in his case. Gatewood further asserted that "proceedings and decisions of a court without jurisdiction of the subject matter are **null and void**" and that the parties, as well as the Court of Appeals, should consider the ALC's June 13, 2017 "Order of Remand" in his case "**as if it had never happened** (20 Am Jur 2d (2015), Courts, § 63)." [emphasis supplied]. *See* Exhibit H, p. 5.

By correspondence from its Clerk dated July 17, 2017, the Court of Appeals summarily rejected Gatewood's July 13, 2017 "Petition for Writ of Mandamus."³⁰

Your petition for writ of mandamus was received July 14, 2017. The remittitur was filed in this appeal on June 2, 2017. **This Court no longer has jurisdiction over this case.** The Court is returning your petition for writ of mandamus to you and no further action will be taken. [emphasis supplied].

4. The inaccuracies and glaring omissions from their "Statement of the Case" are emblematic of the inmates' fundamental and persistent misapprehension of the ALC's jurisdiction in the instant matter.

To the extent such a reference is permissible, the value of the inmates' reference to the filings submitted by the parties to the ALC in *Gatewood* is elusive, because the parties' filings to the ALC in *Gatewood*, like the Notice of Appeal and "Petition for Writ of Mandamus" Gatewood himself filed with the Court of Appeals, profoundly undermine whatever – if any – superficial grounds that could possibly support the inmates' instant petition.

Moreover, the inmates' invoked only SCDC's response to the three (3) filings Gatewood submitted to the ALC after the ALC's June 13, 2017 "Order of Remand." The inmates omitted any discussion of Gatewood's three (3) filings in their instant petition, and they omitted all three (3) of his filings from their Appendix. Likewise, the inmates completely omitted any reference to the Notice of Appeal and "Petition for Writ of Mandamus" Gatewood filed with the Court of Appeals from their instant petition, and they omitted both from their Appendix.

By doing so, the inmates confusingly and frustratingly conflated their arguments and analysis with the argument and analysis offered by Gatewood in his case. SCDC respectfully submits that such confusion is emblematic of the inmates' fundamental and persistent misapprehension of the ALC's jurisdiction in the instant matter.

³⁰ SCDC respectfully submits a copy of the Clerk's July 17, 2017 letter as Exhibit I in support of its instant return.

IV. ARGUMENT IN OPPOSITION TO THE INMATES' PETITION

A. THE ALC IS NOT THE FORUM IN WHICH THE INMATES' CLAIMS ARE LITIGATED, BECAUSE, UNDER *Wicker* AND *Al-Shabazz*, THE ALC SITS *EXCLUSIVELY* IN ITS APPELLATE CAPACITY TO REVIEW SCDC'S FINAL DECISIONS REGARDING THE INMATES' CLAIMS

The inmates divided the argument from their instant petition into three (3) sections:

1. Mode of Trial;³¹
2. Inconsistent ALC Remand and Effects;³² and
3. Considerations Governing Review.³³

The inmates further divided their third section into three (3) subsections:

- 3A. SCACR 242(b)(1)(3)(4);³⁴
- 3B. Delay and Denial of Justice;³⁵
- 3C. Back Wage Calculations.³⁶

The entirety of the inmates' argument is bound by their interpretation of *Wicker*:

More fundamentally, inmates' entitlement is required by due process. In [*Wicker*, 602 S.E. 2d at 58, n. 1], [this Court] held that §24-3-430(D), the prevailing wage statute, creates an interest protected by the Fourteenth Amendment which cannot be denied without due [process]. Therefore, the Court expanded ALC jurisdiction to cover inmate wage [grievance] appeals. Thus, inmates' right to ALC merits review is also a due process requirement.³⁷

...
Third, the Court of Appeals' decision may conflict with [*Wicker's*] guarantee of due process for ALC wage grievance appeals (SCACR 242(b)(3)(4)).³⁸

³¹ See Petition, pp. 3 – 4.

³² *Id.*, pp. 4 – 6.

³³ *Id.*, pp. 6 – 11.

³⁴ *Id.*, p. 6.

³⁵ *Id.*, pp. 6 – 8.

³⁶ *Id.*, pp. 8 – 11.

³⁷ *Id.*, p. 4.

³⁸ *Id.*, p. 6.

After 13 years in litigation, inmates' grievances still have not received ALC merits review, in spite of [*Wicker's*] holding that ALC review is a due [process] right in these cases (602 S.E.2d at 58, n. 1). A remand to SCDC would unnecessarily delay ALC review by months and perhaps years.³⁹

Finally, inmates contend there are substantial legal problems with SCDC calculating back wages. First, it would be an obvious conflict of interest for SCDC as it would be calculating its own damages. More importantly, it would violate due process. In [*Wicker*], 602 S.E. 2d at 58, this Court found that §24-3-430(D) creates an interest encompassed by the Fourteenth Amendment which cannot be denied without due process.⁴⁰

In each instance, however, the inmates' interpretation of *Wicker* is fatally flawed by their fundamental misapprehension of the ALC's jurisdiction and the sources thereof.

The inmates refuse to acknowledge that the ALC's jurisdiction over the instant matter has always been animated and continues to be animated by Section V of the its own Rules of Procedure. Section V is entitled "Special Appeals," and it encompasses Rules 51 through 66.

Rule 51 is entitled "Applicability," and it provides that the rules in Section V "**shall apply exclusively in matters heard on appeal from final decisions pursuant to [*Al-Shabazz*].**" [emphasis supplied].

The 2009 Revised Notes to Rule 51 provide as follows:

The Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of [SCDC] and the Department of Probation, Parole and Pardon Services. The [ALC's] jurisdiction to hear such matters is derived entirely from the decisions of the South Carolina Supreme Court in [*Al-Shabazz*] and [*Furtick v. S.C. Dep't of Probation, Parole and Pardon Services*], 576 S.E.2d 146 (S.C. 2003)]. These Rules are based upon the [ALC's] existing general procedural and appellate rules, with adaptations for this specific type of appeal. [emphasis supplied].

³⁹ See Petition, p. 7.

⁴⁰ *Id.*

As explained above,⁴¹ this Court in *Wicker*, 602 S.E.2d at 57 – 58, invoked *Al-Shabazz* when it recognized the reality that the ALC could review final decisions rendered by SCDC concerning grievances filed by inmates under Policy GA-01.12 in which the inmates articulated prison industries pay claims.

As explicitly stated in the 2009 Revised Notes to Rule 51 and as reflected by the above-cited passage from *Wicker*,⁴² this Court sits *exclusively in its appellate capacity* in reviewing final decisions rendered by SCDC for grievances in which inmates challenge their prison industries pay, and SCDC’s administrative grievance process, established in and by Policy GA-01.12, is the forum of record for all such matters.

Contrary to the argument offered by the inmates in their instant petition, the ALC, by its June 13, 2017 “Order of Remand,” properly recognized the reality that a *final* result in the inmates’ favor does not yet exist, and, in the final paragraph of its order, the ALC properly remanded the grievances in which the inmates articulated their pay claims back to SCDC, the original forum of record, for processing so that SCDC may adjudicate the merits of their prison industries pay claims in conformity with the Court of Appeals’ decision in *Gatewood*.

No amount of argument offered by the inmates in their July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, their July 31, 2017 “Petition for Rehearing” to the Court of Appeals, in anything *Gatewood* filed with the ALC, the Court of Appeals, or this Court, or in the inmates’ instant petition changes, alters, or modifies this jurisdictional reality. Accordingly, this Court should unhesitatingly deny the inmates’ instant petition.

⁴¹ See page 4 above.

⁴² *Id.*

B. THE INMATES CONCEDED IN THEIR JULY 13, 2017 “PETITION FOR WRIT OF MANDAMUS” TO THE COURT OF APPEALS THAT THE ALC’S JUNE 13, 2017 “ORDER OF REMAND” IS “PROBABLY INTERLOCUTORY AND NOT IMMEDIATELY APPEALABLE”

At the outset of the section of their petition entitled “Argument,⁴³” the inmates asserted that that the Court of Appeals “should have decided that [*Charlotte-Mecklenburg Hosp. Auth.*] is distinguishable, and the ALC’s [June 13, 2017 “Order of Remand”] was appealable.

The inmates then quoted the sole footnote which appeared in their Notice of Appeal to the Court of Appeals dated July 14, 2017. However, as illustrated by the following side-by-side comparison, the inmates did not quote the entirety of the sole footnote from their July 14, 2017 Notice of Appeal in their instant petition:

Inmates’ Petition (Page 3)	Inmates’ July 14, 2017 Notice of Appeal (Apx. p. 45)
<p>.. Thus, it is possible the [Court of Appeals] may distinguish [<i>Charlotte-Mecklenburg Hosp. Auth.</i>] based on other circumstances here which were not addressed in that case. Therefore, inmates attempt to appeal the [ALC’s June 13, 2017 “Order of Remand”] to preserve their rights should the Court consider the remand a final order.</p>	<p>In inmates’ petition for a writ of mandamus filed July 13, 2017 [with the Court of Appeals], they contend the remand is probably interlocutory and not immediately appealable, based on circumstances here and [<i>Charlotte-Mecklenburg Hosp. Auth.</i>, 692 S.E.2d at 894 – 895]. However, it is permissible to argue against precedent in the appellate brief (SCACR 217). Thus, it is possible the [Court of Appeals] may distinguish [<i>Charlotte-Mecklenburg Hosp. Auth.</i>] based on other circumstances here which were not addressed in that case. Therefore, inmates attempt to appeal the [ALC’s June 13, 2017 “Order of Remand”] to preserve their rights should the Court consider the remand a final order. [emphasis supplied].</p>

⁴³ See Petition, p. 3.

Remarkably, the inmates made the following representation to the Court of Appeals in their July 13, 2017 “Petition for Writ of Mandamus,” which, again, they neither referenced in their instant petition nor included in their Appendix.⁴⁴

Here, the ALC has yet to consider inmates’ grievances on the merits as the Court of Appeals ordered. As a result, [the ALC’s June 13, 2017 “Order of Remand”] to SCDC **is probably an interlocutory order, and thus not immediately appealable** [*Charlotte-Mecklenburg Hosp. Auth.*, 692 S.E.2d at 894 – 895]. Therefore, **it appears that mandamus is inmates’ only remedy in these circumstances.** [emphasis supplied].

When they quoted the sole footnote in their July 14, 2017 Notice of Appeal in their instant petition, the inmates purposefully failed to quote the entire footnote, and the concession offered therein. The inmates also purposefully failed to reference their July 13, 2017 “Petition for Writ of Mandamus” to the Court of Appeals, and they failed to include it in their Appendix.

The inmates’ purposeful failure to do so is understandable, because they did not want this Court to realize that they had twice conceded to the Court of Appeals that the ALC’s June 13, 2017 “Order of Remand” is “probably” interlocutory under *Charlotte-Mecklenburg Hosp. Auth.* Likewise, the inmates did not want this Court to realize that while they twice conceded to the Court of Appeals that the ALC’s June 13, 2017 remand order is “probably” interlocutory under *Charlotte-Mecklenburg Hosp. Auth.*, most stridently in their July 13, 2017 “Petition for Writ of Mandamus,” they argued the opposite in their instant petition.

The ALC’s June 13, 2017 “Order of Remand” is not “probably” interlocutory under this Court’s decision in *Charlotte-Mecklenburg Hosp. Auth.* Rather, the order is most assuredly interlocutory under *Charlotte-Mecklenburg Hosp. Auth.*, as borne out by the following passages from the decision, 692 S.E.2d at 894 – 895:

⁴⁴ See Exhibit A, p. 13.

The order of the ALC in this case is not a final order. **If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.** (citations omitted). **A judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment.** (citations omitted). A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. (citation omitted).

The ALC's order upholds DHEC's finding that Amisub was a competing applicant for the certificate of need at issue in this matter. However, the ALC found DHEC erroneously interpreted the State Health Plan to allow only existing providers to obtain a certificate of need. **Based on this finding, the ALC remanded the matter to DHEC to determine whether any of the applicants were entitled to the certificate of need. Although the ALC decided questions of law involved in this matter, a final determination as to the certificate of need has not been made. Therefore, the order of the ALC is interlocutory and is not a final decision which is immediately appealable under § 1-23-610.** Accordingly, we dismiss this matter.

[emphasis supplied].

Just like the ALC in *Charlotte-Mecklenburg Hosp. Auth.*, the ALC remanded the inmates' grievances to SCDC. In its 2016 decision in *Gatewood*, the Court of Appeals obviously decided questions of law that impact the adjudication of the inmates' claims. The ALC sits *exclusively in its appellate capacity* in this matter as declared in Section V of its own Rules of Procedure, which is anchored upon *Al-Shabazz* and, by extension, *Wicker*.

Thus, the ALC properly remanded the inmates' claims to SCDC for SCDC to adjudicate the prison industries pay claims articulated in the inmates' grievances under the Court of Appeals' decision in *Gatewood*, and, until SCDC adjudicates the inmates' individual claims, no final decisions exist from which the inmates may appeal to the ALC.⁴⁵ Accordingly, this Court should unhesitatingly deny the inmates' instant petition.

⁴⁵ See note 39 above.

Any distaste the inmates may possess with length of time associated with the above-described sequence of events simply doesn't trump the applicable statutes, precedent, and rules of procedure. Had they simply embraced the reality that the ALC's June 13, 2017 "Order of Remand" is, under *Charlotte-Mecklenburg Hosp. Auth.*, most assuredly interlocutory, SCDC would have either concluded its adjudication of the inmates' grievances by now or it would be well on its way to doing so.

C. THIS COURT SHOULD NOT CONSIDER THE INMATES' ARGUMENT AS TO WHETHER *Charlotte-Mecklenburg Hosp. Auth.* WAS DISTINGUISHABLE

In their instant petition, the inmates contended as follows regarding the sole footnote from their July 14, 2017 Notice of Appeal:⁴⁶

Based on the above, inmates contend they raised in the Court of Appeals the issue that [*Charlotte-Mecklenburg Hosp. Auth.*] may be distinguishable, and the [ALC's June 13, 2017 "Order of Remand"] was appealable. Inmates further contend this issue includes every subsidiary question fairly comprised therein, including the various [circumstances] distinguishing this case from [*Charlotte-Mecklenburg Hosp. Auth.*] (SCACR 242(d)(2)).

The inmates also purposefully – and understandably – omitted the following sentence from the sole footnote in their July 14, 2017 Notice of Appeal from their instant petition (Apx. p. 45): "However, it is permissible to **argue against precedent in the appellate brief** (SCACR 217)." [emphasis supplied].

As discussed above, the Court of Appeals, by the order it issued July 20, 2017, summarily dismissed the inmates' Notice of Appeal (Apx. pp. 7 – 10), and it did so *before* it allowed the inmates to file their initial brief and designation of matter.

As they never filed briefs with the Court of Appeals, the inmates failed to offer any argument against the precedent established by *Charlotte-Mecklenburg Hosp. Auth.*

⁴⁶ See Petition, p. 3.

At most, the inmates offered only conclusory references regarding *Charlotte-Mecklenburg Hosp. Auth.* in the sole footnote from their Notice of Appeal, and, therefore, this Court should not consider the argument they offered in their instant petition as to whether *Charlotte-Mecklenburg Hosp. Auth.* was distinguishable. See *Smith v. Tiffany*, 799 S.E.2d 479, 484, n. 3 (S.C. 2017) (“Further, because Appellants’ brief includes only conclusory references to ‘due process considerations of fairness and equity’ and sets forth no substantive legal argument or supporting citations to authority (even to the due process clauses themselves), we do not consider Appellants’ argument that the trial court erred in finding their due process rights were not violated by the inability to join Mizzell or include him on the verdict form for purposes of allocation. See [*First Sav. Bank v. McLean*, 444 S.E.2d 513, 514 (S.C. 1994)] (finding an assertion to be abandoned where appellant failed to provide arguments or supporting authority therefor and explaining mere allegations are insufficient to demonstrate trial court error).”)

In response to the above-provided argument, the inmates may assert that they preserved this issue for review by this Court in their July 31, 2017 “Memorandum in Support of Petition for Rehearing” to the Court of Appeals. (Apx. pp. 59 – 63). In their supporting memorandum, the inmates asserted as follows (Apx. pp. 62 – 63):

Pursuant to SCACR 221(a), inmates contend the Court of Appeals’ order overlooked the point made in inmates’ notice of appeal footnote, that it is possible the Court may distinguish [*Charlotte-Mecklenburg Hosp. Auth.*] based on circumstances here which were not addressed in that case. Circumstances include the inconsistency between the February 10, 2016 Court of Appeals’ opinion “... remand for the ALC’s consideration of Inmates’ grievances on the merits” [*Ackerman*, 782 S.E.2d at 762]; and the ALC’s June 13, 2017 remand “... to [SCDC] for consideration of [the inmates’] grievances on the merits ...” See ALC remand, attached hereto.

Inmates contend the Court of Appeals overlooked their entitlement to the ALC’s consideration of grievances on the merits. The entitlement stems from the above quoted Court of Appeals’ remand for the ALC to consider grievances on the merits. However, the ALC’s remand to SCDC for

merits consideration would deprive inmates of the mode of trial to which they are entitled, and that is immediately appealable (J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 155, citing [*Williford v. Downs*, 218 S.E. 2d 242 (S.C. 1975)]). Inmates contend these circumstances further distinguish [*Charlotte-Mecklenburg Hosp. Auth.*]

In the conclusion of their supporting memorandum, the inmates asked the Court of Appeals “to grant their [petition for rehearing], and if appropriate, **allow the parties to brief these issues.**” [emphasis supplied]. (Apx. p. 63). Critically, however, the Court of Appeals did not grant their petition for rehearing, and the Court of Appeals denied the inmates’ petition for rehearing without directing them to submit briefs or memoranda.

Thus, the inmates again, at most, offered only conclusory references regarding *Charlotte-Mecklenburg Hosp. Auth.* in the memorandum supporting their July 31, 2017 “Petition for Rehearing” to the Court of Appeals, and this Court should not consider the argument they offered in their instant petition as to whether *Charlotte-Mecklenburg Hosp. Auth.* was distinguishable. See *Smith v. Tiffany*, supra.

Accordingly, this Court should unhesitatingly deny the inmates’ instant petition.

D. THE ALC’S JUNE 13, 2017 “ORDER OF REMAND” IS NOT AN ORDER FROM WHICH AN IMMEDIATE APPEAL MAY BE TAKEN

This Court ruled in *Charlotte-Mecklenburg Hosp. Auth.*, 692 S.E.2d at 895, that the order issued by the ALC under review was interlocutory and not, under § 1-23-610, an order from which an immediate appeal may be taken.

Section 1-23-610 is entitled “Judicial review of final decision of administrative law judge; stay of enforcement of decision,” and § 1-23-610(A)(1) provides as follows:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the [ALC] not more than thirty days after the party receives the final decision and order of the

administrative law judge. Appeal in these matters is by right. [emphasis supplied].

As established above, the ALC's June 13, 2017 "Order of Remand" is simply not a final order issued by the presiding administrative law judge, and, consequentially, it is most assuredly interlocutory. Accordingly, this Court should unhesitatingly deny the inmates' instant petition.

Moreover, the ALC's June 13, 2017 remand order does not, under other applicable statutes, constitute an order from which an appeal may be taken. *See* § 14-3-330 (setting forth the categories of judgments from which an appeal may be taken); and § 14-8-200(a) (defining the appellate jurisdiction of the Court of Appeals to include final decisions of an administrative law judge with the same scope of review as the Supreme Court would apply in a similar case).

E. NONE OF THE CONSIDERATIONS GOVERNING REVIEW FROM SCACR 242(b) APPLY IN THE INSTANT MATTER

Contrary to their argument,⁴⁷ no "special and important reasons" exist under SCACR 242(b)(1), (b)(3), or (b)(4) by which this Court should grant the inmates' instant petition.

SCACR 242(b) is entitled "Considerations Governing Review," and, in its entirety, it provides as follows:

A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

- (1) Where there are novel questions of law.
- (2) Where there is a dissent in the decision of the Court of Appeals.
- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.

⁴⁷ *See* Petition, p. 6. *See also* note 34 above.

- (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

No novel question of law exists under SCACR 242(b)(1), because, as evidenced by *Charlotte-Mecklenburg Hosp. Auth.*, this Court has previously adjudicated controversies concerning whether an order issued by the ALC was interlocutory.

The Court of Appeals' July 20, 2017 order, which summarily dismissed the inmates' appeal in the instant matter, conforms to, rather than conflicts with, a prior decision issued by this Court, namely *Charlotte-Mecklenburg Hosp. Auth.*, and, consequentially, 242(b)(3) does not apply to the instant matter.

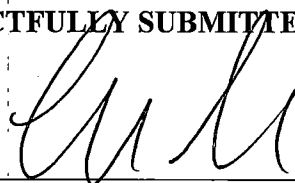
Finally, no substantial constitutional issues are animated, as contemplated by SCACR 242 (b)(4), by the Court Appeals' decision in the instant matter, as the Court of Appeals, by summarily dismissing the inmates' July 14, 2017 Notice of Appeal, properly let stand the ALC's June 13, 2017 "Order of Remand."

Accordingly, this Court should unhesitatingly deny the inmates' instant petition.

V. CONCLUSION

For all the foregoing reasons, this Court should deny the inmates' instant petition and let stand the July 20, 2017 order by which the Court of Appeals summarily dismissed their July 14, 2017 Notice of Appeal in the instant matter.

RESPECTFULLY SUBMITTED:



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Columbia, South Carolina
November 6, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from The Administrative Law Court
Ralph King Anderson, III, Chief Administrative Law Judge

Court of Appeals' Order filed July 20, 2017
Supreme Court Case Tracking No. 2017-002010

Francis Ackerman, #266928, Malik Aljalil, #219551,
Linso Allen, #269378, Michael Benninger, #264212,
Frederic Brown, #289602, Timothy Brown, #238461,
Terrell Buchanon, #277262, Christopher Buch, #200690,
Rudy Cassady, #238732, Sheldon Clark, #264772,
Zawaski Cobb, #187136, Kamathene Cooper, #145333,
Gladstone Cummings, #267450, Patrick Curtis, #175139,
Quintin Daniels, #196284, Curtis Davis, #238776,
Heyward Dempsey, #134171, Phillip Denney, #240678,
Paul Durham, #219573, Jerome Durham, #270393, Keith
Eigner, #299153, Bernard Felder, #122099, Jermaine
Garriett, #191274, Fred Gatewood, #289775, Dennis
Goff, #177506, Gregory Grant, #109656, Nelson
Hampton, #286427, James Hartman, #219770, Gary
Hayes, #263985, Michael Hood, #279987, Nikia Law,
#260855, Stephen Lease, #137016, Harry Leonard,
#249996, Herbert McFadden, #184297, Michael
McFarland, #266870, Earl Mack, #216237, John Moultri,
#276527, Matin Muntaqim, #266870, Tony Pitts,
#280597, Germaine Pringle, #250390, Gene Richardson,
#93614, Dennis Richey, #233472, Ignacio Rivera,
#300424, Vondell Sanders, #241308, James Sattler,
#235043, Joseph Schmitz, #173987, Arthur Scott,
#251957, Jerome Scott, #153381, Roosevelt Scott,
#275631, Archie Simmons, #161419, Robert Smith,
#199324, James Williams, #282929, Gary Bryant,
#258972, Harlon Edger, #261866, Johnny Holden,
#245199, Don Hughes, #256862, Michael Key, #266890,
Archie Lee, #226354, Isaac Richardson, #232574,
Larkland Richards, #281768, John Wojcik, #219463,
James Bogan, #288111, Larry Burke, #281911, Jammie
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,
#260047, Ricky Libby, #274681, Alain Lareua, #128014,
Quentin Baker, #297868, Frank Corley, #292975, James

Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #292264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #20028, Michael Baylor, #265682, Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlan, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Petitioners,

v.

South Carolina Department of Corrections, Respondent.

PROOF OF SERVICE

I certify that I have served the **THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS' RETURN TO PETITION FOR WRIT OF CERTIORARI AND ITS SUPPORTING EXHIBITS** on the above-named Petitioners by mailing a copy of the same to their counsel of record at the following address:

Douglas H. Westbrook, Esquire
Attorney at Law
23 Broad Street
Charleston, South Carolina 29401

November 6, 2017



LAKE E. SUMMERS