

The State of South Carolina
In the Court of Appeals

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SC Court of Appeals

IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No. 2009-000389

RECORDS ON APPEAL

ALIEO GARGA-RICHARDSON

Appellant (Pro-Se)

v

**SOUTH CAROLINA DEPARTMENT OF
PROBATION, PARDON AND PAROLE
SERVICES AND THE SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES**

Respondent

PREFACE TO THE RECORDS ON APPEAL

This Record on Appeal is divided into seven (7) sections. Beginning with section (A) which contains sections one, two and three of the Record on Appeal submitted to the Administrative Law Court.

Section (B) contains section four (4) of the Record on Appeal submitted to the Administrative Law Court which is the Transcript of the Hearing held by the OMVH hearing officer Mr. Philip Addington.

Section (C) contains section five (5) of the Record on Appeal submitted to the Administrative Law Court which includes the judgement rendered by OMVH hearing officer Mr. Phillip Addington; a motion submitted by me for reconsideration; a response to that motion by Mr. Thomas W. Nicholson, Legal Counsel for the Department of Probation, Parole and Pardon Services.

Section (D) contains letters from the Department of Probation, Parole and Pardon Services; the Appellant's Initial Brief; the Respondent's Brief; Appellant Response to Respondent's Issues; Exhibits # 4, 5 and 6. The Judgement rendered by Judge S. Philip Lenski of the Administrative Law Court; Appellant's Motion for Reconsideration and the Order denying such motion.

Section (6) begins with the letter of appeal filed with the Clerk of the Court of Appeals; the Appellant's Initial Brief; the Respondent's Brief and Appellant's Reply Brief.

Section (7) contains correspondence with the Clerk of the Court of Appeals.

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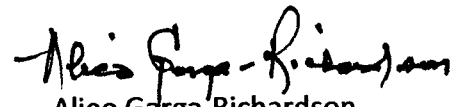
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CERTIFICATE OF APPELLANT

As designated in the Matters to be included in the Records on Appeal, I Alieo Garga-Richardson, the undersign do hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 13th, 2019

A handwritten signature in black ink, appearing to read "Alieo Garga-Richardson".

Alieo Garga-Richardson

Appellant Pro-Se

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

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THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

ALIEO GARGA-RICHARDSON

Appellant

vs.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PRADON;
DEPARMENT OF MOTOR VEHICLES

Respondent

Docket No. 18-ALJ-21-0201-AP

RECORDS ON APPEAL

October 9th, 2018

Alieo Garga-Richardson
Appellant Pro-Se
1435 Ebinport Rd.
Rock Hill, SC 29732
803-398-4456
agargarichardson@yahoo.com

RECORDS ON APPEAL - 1

PREFACE

A note about the contents of the RECORDS.

The Records were so arranged to provide an understanding of the series of events occurring before and after the hearing at the OMVH.

It was divided into sections so as to negate page numbering which I could not provide in an orderly fashion without getting things all mixed up please excuse me!

However, I included a table of contents to help in referencing which can be made by section and document date.

Thanks

Sincerely,

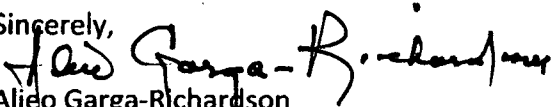

Alieo Garga-Richardson
Appellant Pro-Se

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SECTION ONE

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

Henry McMaster
Governor



Jerry B. Adger
Director

2221 DEVINE STREET, SIXTH FLOOR
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-0019
Facsimile: (803) 734-9307
www.dppps.sc.gov/ignition_interlock.html

July 10, 2017

ALIEO GARGA-RICHARDSON
1435 EBINPORT RD
ROCK HILL, SC 297322020

Customer No: 23368087
DL No: 11567821
VIN No: 1FMZU63E02ZA05098
Offense: DUI 2nd

Notice of Point Assessment
Accumulated Point Total of 1.

Ignition Interlock Device Points have been assessed against your record in the Ignition Interlock Device Program (the IIDP). This assessment is based on the driving history recorded by the Breath Alcohol Ignition Interlock Device installed in the vehicle or vehicles you drive. Because your Accumulated Point Total is less than two (2) points, there are *no penalties* for this assessment. Details of the points assessed are listed below.

Violation Date/Time	Points	Type
7/2/2017 12:00:00 AM	1	Missed Inspection

ADMINISTRATIVE APPEALS: You have the right to appeal the assessment of the points listed above. Mail a copy of this letter to the Department at the address given below. You may also fax your appeal to the number given below. Include a concise, written statement of the grounds for your appeal. Specify which point assessment you are challenging and include any documents that support your position. Note that if you choose not to request an appeal, the assessed points will become permanent and may not be reviewed at a later time.

Ignition Interlock - Appeals
S.C. Dept. of Probation, Parole & Pardon Services
Post Office Box 50666
Columbia, SC 29250
FAX: (803) 734-9307

The Department must receive your appeal within fifteen (15) calendar days of the date of this notice or your appeal will not be considered. The Department's Administrative Hearing Officer will review the appeal within five business days. There will be no hearing. You will be notified of the Hearing Officer's decision by mail. There is no right to appeal or otherwise contest the Hearing Officer's decision.

If you have any questions about this letter or the IIDP you may refer to the Program's website, http://www.dppps.sc.gov/ignition_interlock.html, email the IIDP Administrator at ignition@ppp.sc.gov, or contact the IIDP office at 803-734-0019.

South Carolina Ignition Interlock Device Program Appeal Process

If the offender wishes to appeal the assessment of any Ignition Interlock Points (IIPs) by the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) which results in an accumulated point total (APT) of 3.5 or less, he must comply with the following procedure.

(1) The offender must timely file a written Notice of Appeal with SCDPPPS by mailing or delivering it to the following address:

SCDPPPS
Ignition Interlock Appeal
Post Office Box 50666
Columbia, SC 29250
Or by Fax to IID @ (803) 734-9307 .

(2) The Notice of Appeal must include a concise statement of the grounds for the appeal in writing and any supporting documentation.

(3) The date of filing is the date the Notice of Appeal is received by the Department.

(4) The Notice of Appeal must be filed within fifteen (15) calendar days of the date of the IIP assessment letter. Failure to timely file a Notice of Appeal will result in dismissal of the appeal.

(5) In order for the case to be processed by the SCDPPPS, a copy of the IIP assessment letter must be attached to the Notice of Appeal. Failure to include a copy of the IIP assessment letter may result in dismissal of the appeal.

(6) A SCDPPPS Administrative Hearing Officer will review the appeal and will render a final decision either affirming or reversing the IIP assessment. There will be neither an evidentiary hearing nor oral arguments permitted, and there will be no right to appeal or otherwise contest the administrative hearing officer's decision.

(7) If the point assessment is affirmed, it stands. SCDPPPS will notify the offender of the decision by letter. If the point assessment is reversed, SCDPPPS will remove the points from the APT and will notify the offender of the reversal and the adjusted APT by letter.

(8) Should the offender wish to appeal the assessment of IIP which result in an APT of 4.0 or greater, the offender may request a contested case hearing with the Office of Motor Vehicle Hearings pursuant to SC Code of Laws Sec. 56-5-2941.

If removal of the points from the offender's APT changes the specific responses under the IIDP Policy, SCDPPPS and its partnering agencies will make adjustments to those responses.

Should you receive any DMV suspension while on the program, your time requirement will be tolled until the suspension is cleared.

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

Henry McMaster
Governor



Jerry B. Adger
Director

2221 DEVINE STREET, SIXTH FLOOR
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-0019
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www.dppps.sc.gov/ignition_interlock.html

September 06, 2017

ALIEO GARGA-RICHARDSON
1435 EBINPORT RD
ROCK HILL, SC 297322020

Customer No: 23368087
DL No: 11567821
VIN No: 1FMZU63E02ZA05098
Offense: DUI 2nd

Notice of Two Month Extension in the Ignition Interlock Device Program
Accumulated Point Total of 2.00

Ignition Interlock Device Points have been assessed against your record in the Ignition Interlock Device Program (the IIDP). This assessment is based on the driving history recorded by the Breath Alcohol Ignition Interlock Device installed in the vehicle or vehicles you drive. Details of the points assessed are listed below.

Due to your current Accumulated Point Total, the time you must participate in the IIDP has been extended by two (2) months.

Your Adjusted Program Completion Date is now: July 21, 2017.

Violation Date/Time	Points	Type
8/31/2017 12:00:00 AM	1	Missed Inspection

ADMINISTRATIVE APPEALS: You have the right to appeal the assessment of the points listed above. Mail a copy of this letter to the Department at the address given below. You may also fax your appeal to the number given below. Include a concise, written statement of the grounds for your appeal. Specify which point assessment you are challenging and include any documents that support your position. Note that if you choose not to request an appeal, the assessed points will become permanent and may not be reviewed at a later time.

Ignition Interlock - Appeals
S.C. Dept. of Probation, Parole & Pardon Services
Post Office Box 50666
Columbia, SC 29250

FAX: (803) 734-9307

The Department must receive your appeal within fifteen (15) calendar days of the date of this notice or your appeal will not be considered. The Department's Administrative Hearing Officer will review the appeal within five business days. There will be no hearing. You will be notified of the Hearing Officer's decision by mail. There is no right to appeal or otherwise contest the Hearing Officer's decision.

If you have any questions about this letter or the IIDP you may refer to the Program's website, http://www.dppps.sc.gov/ignition_interlock.html, email the IIDP Administrator at ignition@ppp.sc.gov, or contact the IIDP office at 803-734-0019.-734-0019.

South Carolina Ignition Interlock Device Program Appeal Process

If the offender wishes to appeal the assessment of any Ignition Interlock Points (IIPs) by the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) which results in an accumulated point total (APT) of 3.5 or less, he must comply with the following procedure.

(1) The offender must timely file a written Notice of Appeal with SCDPPPS by mailing or delivering it to the following address:

SCDPPPS
Ignition Interlock Appeal
Post Office Box 50666
Columbia, SC 29250
Or by Fax to IID @ (803) 734-9397

(2) The Notice of Appeal must include a concise statement of the grounds for the appeal in writing and any supporting documentation.

(3) The date of filing is the date the Notice of Appeal is received by the Department.

(4) The Notice of Appeal must be filed within fifteen (15) calendar days of the date of the IIP assessment letter. Failure to timely file a Notice of Appeal will result in dismissal of the appeal.

(5) In order for the case to be processed by the SCDPPPS, a copy of the IIP assessment letter must be attached to the Notice of Appeal. Failure to include a copy of the IIP assessment letter may result in dismissal of the appeal.

(6) A SCDPPPS Administrative Hearing Officer will review the appeal and will render a final decision either affirming or reversing the IIP assessment. There will be neither an evidentiary hearing nor oral arguments permitted, and there will be no right to appeal or otherwise contest the administrative hearing officer's decision.

(7) If the point assessment is affirmed, it stands. SCDPPPS will notify the offender of the decision by letter. If the point assessment is reversed, SCDPPPS will remove the points from the APT and will notify the offender of the reversal and the adjusted APT by letter.

(8) Should the offender wish to appeal the assessment of IIP which result in an APT of 4.0 or greater, the offender may request a contested case hearing with the Office of Motor Vehicle Hearings pursuant to SC Code of Laws Sec. 56-5-2941.

If removal of the points from the offender's APT changes the specific responses under the IIDP Policy, SCDPPPS and its partnering agencies will make adjustments to those responses.

Should you receive any DMV suspension while on the program, your time requirement will be tolled until the suspension is cleared.

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

Henry McMaster
Governor



Jerry B. Adger
Director

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www.dppps.sc.gov/ignition_interlock.html

November 06, 2017

ALIEO GARGA-RICHARDSON
1435 EBINPORT RD
ROCK HILL, SC 297322020

Customer No: 23368087
DL No: 11567821
VIN No: 1FMZU63E02ZA05098
Offense: DUI 2nd

Notice of Four Month Extension in the Ignition Interlock Device Program
Notice of Mandatory Substance Abuse Assessment
Accumulated Point Total of 3.00.

Ignition Interlock Device Points have been assessed against your record in the Ignition Interlock Device Program (the IIDP). This assessment is based on the driving history recorded by the Breath Alcohol Ignition Interlock Device installed in the vehicle or vehicles you drive. Details of the points assessed are listed below.

Due to your current Accumulated Point Total, the time you must participate in the IIDP has been extended by four (4) months. You must also have a substance abuse assessment; see below for details.

Your Adjusted Program Completion Date is now: November 19, 2017.

Violation Date/Time	Points	Type
10/30/2017 12:00:00 AM	1	Missed Inspection

MANDATORY SUBSTANCE ABUSE ASSESSMENT: You are subject to a mandatory substance abuse assessment. You have thirty (30) calendar days from November 06, 2017 to report to a local DAODAS certified substance abuse treatment provider. Please be sure to take a copy of this letter with you when you report. Visit www.daodas.state.sc.gov or call 1-888-727-7383 for more information. You may continue to drive your vehicle with the BAIID installed. However, if you fail to report for the substance abuse assessment, or fail to complete or continue any recommended treatment plan, your Ignition Interlock Restricted License will be suspended.

ADMINISTRATIVE APPEALS: You have the right to appeal the assessment of the points listed above. Mail a copy of this letter to the Department at the address given below. You may also fax your appeal to the number given below. Include a concise, written statement of the grounds for your appeal. Specify which point assessment you are challenging and include any documents that support your position. Note that if you choose not to request an appeal, the assessed points will become permanent and may not be reviewed at a later time.

Ignition Interlock - Appeals
S.C. Dept. of Probation, Parole & Pardon Services
Post Office Box 50666
Columbia, SC 29250
FAX: (803) 734-9307

The Department must receive your appeal within fifteen (15) calendar days of the date of this notice or your appeal will not be considered. The Department's Administrative Hearing Officer will review the appeal within five business days. There will be no hearing. You will be notified of the Hearing Officer's decision by mail. There is no right to appeal or otherwise contest the Hearing Officer's decision.

If you have any questions about this letter or the IIDP you may refer to the Program's website, http://www.dppps.sc.gov/ignition_interlock.html, email the IIDP Administrator at ignition@ppp.sc.gov, or contact the IIDP office at 803-734-0019.

South Carolina Ignition Interlock Device Program Appeal Process

If the offender wishes to appeal the assessment of any Ignition Interlock Points (IIPs) by the South Carolina Department of Probation, Parole and Pardon Services (SCDPPPS) which results in an accumulated point total (APT) of 3.5 or less, he must comply with the following procedure.

(1) The offender must timely file a written Notice of Appeal with SCDPPPS by mailing or delivering it to the following address:

SCDPPPS
Ignition Interlock Appeal
Post Office Box 50666
Columbia, SC 29250
Or by Fax to IID @ (803) 734-9307

(2) The Notice of Appeal must include a concise statement of the grounds for the appeal in writing and any supporting documentation.

(3) The date of filing is the date the Notice of Appeal is received by the Department.

(4) The Notice of Appeal **must be filed within fifteen (15) calendar days of the date of the IIP assessment letter**. Failure to timely file a Notice of Appeal will result in dismissal of the appeal.

(5) In order for the case to be processed by the SCDPPPS, a copy of the IIP assessment letter must be attached to the Notice of Appeal. Failure to include a copy of the IIP assessment letter may result in dismissal of the appeal.

(6) A SCDPPPS Administrative Hearing Officer will review the appeal and will render a final decision either affirming or reversing the IIP assessment. There will be neither an evidentiary hearing nor oral arguments permitted, and there will be no right to appeal or otherwise contest the administrative hearing officer's decision.

(7) If the point assessment is affirmed, it stands. SCDPPPS will notify the offender of the decision by letter. If the point assessment is reversed, SCDPPPS will remove the points from the APT and will notify the offender of the reversal and the adjusted APT by letter.

(8) Should the offender wish to appeal the assessment of IIP which result in an APT of 4.0 or greater, the offender may request a contested case hearing with the Office of Motor Vehicle Hearings pursuant to SC Code of Laws Sec. 56-5-2941.

If removal of the points from the offender's APT changes the specific responses under the IIDP Policy, SCDPPPS and its partnering agencies will make adjustments to those responses.

Should you receive any DMV suspension while on the program, your time requirement will be tolled until the suspension is cleared.

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

Henry McMaster
Governor



Jerry B. Adger
Director

2221 DEVINE STREET, SIXTH FLOOR
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-0019
Facsimile: (803) 734-9307
www.dppps.sc.gov/ignition_interlock.html

January 04, 2018

ALIEO GARGA-RICHARDSON
1435 EBINPORT RD
ROCK HILL, SC 297322020

Customer No: 23368087
DL No: 11567821
VIN No: 1FMZU63E02ZA05098
Offense: DUI 2nd

Notice of Mandatory Six Month Suspension and Mandatory Substance Abuse Assessment
Notice of Your Right to a Contested Case Hearing

NOTICE OF SUSPENSION: Four or more Ignition Interlock Device Points have been assessed against your driving record in the Ignition Interlock Device Program (the IIDP). Therefore, pursuant to South Carolina Code of Laws Section 56-5-2941, your Ignition Interlock Restricted License (II Restricted License) will be suspended for six (6) months. Details of the points assessed are given below.

Violation Date/Time	Points	Type
12/29/2017 12:00 AM	1	Missed Inspection

The South Carolina Department of Motor Vehicles will notify you when the suspension begins and ends. If you want the Breath Alcohol Ignition Interlock Device (BAIID) removed from your vehicle while your II Restricted License is suspended, you must first contact the IIDP. *Note that so long as you keep the BAIID installed in any vehicle you own, you continue to be responsible for any fees relating to its rental and maintenance, whether your II Restricted License is suspended or not.*

NOTICE OF MANDATORY SUBSTANCE ABUSE ASSESSMENT: You are subject to a mandatory substance abuse assessment. You have thirty (30) calendar days from January 04, 2018 to report to a local DAODAS certified substance abuse program. Please be sure to take a copy of this letter with you when you report. Visit www.daodas.state.sc.gov or call 1-888-727-7383 for further information. If the DAODAS program recommends treatment, you will be required to complete the treatment plan before your II Restricted License will be reissued.

YOUR RIGHT TO A CONTESTED CASE HEARING: This suspension is imposed pursuant to S.C. Code of Laws Sec. 56-5-2941. If you believe that you should not be suspended under this statute, you may request a contested case hearing by submitting your request in writing to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton Street, Suite 325, Columbia, SC 29201 within thirty (30) days of the date of this letter. Enclose a copy of this letter. There is a \$200 filing fee. You may file the request by mail or in person with a Money Order, Cashier's Check or cash. Please do not send cash through the mail. If you choose to appeal, your suspension

will be stayed pending the outcome of the contested case hearing. However, during this stay you will remain subject to the Program's terms and conditions and may face additional penalties for new violations during this period.

****If you do not request a contested case hearing within thirty days of the date of this notice, you waive your right to the contested case hearing and your II Restricted License will be suspended pursuant to S.C. Code of Laws Sec. 56-5-2941(E)(3).****

If you have any questions about this letter or the Ignition Interlock Device Program, please visit the Program's website at http://www.dppps.sc.gov/ignition_interlock.html, email the IIDP Administrator at ignition@ppp.sc.gov, or call 803-734-0019.

Guardian Interlock

12409 Stark Rd.
Livonia, MI 48150
www.guardianinterlock.com

Alieo C. Garga-Richardson
1435 Ebinport Rd
Rock Hill, SC 29732

December 19, 2017

Dear Client,

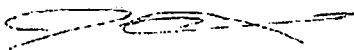
This letter is in reference to your outstanding account balance and the return of our ignition interlock equipment in your possession. Please contact our office immediately at 1-800-499-0994 to arrange for payment of your outstanding account balance, schedule service or arrange the authorized removal and return of our Guardian ignition interlock device.

Please contact our office at 1-800-499-0994 if this balance has been paid, the equipment has already been returned or serviced by Guardian and you believe our records are incorrect.

If we do not hear from you within **ten (10) days** from the postmark date of this letter, we will assume you have no justification for your refusal to pay your outstanding balance, schedule service or arrange for the return of our equipment, and we will act accordingly. This may include forwarding your file to a collection agency to collect from you the full account balance owed in addition to the cost of the equipment, as applicable (*the replacement cost of the ignition interlock equipment could exceed \$1,500.00*).

Your prompt attention to this matter is required.

Sincerely,



Collection Manager
Guardian Interlock, Inc.

0112-14

James
858
225
3799

SECTION TWO

Henry McMaster
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

12/27/2017
GARGA-RICHARDSON, ALIED
1435 EBINPORT RD
ROCK HILL, SC 29732-2020

CUSTOMER NO: 23368087
FILE NO: 23663228
DL NO: 11567821

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO SUCCESSFULLY COMPLY WITH IGNITION INTERLOCK DEVICE ASSESSMENT
REQUIREMENTS- 3 POINTS

SECTION OF LAW: 56-5-2941, 56-5-2990

CAUSE DATE: 12/27/2017

ENDING DATE: When you receive notice from the Department that this action has been cleared.

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. The South Carolina Department of Alcohol and Other Drug Abuse Services has notified the Department that you are not in compliance with South Carolina Section of Law 56-5-2941. You may not drive until DAODAS notifies the Department that you have come into compliance and the DMV has notified you that your driving privileges are eligible to be reinstated.

REINSTATEMENT REQUIREMENTS:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

If you have not already turned in your license, you must return it to Driver Records or your local DMV office.

Driver Records Manager

Post Office Box 1498, Blythewood, South Carolina 29016

Henry McMaster
Governor



State of South Carolina
Department of Motor Vehicles

Kevin A. Shwedo
Executive Director

01/04/2018
GARGA-RICHARDSON, ALIEO
1435 EBINPORT RD
ROCK HILL, SC 29732-2020

CUSTOMER NO: 23368087
FILE NO: 23697606
DL NO: 11567821

OFFICIAL NOTICE

You may not drive commercial or non-commercial motor vehicles.

REASON: FAILURE TO SUCCESSFULLY COMPLY WITH IGNITION INTERLOCK DEVICE ASSESSMENT
REQUIREMENTS- INCREASE OF POINT ASSESSMENT- 4 POINTS

SECTION OF LAW: 56-5-2941, 56-5-2990

CAUSE DATE: 01/04/2018

BEGINNING DATE: 02/03/2018

ENDING DATE: 08/03/2018

SPECIAL DRIVING PRIVILEGES:

There are no special driving privileges available to you. The South Carolina Department of Alcohol and Other Drug Abuse Services has notified the Department that you are not in compliance with South Carolina Section of Law 56-5-2941. You may not drive until you have done the following:

An offender receiving a total of four points shall have his/her license suspended for a period of one year and must submit to a substance abuse assessment pursuant to Section 56-5-2990 and successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Completion of this plan is mandatory as a condition of reinstatement of the person's driving privileges.

REINSTATEMENT REQUIREMENTS:

You must pay a \$100.00 reinstatement fee. This fee can be paid at any DMV Office, mailed to Driver Records, PO Box 1498, Blythewood, SC 29016-0028 or paid by credit card at www.scdmvonline.com. Make checks and money orders payable to SCDMV. Do not send cash through the mail.

THIS LETTER CONCERNS ONLY THE ACTION LISTED ABOVE AND DOES NOT CHANGE ANY OTHER NOTICES WE HAVE SENT TO YOU.

If you have not already turned in your license, you must return it to Driver Records or your local DMV office.

Driver Records Manager

Post Office Box 1498, Blythewood, South Carolina 29016

Henry McMaster
Governor



State of South Carolina
Department of Motor Vehicles

Kevin A. Shwedo
Executive Director

04/09/2018
GARGA-RICHARDSON, ALIEO
1435 EBINPORT RD
ROCK HILL, SC 29732-2020

CUSTOMER NO: 23368087
FILE NO: 24203806
DL NO: 11567821

DEAR CUSTOMER:

The Driver Records Office has received the results of your administrative hearing for IID Point Infringement, dated 05/09/2018.

The Hearing Officer has ruled that the action by the Department be sustained. You will receive additional correspondence from the department concerning your suspension.

DRIVER RECORDS MANAGER

Post Office Box 1498, Blythewood, South Carolina 29016

015

Henry McMaster
Governor



Kevin A. Shivers
Executive Director



State of South Carolina

Department of Motor Vehicles

06/19/2018

GARGA-RICHARDSON, ALIEO
1435 EBINPORT RD
ROCK HILL, SC 29732-2020

CUSTOMER NO: 23368087
FILE NO: 24578183
DL NO: 11567821

01010001180

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 06/19/2018. This official notice cancels previous notices of suspension, cancellation, disqualification or revocation. The suspension action placed against your record for IID Point Infringement, dated 01/04/2018 has been stayed pending the outcome of the appeal.

DRIVING STATUS: Suspended Disqualified

BEGINNING DATE: 12:01AM 02/03/2018 ENDING DATE: MIDNIGHT 11/04/2018

Suspension, cancellation, revocation or disqualification(s) pending:

Date	Begin Date	End Date	Susp Description
------	------------	----------	------------------

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified. If you are holding a driver's license, beginner's permit or special driving credential, it must be surrendered to the Department before the date of suspension listed above.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

If your driving status is suspended and/or disqualified, you are required to meet all reinstatement requirements for any suspension, revocation, cancellation or disqualification. For reinstatement requirements or eligibility for special driving privileges, please refer to previous notices or contact a DMV Customer Service Representative at (803)896-5000. Information may also be obtained by visiting our website at www.scdmvonline.com

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager

(803) - 896-5000 - Cindy -

Henry McMaster
Governor



Kevin A. Shwedo
Executive Director



State of South Carolina

Department of Motor Vehicles

If your driving status shows "No Suspension", you may make application for a driver's license by presenting this notice to your local DMV Office. You may be required to take a vision, knowledge and/or skills test in order to be issued a license.

Driver Records Manager

02020001050

04/17/2014

SECTION THREE

7017 3040 0000 6793 5794

U.S. Postal Service[™] CERTIFIED MAIL[®] RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com . COLUMBIA SC 29201	
OFFICIAL USE	
Certified Mail Fee \$3.35 Extra Services & Fees (check box, add fee to postage rate) ☐ Return Receipt (hardcopy) \$0.00 ☐ Return Receipt (electronic) \$0.00 ☐ Certified Mail Restricted Delivery \$0.00 ☐ Adult Signature Required \$0.00 ☐ Adult Signature Restricted Delivery \$0.00	0913 07 Postmark Here
Postage \$0.49 Total Postage and Fees \$3.84	01/05/2018
Sent To Street and Apt. No., or PO Box No. City, State, ZIP+4 [®]	
PS Form 3800, April 2015 PSN 7530-02-000-9000 See Reverse for Instructions	

 UNITED STATES POSTAL SERVICE[®]		CUSTOMER'S RECEIPT	
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Department of Motor Vehicles</i>	KEEP THIS RECEIPT FOR YOUR RECORDS	
	Address <i>1205 Penbleton St</i>		
	<i>Columbia, SC 29201</i>		<i>Hearing office</i>
Serial Number 24856450378	Year, Month, Day 2018-01-05	Post Office 297301	Amount \$200.00
		Clerk 07	

Depart of Motor Vehicles
Office of Hearings
Columbia, SC 29201

NOTICE OF APPEAL

Dear Sir/Madame,

On the 30th of December 2017, I received a notice from the Department of Motor Vehicles informing me that my license was suspended effective 12/27/2017 due to a violation of SC Code 56-5-2941 and 56-5-2990 failure to comply with ignition interlock device assessment requirements awarding me 3 points.

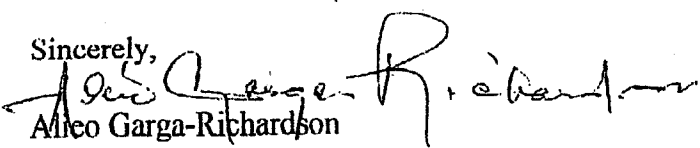
I did not receive any notice from the Department of Probation Pardon and Parole regarding these points assessment or an opportunity to appeal said assessment.

And therefore I am as of this date 1/05/2018 requesting a hearing regarding the assessment of these points and request the reinstallation of my driving privileges until said hearing is held.

Attached is a copy of the Notice I received from the Department of Motor Vehicle.

With Kindest Regards;

Sincerely,


Alice Garga-Richardson

7017 3040 0000 6793 5794

U.S. Postal Service	
CERTIFIED MAIL® RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com	
COLUMBIA SC 29201	
Certified Mail Fee	\$3.35
Extra Services & Fees (check box, add fee to Certified Mail fee)	
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$0.49
Total Postage and Fees	\$3.84
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
PS Form 3800, April 2015 PSN 7530-02-000-9047-1 See Reverse for	

091

Postmark
Here

01/05/201

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

SC Department of Probation, Parole & Pardon
Services
and
South Carolina Department of Motor
Vehicles,

Petitioner,

vs.

Alieo Garga-Richardson,
Respondent.

Docket No. 18-OMVH-14-0124-CC
DL# 11567821

NOTICE OF HEARING

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to Respondent's request for a contested case hearing.

IT IS HEREBY NOTICED that a hearing on the merits of this action before Hearing Officer Phillip T. Addington is scheduled to begin at **8:00 AM on Tuesday, April 3 2018 at Chester Family Court 126 Wylie Street Chester SC**. All parties are to arrive at least fifteen minutes prior to the time set for the hearing.

1. This hearing will be conducted in accordance with the Rules of Procedure for the South Carolina Office of Motor Vehicle Hearings (OMVH). A copy may be obtained from the Administrative Coordinator of the OMVH or from the OMVH website, www.scomvh.net. The South Carolina Rules of Evidence apply.

2. All parties must bring to the hearing all documents, records, and witnesses needed to present their case. All exhibits moved for introduction at the hearing must be originals. Upon good cause shown at the hearing, copies may be substituted for original exhibits.

3. Subpoenas are available to the parties pursuant to S.C. Code Ann. § 1-23-320(d) (as amended) and the rules of the OMVH, to compel the attendance of witnesses or for the production of documents at the hearing. The parties are responsible for service of subpoenas and any cost involved. Subpoena may be obtained from the OMVH website.

4. A party may represent himself or may be represented by an attorney at the hearing.

5. **FOR GOOD CAUSE SHOWN**, a party may request a continuance no later than two (2) business days prior to the scheduled hearing date. All requests must be made in writing and forwarded to the scheduling assistant listed below for the assigned hearing officer of the OMVH by U.S. Mail, Fax, or email. A copy of your request must be sent to all parties.

6. In case a party settles a case or wishes to withdraw their request for a hearing, they must notify the scheduling assistant of the OMVH as soon as possible. If in the event you cannot reach the scheduling assistant then contact the Administrative Coordinator as soon as possible at (803) 734-3201.

Yolanda P. Williams, Administrative Coordinator, OMVH

By: Frances L. Inabine

Scheduling Assistant

January 16, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alieo Garga-Richardson,

Appellant,

vs.

South Carolina Department of Motor Vehicles
and South Carolina Department of Probation,
Parole and Pardon Services,

Respondents.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 17-ALJ-21-0201-AP

NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on June 13, 2018. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2017), the **Honorable S. Phillip Lenski**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within forty-five (45) days of the date of this Notice
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

This the fifteenth day of June 2018.

Ralph King Anderson, III
Chief Administrative Law Judge

By: _____

Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 22-1
Columbia, South Carolina 29201

FILED

JUN 15 2018

SC ADMIN. LAW COURT

021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. "TRIPP" ANDERSON, III
Director ~ SCOMVH
Chief Administrative Law Judge ~ SCALC



(803) 734-3201
FAX: (803) 734-3200
WWW.SCOMVH.NET

June 13, 2018

Alieo Garga-Richardson
1435 Ebinport Road
Rock Hill, SC 29732

Re: Transcript Request

Dear Mr. Garga-Richardson:

We are in receipt of your request for a transcript and money order for \$10. Our office does not have a written transcript. Your letter indicated that the \$10 was the fee for the transcript. We can offer you a copy of a CD that will contain the audio of your hearing. The money order for \$10 will not cover the cost of the transcript. It would only cover the cost of a CD.

Please be advised that our office uses a freelance court reporting agency to prepare all transcript requests. As the Appellant in the case you will need to do one of the following to have a transcript prepared; you can contact the court reporting agency that we use to have it done. The agency here in Columbia that we use is Creel Reporting and their number is (803) 252-3445. Please be advised that they require a deposit before they will prepare the transcript. **You can inform Creel Reporting that your audio is approximately 47 minutes long.** The second option would be to purchase a CD for \$10 from our office which contains the digital audio of your hearing. If you choose to purchase the audio from our office, then you will be responsible for contacting a Certified Court Reporter in your area to have the CD transcribed. The court reporting agency that you decide to use needs to file the original transcript with our office and send a copy to you for your files. If you choose to buy the audio, please resubmit the money order that has been returned to you.

If you have any questions, please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yolanda P. Williams".

Yolanda P. Williams
Administrative Coordinator, OMVH

Cc: Jana Shealy, Clerk ALC

0 2 2 - 111

July 29th, 2018

The Honorable
S. Phillip Lenski
Administrative Law Judge
Columbia, SC 29201

RE: Docket No. 17-AIJ-21-0201-AP

ALIEO GARGA-RICHARDSON vs.
SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
SOUTH CAROLINA DEPARTMENT OF PROBATION, PARDON & PAROLEE

Dear Sir,

In the above stated case, this comes as a petition requesting additional time to file with the Court the Records on Appeal.

The reasons are several but most pressing are time and finance. At the time of filing my appeal I did request a copy of the Transcript of the Proceedings from the Office of Motor Vehicle Hearing. That request was misinterpreted which introduced a delay. Notwithstanding, I was able to rectify the misunderstanding but ran into cost of having the copy of the proceedings transcribe and the time require by the transcribing agency/individual.

A Deposit of \$350.00 was requested by the agency referred by OMVH and two weeks to prepared the transcript. I recently got a job as a 1099 employee and don't expect a check disbursement until August 3rd, 2018.

A second issue is after filing my Appeal, I received a letter from the Department of Motor Vehicle staying the suspension of my license for the accumulation of 4 IID points but not the suspension imposed for the accumulation of the 3rd IID point. The reason given by the person that I spoke with at the DMV was that he/she were not informed that the issues surrounding the issuance of the 3rd IID point is also a matter under consideration by the Administrative Law Court.

My Appeal does request relief from these suspensions. As noted in my request for reconsideration and my initial letter of appeal filed with OMVH.

I pray that this petition is granted and that justice is served.

WITH KINDEST REGARDS;

I remain

Sincerely,



Alieo Garga-Richardson

Appellant Pro-Se

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

CC: Mr. Thomas W. Nicholson

Legal Counsel

South Carolina Depart of

Correction, Probation & Pardon

803-734-9220

CC: South Carolina Office of Motor Vehicle Hearings

12305 Pendleton Street, Ste 325

Columbia, SC 29201

CC: Department of Motor Vehicles

P. O. Box 1498

Blythewood, South Carolina 29016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Alieo Garga-Richardson,

Appellant,

South Carolina Department of Probation,
Pardon and Parole Services and South
Carolina Department of Motor Vehicles,

Respondents.

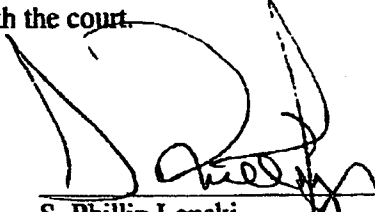
Docket No. 18-ALJ-21-0201-AP

**ORDER GRANTING EXTENSION
OF TIME TO FILE TRANSCRIPT**

This matter is before the court on the appeal of Alieo Garga-Richardson (Appellant) filed on June 13, 2018. On July 30, 2018, the Appellant sent a letter to this court, requesting additional time to file the transcript of the Office of Motor Vehicle Hearings (OMVH) hearing held on April 3, 2018. The court did not receive any opposition to the request, therefore, the court will grant the Appellant thirty (30) days from the date of this Order to file the transcript.

IT IS THEREFORE ORDERED that the Appellant's request for additional time to file the hearing transcript with the court is **GRANTED**. The Appellant has thirty (30) days from the date of this order to file the hearing transcript with the court.

AND IT IS SO ORDERED.


S. Phillip Lenski
Administrative Law Judge

August 28, 2018
Columbia, South Carolina

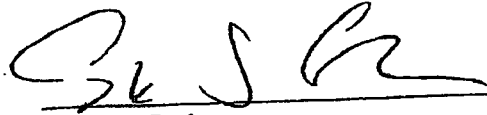
FILED

AUG 28 2018

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

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



Erika S. Easler
Judicial Law Clerk

August 28, 2018
Columbia, South Carolina

SECTION FOUR

IN RE: ALIEO GARGA-RICHARDSON
Motor Vehicle Hearing on 04/03/2018

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MOTOR VEHICLE HEARING

IN RE: ALIEO GARGA-RICHARDSON

PROCEEDINGS HELD BEFORE THE HONORABLE JUDGE
PHILLIP T. ADDINGTON, ON APRIL 3, 2018 RELATIVE TO THE
ABOVE-ENTITLED MATTER.

1 A P P E A R A N C E S:

2 THOMAS W. NICHOLSON, ESQ.

3 Office of General Counsel

4

5 ALIEO GARGA-RICHARDSON,

6 Appearing pro se.

7

8 PRESENT:

9 RUTH ANN CARTWRIGHT,

10 IID Program

11 Public Administrator for the

12 South Carolina Department of

13 Probation, Parole Pardon Services

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I N D E X

WITNESS:

RUTH ANN CARTWRIGHT

Direct Examination by Mr. Nicholson 7

Cross Examination by Mr. Garga-Richardson 13

ALIEO GARGA-RICHARDSON

Cross Examination by Mr. Nicholson 21

RUTH ANN CARTWRIGHT (Recalled)

Redirect Examination by Mr. Nicholson 30

E X H I B I T S

PETITIONER'S	MARKED	MARKED
EXHIBIT NO.:	FOR I.D.	IN EVIDENCE
Petitioner's Exhibit No. 1	8	12

1 P R O C E E D I N G S

2

3 JUDGE ADDINGTON: My name is Bill Addington, I
4 have been appointed by the South Carolina Administrative
5 Law Court to preside over this contested case.

6 These type of proceedings are being tape recorded
7 for departmental reference --- matter of record.

8 Mr. Richardson, if you'll stand for me please,
9 sir?

10 Give me your full name and your address please,
11 sir?

12 MR. GARGA-RICHARDSON: Yes, sir.

13 My name is Alieo Garga-Richardson, spelled
14 A-L-I-E-O, my first name.

15 Last name's a hyphenated name, spelled G-A-R-G-A,
16 dash Richardson.

17 Address is 1435 Ebinport Road, Rock Hill, South
18 Carolina 29732.

19 JUDGE ADDINGTON: Okay, sir.

20 If you'll raise your right hand for me?

21 Do you solemnly swear the testimony you're about
22 to give in this matter will be the truth, the whole truth
23 and nothing but the truth?

24 MR. GARGA-RICHARDSON: I do.

25

1 ALIEO GARGA-RICHARDSON,
2 having been duly called and sworn,
3 was examined and testified as follows:
4

5 JUDGE ADDINGTON: Okay.

6 You may be seated.

7 Ms. Cartwright, if you'd give for me your name
8 and your relationship to this matter?

9 MS. CARTWRIGHT: I am Ruth Ann Cartwright, Public
10 Administrator for the South Carolina Department of
11 Probation, Parole Pardon Services, 2221 Divine Street,
12 Columbia, South Carolina 29250.

13 JUDGE ADDINGTON: All right.

14 If you'll raise your right hand for me?

15 Do you solemnly swear the testimony you're about
16 to give in this matter will be the truth, the whole truth
17 and nothing but the truth?

18 MS. CARTWRIGHT: Yes, sir.
19

20 RUTH ANN CARTWRIGHT,
21 having been duly called and sworn,
22 was examined and testified as follows:
23

24 JUDGE ADDINGTON: You may be seated.

25 I'll turn the case over at this time to counsel.

1 MR. NICHOLSON: Okay.

2 We're here today pursuant to a --- Mr. Garga-
3 Richardson requested a --- a hearing to contest the
4 suspension on a Suspension Notice, dated January 4th for a
5 missed inspection, one point assessed against him for a
6 missed inspection and Mr. Garga-Richardson is a driver, was
7 enrolled in the Ignition Interlock Device Program subject
8 to the terms of South Carolina Code 56-5-2941 and, subject
9 to --- under that statute to the ignition interlock point
10 system.

11 Under 56-5-2941 at Subsection capital (H), Item
12 No. 1, states that, "Failure of a person who's in the
13 program to have the interlock device inspected every sixty
14 days must result in one ignition interlock device point and
15 that is why the point and the Suspension Notice on December
16 29th, 2017 was assessed for that reason and Mr. --- this
17 brings Mr. Garga-Richardson's point total up to four points
18 and when four points are reached under the statute, under
19 the terms of the statute, suspension is imposed.

20 I'll point out that the three previous points
21 that were assessed against Mr. Garga-Richardson were also
22 for missed inspections and at this time, I would like to
23 have Ms. Cartwright testify.

24 JUDGE ADDINGTON: Okay, and she's already been
25 sworn.

1 DIRECT EXAMINATION

2 BY MR. NICHOLSON:

3 Q All right.

4 Ms. Cartwright, if you could explain to the ---
5 to the Court what the program's procedures are for --- when
6 somebody is complete with the program, what they have to
7 do?

8 A Yes, sir.

9 Once a driver reaches the end of the required
10 period of time on ignition interlock, they are required to
11 have a final download of their data phone, the device,
12 which is installed in the vehicle.

13 We notify drivers by mail of that final
14 inspection.

15 We cannot close out their case without the
16 information from that final inspection. We rely on that to
17 make sure that up until the point that the driver was to
18 satisfy the period of time on ignition interlock, that they
19 are free and clear of violations.

20 If for some reason there are violations assessed
21 during that final inspection period, it may result in
22 extensions.

23 So we have to look at that final download before
24 the driver could be program complete.

25 Q Okay.

1 Had Mr. Garga-Richardson reached the point where
2 you had --- the program rather, had sent him the final
3 inspection letter?

4 A Yes, sir.

5 We did send the final inspection letter back in
6 May to Mr. Richardson.

7 It would have been May 22nd of 2017. We did send
8 a final inspection letter to the address of record.

9 Q Okay.

10 A I will point out that up until that point, Mr.
11 Richardson had done well on the program. He had a twenty-
12 four month requirement and there had been just --- at the
13 time of the first missed inspection assessment, was deemed
14 appropriate and assessed against Mr. Richardson. That was
15 his first point that actually stayed on his record.

16 Q Okay.

17 MR. NICHOLSON: I'd like to introduce a document,
18 Your Honor.

19 JUDGE ADDINGTON: Okay.

20

21 (PETITIONER'S EXHIBIT NO.1, MR. GARGA-
22 RICHARDSON'S INSPECTION LETTER DATED MAY 22, 2017 MARKED
23 FOR IDENTIFICATION.)

24

25 Q (By Mr. Nicholson) Ms. Cartwright, the document,

1 I'll pass it around, if you could identify what this
2 document is?

3 A This is a screenshot of the violations page for
4 Mr. Garga-Richardson.

5 You can see by his name the violations listed on
6 the far right-hand side.

7 This is our Ignition Interlock Management
8 automated system.

9 Any violations that come in from inspections, as
10 well as points assessed and extensions, are collected on
11 this page and that's what we're looking at.

12 If you will note, we --- Mr. Garga-Richardson had
13 had inspections up until, all the way to May 2nd was his
14 last inspection that we show and you can see, if you review
15 Sequence No. 402, that inspection and then 403, there was a
16 zero total points in the total point column.

17 After the Administrative Appeal and Sequence 403,
18 and then the missed inspections started at that point.

19 7/2, at Sequence 503, which issued one point,
20 603, the missed inspection assessment on August 31st, 703
21 missed inspection assessment on October 30th that brought
22 him to three points and then final, the missed inspection
23 from 12/29/2017 that brought him to the four points.

24 All four of these are missed inspections.

25 Q Okay.

1 So I just want to clarify the sequence here.

2 Mr. Garga-Richardson had gotten to the point
3 where he was ready to be done with the program, that's
4 correct?

5 A That is correct. Yes, sir.

6 Q Okay.

7 And then the program sent him the final
8 Inspection Notice to get him to go in and get the car
9 inspected the final time?

10 A Yes, sir. That's correct.

11 Q And then he --- he didn't do it?

12 A Yes, sir.

13 We never did receive it.

14 Q And then you got these four missed inspection
15 points assessed against him after that?

16 A After that, yes, sir.

17 Q And before that, he hadn't had any point
18 assessment that was --- that stayed on his record?

19 A That's correct.

20 There was one time where he had appealed and
21 several times that we had administratively removed
22 violation points, but Mr. Garga-Richardson up until that
23 point, did well.

24 Q Okay.

25 And so as it shows on the violation's page here,

1 he has four total points all because of missed inspections
2 after --- after completing his initial required term in the
3 program of two years?

4 A Yes, sir. That's correct.

5 Q Okay.

6 And I believe the --- you have to enter these
7 points manually, correct?

8 A No, sir.

9 Our system automated after sixty days from the
10 last inspection.

11 If there's not been an inspection that comes into
12 our system ---

13 Q Uh-huh.

14 A --- the system automatically will assess that.

15 However, just like any violation point that comes
16 into our system, it will be reviewed against the
17 manufacturer's website to insure that no inspection was
18 actually done.

19 And I would like to point out, up till that
20 point, we had --- we hadn't heard from Mr. Garga-Richardson
21 either.

22 Q Okay.

23 So if Mr. Garga-Richardson back in May had gone
24 in and had the final inspection and there were no points
25 and there was --- assuming there weren't four points on the

1 machine at that time, he would have been done with the
2 program?

3 A Yes, sir.

4 Contention upon no extensions, no violations,
5 yes, sir. He would have been completed.

6 Q Okay.

7 And he does have four total points, correct?

8 A Yes, sir.

9 Q Okay.

10 JUDGE ADDINGTON: Mr. Richardson, this document
11 was given to you.

12 Do you have any objections to it being entered in
13 as an exhibit here today?

14 MR. GARGA-RICHARDSON: No, Your Honor.

15 I have no objection.

16 JUDGE ADDINGTON: We'll enter it in as
17 Petitioner's Exhibit No. 1.

18

19 (PETITIONER'S EXHIBIT NO. 1, HAVING BEEN
20 PREVIOUSLY MARKED FOR IDENTIFICATION, WAS RECEIVED IN
21 EVIDENCE.)

22

23 JUDGE ADDINGTON: At this time, Mr. Richardson,
24 do you have any questions that you would like to ask
25 pertaining to the testimony that's been entered here today?

1 MR. GARGA-RICHARDSON: No, I don't have any
2 questions, no questions to ask her.

3 Well, I would like to ask him one question.
4

5 CROSS EXAMINATION

6 BY MR. GARGA-RICHARDSON:

7 Q I'd like to know why is it that at the time you
8 sent out the letter advising me to go for an inspection,
9 why, at the same time, you couldn't have sent a letter
10 having to go and get it, I mean the inspection to have the
11 IID removed from the car?

12 A It is our procedure, standard procedure.

13 Once we sent you that final inspection letter
14 that --- that told you you needed to have a final download
15 of your data.

16 Once that data comes into the system, then if
17 there are no violations, at that point, we send a program
18 complete letter.

19 We cannot send a program complete letter without
20 that last download.

21 Q Well, why didn't you send the required Inspection
22 Notice before my program ended?

23 A The notice is sent out on the projected end date,
24 which was May 22nd for you.

25 So the letter, just like we do any other driver,

1 it's automatically generated by our computer system on that
2 projected end date and we mail it to your address of record
3 advising you to go for the final download.

4 JUDGE ADDINGTON: Anything further?

5 MR. GARGA-RICHARDSON: No further questions.

6 JUDGE ADDINGTON: Okay.

7 At this point, do you have testimony or evidence
8 you'd like to present here today?

9 MR. GARGA-RICHARDSON: Yes, Your Honor.

10 A couple of things. At first, I'd just like to
11 say that, what I --- when I was told to enroll into the I
12 --- IID, IID program, I was never sent a letter from the
13 Department of Motor Vehicles, nor did I receive a letter
14 from Bogman (ph), the Administrator here, advising me of
15 the rules and regulations of the program, telling me what
16 my started date is, so --- or how long I'll be in the
17 program for.

18 I received a phone call. I called the Department
19 of Motor Vehicles at the end of my suspension, my license
20 was suspended for three years and I was informed by
21 telephone that I had enrolled in the IID program.

22 I asked for how long, she said to call them and
23 they will tell you how long and me and her discussed the
24 letter come for me, I've been working here.

25 We discussed the term and I said well I don't

1 know, you ought to tell me.

2 She said, no, you go ahead and call them.

3 When I called them, they told me I had to enroll
4 in this program and they did not even tell me how long the
5 program was going to be.

6 Well, I went ahead and --- went ahead and
7 enrolled in the program. I guess by assumption, I was
8 talking to the lady at the DMV and I said that.

9 I mean the DMV, goes up here, it gives you the
10 DUI first offense.

11 And the DMV, they say, suspend my license for two
12 years. They said call the DMV that will have been my
13 second offense.

14 So they will suspend my license for two years,
15 but other than, because my license was suspended for two
16 years that mandated that I had to enroll in the program as
17 a second --- as a second offense --- offender, but I went
18 ahead and enrolled in the program anyway.

19 I signed a contract with the people that
20 installed the IID and usually like --- into the car for two
21 years.

22 At the end of the two --- at the end of the two
23 years period, in May was my last inspection. I took the
24 vehicle, they did the last inspection.

25 Then the fellow that told me he was going to

1 reschedule me for June, so I could do an inspection in
2 June.

3 I told him no, I expect to get a letter from your
4 Department telling me to come in and get this thing out of
5 my car, and I'd be coming back to do that.

6 Well, I never received a letter. Instead in
7 June, I receive a letter stating that I had missed an
8 appointment and I was assessed a point that morning.

9 Well, the Department should know that my --- my
10 term is over. There's no reason I should be a --- or go
11 for another inspection, all right?

12 Then later on, I received another letter and this
13 one was dated, I've forgotten the term it was dated, but it
14 says the date is 7/2/2017 and the date on this letter is
15 July 10th and so apparently my --- my inspect --- the
16 inspection I was supposed to have done would have --- I
17 should have taken that in July.

18 That was approximately --- let's see, May, June,
19 July, about two months after the end date of my --- of my
20 --- of the program.

21 I couldn't understand her. I said well, to
22 myself, I said well maybe the Department is not aware of
23 when the end date's supposed to be.

24 So I'll just go ahead and see, but at that time,
25 I had not contacted them.

1 I received another letter, something that I'm
2 missing, that a --- an appointment.

3 I'm sorry, the first --- oh no, this is something
4 different.

5 I received another letter stating that I had
6 missed another inspection and this was dated 8/31/2017 and
7 then it says here, since I missed the --- the suspension,
8 my participation in the program had been extended for two
9 months.

10 This letter is dated on the 6th of September and
11 it said, your adjusted program completion date is July
12 21st, 2017.

13 I said well, okay. Well now they got the date
14 right. I should be getting a letter telling me to go ahead
15 and take this thing out of the car.

16 I called the Department when I received this
17 second letter, and told them by telephone, that the
18 vehicle's down.

19 I did not have the money. I had to tow the
20 vehicle to the place where they store the car for them to
21 do an inspection and I told them the vehicle is down. I
22 cannot --- I don't have any money to tow it.

23 As soon as I get some money, I was waiting for my
24 income tax refund. As soon as I get some money, I'll go
25 ahead and have this --- or he was talking that, to have the

1 inspection done.

2 Well, I didn't --- I didn't get a job. I didn't
3 get anything going until sometime in the beginning of this
4 year. I got a job in Virginia and I was working in
5 Virginia until I received the letter.

6 I came down to visit with my mother and I ---
7 that's where my mail goes, and I receive a letter stating
8 that my license was suspended back in December, sometime in
9 December.

10 So I went ahead and I filed an appeal, this was
11 for three points on the license.

12 I filed an appeal and in about a week, I received
13 another letter saying that my license will be --- there was
14 a mandatory suspension for six months because I had
15 accumulated four points.

16 Well, I did not know that. As long as I had the
17 IID equipment in the car, I was considered an active
18 participant in the program and --- I mean I thought they
19 would have known that my --- or that my term for
20 participation had ended.

21 Well, I went ahead and sent a letter of appeal
22 with the filing fee to the Board of Hearing, but when she
23 received the letter, she researched.

24 She called the Department of Motor Vehicles,
25 asking them if they have any records of a suspension on a

1 three point suspension, they said no.

2 She called the Department of Probation and they
3 didn't have any record.

4 So she says she'll move to --- or use that money,
5 combine it to --- to --- the two notices together and file
6 an appeal and that's what she did.

7 I received a Stay of Execution of suspension on
8 my license and then a couple of weeks later, there was
9 another letter that came in and said you're suspending me
10 for the three points violation and the three points
11 violation, according to the law doesn't carry any
12 suspension, but right now the Department has my license
13 suspended because of three points ---- that was assessed
14 against me and four points, they went ahead and ordered,
15 they state that they, they had instituted in the first
16 place.

17 Well, when that happened, I received a letter
18 from --- from our, I think the law office, they informed me
19 that --- well, I called her when I was in Virginia.

20 She told me that she received notice that my
21 license had been suspended and if I were to go ahead and
22 have the IID removal in the car, she --- go ahead and
23 remove it.

24 When I came back to South Carolina, I seen a
25 letter that was there that I read that, said that's how the

1 program work and how they intend to assess points on me if
2 I kept it.

3 So I went ahead and told her, I'm going to go
4 ahead and have it removed.

5 I needed her to give me a letter of removal.

6 She gave me a letter of removal. I had enough
7 money to tow the car there and had it removed, they could
8 get the final inspection then and there cause they
9 downloaded everything and after they did the final
10 inspection and downloaded, they downloaded everything, they
11 gave me a letter to take to the Department of Motor
12 Vehicles to receive my actual license.

13 So I said no, well we got a hearing. Just go to
14 --- go ahead and wait until the hearing because if I took
15 the letter over to the Department of Motor Vehicles and
16 they tell me your license is suspended and we're not going
17 to honor this, we need to hear from the Department of
18 Probation.

19 So I'm here this morning, sir.

20 I believe that the points that --- the points
21 that I've been assessed, that was assessed against me,
22 shouldn't have been assessed cause they knew that --- they
23 --- they'd review the (inaudible) --- and if they did the
24 review of that.

25 This person, she --- she stated earlier that

1 administratively, some of these points were --- well, were
2 not included and one of the points that wasn't included was
3 the point that went on --- on in June when I did not go for
4 the inspection, they assessed a point against me and then
5 she took that point off, by the administrative decision.

6 They should have made the same decision here
7 knowing that the car was down and I couldn't get the car in
8 there for --- for an inspection.

9 Instead, they continue to --- to --- to give
10 point --- I mean assess a point against me, cause it's
11 under four points and I have my license suspension, I mean
12 suspended and I --- I just think they're unfair.

13 JUDGE ADDINGTON: Cross examination?

14

15 CROSS EXAMINATION

16 BY MR. NICHOLSON:

17 Q So, Mr. Garga-Richardson, you did --- you did ---
18 you were receiving the --- the point assessment notices
19 they were telling you you were getting points assessed for
20 skipped and skipped inspections.

21 A I received two notices and those two notices that
22 I received, I have them here and the last notice that I
23 received was on --- was dated the 26th of September 2017.

24 That's the last notice that I received.

25 The notice for --- for --- me accumulated three

1 points, I never received that notice.

2 All I received was a suspension letter from the
3 Department of Motor Vehicles.

4 Q Was this --- was this during the time you said
5 you were in Virginia?

6 A No. I don't know when --- when they assessed the
7 three points against me.

8 I never received a notice.

9 Q But you received all the other notices?

10 A I received --- I didn't even receive the notice
11 for the full --- for the four point.

12 All I received was a letter from the Department
13 telling me my license had been suspended. I only received
14 the first two, that is --- that still got my name on.

15 Attending the program was extended for two
16 months.

17 Q Uh-huh.

18 A And --- and after that ---

19 Q Did your address change during that time or has
20 it always been 1435---

21 A No, not ---

22 Q --- Ebinport?

23 A --- it did not change and it's always been the
24 same.

25 Q Okay.

1 A I received a letter from them.

2 The letter that I received from them explaining
3 their --- explaining the --- the (Department) system, came
4 to my address.

5 So I don't understand why --- why the other
6 letters never --- never arrived.

7 This here was --- (inaudible) on the 4th of
8 January.

9 Q That Suspension Notice?

10 A Yeah, that's the --- that's --- that's the letter
11 she sent with the suspension.

12 The last suspension notice, it says notice of my
13 first six months suspension, but this came on the 4th of
14 July and it says after --- after six months suspension, but
15 this had come long before I received their --- the DMV
16 notice and didn't --- didn't tell me that --- I mean it
17 came --- after I received the --- the Department notice
18 and I only received this because I had filed my appeal, the
19 Department notice for four points came.

20 Let me see if they have a date on this (perusing
21 document).

22 I only received this notice after I had filed my
23 appeal, cause let me see (perusing documents). That's the
24 date I filed the appeal --- my appeal was filed on --- on
25 the 5th.

1 My appeal was filed on the 5th.

2 I received a notice stating that --- and it says
3 12/29, (2017), it says if the point was assessed and the
4 letter was dated on the 4th of January.

5 I never received the letter until after I filed
6 my appeal and after I filed the appeal, I guess that's when
7 she was called and I think the --- the lady that handled
8 the --- the (inaudible) was --- once I informed her that a
9 --- you don't get a suspension on three points.

10 You get a suspension on four point, but for some
11 reason, the Department assessed that my license should be
12 suspended for three points.

13 Q Your --- when you got the third point, when you
14 get three points, Mr. Garga-Richardson, there's a
15 requirement that you go to --- you call (inaudible) for a
16 drug and alcohol assessment.

17 There's --- the current suspension that is on
18 your license is for failure to call (inaudible) and have a
19 drug and alcohol assessment arranged.

20 It's not for --- it's not so much for the point
21 assessment as it is for the failure to --- to do that.

22 A Well, that's my objection. I'll object to that,
23 cause it --- I mean look, I think the three points
24 assessment, they wish the requirement to --- to book a
25 blood and alcohol assessment, will forward --- forward

1 (inaudible) where the three points have been assessed.

2 I've been assessed due to failure in the program
3 for --- for failing to re-test or something.

4 Other than that, but --- because the car is down,
5 I can't take it or take it to --- he said that I'll go to a
6 go to (medical) program, no, that's an invasion of my
7 privacy.

8 Q Mr. Garga-Richardson, did you call the program to
9 tell them that your car wasn't working?

10 A Yes, sir, I did.

11 Q Did you --- did you do that after you got the
12 final inspection letter?

13 A After I got the final inspection, yeah, after I
14 got the second inspection letter, that's when I called,
15 cause the first inspection letter, I thought after the ---
16 the --- the center that sent me the --- the second letter,
17 stated that, you know, your program has been extended for
18 two months.

19 Given your termination (inaudible) adjustment
20 program completion dated July 21st, 2017, but I didn't get
21 this --- this letter until September 6th, 2017.

22 So by then ---

23 Q So you're talking --- the letter you're talking
24 about is the final completion date of --- in July?

25 A What I'm talking about is that I receive a letter

1 that I --- that I was assessed two points.

2 Q Okay.

3 A Telling me that my --- my program adjusted
4 completion date was the 21st of July ---

5 Q All right.

6 A --- but this letter was not mailed out, according
7 to the date on the letter, September 16th.

8 Q Okay.

9 The --- when you get the two points, once you get
10 two points in the program, you get a time extension in the
11 program of two months, which is why you got extended to
12 July from what would have been the completion date in May.

13 So that was what that extension was, but the ---
14 but you didn't take it in for the final inspection at that
15 point?

16 A Well, didn't the Department had a --- had an
17 obligated or informed --- of informing me what the steps
18 were and what the consequences were?

19 Cause they've always --- always, every time they
20 assessed a point against me, they tell me I can go ahead
21 and file an appeal.

22 Q Uh-huh.

23 A But I feel that they're obligated to inform me
24 what it were, cause I had called and told them that the car
25 was down.

1 They knew the car was down and they stopped
2 sending me notices and ---

3 Q Uh-huh.

4 A --- and they kept assessing points.

5 Now, this is --- this is --- (inaudible) form of
6 --- of --- (inaudible).

7 Q But you --- you did know that you had to bring
8 the car in for a final inspection?

9 A No, sir.

10 All I knew was that my program, the program has
11 ended and I was going to receive a letter telling me to
12 take the car in to have it --- have the IID stuff removed.

13 Q So you knew that you needed a letter to get it
14 removed?

15 A Yes.

16 Q Are you saying that you did not get a final
17 inspection letter?

18 A I said I got a letter, one letter ---

19 Q Uh-huh.

20 A --- stating that I should take the car for
21 inspection.

22 Q Okay.

23 A Just the --- just one letter, I never ---

24 Q Right.

25 A --- received a second letter, asking me to take

1 it for --- for nothing, you know, tell me that I failed to
2 take the first inspection.

3 Q Uh-huh.

4 A You need to go ahead and take the --- the second
5 inspection.

6 These are the consequences if you fail to do so,
7 none of that stuff. I did not receive any of that.

8 I did not --- I received a letter stating that
9 there was a setup inspection date that I failed to meet.

10 Q Uh-huh.

11 A And they had two points assessed against me ---

12 Q Uh-huh.

13 A --- at that time.

14 Q Uh-huh.

15 A Thereby extending my --- my --- my (inaudible)
16 program for two months.

17 Q Uh-huh.

18 A So by then, the two months had expired when I
19 received this letter, they stating the appointment was in
20 September.

21 So they --- they --- in the program, so I --- I
22 don't understand.

23 The --- you can take the car and you have the car
24 inspection done then and there, then and there cause they
25 --- the guy is the (inaudible) transmitted.

1 Had the inspection done then and there and I was
2 advised it was removed cause if I had had a problem with
3 the device when I took it there to have it ---

4 Q Uh-huh.

5 A --- (inaudible) letter, I don't think I would
6 have been --- I would have been able to have --- I don't
7 know what the consequences for that be, but I --- I'm very
8 sure there would have been some consequences.

9 Q So when you went --- when did you --- and when
10 did you finally have the device removed, when did you
11 finally get it in?

12 A Sometime in January, I've forgotten the letter --

13 Q Okay.

14 A --- the letter they give me, I can't ---

15 Q All right.

16 A I had it removed, I had it removed in, was it
17 January or February, cause when I came back --- I came back
18 and I took it over there, I think it was like four or five
19 days after I received the letter.

20 So it was on a Monday of (inaudible).

21 We had a holiday and I had taken off from work
22 one day and then I (inaudible) save that money.

23 Q Okay.

24 MR. NICHOLSON: That's all I've got.

25 If I could recall Ms. ---

1 JUDGE ADDINGTON: You can.

2

3

RUTH ANN CARTWRIGHT,

4

having been previously duly called and sworn,
5 was examined and testified further as follows:

6

7

REDIRECT EXAMINATION

8

BY MR. NICHOLSON:

9

Q Ms. Cartwright.

10

A Yes, sir.

11

Q When was the --- what was the date that the final
12 inspection letter was sent out?

13

A May 22nd.

14

Q So the ---

15

A 2017.

16

Q --- okay.

17

And when did --- when did --- what does your
18 record show, when is --- did Mr. Garga-Richardson get the
19 device removed?

20

A February 19, 2018.

21

Q Okay.

22

Now, is there --- at that time, was there any
23 information on the --- recorded on the device?

24

A We did not get any data into the device. That
25 could have been for a number of reasons.

1 It's a long time from the last inspection, the
2 last inspection was May 3rd, 2017. It just appeared that
3 there was no driving of the vehicle.

4 Q Okay.

5 Now, after the --- the final Inspection Notice
6 went out, at what point after that, did Mr. Garga-
7 Richardson contact the program?

8 A I'm looking at the notes from our system and
9 these are notes that all five of the staff have access to
10 and make notes.

11 The next three notes on his note page are where
12 they --- missed inspections had been mailed out and then it
13 stated information about no treatment.

14 I'm looking --- sent an email to the vendor back
15 in December of 2017 to try to get in contact with Mr.
16 Garga-Richardson because at that point, we weren't sure if
17 the manufacturer had gotten the device back at that point.

18 I show no phone call on the notes until and I do
19 apologize because the dates were cut off of here, but the
20 last date that I see was in January, received a call from
21 driver, discussed the three point suspension and OMVH
22 Hearing.

23 Driver states he didn't receive the violation
24 letter, verified address of record with driver, no change.
25 Discussed options of hearing, for an OMVH hearing in May

1 that the Hearing Officer can suspend or rescind.

2 Driver received a remove --- requested that
3 removal letter. He states he completed the program. He
4 received the final inspection letter, but could not get the
5 vehicle in for final download.

6 Explained that because he didn't have final
7 inspection, that the points were then assessed due to the
8 sixty day requirement.

9 So unfortunately, I don't have the exact ---
10 2/13/18.

11 Q So February 13th?

12 A Yes.

13 Q He called in?

14 A Now, Mr. Garga-Richardson very well could have
15 called the manufacturer and me not know about it.

16 I did want to point out again that we sent the
17 final inspection, all he needed to do was to have that
18 final inspection and if there were no violations, at that
19 point, a program complete letter would have been mailed
20 out.

21 Mr. Garga-Richardson admits that he understands
22 it was a two letter process. We just never got the final
23 inspection and because of that, the system is every sixty
24 days, it's going to spit out a point.

25 Q Okay.

1 A And we did mail that to Mr. Richardson and he did
2 have the opportunity to ---

3 MR. GARGA-RICHARDSON: (Interrupts) I had no
4 idea ---

5 THE WITNESS: --- to appeal those points.

6 MR. GARGA-RICHARDSON: Your Honor ---

7 JUDGE ADDINGTON: Mr. Richardson, you've stated
8 that you were in Virginia and I didn't catch the dates.

9 You were in Virginia working a job, am I
10 understanding that correctly?

11 MR. GARGA-RICHARDSON: That's correct.

12 JUDGE ADDINGTON: When did you go to Virginia?

13 MR. GARGA-RICHARDSON: I went to Virginia the
14 second week in January.

15 JUDGE ADDINGTON: Of?

16 MR. GARGA-RICHARDSON: 2018.

17 JUDGE ADDINGTON: Okay.

18 MR. GARGA-RICHARDSON: And all that time I was in
19 Rock Hill, I never received any letter from them, but ---

20 JUDGE ADDINGTON: (Interrupts) Okay.

21 So during the time up until January, the second
22 week of January, you were living at this address?

23 MR. GARGA-RICHARDSON: Yes, sir.

24 JUDGE ADDINGTON: Okay.

25 MR. GARGA-RICHARDSON: Yes, sir.

1 Well let me further state, Your Honor, the
2 vehicle went down on the --- on, I think it was in January
3 of 2017.

4 I don't know what happened. I be having problems
5 with the car before and all the time I had a vacuum leak in
6 the car, kept taking it, kept changing the --- the stuff.

7 When my time of inspection came, I had to take
8 the --- the camera and the stuff that I (inaudible) and
9 take it over to the guys for them to download.

10 Every time I go there to down --- for him to
11 download, asked him, what's the odometer reading?

12 I say the odometer reading is the same, it hasn't
13 changed.

14 The vehicle is down, I can't drive it, but I keep
15 bringing it to you all till the program is over.

16 They should have known. She had the records,
17 cause they transmitted it to her, she should have seen the
18 odometer reading all the time. There was absolutely
19 nothing --- not much activities on this stuff since January
20 till May till my --- my tenure was over and she claims that
21 --- that she didn't know, she didn't want to --- and just
22 --- and just kept assessing points against me just cause
23 they wanted me to stay in the program and see the thing
24 about it, this statute states that, it should not have
25 applied to me, entering the program, cause the statutes

1 clearly state that anybody convicted of a first offense
2 this --- what is it, 56-529 does not apply and my
3 (inaudible) were for a first offense.

4 MR. NICHOLSON: The issue he's referring to, I
5 assume he is for --- he pled to a DUI first, but under the
6 statute, 56-5-2941, Subsection (B), says, "Notwithstanding
7 the pleadings for purposes of a second or subsequent
8 offense, a specified length of time the device is required
9 to be affixed to the motor vehicle is based on the
10 Department of Motor Vehicle's records for offenses pursuant
11 to the DUI statutes.

12 So DMV is the gate --- is the timekeeper for
13 these and it doesn't matter what it's called when you plead
14 to it, if they see you have to ---

15 MR. GARGA-RICHARDSON: (Interrupts) Well, go
16 ahead, go ahead, sir.

17 Pardon me, I missed that.

18 Would you please quote that ---

19 MR. NICHOLSON: It is ---

20 MR. GARGA-RICHARDSON: Go ahead and quote that
21 for me cause I've, I missed it and let me see if I got a --

22 JUDGE ADDINGTON: Well, Mr. Richardson, we're not
23 really here based upon what happened back then, whether it
24 was a first or a second or whatever.

25 We're here only for the missed inspections.

1 MR. GARGA-RICHARDSON: Yes, sir.

2 JUDGE ADDINGTON: That other would be beyond the
3 scope of the hearing here today, not for us to hear.

4 We have no jurisdiction.

5 MR. GARGA-RICHARDSON: Okay.

6 JUDGE ADDINGTON: Over that.

7 So that would be irrelevant here today as to
8 whether it was the first or the second.

9 That would be for the Court and even --- as Mr.
10 Thomas said, that even with the Court, the --- it's still
11 counted one, two, three, four.

12 Even though the Court counted maybe one, one,
13 when it goes to DMV by statute, they count it one, two,
14 three, four, whatever.

15 MR. GARGA-RICHARDSON: Okay.

16 JUDGE ADDINGTON: I know that might be hard
17 sometimes for people to understand but ---

18 MR. GARGA-RICHARDSON: Oh, no, it's not that I
19 don't understand ---

20 JUDGE ADDINGTON: --- you're not the first one
21 that we have had ---

22 MR. GARGA-RICHARDSON: I'm not --- I'm not
23 familiar with that --- with that particular course, so I'll
24 (back you), you know, the court number and I'll go ahead
25 and reference that.

1 JUDGE ADDINGTON: Right.

2 But like I say, that's --- that's not for us ---

3 MR. GARGA-RICHARDSON: (Interrupts/inaudible).

4 JUDGE ADDINGTON: --- to hear today whether it
5 was the first or second.

6 We're only here for the case of the missed
7 inspection.

8 All evidence, all testimony's completed at this
9 time?

10 MR. NICHOLSON: Is there anything else you ---

11 MS. CARTWRIGHT: I just do want to point out, Mr.
12 Garga-Richardson said he was confused about the missed
13 inspection letters and he ---

14 MR. GARGA-RICHARDSON: Well, I didn't say I was
15 ---

16 MS. CARTWRIGHT: --- he --- he ---

17 JUDGE ADDINGTON: I'll give you an opportunity.

18 MR. GARGA-RICHARDSON: Okay.

19 MS. CARTWRIGHT: And he did quote about the
20 extensions, that the letter probably did say that your
21 projected end date was July when he received the letter in
22 September and that was because of the two month extensions.

23 However, you know, we never got the final
24 inspection letter or final inspection.

25 Had that occurred, as testified to earlier, Mr.

1 Garga-Richardson would have most likely completed his two
2 year requirement as DMV gave us information that it was a
3 DUI second.

4 Looking, Mr. Garga-Richardson also said about
5 that he took his handset and camera in?

6 MR. GARGA-RICHARDSON: Yeah.

7 MS. CARTWRIGHT: You didn't take your vehicle in
8 to have it serviced.

9 MR. GARGA-RICHARDSON: What do you mean "take it
10 in to have it serviced"?

11 MS. CARTWRIGHT: Looking at the Guardian website
12 information there, it's very possible that ---

13 MR. GARGA-RICHARDSON: (Interrupts) Every time
14 --- every time ---

15 MS. CARTWRIGHT: --- there was little ---

16 MR. NICHOLSON: Mr. Garga-Richardson, if you
17 would not interrupt, please.

18 MR. GARGA-RICHARDSON: --- well, she did ---

19 MR. NICHOLSON: (Interrupts) Please don't
20 interrupt.

21 MR. GARGA-RICHARDSON: All right.

22 MS. CARTWRIGHT: There's --- there's --- doesn't
23 appear to be a lot of tests by looking at the Guardian
24 website since January, which is in line with what he said
25 about his vehicle being, possibly being down.

1 Our Department did not have information about
2 that.

3 Again, maybe Guardian did, but after the final
4 inspection letter was sent, we didn't hear from Mr. Garga-
5 Richardson to address this.

6 We did send out the missed inspections. He was
7 aware of how to appeal as he had appealed in the past.
8 There was just no appeal.

9

10 REDIRECT EXAMINATION

11 (CONT'D) BY MR. NICHOLSON:

12 Q And, Ms. Cartwright, it's the driver's
13 responsibility to get the car brought in for a final
14 inspection, correct?

15 A It is, but you have to have a final inspection
16 and then based upon the results of that final inspection,
17 then it's determined whether or not they've completed the
18 program.

19 They're not program complete at the final
20 inspection.

21 Q Okay.

22 JUDGE ADDINGTON: Have a closing Mr. Richardson?

23 MR. GARGA-RICHARDSON: Yes, Your Honor.

24 The Department know, I informed them that I had
25 to take my vehicle in for a final inspection.

1 That's when you take the vehicle in for an
2 inspection.

3 It didn't (inaudible) ticket that you gave me for
4 a final inspection letter I received and I was just
5 wondering, I was not confused.

6 I was just wondering, why in the world the
7 Department didn't send me a letter to go ahead and have the
8 --- the IID removed, at which time a final inspection will
9 be --- will be conducted and the IID removed out of the
10 car.

11 So I went --- I was waiting on the letter telling
12 me to go ahead, I had completed the program and went ahead
13 and took the vehicle in to have the --- have it removed.

14 When this --- assess a second point for me not
15 --- brought it in for final inspection, I think I had time,
16 actually I received a warning telling me what the
17 consequences were or what was going on.

18 I received no such notices.

19 As a matter of fact, the second notice to take my
20 car in for an inspection, I did not even receive that.

21 I don't remember seeing this --- a letter sent to
22 me that a point had been assessed against me because I
23 didn't --- I missed a --- a day in August, yeah, the 31st
24 of August. They say I should have been in there for an
25 inspection and I missed that date.

1 That was the only letter I received, I did not
2 receive a letter stating that I should take it in for an
3 inspection on this date and then at which time, I had a two
4 point assessed against me.

5 I mean the program, not a two point, but the
6 program was set up for two --- for two months, but --- and
7 the letter did not arrive till the --- till the 6th of
8 September.

9 So I don't know what was going on in their
10 Department, why wasn't I --- keeping up with the dates and
11 doing what he was supposed to do.

12 JUDGE ADDINGTON: Okay.

13 The State have closing?

14 MR. NICHOLSON: We've heard Ms. Cartwright
15 testify that the program sent out a final inspection letter
16 in May of 2017 and that after the final inspection letter
17 goes out, the Department needs to get the results of a
18 final inspection so that they can complete the person on
19 the program.

20 So the program sent out a final inspection letter
21 and then did not get a --- the car was not brought in for
22 an inspection thereafter and under the program's
23 procedures, they can't mark a driver program complete until
24 they get the final inspection and so when Mr. Garga-
25 Richardson failed to bring the car in after sixty --- every

1 sixty days thereafter, a point was assessed up until the
2 point he got four points and then the Suspension Notice
3 went out.

4 After the Suspension Notice went out, Mr. Garga-
5 Richardson took the car in and the device was removed,
6 although we received no information from --- on the device.

7 So --- and there were extensions as you've heard
8 testified to, six months total in extensions because of the
9 two points, when he got the two points, two points, two
10 months were added when he got the three points, four months
11 were added.

12 However, enough time has elapsed since those ---
13 since --- that six months has been served.

14 So this point where Mr. Richardson is, is he's
15 done. The only thing that he's got hanging over his head
16 is the suspension for these --- these --- for the --- for
17 all these missed inspections and should the point be
18 assessed, he would have to serve six months suspension, but
19 then he would be done with the program after the
20 suspension.

21 As you heard, he would have been done with the
22 program back in May of last year had he brought the car in
23 for a final inspection.

24 So that's essentially where we are here.

25 The program was compelled to assess these points

1 because of the missed inspections and because they didn't
2 have a final inspection in order to close it out.

3 JUDGE ADDINGTON: We will review the evidence and
4 testimony presented and recorded during this case ---

5 MR. GARGA-RICHARDSON: (Interrupts) Your Honor,
6 I have one more thing ---

7 JUDGE ADDINGTON: --- this case is now closed.

8 (PROCEEDINGS CONCLUDED.)
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1 R E P O R T E R ' S C E R T I F I C A T E
2 I, Scott A. Huseby, Court Reporter,
3 do hereby certify that this transcript
4 is a true and accurate record of the
5 electronically recorded proceedings,
6 transcribed under my direction
7 this the 20th day of September, 2018.

8
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12 SCOTT A. HUSEBY
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SECTION FIVE

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Probation,)
Parole and Pardon Services,)
and)
South Carolina Department of Motor)
Vehicles,)
Petitioners,)
vs.)
Alieo Garga-Richardson,)
Respondent.)

Docket No. 18-OMVH-14-0124-CC

FINAL ORDER AND DECISION

Appearances:

For the Respondent: Alieo Garga-Richardson, Respondent

For the Petitioners: Thomas W. Nicholson, Esquire – Office of General Counsel
S.C. Department of Probation, Parole and Pardon Services
Ruth Ann Cartwright, Administrator
Ignition Interlock Device Program
S.C. Department of Probation, Parole and Pardon Services

Other Information:

Respondent's Driver's License No: 11567821

Type of Hearing: Ignition Interlock Device Program ("IIDP")

Suspension - Four (4) Points or more (S.C. Code §56-5-2941)

INTRODUCTION

This matter is before the South Carolina Office of Motor Vehicle Hearings ("OMVH") pursuant to a hearing request by Alieo Garga-Richardson to challenge the suspension of his Ignition Interlock Device ("IID") driver's license or driving privilege as set out by letter from the South Carolina Department of Probation, Parole and Pardon Service ("SCPPP") on January 04, 2018 for the assessment of four (4) or more Ignition Interlock Points, pursuant to S.C. Code §56-5-2941.

Pursuant to written notice to the parties, a hearing was held before me on April 03, 2018 at the Chester County Family Court in Chester, South Carolina. After reviewing the entire record and considering all the evidence, I find the suspension of Respondent's driver's license or driving privilege must be sustained.

FINDINGS OF FACT

Having observed the witness and exhibits presented at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of the evidence:

1. Notice of the date, time, place and subject matter of the hearing was timely given to the parties.
2. On January 04, 2018, the Petitioner ("SCPPP") issued the Respondent a notice of suspension for the accumulated total of four or more Ignition Interlock Points.

Testimony of Ruth Ann Cartwright, Administrator Ignition Interlock Device Program ("IIDP") testified that:

The four or more points listed on the notice of suspension maintained by the Ignition Interlock Management System ("IIDMS") were an accumulation of points as follows:

July 02, 2017 – Missed Inspection -1.00 Point Assessed

August 31, 2017 – Missed Inspection – 1.00 Point Assessed

October 30, 2017 – Missed Inspection – 1.00 Point Assessed

December 29, 2017 – Missed Inspection -1.00 Point Assessed

A person who has reached the end of the IID program must have a required inspection which will then clear out the IID and a letter will be sent showing that the IID can be removed from the vehicle, unless there is a violation on the inspection. Mr. Garga-Richardson had completed the program, but never had the final required inspection of the IID. Since the required final inspection was not completed, the points were given.

Testimony of Alleo Garga-Richardson:

3. The Respondent testified that he received some of the letters from the South Carolina

Department of Motor Vehicles and some from the South Carolina Department of Probation, Parole and Pardon Services. He never received all the notices and he did not know what was going on. He has not moved, and his address on the notices he received showed his correct address.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude as a matter of law the following:

1. In S. C. Code Ann. §1-23-660, the General Assembly provided for the creation of the South Carolina Department of Motor Vehicle Hearings (DMVH). Effective January 1, 2006, the DMVH was authorized to employ Hearing Officers to preside over contested case hearings involving suspensions, cancellations, or revocations of drivers' licenses. Effective October 1, 2008, the General Assembly changed the name to the Office of Motor Vehicle Hearings (OMVH).
On October 1, 2014, significant changes were made to S.C. Code Ann. §56-5-2941, commonly known as Emma's Law. As part of the changes, the legislature provided that a person accumulating four or more points whose license is subject to suspension by the SCPPP and the SCDMV, is entitled to request a contested case hearing.
2. All hearings presided over by Hearing Officers of OMVH must be conducted in accordance with the Administrative Procedures Act (APA) and the rules of procedure of the South Carolina Office of Motor Vehicle Hearings (SCOMVH).
3. Petitioner South Carolina Department of Motor Vehicles is an administrative agency of the State of South Carolina which is charged with administering its motor vehicle laws and delivering accurate and secure credentials and transaction documents to the citizens of this state. S. C. Code Ann. §56-1-5 (2006). Petitioner South Carolina Probation, Parole, and Pardon Services is an administrative agency of the State of South Carolina which is charged with managing the ignition interlock program of this state. S.C. Code Ann. §56-5-2941 (Supp. 2017).
4. Basic administrative law principles establish that an agency bears the burden of proof in an enforcement action. *See Peabody Coal Co. v. Ralston*, 578 N.E.2d 751 (Ind. Ct. App. 1991); Randy R. Lowell and Stephen P. Bates, South Carolina Administrative Practice and Procedure, 200-201 (2004). Since Petitioner asserts the affirmative of an issue, i.e... the enforcement of a driver's license suspension, and since it will be subject to an adverse ruling if no evidence is

introduced, Petitioner bears the burden of proof in this enforcement action. See Alex Sanders and John S. Nichols, Trial Handbook for South Carolina Lawyers, Second Edition, 2001, § 9:3, p. 366.

5. Pursuant to S. C. Code Ann. §56-5-2941, the Department of Motor Vehicles shall require a person who is a resident of this State and who is convicted of violating the provisions of Section 56-5-2930, 56-5-2933, 56-5-2945, 56-5-2947, except if the conviction was for Section 56-5-750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offence violation of Section 56-5-2930 or 56-5-2933, unless the person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of fifteen one-hundredths of one percent or more.

A person may also enter the ignition interlock device program at his own choice in lieu of serving an implied consent suspension. S.C. Code Ann. §56-5-2950.

6. S.C. Code Ann. § 56-5-2941 provides for a system of points assessments for violations while using the Ignition Interlock Device. A person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the person's alcohol content at each attempt to start and running retest during each sixty day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition device point.

7. In addition to the failure to inspect listed in paragraph 6, points may also be assessed as follows:

If the inspection report reflects that the person has failed to complete a running retest, the person must be assessed one ignition interlock device point.

The inspection report must indicate the person's alcohol content at each attempt to start a running retest during each sixty-day period. If the report reflects that the person violated a running retest by having an alcohol concentration of:

- (a) two one-hundredths of one percent or more but less than four one-hundredths of one percent, the person must be assessed one-half ignition interlock device point;
- (b) four one-hundredths of one percent or more but less than fifteen one-hundredths

of one percent, the person must be assessed one ignition interlock device point; or
(c) fifteen one-hundredths of one percent or more, the person must be assessed two
ignition interlock device points.

S.C. Code Ann. §56-5-2941(H)(3) and (4).

Before October 1, 2014, a failed engine start attempt was assessed at one-half ignition
interlock device point. However, that assessment was removed from the statute after October 1,
2014.

8. A person may appeal less than four ignition interlock device points received to an
administrative hearing officer with the Department of Probation, Parole and Pardon Services
through a process established by the Department of Probation, Parole and Pardon Services. The
administrative hearing officer's decision on appeal is final and no appeal from such decision is
allowed. S.C. Code Ann. §56-5-2941 (H)(5).

9. If a person accumulates four points or more, the SCPPP must provide a notice of
assessment, including the person's right to request a contested case hearing at the OMVH.

10. After reviewing the facts of this case and the applicable law, I find the Petitioner to be
credible witness and conclude that the four points assessed against the Respondent on the Notice
of Suspension dated January 04, 2018 should be sustained. Pursuant to S.C. Code Ann. §56-5-
2941 (I)(3) "Emma's Law"¹, "At the contested case hearing, ... (a) the assessment of driver's
license suspension can be upheld; ..."

The four (4) or more points listed on notice of suspension maintained by the Ignition
Interlock Management System ("IIDMS") were an accumulation of points as follows:

July 02, 2017 – Missed Inspection -1.00 Point Assessed

August 31, 2017 – Missed Inspection – 1.00 Point Assessed

October 30, 2017 – Missed Inspection – 1.00 Point Assessed

December 29, 2017 – Missed Inspection -1.00 Point Assessed

¹ "Emma's Law" signed by Governor Nikki Haley on April 14, 2014 and effective on October 1, 2014.

A person that has reached the end of the IID program must have a required inspection which will then clear out the IID and a letter will be sent showing that the IID can be removed from the vehicle, unless there is a violation on the inspection. Mr. Garga-Richardson had completed the program, but never had the final required inspection of the IID. Since the required final inspection was not completed, the points were given.

The Respondent did not show that the points assessed were assessed improperly. The Respondent only testified that he never received some of the notices that were sent to him.

Therefore, I conclude as a matter of law that the Petitioners have met the burden of proof that the Respondent accumulated four (4) points or more. Accordingly, the relief requested by the Respondent must be denied.

ORDER

Based upon the above findings of facts and conclusions of law, it is hereby:

ORDERED that the suspension of the Respondent's driver's license or driving privilege is sustained.

AND IT IS SO ORDERED.



Phillip T. Addington
Senior OMVH Hearing Officer

April 9, 2018
Chester, South Carolina

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES

Petitioners

vs

ALIEO GARGA-RICHARDSON

Respondent

DOCKET No. 18-OMVH-14-0124-CC

Motion requesting a reconsideration of final
order and an application for a stay of
Execution of said order.

APRIL 19, 2018

ALIEO GARGA-RICHARDSON
1435 Ebinport Rd
Rock Hill, SC 29732
803-389-4456

Respondent

[PLEADING TITLE] - 1.

077

HISTORY

On April 3rd, 2018, I appeared before Senior OMVH Hearing Officer Phillip T. Addington in the matter concerning the assessments of 4 ignition interlock points against me. Present were Ruth Ann Cartwright, Administrator of the program and Thomas W. Nicholson Attorney form the General Counsel Office of the Department of Probation, Parole and Pardon Services.

As noted in my Letter of Appeal;

On the 30th of December 2017, I received a notice from the Department of Motor Vehicles Informing me that my license was suspended effective 12/27/2017 due to a violation of SC Code 56-5-2941 and 56-5-2990 failure to comply with ignition interlock device assessment requirements awarding me 3 points.

I did not receive any notice from the Department of Probation, Pardon and Parole Services regarding these points assessment or an opportunity to appeal said assessment.

Subsequently, I received another letter from the Department of Motor Vehicles stating that I had to undergo a mandatory 6 months suspension because of an accumulated 4th point assessment.

I received a call from Mrs. Frances L. Inabinet, Scheduling Assistant to Hearing Officers Philip Hayes and Philip Addington informing me that the Department of Probation, Pardon and Parole Services and the Department of Motor Vehicles could not find any records relating to the 3 points assessed and that she was therefore going to apply my fees to the 4 points assessment and and therefore schedule a hearing.

1 FINDINGS

2 At the hearing, Mrs. Cartwright acknowledged that she was unaware that my vehicle was not
3 operable else she would not have assessed the points against me.

4 Evidenced by the records of inspection conducted from January 2017 to May 2017, it was
5 obvious that the vehicle had not been in use from the odometer readings.

6 Mrs Cartwright also testified that as per department's policy, a final inspection is required before
7 an order of removal of the IID can be issue.

8 According to SC code 56-5-2990 subsection 3;

9 For a second offense, a person shall enroll in the Ignition Interlock Device program pursuant to
10 56-5-2941, end the suspension, and obtained an Ignition Interlock Restricted License pursuant to
11 Section 56-1-400. The Ignition Interlock Device is required to be affixed to the motor vehicle
12 for two years.

13 SC code 56-5-2941 subsection (H)(1);

14 The person shall have the device inspected every sixty days to verify that the device is affixed to
15 the motor vehicle and properly operating, and to allow for the preparation of an Ignition
16 Interlock device inspection report by the service provider indicating the person's alcohol content
17 at each attempt to start and running retest during each sixty days period. Failure of the person to
18 have the Interlock Device inspected every sixty days must result in one Ignition Interlock Device
19 point.
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1 ARGUMENTS

2
3 According to SC Code 56-5-2990 subsection 3, my participation in the IID program ended in
4 May of 2017. Any final inspection that the Department of Probation, Parole and Pardon Services
5 intended should have been done or conducted during my tenure in the program.

6 SC code 56-5-2941 subsection (H)(1) required that an inspection be conducted every Sixty Days.

7
8 An Inspection was conducted during my tenure in the program every thirty days. The Device
9 has a build – in – temper proof mechanism that makes it unnecessary for a physical inspection of
10 of the vehicle other than the download of device files and camera images as required by the sub-
11 section.

12 It would appear that the Department of Probation, Parole and Pardon Services would have had a
13 Personnel who reviewed these downloads and reported findings. It appears that would have been
14 the responsibility of the service provider.
15

16 CONCLUSION

17 In view of the above stated arguments, I respectfully request a reconsideration of the decision of
18 The Hearing Officer and a stay of suspension of my driving privileges. The law is clear and I
19 believe the just course of action in this matter is a removal of all points assessed against me as
20 my tenure in the program had long since ended.
21

22
23 
24 Alieo Garga-Richardson
25 1435 Ebinport Rd.
26 Rock Hill, SC 29732
27 803-389-4456
28

cc: South Carolina Office of Motor
Vehicle Hearings
1205 Pendleton Street, Ste 325
Columbia, SC 29201

PROOF OF SERVICE

I Alieo Garga-Richardson, do hereby state under penalty of perjury that I have deposited in the US mail with sufficient postage affixed copies of my Motion requesting a reconsideration of The Final Order of the OMVH Hearing Officer and Stay of Execution of the Order pending the Outcome of the Reconsideration to the parties concerned.

South Carolina Office of Motor Vehicle Hearings
12305 Pendleton Street, Ste 325
Columbia, SC 29201

Mrs. Ruth Ann Cartwright, Administrator IID Program
South Carolina Department of Probation Parole and Pardon Services
2221 Devine St.. STE 600
P. O. Box 50666
Columbia, SC 20250

Mr Thomas W. Nicholson, Esquire – Office of General Counsel
South Carolina Department of Probation Parole and Pardon Services
2221 Devine St. Ste 600
P. O. Box 50666
Columbia, SC 20250

Alieo Garga-Richardson

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

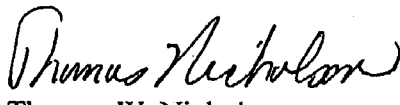
May 1, 2018

South Carolina Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201

RE: Alieo Garga-Richardson
Case No.: 18-OMVH-14-0124-CC

Please find enclosed a Response to the Motion to Reconsider and Certificate of Service in the above referenced case. I have also enclosed a self-addressed stamped envelope for return of a clocked-in copy of these documents.

Sincerely,


Thomas W. Nicholson
Legal Counsel 

TWN:dn

cc: Alieo Garga-Richardson

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

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

and)

South Carolina Department of Motor)
Vehicles,)

Petitioners,)

vs.)

Alieo Garga-Richardson,)
Respondent.)

Docket No.: 18-OMVH-14-0124-CC

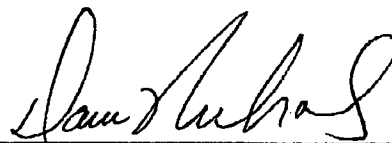
CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant with the South Carolina Department of Probation, Parole and Pardon Services, hereby certify that this 1st day of May, 2018, I served the following documents:

1. Response to Motion to Reconsider; and
2. Certificate of Service.

by first class mail, postage prepaid as follows.

Alieo Garga-Richardson
1435 Ebinport Road
Rock Hill, S.C. 29732



Dawn Nichols
Executive Assistant
South Carolina Department of Probation, Parole and
Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

South Carolina Department of Probation,
Parole and Pardon Services

and

South Carolina Department of Motor
Vehicles,

Petitioners,

vs.

Alico Garga-Richardson,

Respondent.

Docket No. 18-OMVH-14-0124-CC

DL# 11567821

Hearing Officer:

Phillip T. Addington

RESPONSE TO MOTION TO RECONSIDER

Petitioner, the South Carolina Department of Probation, Parole and Pardon Services, through its undersigned counsel, files this response to the Respondent's motion to reconsider, and shows the Court as follows:

The Department will respond to various representations made by the Respondent in his Motion to Reconsider.

The Respondent discusses the three points assessed against him before the fourth assessed in the suspension notice dated January 4, 2018 (the January Notice). A total of four points were assessed against him, all for skipping inspections in violation of S.C. Code § 56-5-2941(H)(1). For each skipped inspection, one point was assessed, and one point assessment notice was mailed. He states that he did not receive the point assessments mailed prior to the

January Notice. However, Department records indicate that all notices were mailed to the Respondent at his address of record with the Department of Motor Vehicles (DMV): 1435 Ebinport Road / Rock Hill, S.C. 29732-2020. At the hearing the Respondent confirmed that this was, and had been, his address, where he had received this Department's suspension notice, and an earlier notice of suspension from DMV. Further, the Department's impression at the hearing was that he claimed he had not received the third point assessment letter, not that he had not received any of them. In any case, discussion of the first three point assessments is moot because the Office of Motor Vehicle Hearings (OMVH) does not have jurisdiction over the Program's point assessments when the total number of points is less than four. See S.C. Code §§ 56-5-2941(H)(6), 56-5-2941(I); See also SCDPPPS v. Brewer, 15-ALJ-30-0061-AP (2015 WL 6410107)(S.C.Admin.Law.Judge.Div.)(2015). Therefore the validity of point assessments under four points, or suspensions relating to point assessments under four points, are outside OMVH's jurisdiction.

For the sake of clarity, the Department will address the Respondent's referral to a suspension notice he received from DMV stating that he would be suspended effective 12-27-17 pursuant to an assessment of three points. Under S.C. Code § 56-5-2941(E)(2), the following is required of drivers who are assessed three, but fewer than four points:

[The driver] shall submit to a substance abuse assessment pursuant to Section 56-5-2990, and shall successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. Should the person not complete the recommended plan, or not make progress toward completing the plan, the Department of Motor Vehicles shall suspend the person's ignition interlock restricted license until the plan is completed or progress is being made toward completing the plan. (Italics added for emphasis).

On receiving the third point assessment, the Respondent did not comply with the requirement that he submit to the required substance abuse assessment. This caused DMV to indefinitely suspend his license until he complies with this requirement. This suspension is independent of that required under Subsection 56-5-2941(E)(3) for an assessment of four points. Further, as discussed above, OMVH has no jurisdiction over point assessments where a driver's point total is fewer than four points, or a suspension imposed for failure to comply with Subsection 56-5-2941(E)(2). The Respondent notes that Mrs. Francis Inabinet informed him that OMVH did not have any information relating to these point assessments or the suspension imposed by DMV, but OMVH would have no reason to have such information.

The Respondent states that at the hearing, Mrs. Ruth Ann Cartwright "acknowledged that she was unaware that my vehicle was not operable else she would not have assessed the points against me." The Department's position is that this does not accurately convey the substance of Mrs. Cartwright's testimony. She may have been unaware of the condition of the Respondent's vehicle, but this was because the Respondent did not contact the Ignition Interlock Device Program (the Program) with such information after any of the point assessments. Had the Respondent appealed any of the first three point assessments with relevant information about his vehicle's condition, or contacted the Program with such information, then the Program *might not* have assessed the points.¹ However, the issue is moot because the Respondent did not appeal any of the first three point assessments and thus those points became permanent.

The Respondent states that his term of participation in the Program should have ended in May of 2017. However, he did not comply with the Program's rules and take the steps necessary

¹ Note that all point assessment notices, where the total number of points is fewer than four points, inform the drivers that they have fifteen days from the date of the notice to appeal the assessment, or they waive their right to appeal the assessment. See S.C. Code § 56-5-2941(H)(6).

to complete his Program term. South Carolina Code § 56-5-2941(E) states that drivers in the Program “must be subject to [the] Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services.” Subsections 56-5-2941(E)(1), (2) and (3) set forth what penalties must be assessed for violations of the Program’s rules. The Department *must* assess points for violations that occur *during* the driver’s Program term. Therefore, as Mrs. Cartwright testified at the hearing, before a driver’s term in the Program may be completed, the Program must receive a final inspection report to determine if any violations occurred during the last stage of the driver’s Program term. She testified that the Department mailed the Respondent a notice advising him to have a final inspection of his vehicle performed.² However, the Respondent did not timely do so. Without the final inspection report, the Program could not determine whether any violations occurred in the last stage of the Respondent’s program term. Therefore, the Program could not consider the Respondent to have completed his Program requirement.

Note that on May 26, 2015, at the beginning of his Program term, the Department mailed the Respondent an information package setting out the Program’s rules and procedures. The package contained information that specifically described the procedures followed at the end of a driver’s term. The package indicated that the driver would receive a final inspection letter, and that the Program term could not be completed until a final inspection occurred. The Respondent should have known that he had to have a final inspection performed before his Program term would be complete.

For the above-stated reasons, the Respondent’s motion should be denied.

² The notice was dated May 22, 2018.

Respectfully submitted,



Thomas W. Nicholson
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

*Counsel for the Petitioner, South Carolina
Department of Probation, Parole and
Pardon Services.*

Columbia, South Carolina
April 30, 2018

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

Henry McMaster
Governor



Jerry B. Adger
Director

2221 DEVINE STREET, SIXTH FLOOR
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-0019
Facsimile: (803) 734-9307
www.dppps.sc.gov/ignition_interlock.html

April 09, 2018

ALIEO GARGA-RICHARDSON
1435 EBINPORT RD
ROCK HILL, SC 29722020

Customer No: 23368087
DL No: 11567821
VIN No: 1FMZU63E02ZA05098
Offense: DUI 2nd

IGNITION INTERLOCK DEVICE PROGRAM

Final Decision in Your Contested Case

NOTICE OF SUSPENSION

The Office of Motor Vehicle Hearings (OMVH) reached a final decision in the contested case you requested to review the Ignition Interlock Device Program (IIDP or the Program) assessment of four or more points against your Ignition Interlock Restricted License (II Restricted License).

The OMVH did not reverse any of the point assessments you asked to be reviewed. Therefore Your II Restricted License will be suspended for six months. The South Carolina Department of Motor Vehicles will notify you when the suspension begins and ends.

You must also undergo the mandatory drug and alcohol evaluation described in the four-point notice letter you received from the IIDP. You have thirty (30) calendar days from April 09, 2018 to report to a local DAODAS certified substance abuse program. Please be sure to take a copy of this letter with you when you report. Visit www.daodas.state.sc.gov or call 1-888-727-7383 for further information.

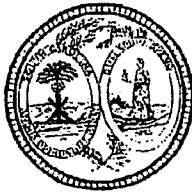
After you served the suspension and after the South Carolina Department of Motor Vehicles has reissued to you an Ignition Interlock Restricted license, all points assessed against you will be reset to zero points, including any points assessed against you while your contested case was pending. However, any penalties associated with past point assessments will remain.

Note: So long as you keep the BAID installed in any vehicle you own, you continue to be responsible for all fees relating to its rental and maintenance, whether or not you are participating in the Program. If you wish to have the BAID removed from your vehicle for the duration of your suspension, contact the Ignition Interlock Device Program at ignition@ppp.sc.gov or call 803-734-0019.

For more information about the IIDP, visit the Program's website: http://www.dppps.sc.gov/ignition_interlock.html. You may also email the IIDP Administrator at ignition@ppp.sc.gov, or call 803-734-0019.

OMVH Appeal Affirmed

Henry McMaster
Governor



Kevin A. Shwedo
Executive Director



State of South Carolina
Department of Motor Vehicles

02/08/2018

GARGA-RICHARDSON, ALIEO
1435 EBINPORT RD
ROCK HILL, SC 29732-2020

CUSTOMER NO: 23368087
FILE NO: 23878949
DL NO: 11567821

AMENDED NOTICE OF DRIVING STATUS

This is official notification that the information on your driving record has changed effective 02/08/2018. This official notice cancels previous notices of suspension, cancellation, revocation or disqualification concerning the listed description(s).

Your request concerning the Department's action has been received. You will receive notification from the Hearings or Review Office advising you of the date, time and location of the hearing/review.

DRIVING STATUS: Suspended Disqualified

Hearing/Review Requested for:

Date	Begin Date	End Date	Susp Description
01/04/2018	02/03/2018	08/03/2018	IID Point Infringement

Suspension, cancellation, revocation and/or disqualification modified or deleted.

Date	Begin Date	End Date	Action	Susp Description
------	------------	----------	--------	------------------

IMPORTANT INFORMATION
DEFINITIONS OF DEPARTMENTAL STATUS AND ACTIONS

DRIVING STATUS:

NO SUSPENSION-Your driving privileges are clear.

SUSPENDED/DISQUALIFIED-All driving privileges to operate commercial and non-commercial vehicles are suspended and disqualified.

DISQUALIFIED-All driving privileges to operate commercial vehicles are disqualified.

SUSPENDED-Provisional, Route Restricted or Temporary Alcohol- You have special driving privileges.

MODIFIED-The violation has been changed and is still on your official driving record.

DELETED-The violation has been removed from your driving record.

SEQUENCE 0001130
02010001130

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

January 11, 2018

Alieo Garga-Richardson
1435 Ebinport Road
Rock Hill, S.C. 297322020

Re: NOTICE OF STAY OF SUSPENSION
NOTICE OF DRIVER'S CONTINUING PROGRAM DUTIES
NEW POINT SET ADVISORY

Dear Mr. Garga-Richardson:

The Department of Probation, Parole and Pardon Services has received notice from the Office of Motor Vehicle Hearings (the OMVH) that you have requested a contested case hearing to review points assessed against you by the Ignition Interlock Device Program. We write to advise you of your rights and responsibilities while your case is pending.

The Ignition Interlock Device Program (the IIDP or the Program) notified you in a letter dated January 4, 2018, that your Ignition Interlock Restricted Driver's License (your "II Restricted License") would be suspended because four or more Ignition Interlock Device Points had been assessed against your driving record in the Program.

Pursuant to South Carolina Code of Laws, Section 56-5-2941(I)(2), "*The filing of the request for a contested case hearing will stay the driver's license suspension pending the outcome of the hearing. However, the filing of the request for a contested case hearing will not stay the requirements of the person having the ignition interlock device.*"

This means that until your contested case is heard by the OMVH and the hearing officer presiding over the case issues a final decision, the South Carolina Department of Motor Vehicles (SCDMV) will not suspend your license for the point assessments you were notified of in the letter dated January 4, 2018. However, this stay will only extend to the suspension caused by the assessment of four or more IID points. It will not stay a suspension caused for any other reason.

The law requires you to continue participating in the IIDP pursuant to the terms of your IIDP requirements while your contested case is pending. This means that you must keep the ignition interlock device installed in your vehicle and continue to drive under the supervision of the IIDP while the contested case is pending. Please see the "New Point Set Advisory" included with this letter for further details about how you will be monitored while the contested case is pending.

Note that on May 22, 2017 the IIDP sent you a letter directing you to have the final inspection of the interlock device installed in your vehicle. At that time, this would have been the preliminary step before removing the device from your vehicle and completing your term in the IIDP. However, you have failed to have the vehicle inspected at all since May 3, 2017. Not only has this prevented you from completing your IIDP term, it has caused points to be assessed against you for skipping inspections, including the point and suspension you were notified of in the letter dated January 4, 2018. The skipped inspection points assessed prior to those detailed in the January 4, 2018 notice also caused extensions in the length of your program term. Please be advised that completion of your Program term will require you to present the vehicle in which the interlock device is installed to your service center in order for the device to be inspected and the information recorded on it to be retrieved. Any violations recorded by the device may cause a penalty assessment against your record in the IIDP.

When the hearing officer assigned to your contested case at the OMVH has reached a final decision, the status of your II Restricted License, the points assessed against your record in the IIDP, and your status in the Program will be adjusted accordingly.

If you have any questions relating to your active participation in the IIDP, you should contact the Program at 803-734-0019.

However, if you have any questions relating to your contested case hearing, you (or your legal counsel) should contact an attorney in the Department of Probation, Parole and Pardon Services' Office of General Counsel.

Respectfully,



Thomas W. Nicholson

Legal Counsel, Office of General Counsel

Department of Probation, Parole and Pardon Services

cc: Ruth Ann Cartwright, IID Administrator

In the State of South Carolina
THE ADMINISTRATIVE LAW COURT

APPEAL FROM THE FINDINGS OF THE OFFICE OF MOTOR VEHICLE HEARING

OMVH DOCKET NUMBER 18-OMVH-14-0124-CC

Department of Probation, Parole and Pardon Services &
The South Carolina Department of Motor Vehicle

Vs.

Alieo Garga-Richardson

The Clerk of The Administrative Law Court
1205 Pendleton Street, STE 224
Columbia, SC 29201

On the April 3rd, 2018 a hearing was held by Senior OMVH Hearing Officer Mr. Phillip T. Addington for the Office of Motor Vehicle Hearing in which I filed an appeal (Exabit # 1) to have the points assessed against me by the Department of Probation, Parole and Pardon Services reviewed.

A decision was rendered (Exabit # 2). On the 9th of April, 2018 via email I was informed of the decision of the OMVH and subsequently filed a petition for reconsideration (Exabit # 3).

As of today's date, I have not heard from the Office of Motor Vehicle Hearings concerning this and is therefore submitting this request for an Appeal on this 10th, day of June, 2018.

Sincerely,



Alieo Garga-Richardson

1435 Ebinport Rd
Rock Hill, SC 29732

agargarichardson@yahoo.com

803-389-4456

cc: Thomas W. Nicholson
Legal Counsel
South Carolina Department
of Probation, Parole and
Pardon Services
803-734-9220

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

ALIEO GARGA-RICHARDSON,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON:

DEPARTMENT OF MOTOR VEHICLES SERVICES

Defendant

Docket No: 18-ALJ-21-0201-AP

APPELLANT BRIEF

November 12, 2018

Alieo Garga-Richardson
Appellant Pro-Se
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
agargarichardson@yahoo.com

APPELLANT BRIEF - 1

093

INTRODUCTION

History of the case

1. In September of 2012, I was arrested and charged with Driving Under the Influence of
2. Alcohol. In November of 2012, I pleaded guilty to Driving Under the Influence 1st. My
3. Driving Privilege was suspended by the Department of Motor Vehicle for two years.
4. After serving my suspension, I went to the Department of Motor Vehicles to have my
5. driving privilege restored and my license reinstated. Before going to the DMV office, I
6. made a phone call to the DMV stating my intentions. I was then informed that I had to
7. have a breathalyzer installed in any vehicle that I own and intended to drive. I was given
8. a number and told to call to make arrangement. I did and was instructed to look up any
9. place that carried the equipment and get it installed. I follow these instructions, had the
10. breathalyzer installed in the vehicle that I own at the time; had the vehicle registered;
11. did a road test pay the reinstatement fees and was issued a license.
12. The agreement for the Breathalyzer was signed with Guardian Interlock Services for a
13. period of two years. The two years period ran from May 2015 to May 2017.
14. During this time, I was required to have an inspection of the Device every 30 days which
15. I comply with until the final inspection which was done in May of 2017.
16. In June of 2017, I received a letter from the Department of Probation, Parole and
17. Pardon Services stating that I should take my vehicle for Inspection. This was not what
18. I had hope to receive, I expected to receive a letter telling me to go and have the device
19. Removed from my vehicle. Well, I said to myself, this must be a mistake because I had

20. completed the program and was hoping that I could have the device returned and be
21. done with the Department of Probation, Parole and Pardon Services. But this did not
22. happened. I received a second letter informing me that I missed an inspection and a
23. IID point was assessed against me (reference section one of the records on appeal,
24. letter from the Department of Probation, Parole and Pardon Services dated July 10
25. 2017). In September of 2017, I received another letter stating that I missed another
26. inspection and an IID point against me and my participation in the program had been
27. extended for two months (reference section one of the records on appeal, letter
28. from the Department of Probation, Parole and Pardon Services dated September 06
29. 2017). And Then subsequently a third and a fourth point were assessed. Honestly
30. I had intended to respond to the letter dated November 6, 2017 but must have
31. forgotten about it because of work requirement. In my letter of appeal to the Office
32. of Motor Vehicle Hearings, I honestly did not remember ever receiving this letter and
33. so testified at the hearing.
34. But, at the hearing issues I wanted heard was not and the Hearing Officer Mr. Phillip
35. Addington render a judgement in favor of the Department of Probation, Parole and
36. Pardon Services.

APPELLANT BRIEF

1. In this matter before the Court I Alieo Garga-Richardson would like the Court to decide
2. on these issues:
3. One: After serving my suspension imposed by the Department of Motor Vehicle, was
4. I under law, obligated to have the Breathalyzer installed in my car?
5. Two: Does the Department of Probation, Parole and Pardon Services has the authority
6. to request inspections.
7. Three: Did the Department of Probation, Parole and Pardon Services have the right to
8. assessed IID points against me after my program completion date?
9. With regards to Issue One,
10. South Carolina Code of Laws Section 56-5-2941

Text of (A) effective until November 19, 2018.

(A) The Department of Motor Vehicles shall require a person who is a resident of this State and who is convicted of violating the provisions of Section 56-5-2930, 56-5-2933, 56-5-2945, 56-5-2947 except if the conviction was for Section 56-5-750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives an Ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offense violation of Section 56-5-2930 or 56-5-2933, unless the

person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of fifteen one-hundredths of one percent or more. The department may waive the requirements of this section if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person's driver's license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person's medical condition has improved to the extent that the person has become capable of properly operating an installed device. The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver's license suspension or denial of the issuance of a driver's license or permit to have an ignition interlock device installed on any motor vehicle the person drives.

The length of time that a device is required to be affixed to a motor vehicle as set forth in Sections 56-1-286, 56-5-2945, 56-5-2947 except if the conviction was for Sections 56-5-750, 56-5-2951, and 56-5-2990.

11. South Carolina Code of Laws 56-5-2990

(3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for two years, obtain an ignition interlock restricted license pursuant to Section 56-1-400.

1. According to SC code 56-5-2990, I should not have been required to have installed in my
2. car a Breathalyzer since I had served the suspension.
3. With regards to Issue two;
4. Whereas I had completed the two years period I had to have the device in my vehicle
5. without due cause, did the department of Probation, Parole and Pardon Services had
6. the authority to extend my participation in the program?
7. And the Third and Final Issue;
8. I completed the program with no points assessed against me. I should have received a
9. removal notice after my completion date instead of points being assessed against me.
10. Had I received a removal notice, a final inspection would have been conducted and the
11. Department would have had the record to make their determination. However, I did
12. get a removal notice after I was given the option of having the Breathalyzer remaining
13. in my vehicle or removed. I had it removed, a final inspection was conducted at the
14. time of the removal. I have included a copy of the removal notice and the and a letter
15. given me by the service provider.

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

HENRY MCMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/ignition-interlock

February 13, 2018

Alieo Garga-Richardson
1435 Ebinport Rd
Rock Hill, SC 29732

DL 11567821

RE: Authorized Removal/Not Program Completed

The Breath Alcohol Ignition Interlock Device (BAIID) may now be removed by the Service Center Provider who installed the device. You should report immediately to the Service Center Provider, who will remove the device and provide you with a removal receipt.

You are still responsible for any daily fees as long as the device is in the vehicle regardless of whether or not you are enrolled in the Ignition Interlock Device Program (IID Program). Should you have any questions or need clarification please email the IID Program at ignition@ppp.sc.gov or call 803-734-0019.

This removal is not based on your completion of the IID Program, but due to you:

- Receiving a medical exemption from DMV;
- **Receiving a suspension from DMV;**
- Unable to obtain your Ignition Interlock driver's license at this time;
- Voluntarily surrendered Ignition Interlock license to DMV
- Device installed before eligibility date;
- Completed the requirements for another state;
- Vehicle is inoperable.
- Multiple vehicle removal of VIN only.

FORM R100

Notice of Modification or Addendum to Probation Order
Removal Report
Guardian Interlock Responsible Driver Program™

2/19/2018

Probationer

Case:

Alieo C Garga-Richardson

1435 Evintort Rd

Roch Hill, SC 29732

Home Phone: (803)389-4456

Last Odometer:

Work Phone: Total miles traveled since last Monitor:

DOB: 11/17/1959

SSN: *****0000

DL#: 011567821

Vehicle

2002 black ford explorer

VIN: 1fmzu63e02za05098

Tag: temp State: SC

Odometer: 1

Calibration Certification

BrAC (1) 40 (2) 56

(3) 50 (4) N/A (5) N/A

Monitoring Official

Judge

Fax

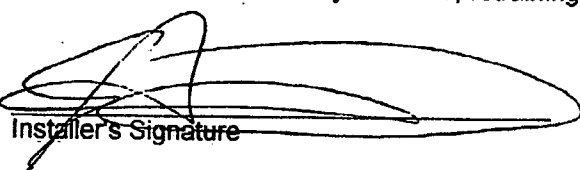
Monitor Email

Under authorization from the above Court, state agency, or Monitoring Authority, Guardian Interlock Systems has removed the following equipment from the above named Program participant's vehicle. The participant / operator is required to obtain a valid unrestricted (no interlock) driver's license & should do so prior to removal if possible.
Serial Number 25902 removed from vehicle.

Additional Comments on Modification

At the time of this addendum, the participant's unpaid program balance was \$0.00.

Due to an increased security measure, retraining may be required. Please see your service technician for details.


Installer's Signature

2/19/2018

Date

Probationer's Signature

Date

Service Center

Sound on Wheels

515 S. Anderson Road

Rock Hill, SC 29730

Phone: 803-329-3400

Fax: 803-329-7532

Guardian Interlock Systems, 800-499-0994

Proof of service

November 13, 2018

I, Alieo Garga-Richardson do hereby attest under penalty of perjury that I have deposited in the US mail with sufficient postage affixed, copies of the Appellant Brief addressed to

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. o. Box 50666
Columbia, SC 29250
803-734-9220

Frank L. Valenta
Office of General Counsel
P. O. Box 1498
Blytheewood, SC 29016
803-895-9902
Attorney(s) for Respondent

South Carolina Department of Motor Vehicle
P. O. Box 1498
Blythewood, SC 29016

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia SC 29201

Sincerely,



Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
agargarichardson@yahoo.com

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

December 12, 2018

The Honorable Phillip Lenski
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Alieo Garga-Richardson
Case No.: 18-ALJ-21-0201-AP

Dear Judge Lenski:

Please find enclosed for filing the original and one copy of the following documents:

1. Respondent's Brief; and
2. Certificate of Service

I have also enclosed a self-addressed stamped envelope for return of a clocked-in copy of these documents. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas W. Nicholson".

Thomas W. Nicholson
Legal Counsel

Enclosures

cc: Alieo Garga-Richardson
S.C. Office of Motor Vehicle Hearings

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

Alieo Garga-Richardson,

Appellant,

vs.

South Carolina Department of Probation,
Parole and Pardon Services,

Respondent.

Docket No.: 18-ALJ-21-0201-AP

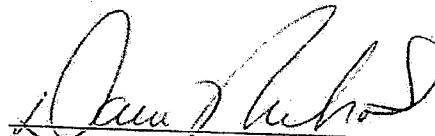
CERTIFICATE OF SERVICE

I, Dawn Nichols, Executive Assistant with the South Carolina Department of Probation, Parole and Pardon Services, hereby certify that this 12th day of December, 2018, I served the following documents:

1. Brief of Respondent; and
2. Certificate of Service.

by first class mail, postage prepaid as follows.

Alieo Garga-Richardson, Pro Se
1435 Ebinport Road
Rock Hill, S.C. 29732



Dawn Nichols

Executive Assistant

South Carolina Department of Probation, Parole and
Pardon Services

P.O. Box 50666

Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Docket Number 18-AIJ-21-0201-AP

ALIEO GARGA-RICHARDSON APPELLANT

v.

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

BRIEF OF RESPONDENT

Thomas W. Nicholson
Legal Counsel

South Carolina Department of Probation, Parole and
Pardon Services
Post Office Box 50666
Columbia, S.C. 29250
(803)734-9220

ATTORNEY FOR THE RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Alieo Garga-Richardson,

Appellant,

vs.

South Carolina Department of
Probation, Parole and Pardon
Services,

Respondent.

Docket No. 18-ALJ-21-0201-AP

BRIEF OF RESPONDENT

Judge S. Phillip Lenski

RESPONDENT'S STATEMENT OF THE ISSUES ON APPEAL

- A. Does the Respondent Have the Authority to Require a Final Inspection Before a Driver's Term in the Ignition Interlock Device Program Is Completed? ✓
- B. Does the Respondent have the Authority to Continue Monitoring Drivers If the Final Inspection Is Not Performed?
- C. Did the Respondent Properly Continue to Monitor the Appellant When He Failed to Have a Final Inspection?
- D. Did the Respondent Correctly Assess One Point for Skipping an Inspection?
- E. Was the Appellant Required to Serve Two Years In the Ignition Interlock Device Program?

STATEMENT OF THE CASE

The Appellant started participating in the South Carolina Ignition Interlock Device Program (the IIDP or Program) on May 22, 2015. He was required to drive a vehicle equipped with a Breath Alcohol Ignition Interlock Device (Device). According to records

received from the South Carolina Department of Motor Vehicles (SCDMV) by the Department of Probation, Parole and Pardon Services (the Department), he was required to participate in the Program for a minimum of two years.

On May 22, 2017 the Department sent the Appellant a letter requesting that he take the vehicle in which the Device was installed to have a final inspection. This inspection was necessary before the Department could consider him to have successfully completed the Program. However, he did not, so the Program continued to actively monitor him pending the driver undergoing a final inspection. The Program requires every active driver to obey the Program's rules, which include the requirement to have the vehicle equipped with the Device inspected at least once every sixty days. Failure to do so causes a one-point assessment.¹

After the Program sent the request for the final inspection, the Appellant proceeded to skip four inspections in a row earning one point for each skipped inspection. For each skipped inspection, the Program mailed the Appellant a point assessment notice. The fourth notice, dated January 4, 2018, informed the Appellant of his suspension for an accumulation of four or more points.²

The Appellant requested a hearing at the Office of Motor Vehicle Hearings to contest this suspension. The hearing was held on April 3, 2018 before Hearing Office Phillip T. Addington. The subject of the hearing was whether or not the Program had properly assessed the single point detailed in the January 4, 2018 suspension notice, and whether four total points had been assessed against the Appellant by the Program. On April 9, 2018 Hearing Officer Addington issued a final order and decision finding that the point assessment

¹ See S.C. Code Ann. § 56-5-2941(H)(1).

² See S.C. Code Ann. § 56-5-2941(E)(3).

recorded by the January 4, 2018 suspension notice had been properly assessed, that four total points had been assessed against the Appellant, and that his suspension should be sustained. This appeal followed.

STANDARD OF REVIEW

The standard of review applicable in this case is stated at S.C. Code Ann. § 1-23-380(5):

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1.

[. . . .]

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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

ARGUMENT AND CITATION OF AUTHORITY.

A. The Department of Probation, Parole and Pardon Services Has the Authority to Require Final Inspections Before a Driver's Program Term Is Completed.

In his brief the Appellant poses the question of whether or not the Department has the authority to request inspections. In his subsequent discussion of this issue, he asks whether the Department could extend his participation in the Program after his mandatory two-year

Program term. There is no question that during their Program terms drivers must have their vehicle that is equipped with a Device regularly inspected. See S.C. Code § 56-5-2941(H)(1). The Appellant is referring to the Program's procedure at the end of drivers' mandatory terms that requires a final inspection before the drivers are considered to have successfully completed the Program. Explaining this will require a discussion of the Program's procedure when drivers enroll in and then complete the Program.

1) The Program Requires a Final Inspection at the End of Program Terms.

Drivers who are subject to an ignition interlock requirement and who want to participate in the Program must first have a Breath Alcohol Ignition Interlock Device (Device) installed in any vehicle they intend to drive. S.C. Code § 56-5-2941(A). The South Carolina Department of Motor Vehicles (DMV) will not issue such drivers an ignition interlock restricted license (IIR license) until the driver has confirmed that the Device has been installed. S.C. Code § 56-1-400(A). Participation in the Program begins when DMV issues the IIR License. Drivers issued this license "must be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services." S.C. Code § 56-5-2941(E). The General Assembly established penalties for point assessments, which include extensions of time served in Program and the suspension of the driver's IIR license. See S.C. Code § 56-5-2941(E). Drivers who have been issued a IIR license must have the vehicle in which the Device is installed inspected at least once every sixty days, and are subject to penalty if they refuse to do so:

The person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the person's alcohol content at each attempt to start and running retest during each sixty-

day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

S.C. Code § 56-5-2941(H)(1) (Supp. 2015)(emphasis added).

The ignition interlock device inspection report (the Inspection Report) contains the data recorded by the Device while the driver has been operating the vehicle. This data is downloaded at the inspections and reported to the Department. The Inspection Report is what allows the Program to monitor the driver's conduct in the Program and subject them to the Ignition Interlock Device Point System (Point System). Therefore, in order to carry out its legislative mandate, the Department must have access to the Inspection Reports, and the drivers must have their vehicles inspected to allow their preparation. For those drivers who are subject to the requirement, the General Assembly has specified the minimum length of time they must participate in the Program and be subject to the Department's supervision under the Point System. See S.C. Code §§ 56-5-2945(C)(2); ^{not app} 56-5-2947(D)(2); 56-5-2951(I); 56-5-2990(A). Therefore, the Department must also have access to Inspection Reports covering the entire Program term required of the drivers by the General Assembly.

The Department's responsibility to monitor the driver's *entire* Program term poses a problem at the end of a driver's mandatory term, because the Program cannot access data recorded by the Device until it has been inspected. On the day a driver's term ends, there will inevitably be data recorded by the Device that the Program has not been able to review. The data might show that the driver is subject to penalties under the Point System that will extend his term in the Program or cause his suspension. The Department established a procedure to ensure that it monitors the entire term for which drivers must participate in the Program. At the hearing of the contested case, Mrs. Ruth Ann Cartwright, Administrator of the Program, testified about this

procedure. She stated that when drivers reach the end of their Program term they must take their vehicles in for a final inspection so that an Inspection Report of the data recorded by the Device may be prepared for review by the Program. The Program first sends a letter to the drivers requesting that they take their vehicles in for an inspection. T-7, ll. 9-14. This is consistent with Section 56-5-2941(H)(1) set forth above, which requires drivers to undergo inspections in order to monitor their driving conduct. Mrs. Cartwright further stated:

We cannot close out their case without the information from that final inspection. We rely on that to make sure that up until the point that the driver was to satisfy the period of time on [the Program], that they are free and clear of violations. If for some reason there are violations assessed during that final inspection period, it may result in extensions. So we have to look at that final download before the driver could be program complete.

T-7, ll. 15-24.

Ms. Cartwright emphasized that merely having the final inspection performed does not complete the driver's Program term: "... you have to have a final inspection and then based upon the results of that final inspection, then it's determined whether or not they've completed the Program. They're not program complete at the final inspection." T-13, ll. 12-20; T-39, ll. 15-20. If the inspection report from the final inspection contains no penalties that cause a suspension or extension of time in the Program, then the Program will send a letter to the driver informing him that his term in the Program is complete.³ T-13, ll. 16-18; T-32, ll. 14-20.

2) The Department Has the Authority to Establish the Final Inspection Procedure.

The General Assembly has granted the Department broad authority to administer the State's Ignition Interlock Device Program. See generally S.C. Code § 56-5-2941. The final

³ On enrolling in the Program Drivers are sent an information packet detailing this procedure, which is also published online at <https://www.dppps.sc.gov/Ignition-Interlock/Program-Procedures>.

inspection procedure is compelled by the General Assembly's intent that drivers participating in the Program "*must* be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services." S.C. Code § 56-5-2941(E)(emphasis added). Further, the Department *must* assess points against drivers for their violations of the Program's rules:

A person accumulating a total of:

- (1) two points or more, but less than three points, *must* have the length of time that the device is required *extended by two months*;
- (2) three points or more, but less than four points, *must* have the length of time that the device is required *extended by four months*, shall submit to a substance abuse assessment pursuant to Section 56-5-2990, and shall successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. [].
- (3) four points or more must have the person's ignition interlock restricted license suspended for a period of six months [].

S.C. Code § 56-5-2941(E)(Supp. 2015)(emphasis added).

Further, drivers *must* have the Device installed in their vehicles inspected to provide the Department with the data it needs to monitor the drivers under the Point System:

The person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the person's alcohol content at each attempt to start and running retest during each sixty-day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

S.C. Code § 56-5-2941(H)(1) (Supp. 2015)(emphasis added).

Finally, the General Assembly has established the minimum time the Department must monitor drivers while they are subject to the Point System. See S.C. Code §§ 56-5-2945(C)(2); 56-5-2947(D)(2); 56-5-2951(I); 56-5-2990(A).

It is clear that the General Assembly intended the Department to monitor drivers enrolled in the Program, that the drivers be subject to the Point System that penalizes them for various infractions of the Program's rules, and that the drivers should be monitored for defined lengths of time. However, the General Assembly did not set forth how the Department should manage the end of driver's Program terms. Therefore the Department established the final inspection procedure to do so while carrying out the intent of the law. It is within the Department's discretion to do so:

While the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board "to fill up the details" by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.

McNickel's Inc. v. S.C. Dep't of Revenue, 331 S.C. 629, 634 (1998) (Citing Heyward v. South Carolina Tax Comm'n, 240 S.C. 347 (1962) (internal quotes in original).

Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency's interpretation of the statute. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 33, (2014)(Citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)). In South Carolina, courts defer to an administrative agency's interpretation of the statutes it is tasked with enforcing unless there is a compelling reason to differ with the agency's interpretation:

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.

Id. at 34-35.

Further, “[i]n South Carolina, operating a motor vehicle is a privilege of the State, not a right of the individual.” Taylor v. S.C. Dep’t of Motor Vehicles, 368 S.C. 33, 36, (Ct. App. 2006). This privilege is subject to reasonable regulation under the State’s police power to further public safety and welfare. See e.g. Chisolm v. S.C. Dep’t of Motor Vehicles, 402 S.C. 593, 597 (Ct. App. 2013); Peake v. S.C. Dep’t of Motor Vehicles, 375 S.C. 589, 595, (Ct.App.2007); State v. Collins, 253 S.C. 358, 361(1969).

The Department has interpreted the statutory scheme set forth in S.C. Code § 56-5-2941 and its related statutes⁴ to require that drivers participating in the Program must be monitored for the entire duration of their statutorily defined Program terms. The Department developed the final inspection procedure to carry this out. It is not arbitrary, because it is designed to provide the Department with the final Inspection Report it needs to implement the General Assembly’s mandate. It is not capricious for the same reason, but also because it is structured to obtain the final Inspection Report with as little inconvenience as possible to the drivers. Further, possession of a IIR license is a privilege the State has granted to eligible drivers, and thus is subject to the State’s reasonable regulation. Finally, in all instances, participation in the Program is voluntary, and its terms, conditions and procedures available for public review. Drivers who have enrolled in the Program cannot claim to be ignorant of what is required of participants.

The only alternative to the Program’s final inspection procedure would be to allow the drivers to immediately remove the device from their vehicles at the final inspection. There are two principle problems with this. First, if the final inspection report indicates that points should be assessed, and the assessment causes an extension of time in the Program, then the driver

⁴ See “Emma’s Law”, 2014 South Carolina Laws Act 158 (S.B. 137).

would be required to go to the expense of having the Device reinstalled so that the extension in time could be served.⁵ Second, drivers issued the IIR license must drive a vehicle equipped with a working Device. See S.C. Code § 56-5-2941(A). Drivers who fail to do so commit a misdemeanor; repeated failures may result in a felony. S.C. Code § 56-5-2941(K). Until the Department has determined that the driver has successfully completed the Program, DMV will not issue the driver an unrestricted driver's license. So long as the driver holds the IIR license, his vehicle must be equipped with a Device. Given the statutory scheme, the procedure the Department has implemented is the best available option for handling the end of drivers' Program terms while satisfying the General Assembly's intent that the Department monitor the entirety of drivers' terms. The Court should defer to the Department's interpretation of the statutory scheme implementing the Program and recognize that it has the authority to establish the final inspection procedure.

B. The Department Has the Authority to Continue Monitoring a Driver Who Refuses to Undergo a Final Inspection.

Drivers issued the IIR license "*must* be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services." S.C. Code § 56-5-2941(E)(emphasis added). Drivers are subject to various penalties for violations of the Program's rules, which may include extensions of time a driver must participate in the Program. See S.C. Code § 56-5-2941(E)(1, 2, 3). Therefore drivers in the Program must have their vehicles regularly inspected so that the Program can review the Inspection Report containing data recorded by the Device installed in driver's vehicles. See S.C. Code § 56-5-2941(H)(1). As discussed in Subsection (A)(1) above, the Department must have the

⁵ Without question the Department will not simply "write off" the data recorded on the device without reviewing it for potential violations.

Inspection Reports to carry out the General Assembly's mandate to monitor the drivers, and the Program must be able to review Inspection Reports that cover the entire term the driver is required to serve in the Program. As also discussed, the Department established a procedure at the end of the drivers' terms to request a final inspection be performed so that the Program can review the final data recorded by the Device. Only after reviewing this Report will the Program consider the driver to have completed the Program.

In general, having a driver's license of any kind is not a property right, but is only a privilege that is subject to reasonable regulation under the police power in the interest of the public safety and welfare. See e.g. Chisolm v. S.C. Dep't of Motor Vehicles, 402 S.C. 593, 597 (Ct. App. 2013); Peake v. S.C. Dep't of Motor Vehicles, 375 S.C. 589, 595, (Ct.App.2007); State v. Collins, 253 S.C. 358, 361(1969). The purpose of the Ignition Interlock Device Program is to protect the interest of public safety and welfare by requiring drivers who have violated State laws relating to drinking and driving to only drive a vehicle equipped with a Device. While drivers are subject to the ignition interlock restriction they must participate in the Program, *if they want to drive legally*. See S.C. Code § 56-5-2941(A, K). However, they are not compelled to do so. It is their choice whether to have a Device installed in their vehicle and to acquire the IIR license. Further, at any time, drivers enrolled in the Program may remove the Device from their vehicles and give up the IIR license.⁶

Any driver who has volunteered to participate in the Program has also consented to its rules and regulations. To begin participating in the Program at all, the driver must follow statutorily set procedure. See S.C. Code § 56-1-400(A)(requiring drivers to have a Device

⁶ Upon doing so they stop getting credit in the Program.

installed in their vehicle before DMV will issue the IIR license). The driver's participation begins when he obtains the IIR License. Any driver who, while holding the IIR license, refuses to have a final inspection performed is preventing the Department from monitoring the entire period of the driver's Program term, and thus thwarting the General Assembly's intention that the driver's full term be monitored. Without the final Inspection Report, the Department cannot consider the driver to have successfully completed the Program term. Under such circumstances, so long as the driver continues to possess the IIR license, then Department has no choice but to continue to monitor the driver per its statutory mandate.

As discussed in section A(2) above, here is another instance where the Department must "fill up the details by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose." McNickel's Inc., 331 S.C. 629, 634 (1998). Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency's interpretation of the statute. Kiawah Dev. Partners, II, 411 S.C. 16, 33, (2014). In South Carolina, courts defer to an administrative agency's interpretation of the statutes it is tasked with enforcing unless there is a compelling reason to differ with the agency's interpretation, and so long as it is not arbitrary, capricious, or manifestly contrary to the statute. Id. at 34-35.

Here, the General Assembly did not speak to a scenario where a driver enrolled in the Program refuses to have a final inspection performed, thereby preventing the Department's access to information it needs before the driver's term is complete, *and while the driver continues to possess the IIR license and keep the device installed in his vehicle*. The Department's practice of continuing to monitor such drivers until it receives a final Inspection Report is consistent with the General Assembly's intention that the Department monitor the

drivers until their terms are complete, even if the Department must continue monitoring them beyond what would have been the formal end date of the driver's term. This is not arbitrary because the Department is required to monitor the drivers until their terms are complete; it is not capricious for the same reason, but also because the driver in such a situation has consented to participate in the Program, and has by their own inaction prevented the Department from designating their Program term complete. Nor is this manifestly contrary to statute - the Program has no idea what information the Device may have recorded that requires the Department to assess points against the driver; it would be contrary to statute for the Department to simply write this possibility off and designate the drivers as Program complete. Drivers should not be allowed to thwart the General Assembly's intent by refusing to comply with rules and procedures they consent to when they enroll in the Program, and the Court should defer to the Department's discretion to continue monitoring drivers in the above circumstances.

1) The Department Properly Continued to Monitor the Appellant After He Failed to Have a Final Inspection.

The Appellant's behavior is singular and unprecedented thus far among drivers who have enrolled in the Program, and deserves clear explanation for the Court's understanding of the circumstances. The Appellant had a Device installed in his vehicle, obtained the IIR license, and started participating in the Program for a two-year requirement on May 22, 2015. At the hearing, Mrs. Cartwright testified that on May 22, 2017 the Department mailed the Appellant a letter requesting a final inspection. T-8, ll. 4-8. He admitted to receiving this letter. T-27, ll. 16-21; T-32, ll. 4-5. However, he did not take his vehicle in for an inspection. As Ms. Cartwright explained, without the final Inspection Report the Program could not consider the Appellant to have completed the Program. T-7, ll. 15-24; T-13, ll. 12-20. He continued to possess the IIR license and the Device continued to be installed in his vehicle. Therefore the Program continued

to actively monitor him pending the reception of the final Inspection Report. Drivers who are actively monitored by the Program are subject to the Program's terms and conditions. Therefore the Appellant continued to be subject to the Program's, including the requirement to have the device inspected regularly. T-32, ll. 21-14. Failure to do so at least once every sixty days will cause a one-point penalty assessment. See S.C. Code § 56-5-2941(H)(1).

Prior to May 22, 2017 the Appellant's previous inspection had occurred on May 2, 2017. T-9, ll. 12-14. He failed to have an inspection within sixty days of that date, causing a point to be assessed against him pursuant to Section § 56-5-2941(H)(1). The Program mailed him a letter advising him of the assessment. He has acknowledged receiving this letter. T-16, ll. 12-17. He did not appeal this point assessment or contact the Program. T-16, ll. 24-25. Mrs. Cartwright noted that prior to May 22, 2017 the Appellant had filed with the Department at least one successful appeal of a point assessment, so he should have been familiar with the procedure.⁷ T-10, ll. 20-23; T-39, ll. 1-8.

Sixty more days passed without an inspection. The Appellant continued to possess the IIR license and the Device remained in his vehicle. This caused a second one-point assessment. The Program sent him a letter dated September 6, 2018 advising him of the assessment and a two-month term extension pursuant to S.C. Code § 56-5-2941(E)(1). The Appellant admitted to receiving this letter also. T-17, ll. 5-12. He did not appeal this point assessment. Id. A two-point assessment notice not only advises the driver of the term extension, it states the new projected Program end date. The Appellant noted that the September 6 letter stated "your adjusted program

⁷ All the Department's assessment notices include instructions on how to appeal the assessment.

completion date is July 21st, 2017.” T-17; ll. 10-12. This date was calculated from what might have been the end date, May 22, 2017.⁸

Sixty more days passed during which the Appellant failed to have the vehicle inspected. The Appellant continued to possess the IIR license and the Device remained in his vehicle. The Program mailed the Appellant a one-point assessment dated November 6, 2017. Pursuant to S.C. Code § 56-5-2941(E)(2), the third point caused a four-month Program extension and required the Appellant to contact the Department of Alcohol and Other Drug Abuse Services (DAODAS) for a mandatory substance abuse assessment. If a driver fails set up the substance abuse assessment, DMV will suspend the driver’s license. See S.C. Code § 56-5-2941(E)(2). The Appellant did not appeal the third point assessment, nor did he contact DAODAS to set up a substance abuse assessment. At the hearing the Appellant claimed he did not receive the third point assessment letter, though he did receive SCDMV’s notice that he would be suspended for failing to set up the substance abuse assessment.⁹ T-18, ll. 6-9. The Program mailed all notices to the Appellant’s record of address with SCDMV; at the hearing the Appellant confirmed that his address had not changed. T-22, ll. 19-24.

Sixty days after the third point assessment, the Appellant had failed to have his vehicle inspected. The Appellant continued to possess the IIR license and the Device remained in his vehicle. The Program issued a fourth skipped inspection point. Dated January 4, 2018, this notice advised the Appellant that his license would be suspended for accumulating four points. R-47. It appears that before he received the January 4 notice, the Appellant attempted to file an appeal of

⁸ The Appellant got credit against this term extension, and for the subsequent four-month extension, from the extended time he was active in the Program. By the time he received notice of the extensions, he had already satisfied them.

⁹When the Department issues a suspension notice, DMV mails the driver a notice advising the driver of the nature of the suspension, when it will start, and when it will end.

the third point assessment with the Office of Motor Vehicle Hearings. R-14, 45; T-18, ll. 10-11. Thereafter he received the January 4 notice, which he forwarded to OMVH, who converted his attempted appeal of the third point assessment into the appeal of the fourth point assessment.¹⁰ R-45; T-18, ll. 12-23.

On January 26, 2018, the Appellant's II Restricted license was suspended because he had failed to contact DAODAS pursuant to the third point assessment he had been advised of in the November 6, 2017 notice.¹¹ On February 13, 2018 he contacted the Program for the first time since it had mailed the May 22, 2017 request for a final inspection. T-32, ll. 1-12. He wanted to discuss the three-point assessment letter; he also stated that he had received the final inspection letter, but could not get his vehicle in for the inspection. Id. At this time he requested a removal letter so he could have the device removed from his vehicle. Id. This letter authorizes the installer to remove the Device. The letter was provided, and the Device was removed on February 19, 2018.¹² T-20, ll. 17-20. The installer attempted to download what data may have been recorded by the Device but Ms. Cartwright testified that it contained no data. T-30, ll. 22-25; T-31, ll. 1-4.

At the hearing the Appellant testified that had contacted the Program around the time of the second point assessment to explain that his vehicle had broken down and he could not take it in for an inspection. T-17, ll. 16-18. However, Mrs. Cartwright testified that the Program's records showed that after it mailed the request for a final inspection in May 2017, the Appellant

¹⁰While a driver's total points are under four, they must file appeals with the Department. S.C. Code § 56-5-19414(H)(6); see also SCDPPPS v. Brewer, 2015 WL 6410107 (S.C.Admin.Law.Judge.Div.)(2015).

¹¹Note that this suspension started after the Department assessed the fourth point. Had it started before, it would have paused his active status on the Program until the suspension cleared.

¹²This letter was issued due to his suspension by SCDMV, not because he had completed the Program. When drivers are suspended for any reason, they stop getting credit in the Program and are allowed to remove the Device rather than continue paying for it.

did not contact the Program until February 13, 2018. T-31, ll. 18-22. T-32, ll. 1-12; T-39, ll. 3-5. She stated it was possible he contacted the installer with this information, but that the Program would not necessarily learn of this.¹³ T-32, ll. 14-15; T-39, ll. 1-8. Mrs. Cartwright testified that it is the driver's responsibility to get their vehicles in for inspections. T-39, ll. 12-18. This would be true whether the vehicle was broken down or not. She noted that had he simply had the final inspection performed, if there were no violations recorded by the Device, he would have completed the Program, but because he did not he remained active and the system continued to assess points against him for skipping inspections. T-32, ll. 16-24.

Here the Appellant volunteered to participate in the Program, and at what could have been the end of his Program term he simply refused to comply with the Program's rules. He would not have a final inspection performed, denying the Department the data it needed to designate him as Program complete. He did not contact the Program, but continued to possess the IIR license and to keep the Device installed in his vehicle. Under these circumstances the Program reasonably continued to monitor him, as required by the General Assembly until his term was complete, and reasonably continued to assess points against him for skipping inspections so long as he possessed an active, unsuspended IIR license. As argued above in Section B of this brief, the Department has the authority to do so. The Court should find that not only was it within the Department's discretion to continue monitoring the Appellant, it was required to do so under its mandate from the General Assembly to administer the Program.

¹³Drivers rent the Devices from their manufacturers, who contract with local businesses (installers) to install and inspect the Devices. Drivers routinely contact the installers to set up inspection appointments, but the Department is not automatically privy to such communications.

C. The Point Recorded In The Suspension Notice Was Correctly Assessed.

The Department mailed the Appellant a suspension notice dated January 4, 2018. R-47. The notice stated that on December 29, 2017, one point had been assessed against him for a skipped inspection, and that because at least four points had been assessed against him he would be suspended. Id. Drivers must have their vehicles inspected at least once every sixty days or a point is assessed against them. S.C. Code § 56-5-2941(H)(1). Drivers in the Program must be suspended if they accrue four or more points. S.C. Code § 56-5-2941(E)(3). Therefore, at the hearing the Department was required to show that at least four points in total had been assessed against the Appellant. With regards to any point assessments that occurred prior to those detailed in the notice, the Department bore a burden of production that those points had been assessed. See SCDPPPS v. Brewer, 2015 WL 6410107, *7 (S.C.Admin.Law.Judge.Div.) With regards to the point assessment detailed in the suspension notice, the Department was required to prove by a preponderance of the evidence that the point was correctly assessed. Id.; see also S.C. Code § 1-23-600(A)(5); OMVHR #15(B).

At the hearing Mrs. Cartwright testified about a record of the Department she identified as the violations page, a screenshot from the Department's ignition interlock management system.¹⁴ She testified that it recorded any point assessments and the penalties caused by them. T-9, ll. 1-11. She testified that four total missed inspection points were assessed against the Appellant. T-9, ll. 9-24; T-12, ll. 7-8. The Program's system automatically assesses skipped inspection points when sixty days have passed from the previous inspection, but the Program checks with the manufacturer to make sure that there had not in fact been an inspection before

¹⁴ Note that this document is misidentified by the Transcript on page 8, as Mrs. Cartwright's subsequent testimony makes clear. Further, though it was entered into evidence without objection (See T-12, ll. 10-17), it is absent from both the transcript and the Record on Appeal. It was a certified record of the Department prepared by Mrs. Cartwright, who is also the custodian of records for the Ignition interlock Device Program.

the Program will officially assess the point. T-11, ll. 9-18. She noted that the Appellant's last inspection had been on May 2, 2017. T-9, ll. 12-16. July 1st was sixty days later, the next day a point was assessed. August 30th was sixty days after July 1st; the next day a point was assessed. October 29th was sixty days from August 30th; the next day a point was assessed. Finally, December 28th was sixty days after October 29th; on December 29, 2017 the fourth skipped inspection point was assessed, and the suspension notice was mailed on January 4, 2018. Id., ll. 17-24. After May 2017, the Appellant did not visit the device installer again until February 19, 2018. T-30, ll. 11-20.

Mrs. Cartwright's testimony established the Department's prima facie case that four points were assessed, and that the fourth was correctly assessed for skipping an inspection in violation of S.C. Code § 56-5-2941(H)(1). In South Carolina, "[o]nce a party establishes a prima facie case, the burden of proof shifts to the opposing party." Daisy Outdoor Advertising Co., Inc. v. South Carolina Dept. of Transp., 352 S.C. 113, 118, (Ct. App. 2002). However, at the hearing the Appellant presented no evidence to rebut the fact that he had not taken his vehicle in for an inspection between October 29 and December 28, 2017. He did not even deny that he had not done so, or that he had not done so before the previous three points were assessed. Rather, he complained of the final inspection process the Program has established for drivers at the end of their Program terms. T-13; T-14, ll. 1-5.

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code § 1-23-380(5)

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, (2010). That the record, considered as a whole, may present the possibility of drawing two inconsistent conclusions from the evidence does not prevent an agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226 (1996). When applying the substantial evidence rule, reviewing courts will not overturn an agency's finding of fact "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136 (1981)). When applying this rule, the agency's factual findings are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226.

Here the Appellant provided no evidence whatsoever that the point assessment detailed in the January 4, 2018 suspension notice was not supported by substantial evidence. He has not shown that the Department's decision was arbitrary, capricious, contrary to statutory provisions,

in excess of the Department's authority or made upon unlawful procedure. The Court should sustain the hearing officer's decision affirming the Department's suspension of the Appellant.

D. The Appellant Was Required To Serve A Minimum of Two Years In The Ignition Interlock Device Program.

The Appellant was convicted of committing a second violation within ten years of S.C. Code § 56-5-2930. The date of the violation was September 11, 2012. The Appellant now asks whether he was properly required to serve a term in the Program after serving the suspension imposed for this violation, citing to current versions of S.C. Code §§ 56-5-2941 and 56-5-2990. However, the law at the time of his offense was different. The then-applicable law stated as follows:

Except as otherwise provided in this section, in addition to the penalties required and authorized to be imposed against a person violating the provisions of Section 56-5-2930, 56-5-2933, or 56-5-2945 . . . the Department of Motor Vehicles must require the person, if he is a subsequent offender and a resident of this State, to have installed on any motor vehicle the person drives an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. [].

The length of time that an interlock device is required to be affixed to a motor vehicle *following the completion of a period of license suspension imposed on the offender is two years for a second offense.* . . . Notwithstanding the pleadings, for purposes of a second or a subsequent offense, the specified length of time that an interlock device is required to be affixed to a motor vehicle is based on the Department of Motor Vehicle's records for offenses pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945.

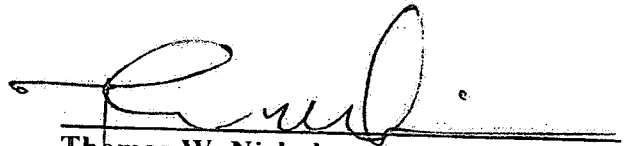
S.C. Code Ann. § 56-5-2941 (Supp. 2009)(emphasis added).

At the time the Appellant committed the offense, Section 56-5-2941 explicitly required that those convicted of violating S.C. Code § 56-5-2930 should serve a minimum two-year term in the Program following the completion of any period of suspension imposed on the person for the offense.

CONCLUSION.

For the reasons stated above, the Respondent requests that the Court refuse to grant to the Appellant any of the requested relief. The Court should dismiss the appeal and confirm the hearing officer's decision.

Respectfully submitted,



Thomas W. Nicholson
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

*Counsel for the Respondent, the South
Carolina Department of Probation, Parole
and Pardon Services.*

Columbia, South Carolina
December 11, 2018

1 **IN THE STATE OF SOUTH CAROLINA**
2 **In the Administrative Law court**

3
4
5
6 **ALIEO GARGA-RICHARDSON**

7 Plaintiff,

8 vs.

9 **SOUTH CAROLINA DEPARTMENT OF**
10 **PROBATION, PAROLE AND PARDON**
11 **SERVICES; DEPARTMENT OF MOTOR**
12 **VEHICLES**

13 Defendant

Docket No.18-ALJ-21-0201

APPELLANT RESPONSE TO
RESPONDANT ISSUES.

THE HONORABLE S. PHILIP LENSKI
PRESIDING

14
15
16
17 December 21, 2019

18
19
20
21 Alieo Garga-Richardson

22 Appellant Pro-Se

23 1435 Ebinport Rd.

24 Rock Hill, SC 29732

25 803-389-4456

26 agargarichardson@yahoo.com

27
28 APPELLANT RESPONSE TO RESPONDANT ISSUES.THE HONORABLE S - 1

1 I begin this reply to the Respondent's Brief with the Issues stated in the Appellant's Brief

2 beginning with Issue # 1;

3 Which asks ... "After serving my suspension imposed by the Department of Motor Vehicle, was I
4 under law, obligated to have the Breathalyzer installed in my car"?

5 Respondent reply is "At the time the Appellant committed the offense, Section 56-5-2941
6 explicitly required that those convicted of violating S.C. Code section 56-5-2930 serve a
7 minimum two-year term in the program following the completion of any period of suspension
8 imposed on the person for the offense.

9 Consequently, the law was revised in 2015, the same year I became eligible to participate in the
10 IID program. Thus, S.C. Code Section 56-5-2941, which states;

11 (T) This section shall apply retroactively to any person currently serving a suspension or denial
12 of the issuance of a license or permit due to a suspension listed in subsection (A).

13 And as printed in the 2015 revision of The South Carolina Code of Laws, Section 56-5-2990(A)(3)

14 (3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant
15 to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license
16 pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the
17 motor vehicle for two years.

18 Issue # 2;

19 Does the Department of Probation, Parole and Pardon Services have the authority to request
20 Inspections?

1 This was not addressed

2 Issue # 3;

3 Did the Department of Probation, Parole and Pardon Services have the right to assessed IID
4 points against me after my program completion date?

5 Respondent reply is that the Department of Probation, Parole and Pardon Services has the
6 Authority to require Final Inspections before a driver's program Term is completed.

7 Well, the question then becomes, "under which statue". The Respondent then argued See
8 Respondent's Brief page 3 'ARGUMENT AND CITATION OF AUTHORITY' (A).

9 I disagree on two grounds.

10 First, The General Assembly has revised the code a total of 17 times; Why has this issue never
11 been address?

12 Second, the actions by the Servicing Agent for the device at the time of removal serves as a final
13 inspection. Why then is one requested before a removal order can be issue. I visited the ALC
14 web site in search of precedence and found none.

15 This brings me to another subject STANDARD OF REVIEW as requested by the Respondent
16 on page 3 of the Respondent's Brief.

17 I believe the Standard of Review should be with regards to Title 18 U.S.C Section 242.

1 In that I filed this appeal when my license was suspended for the 3-point violation; one
2 question that continues to hunt me is that; 'if my license had already been suspended for the 3-
3 point violation, how do you justify a fourth point?

4 Second, by filing this appeal, a stay of suspension for both the 3-point violation and the 4-point
5 violation should have been issue. The Department of Motor Vehicle still has me listed as
6 suspended for the 3-points violation. Upon Inquiry, The Department of Motor Vehicle informed
7 me that they await a letter form the Department of Probation, Parole and Pardon Services
8 acknowledging that an appeal has been filed regarding the 3-points IID violation. A copy of all
9 communications regarding this appeal was also sent to the General Counsel for the Department
10 of Motor Vehicle, Mr. Frank L. Valenta and yet The Department of Motor Vehicle claims to have
11 no knowledge of these proceedings as it pertains to the 3-point suspension.

12 With regards to the Issue stated in Section B of the Respondent's Brief;

13 THE DEPARTMENT HAS THE AUTHORITY TO CONTINUE MONITORING A DRIVER WHO REFUSES
14 TO UNDERGO A FINAL INSPECTION.

15 Had I received a letter from the Department of Probation, Parole and Pardon Services informing
16 me to take my vehicle for a final inspection before the end of my time in the program, I most
17 definitely would have complied though it would have been difficult, I would have complied.

18 I vaguely remember a letter directing me to take my vehicle for inspection. Nothing in that
19 letter referred to a final inspection. My objection was based on a verbal conversation I had
20 with the Service Technician on the day I did my last monthly inspection in the early part of the
21 month of May 2017. The Technician had said and I quote "I will schedule you for an inspection

1 in June, because sometimes the Department will request you to have another inspection". My
2 reply was 'I hope that does not happen, because I am done. I had had enough issues with
3 the servicing agent (A copy of a letter addressed to the program supervisor is indexed as exhibit
4 # 4, to be added to the records).

5 The letter received on the 10th of July, 2017 from the Department of Probation, Parole and
6 Pardon Services said nothing about missing a Final Inspection (please reference section one of
7 the Record on Appeal). The letter is dated July 10, 2017. If sixty days had elapsed since my last
8 inspection, It appears that my last inspection occurred sometime early in the Month of May.
9 Which implied that Mrs. Carthwright believed I should continue to submit to the program
10 requirement for inspections even though my time in the program had ended.

11 With regards to Issue C.

12 THE POINT RECORDED IN THE SUSPENSION NOTICE WAS CORRECTLY ASSESSED.

13 I disagree. Mrs. Carthwright testified at the OMVH hearing that the points assessed against me
14 were for failure to abide by the program exit rule for a 'Final Inspection'.

15 The notices I'd received informed me that the assessments were 'based on the driving history
16 recorded by the Breath Alcohol Ignition Interlock Device installed in the vehicle or vehicles I
17 drive' (paraphrased).

18 At the time, the vehicle was down due to mechanical problems.

19 Issue D.

1 THE APPELLANT WAS REQUIRED TO SERVE A MINIMUM OF TWO YEARS IN THE IGNITION
2 INTERLOCK DEVICE PROGRAM.

3 I disagree. According S.C. Code Section 56-5-2990 (3) revised in 2015;

4 (3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant
5 to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license
6 pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the
7 motor vehicle for two years.

8 Another Issue I like to address is with reference to the Respondent's Brief, Section C, page 19
9 paragraph 1.

10 And I quote; " Mrs. Cartwright's testimony established the Department's PRIMA FACIE case
11 that four points were assessed, and that the fourth was correctly assessed for skipping an
12 inspection in violation of S.C. Code Section 56-5-2941(H)(1).

13 I disagree.

14 In April of 2016, the Department of Probation, Parole and Pardon Services attempted to access
15 a 0.5 IID point against me for a failed retest recorded by the Breathalyzer. I appealed and the
16 0.5 point assessed was removed (a copy of said appeal is indexed as exhibit # 5 to be added to
17 the Record on Appeal).

18 With reference to Case number 16-AJ-15-0036-AP, Christopher Good v. South Department of
19 Probation, Pardon and Parole Service, there is similarities in such that the Department of

1 Probation, Parole and Pardon Services should not have attempted to assess any point against
2 me for the failed retest in April of 2016.

3 I find this behavior to be capricious to say the least.

4 IN CONCLUSION;

5 I ask that the Respondent request for a dismissal be refused and that the points assessed
6 against me after the end date of my participation in the IID program be removed and that all
7 suspensions imposed be lifted and my driving privileges be restored.

Exhibit # 4

Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill, SC 29732
(803) 389-4456
Agargarichardson@yahoo.com

Thursday
August 13th, 2015

Mr. Charles McNeill,
5515 Shakespeare Rd # 316
Columbia, SC

Dear Mr. McNeill;

I am Alieo Garga-Richardson a Guardian Interlock User. I have been having problems with the unit that is installed in my car.

- i) At times when I'm blowing into the unit, the "blow-time" before I'm suppose to "Hum and Inhale" is longer causing me to run out of breath resulting into an "Abort" being displayed by the unit which I believe leads to me having to have the device re-set before the Service date. This I believe is "faulty or predicator" programming.
- ii) On Sunday, August 9th, 2015, the unit installed in my car stopped responding. By this I mean, when I plugged in the handset I did not hear the familiar beep it makes when it's activated. From about 7:30pm Sunday to about 11:30pm I was in contact with The Guardian call center which eventually advised that take the handset into the Service Center to have it checked-out which subsequently recommended that the vehicle be towed-in.
- iii) It was determined that the malfunction was caused by a relay in the unit which was replaced. I had to wait until all other service work scheduled for that day had been completed before any work could be done on my car. When the Technician finally got to my car, it was about 6:00pm (closing time). A rush job was done which resulted in the back break lights being turn on and remaining on. I had noticed the lights on and informed them about it and was advised to returned the following day. On Tuesday August 11th, 2015, I return my vehicle to have the problem corrected and to my dismay was told to return the following day.
- iv) On Wednesday I returned to have the vehicle service; the technician checked it out

And came back and told me that the switch that regulates the back break lights was loose. My response; "I don't know about that, what I do know is that I did not have that problem before I brought it in and now I have to disconnect the battery when I park it at night to prevent the battery from draining-low". May have been something he did/done that caused the problem.

- v) Anyway, Erica informed me what your position is on this matter and I am in agreement except that I have a contract with Guardian Interlock and not "Sounds-on-Wheels (the service company).

In view of this, I await a redress and submit along with this complaint a copy of the Tow Truck Receipt for a refund.

With Kindest Regards,

Sincerely,


Alice Garga-Richardson

Exhibit #5

April 8th 2016

The Hearing Officer
South Carolina Department of Probation Parole and Pardon
P. O. Box 50666
Columbia, SC 29250

On March 21, 2016 the Department of Probation, Parole and Pardon assessed a point of 0.5 for failing a running retest that occurred on the 5th of March 2016.

In response to the letter from the department which I received on the 23rd of March, I would like to submit this letter of appeal stating the facts as is so clearly evidenced by the camera and or the mouth piece installed in my vehicle.

Before so doing, allowed me to petition for a waiver to the requirement that this appeal be accompanied by a copy of the IIP assessment letter. Due to my work schedule which is 10 to 12 hours a day, seven days a week, I somehow misplaced the letter and cannot furnish a copy at this time.

My work day begins at 7:00 am. I work for Atlantic Workforce contracted to IES to assist in the Installation of the Building Electrical System at the Dollar Tree Facility in Cowpens, SC which is currently under construction.

I am awoken at 4:00am and usually departs my residence by 5:15am daily enroute to Cowpen. My Usual routine is to stop at the QT service station on SC 160 to SC 5 to I-85 to Cowpens, SC. As usual, I would pay for a refill of coffee and two donouts.

On the 5th of March, on my way to work, the device requested a running test just when I had taken a bite of the Chocolate donout I had bought that morning. I responded by blowing into the device which resulted in a "FAIL" after its analysis. I took a swallow of coffee and blew again when it request a retest right after the analysis about 5 seconds later at the most. The result, I don't remember But usually is "PASS OR WARNING".

The only records available to my defense is in you custody and so I recommended that you view and review the camera and device's downloads.

In conclusion, my argument is that the device was installed to prevent a person from operating or cause to purnish when driving under the Influence of Alcohol. And as evidenced by the downloads of the device, I was not under the Influence of any Intoxicating beverage. I hope and pray that this assessment be reversed in the Interest of Justice.

Sincerely,

Aliso Garga-Richardson

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

Agargarichardson@yahoo.com

Exhibit # 6

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS**

RALPH K. "TUFF" ANDERSON, III
Director - SCOMVH
Chief Administrative Law Judge - SCALC



(803) 734-3201
FAX (803) 734-3200
WWW.SCOMVELNET

December 10, 2018

The Honorable S. Phillip Lenski
SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Alieo Garga-Richardson vs. South Carolina Department of Probation, Parole, and Pardon Services and South Carolina Department of Motor Vehicles, 18-ALJ-21-0201-AP

Dear Judge Lenski,

A review of the record in this matter indicated that a document entered into evidence is missing from the record. The document was introduced into evidence by counsel for the South Carolina Department of Probation, Parole, and Pardon Services on page 8 of the transcript and was entered on page 12. On page 8, it also appears from reading the subsequent testimony that the court reporter identified it by the wrong name. It should have been identified as the violations page. Regardless, neither document is in the record.

The document was not received in the OMVH office from the hearing officer after the hearing. A check with the hearing officer in this matter revealed that he does not have the document. Therefore, we are unable to provide Petitioners Exhibit #1 for the record. We sincerely apologize to the court and to the parties for this error.

Sincerely,

Ester F. Haymond
Senior Staff Counsel

cc: Alieo Garga-Richardson, Appellant
Thomas W. Nicholson, counsel for Respondent SC PPP
Frank L. Valenta, General Counsel, SC DMV

EDGAR A. BROWN BUILDING • 1205 PENDLETON STREET, SUITE 325 • COLUMBIA, SOUTH CAROLINA 29201

PROOF OF SERVICE

December 24th, 2018

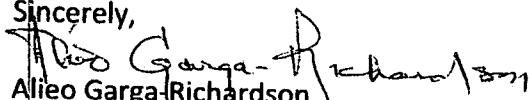
I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail with sufficient postage affixed, copies of Appellant Respond to Respondent Issues addressed to:

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P.O. Box 50666
Columbia, SC 29250
803-734-9220

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, SC 29016
803-895-9902
Attorney(s) for Respondent

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,


Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
agargarichardson@yahoo.com

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alieo Garga-Richardson,

Docket No. 18-ALJ-21-0201-AP

Appellant,)

South Carolina Department of Probation,)
Pardon and Parole Services and South)
Carolina Department of Motor Vehicles,)

ORDER

Respondents.)

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to an appeal filed by Alieo Garga-Richardson (Appellant) on June 13, 2018. The Appellant is appealing the decision of the South Carolina Department of Motor Vehicles, Office of Motor Vehicle Hearings (OMVH) in which OMVH sustained the suspension of the Appellant's Ignition Interlock Device (IID) driver's license or driving privileges for one year due to the assessment of four (4) or more Ignition Interlock Points by the South Carolina Department of Probation, Parole, and Pardon Services (Department or PPP) pursuant to S.C. Code Ann. 56-52941.1

STATEMENT OF THE CASE

To prevent repeat offenders from driving under the influence, the legislature created the Ignition Interlock Device (IID) program. See S.C. Code Ann. S 56-5-2941 (Supp. 2014). The IID prevents the engine from starting if the device detects a threshold level of alcohol on the driver's breath. S.C Code Ann. 56-5-2941 ("Emma's Law") provides for a system of points assessments for violations while using the IID and requires the person to have the device inspected every sixty (60) days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an IID inspection report by the service provider indicating the person's alcohol content at each attempt to start and running retest during each sixty (60) day period. Failure

¹ The Appellant asserts that he is also appealing the assessment of three (3) ignition interlock device points, however pursuant to S.C. Code Ann. 56-5-2941 (H)(5), a person may appeal less than four (4) ignition interlock device points received to an administrative hearing officer with PPP through a process established by P administrative hearing officer's decision on appeal is final and no appeal from such decision is a o e that issue is not properly before this court and this Order only addresses the suspension of the Appellant's license or the assessment of four (4) or more ignition interlock points.

of the person to have the IID inspected every sixty (60) days results in a mandatory one-point assessment. In addition, a person that has reached the end of their time in IID program is also required to have a final inspection completed before the device can be removed from their vehicle. Further, if a person accumulates four (4) or more points, the Department must provide a notice of assessment, including the person's right to request a contested case hearing with the OMVH.

The Appellant started his participation in the IID program on May 22, 2015 and was required to participate in the program for a minimum of two (2) years. On May 22, 2017, the Department sent the Appellant a letter requesting that he take his IID in for a final inspection before the IID could be removed from his vehicle. The Appellant admitted that he had received this letter but did not take his vehicle in for inspection. The Appellant continued to possess the Interlock Restricted (IIR) License and the IID, therefore the Department continued to actively monitor the Appellant pending the receipt of the final inspection report.

Prior to the Department's May 22, 2017 letter, the Appellant's last IID inspection occurred on May 2, 2017. Absent a final inspection report which would have resulted in the removal of the device, the Appellant was statutorily required to continue having an IID inspection every sixty (60) days. On July 2, 2017, the Appellant failed to have a 60-day IID inspection, and pursuant to S.C. Code Ann. S 56-5-2941), the Department issued him a letter advising him of a one-point assessment on his license. The Appellant did not appeal the assessment. Sixty more days passed without the Appellant obtaining an inspection, resulting in a second single-point assessment for the August 31, 2017 missed inspection. In accordance with S.C. Code Ann. S 56-5-2941 (E)(1), the Department sent the Appellant a letter advising him of the second single-point assessment and a two-month term extension in the IID program. Again, the Appellant did not appeal this assessment.

A third sixty-day period lapsed without the Appellant obtaining a required IID inspection. On November 6, 2017, the Department sent the Appellant a letter notifying him of another one-point assessment for missing an inspection on October 30, 2017. The Appellant again did not appeal the point assessment. In accordance with S.C. Code 56-5-2941 (E)(2), the third point assessment resulted in a four-month extension in the IID program and required a mandatory substance abuse assessment by the Department of Alcohol and Other Drug Abuse Services (DAODAS). Additionally, if the driver fails to set up the mandatory substance abuse assessment, DMV will suspend the driver's license. The Appellant did not contact DAODAS to set up a substance abuse assessment. Another sixty days passed and when the Appellant failed to have an IID inspection on December 29, 2017, he received another single point assessment. On January 4, 2018, the Department sent the Appellant a letter advising him that his license would be suspended

for accumulating four (4) points.¹ On January 26, 2018 the Appellant's IIR license was suspended. A hearing was held on April 3, 2018 and on April 9, 2018 the OMVH Hearing Officer issued his decision sustaining the suspension of the Appellant's driver's license or driving privileges for the accumulation of four (4) points. On April 19, 2018, the Appellant filed a Motion for Reconsideration with OMVH and on May 2, 2018 his motion was denied. This appeal followed.

STANDARD OF REVIEW

The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to Section 1-23660(D) of the South Carolina Code. S.C. Code Ann. 1-23-660(D) (Supp. 2017). As the OMVH is an "agency" under the South Carolina Administrative Procedures Act (APA), the APA's standard of review governs appeals from the decisions and orders of the APA. See S.C. Code Ann. §§1-23-310(2), -380 (Supp. 2017); see also *Byerly Hosp. v. S.C. State Health & Human Services*, Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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

S.C. Am. 1-23-380(5) (Supp. 2017); see also S.C. Code Ann. {1-23-600(E) (Supp. 2017) (directing administrative law judges to conduct appellate review in the same manner as prescribed in Section 1-23-380).

A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. See *Byerly Hosp.*, 319 S.C. at 229, 460 S.E.2d at 386 (citation omitted); see also *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citation omitted). The limited substantial evidence standard of

¹ On January 5, 2018 the Appellant mailed a letter to the DMV to appeal the Department's suspension of his license for assessing three (3) points. The Appellant then received the January 4, 2018 letter from DMV advising him that his license was suspended and forwarded that letter to OMVH, which resulted in this appeal.

review is intended only to assure that the agency's action is properly supported and that, consequently, no abuse of delegated authority occurred. See *Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973) (citing *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 118 (1981)).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Human Services Fin. Comm 'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A C.J.S. Public Administrative Law and Procedure 497 (2015). "A reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass 'n for Prot. of Wildlife, Inc. v. S.C. Dep 't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark*, 276 S.C. at 136, 276 S.E.2d at 307 (1981)). The party challenging an agency action has the burden of proving convincingly that the agency's decision is not supported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

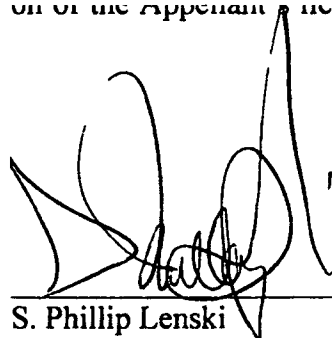
Drivers issued an IIR license are subject to the Ignition Interlock Device Point System managed by the Department of Probation, Parole, and Pardon Services. S.C. Code Ann. 56-52941 (E). Drivers are subject to penalties for violations of the program's rules, to include extensions of time a driver must participate in the program. *Id.* Drivers in the program must have their vehicles regularly inspected so that the Department can review the inspection reports for any violations. S.C. Code Ann. 56-5-2941 (H)(I). Given these statutory requirements the Department developed the final inspection procedure for drivers who have reached the end of their period in the program. Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency's interpretation of the statute. *Kiawah Dev. Partners, II v. S.C. Dep 't of Health & Env'tl. Control*, 41 S.C. 16, 33, (2014) (citing *Chevron, U.S.A., Inc., v. Natural Res. Def Council, Inc.*, 467 U.S. 837 (1984)). Courts will defer to an administrative agency's interpretation of the statutes it is tasked with enforcing unless there is a compelling reason to differ with the agency's interpretation. *Id.* Therefore, based on the Department's established program requirements, without the final inspection report, the Appellant was not considered to have completed the terms of the program.

The Appellant argues that because he had completed his two-year time period in the program, the Department could not continue to assess points against him for the failed inspections. However, while the Appellant may have completed the required time period of participation in the program, he failed to obtain the required final inspection. Because the Appellant did not complete

the final inspection and continued to possess an IIR license as well as have the IID installed on his vehicle, he had not completed the program. Therefore, under these circumstances, the Appellant continued to be monitored and continued to assess points for his failure to get the required inspections after receiving notices from the Department. The Appellant has not shown that the points were improperly assessed, but instead testified that he did not receive some of the assessment notices that were sent to him, even though all notices were sent to the same address. The court finds this unpersuasive, especially given that the Appellant acknowledges he received some of the notices from the Department.

Based on the foregoing, IT IS THEREFORE ORDERED that the OMVH Hearing Officer's decision is AFFIRMED and the suspension of the Appellant's license for one year is upheld.

AND IT IS SO ORDERED.



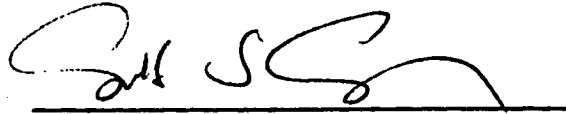
S. Phillip Lenski

Administrative Law Judge

January , 2019
(Columbia, South Carolina)

CERTIFICATE OF SERVICE

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

A handwritten signature in black ink, appearing to read 'Erika S. Easler', is written over a solid horizontal line.

Erika S. Easler
Judicial Law Clerk

January 10, 2019
Columbia, South Carolina

ALIEO GARGA-RICHARDSON

Docket No.18-ALJ-21-0201

MOTION FOR RECONSIDERATION OF
FINAL ORDER FROM THE PRESIDING
LAW JUDGE

THE HONORABLE S. PHILIP LENSKI
PRESIDING

January 21. 2019

Alieo Garga-Richardson

Appellant Pro-Se

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

MOTION FOR RECONSIDERATION OFFINAL ORDER FROM THE PRESIDINGLAW JUDGE
THE
HONORABLE S - 1

1 Your Honorable Body;

2 Let me begin this appeal for a reconsideration of the final decision in this matter rendered by
3 Your Honorable Judge S. Philip Linski by stating that I am not an attorney and am proceeding in
4 this matter purely on a Pro-Se basis. In so stating, I find it difficult to assimilate the points for
5 which this petition for reconsideration is based in a fashion that is accustomed by this body and
6 therefore extend my apology for so doing.

7 I begin a point for reconsideration on page one (1) of the ORDER by referring to footnote 1;
8 which states that (paraphrase) "The appellant asserts that he is also appealing the assessment
9 of three (3) ignition interlock device points, however pursuant to SC code 56-5-2941 (H)(5), a
10 person may appeal less than four (4) ignition interlock device points received to an
11 administrative hearing officer with PPP through a process established by ". The sentence's
12 ending is obscured by the stamped 'FILED'. However, SC 56-5-2941 (H)(5) states (5) The
13 inspection report must indicate the person's alcohol content at each attempt to start and
14 running retest during each sixty-day period. If the report reflects that the person violated a
15 running retest by having an alcohol concentration of: ... and it goes on to state instances.
16 But, SC 56-5-2941 (H)(6) does state ... (6) A person may appeal less than four ignition interlock
17 device points received to an administrative hearing officer with the Department of Probation,
18 Parole and Pardon Services through a process established by the Department of Probation,
19 Parole and Pardon Services. The administrative hearing officer's decision on appeal is final and
20 no appeal from such decision is allowed.

21 I did not submit an appeal to be heard on the three (3) Ignition interlock device points through
22 the process established by PPP and therefore did not waive my rights to an appeal.

23 As established by SCALC rule one (1), I am entitled to due process as established by the United
24 States Constitution.

25 Reconsideration point # 2

26 On page two (2) of the ORDER paragraph one (1), second sentence; "On May 22, 2017, the
27 Department sent the Appellant a letter requesting that he take his IID in for a final inspection
28 before the IID could be removed from his vehicle". I am afraid this is an assumption; the letter
29 sent to me by the department arrived in June. I remember clearly because I had been waiting

1 for a letter from the department instructing me to take my vehicle in for removal of the device.
2 The letter sent did not mention anything about a final inspection, but simply stated that I
3 should take my vehicle in for an inspection, ... which confused me. At the hearing at OMVH, the
4 letter presumed to have been sent by PPP informing me of a final inspection was never
5 presented. Instead, I was presented with a document that showed tabulated data taken from
6 the inspections that had been conducted. And therefore, according to SCALC RULE # 29(B),
7 proof was never established that an inspection noticed was mailed out on or before May 22,
8 2017. Furthermore, I find it hard to believe that neither PPP or OMVH has record of the letter
9 as referenced by the letter sent to Honorable S. Philip Lenski dated on December 10, 2018
10 signed by Ester F. Haymond, Senior Staff Counsel. I would like to introduce a copy of this letter
11 into the records to be marked EXHIBIT # 6.

12 Reconsideration point # 3

13 With reference to paragraph 3, on page two (2) of the ORDER, sentence number 2; "Absent a
14 final inspection report which would have resulted in the removal of the device, the appellant
15 was statutorily required to continue having an IID inspection every sixty (60) days". I am
16 unaware of any statute that required me to continue to have an IID inspection every sixty (60)
17 days after the end of my IID program participation which is set forth pursuant SC code 56-1-
18 400. Unless, had I acquired IID points before May 22, 2017, which could have resulted in an
19 extension of my participation in the IID program. By virtue of the following SC Statutes;
20 **SECTION 1-23-40.** Documents required to be filed and published in State Register.
21 There shall be filed with the Legislative Council and published in the State Register:
22 (1) All regulations promulgated or proposed to be promulgated by state agencies which have
23 general public applicability and legal effect, including all of those which include penalty
24 provisions. Provided, however, that the text of regulations as finally promulgated by an agency
25 shall not be published in the State Register until such regulations have been approved by the
26 General Assembly in accordance with Section 1-23-120.
27 (2) Any other documents, upon agency request in writing. Comments and news items of any
28 nature shall not be published in the Register.

29 Reconsideration point # 4

1 With reference to paragraph 1 on page four (4) under title 'DISCUSSION', sentence 3; "Given
2 these statutory requirements the Department developed the final inspection procedure for
3 drivers who have reached the end of their period in the program".

4 The Department failed to follow standard procedure;
5

6 **SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable**
7 **presumption of compliance; judicial notice of contents.**
8

9 A document or regulation required by this article to be filed with the Legislative Council shall
10 not be valid against a person who has not had actual knowledge of it until the document or
11 regulation has been filed with the office of the Legislative Council, printed in the State Register
12 and made available for public inspection as provided by this article. Unless otherwise
13 specifically provided by statute, filing and publication of a document or regulation in the State
14 Register as required or authorized by this article is sufficient to give notice of the contents of
15 the document or regulation to a person subject to or affected by it. The publication of a
16 document filed in the office of the Legislative Council creates a rebuttable presumption:
17

18 (1) That it was duly issued, prescribed or promulgated subject to further action required under
19 this article;
20

21 (2) That it was filed and made available for public inspection at the day and hour stated in the
22 printed notation thereon required under Section 1-23-30;
23

24 (3) That the copy on file in the Legislative Council is a true copy of the original;
25

26 The contents of filed documents shall be judicially noticed and, without prejudice to any other
27 mode of citation, may be cited by volume and page number or the numerical designation
28 assigned to it by the Legislative Council.
29

1 Based on these points, I ask this Honorable Body to reconsider the issues in this case; I also
2 request a stay of execution if this petition is denied. A stay of execution of the three and four
3 IID points assessed against me by the Department of Probation, Pardon and Parole Services.
4
5
6

7 WITH KINDEST REGARDS;
8

9 I Remain,
10

11 Sincerely,

12 

13 Alieo Garga-Richardson

14 1435 Ebinport Rd.

15 Rock Hill, SC 29732

16 803-389-4456

17 agargarichardson

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Alieo Garga-Richardson,

Appellant,

v.

South Carolina Department of Probation,
Pardon and Parole Services and South
Carolina Department of Motor Vehicles,

Respondents.

Docket No. 18-ALJ-21-0201-AP

**ORDER DENYING MOTION
FOR RECONSIDERATION**

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to an appeal filed by Alieo Garga-Richardson (Appellant) on June 13, 2018. The Appellant appealed the decision of the South Carolina Department of Motor Vehicles, Office of Motor Vehicle Hearings (OMVH) in which OMVH sustained the suspension of the Appellant's Ignition Interlock Device (IID) driver's license or driving privileges for one year due to the assessment of four (4) or more Ignition Interlock Points by the South Carolina Department of Probation, Parole, and Pardon Services (Department or PPP) pursuant to S.C. Code Ann. § 56-5-2941. On January 10, 2019, this court affirmed the decision of the OMVH Hearing Officer's decision and upheld the suspension of the Appellant's driver's license for one year. On January 22, 2019, the Appellant filed a Motion for Reconsideration of this court's January 10, 2019 Order.

Aside from arguing facts not in evidence and attempting to introduce new evidence into the record on appeal, all of which are impermissible, the Appellant also argues that the court is in error to find that he cannot appeal a separate three-point assessment to this court on the grounds that he failed to follow proper procedures in appealing that assessment. It appears that the Appellant's argument is that because S.C. Code Ann. § 56-5-2941(H)(6) provides that a person "may" appeal a less than four-point assessment to an administrative hearing officer with the Department of Probation, Parole and Pardon Services, this allowed the Appellant to opt out of appealing the three-point assessment via that process, and to directly appeal to this court. The court rejects the Appellant's argument. Section 56-5-2941(H)(6) provides the sole method of appeal of a less than four-point assessment. The word "may" is used instead of "must" because the person receiving an assessment is not required to appeal the assessment. However,

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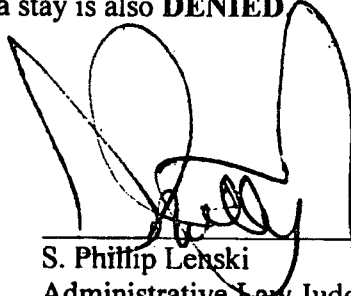
should the person choose to appeal, then he or she may do so in accordance with the method provided in the statute. This method is the administrative due process afforded to individuals aggrieved of a less than four-point assessment. The Appellant's decision to not file an appeal in accordance with the law then rendered the three-point assessment final. And therefore, as stated in this court's January 10, 2019 Order, that matter was not properly before the court.

The Appellant also requests a stay of execution of the three and four-point assessments against his South Driver's license. However, the Appellant provided no reason why this court should consider granting a stay. Therefore, the court finds no grounds to grant the Appellant's request.

Therefore, the Appellant's Motion for Reconsideration is **DENIED**.

Additionally, the Appellant's request for a stay is also **DENIED**.

AND IT IS SO ORDERED.

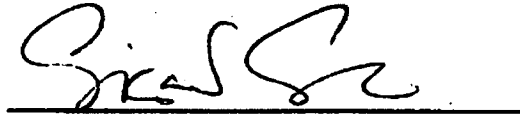


S. Phillip Lenski
Administrative Law Judge

February 6, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

A handwritten signature in black ink, appearing to read 'Erika S. Easler', is written over a horizontal line.

Erika S. Easler
Judicial Law Clerk

February 6, 2019
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Philip Lenski, Administrative Law Judge

Docket No. 18-AIJ-21-0201AP

South Carolina Department of Probation, Parole and Pardon Services
South Carolina Department of Motor Vehicles

Respondent

v.

Alieo Garga-Richardson

Appellant

I, Alieo Garga-Richardson, on this 5th day of March 2019 submit this letter requesting an Appeal in the above captioned case from the decision rendered by Judge S. Philip Lenski of the Administrative Law Court.

On January 10, 2019, Judge Lenski rendered a decision in this matter. On January 20th, I petition for a reconsideration of his findings.

On February 6th, 2019, Judge Lenski denied my petition.

Attached are the Final Order and the order Denying my petition for reconsideration.

The South Carolina Department of Probation, Pardon and Parole Services was represented in this matter by

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

The Department of Motor Vehicle did not have a representative at the hearing held by THE OFFICE OF MOTOR VEHICLE HEARING, but I did received a copy of the Records on Appeal and a letter that stated it was from the office of

Mr. Frank L. Valenta
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

A copy of all communication was also sent to
the Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,

A handwritten signature in black ink, appearing to read "Alteo Garga-Richardson". The signature is written in a cursive, somewhat stylized script.

Alteo Garga-Richardson
Appellant Pro-SE
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
agargarichardson@yahoo.com

PROOF OF SERVICE

March 5th, 2019

I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail with sufficient postage affixed, copies of this letter of appeal addressed to;

The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,



Alieo Garga-Richardson

Appellant Pro-Se

1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456

Agargarichardson@yahoo.com

The State of South Carolina
In the Court of Appeals

IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Philip Lenski, Administrative Law Judge

Case No. 2019-000389

Alieo Garga-Richardson Appellant (Pro-Se),

V.

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

IN RESPONSE TO LETTER DATED MARCH 15, 2019
Signed by Deputy Clerk of the Court of Appeals

Alieo Garga-Richardson (Appellant, Pro-Se)
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
agargarichardson@yahoo.com

The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250

March 20th, 2019

Re: Alieo Garga-Richardson v. SCDPPPS (SCDMV)
Appellate Case No. 2019-00389

Dear Mrs. Allen,

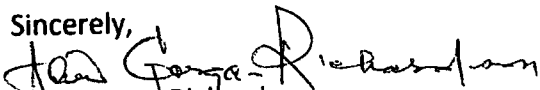
Your letter dated March 15, 2019, advising me of a deficiency under South Carolina Appellate Court Rules 203(b)(6) was received on March 18, 2019.

A proof of service showing that a copy was timely served on the Administrative Law Court was included when I submitted my appeal. A copy of said proof is attached.

As per instructions received from the Administrative Law Court, a copy of my appeal was mailed to The Honorable S. Philip Lenski as addressed.

A copy of the correspondence is attached.

Sincerely,



Alieo Garga-Richardson

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

cc: Honorable S. Philip Lenski
Frank L. Valenta Jr., Esquire
Thomas Wells Nicholson, Esquire
Office of Motor Vehicle Hearings



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1838
www.sccourts.org

March 15, 2019

Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill SC 29732

Re: Alieo Garga-Richardson v. SCDPPPS (SCDMV)
Appellate Case No. 2019-000389

Dear Mr. Garga-Richardson:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- A proof of service showing that a copy has been timely served on the Administrative Law Court has not been provided as required by Rule 203(b)(6), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Frank L. Valenta, Jr., Esquire
Thomas Wells Nicholson, Esquire

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alieo Garga-Richardson,

Appellant,

vs.

South Carolina Department of Motor Vehicles
and South Carolina Department of Probation,
Parole and Pardon Services,

Respondents.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 17-ALJ-21-0201-AP

NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on June 13, 2018. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2017), the **Honorable S. Phillip Lenski**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within forty-five (45) days of the date of this Notice
Appellant's Brief	Due within thirty (30) days after the Record on Appeal is filed
Respondent's Brief	Due within thirty (30) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

This the fifteenth day of June 2018.

Ralph King Anderson, III
Chief Administrative Law Judge

By: _____

Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

JUN 15 2018

PROOF OF SERVICE

March 23rd, 2019

I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail on this date March 23rd, 2019, with sufficient postage affixed, copies of my Respond to Letter Dated March 15th, 2019, signed by the Deputy Clerk of the Court of Appeals to:

The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,


Alieo Garga-Richardson

Appellant Pro-Se
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456

Agargarichardson@yahoo.com

The State of South Carolina
In the Court of Appeals

IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No. 2009-000389

INITIAL BRIEF

ALIEO GARGA-RICHARDSON

Appellant (Pro-Se)

v

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PARDON AND PAROLE
SERVICES AND THE SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES

Respondent

PLEADING TITLE - 1

160-1-1

The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta (Esquire)
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, suite 325
Columbia, SC 29201

PREFACE TO INITIAL BRIEF

THIS PREFACE TO APPELLANT'S INITIAL BRIEF IS INCLUDED TO PROVIDE AN UNDERSTANDING OF THE TABLE OF CONTENTS.

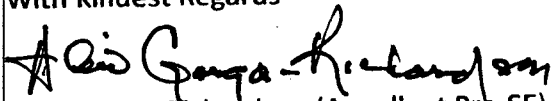
The contents of the brief are arranged in Sections, beginning with the Table of Contents and ending with the Proof of Service.

I was unable to insert consecutive numbering in the brief and there apologize for my inability to do so.

The Table of Contents states the number of pages in each section. The pages are numbered in a section.

I pray that this provides ready referencing without any confusions.

With Kindest Regards



Alieo Garga-Richardson (Appellant Pro-SE)

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

Agargarichardson@yahoo.com

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STATUTES

SC Code 1-23-30	Page (3) of the Argument
SC Code 1-23-40	Page (2) of the Argument
SC Code 1-23-60	Page (3) of the Argument
SC Code 1-23-120	Page (2) of the Argument
SC Code 56-5-2941(H)(5)	Page (1) of the Argument
SC Code 56-5-2941(H)(6)	Page (1) of the Argument

STATEMENT OF ISSUES ON APPEAL

In my brief to the Administrative Law Court, I asked the court to decide on the following issues.

1. After serving my suspension imposed by the Department of Motor Vehicle, was I under law, obligated to have the Breathalyzer Installed in my car?
2. Does the Department of Probation, Parole and Pardon Services has the authority to request inspections?
3. Did the Department of Probation, Parole and Pardon Services have the right to assessed IID Points against me after my program completion date?

These were the issues that concerned me at the time and I thought they were specific to my case. However, the issues in this matter can be summed up in point # 3 as stated above.

And this is the Issue I would like the Court to decide.

STATEMENT OF THE CASE

1. In September of 2012, I was arrested and charged with Driving Under the Influence of
2. Alcohol. In November of 2012, I pleaded guilty to Driving Under the Influence 1st. My
3. Driving Privilege was suspended by the Department of Motor Vehicle for two years.
4. After serving my suspension, I went to the Department of Motor Vehicles to have my
5. driving privilege restored and my license reinstated. Before going to the DMV office, I
6. made a phone call to the DMV stating my intentions. I was then informed that I had to
7. have a breathalyzer installed in any vehicle that I own and intended to drive. I was given
8. a number and told to call to make arrangement. I did and was instructed to look up any
9. place that carried the equipment and get it installed. I follow these instructions, had the
10. breathalyzer installed in the vehicle that I own at the time; had the vehicle registered;
11. did a road test pay the reinstatement fees and was issued a license.
12. The agreement for the Breathalyzer was signed with Guardian Interlock Services for a
13. period of two years. The two years period ran from May 2015 to May 2017.
14. During this time, I was required to have an inspection of the Device every 30 days which
15. I comply with until the final inspection which was done in May of 2017.
16. In June of 2017, I received a letter from the Department of Probation, Parole and
17. Pardon Services stating that I should take my vehicle for Inspection. This was not what
18. I had hope to receive, I expected to receive a letter telling me to go and have the device
19. Removed from my vehicle. Well, I said to myself, this must be a mistake because I had
20. completed the program and was hoping that I could have the device returned and be

21. done with the Department of Probation, Parole and Pardon Services. But this did not
22. happened. I received a second letter informing me that I missed an inspection and a
23. IID point was assessed against me (reference section one of the records on appeal,
24. letter from the Department of Probation, Parole and Pardon Services dated July 10
25. 2017). In September of 2017, I received another letter stating that I missed another
26. inspection and an IID point against me and my participation in the program had been
27. extended for two months (reference section one of the records on appeal, letter
28. from the Department of Probation, Parole and Pardon Services dated September 06
29. 2017). And Then subsequently a third and a fourth point were assessed. Honestly
30. I had intended to respond to the letter dated November 6, 2017 but must have
31. forgotten about it because of work requirement. In my letter of appeal to the Office
32. of Motor Vehicle Hearings, I honestly did not remember ever receiving this letter and
33. so testified at the hearing.
34. But, at the hearing issues I wanted heard was not and the Hearing Officer Mr. Phillip
35. Addington render a judgement in favor of the Department of Probation, Parole and
36. Pardon Services.

The Issue I wanted heard pertains to Issue # 3 as stated in my 'Statement of Issues on Appeal'.

However, I then filed an appeal with the Administrative Law Court. Judge S. Philip Lenski presided.

On January 10th, 2019 the Honorable S. Philip Lenski affirmed the decision of the Office of Motor Vehicle Hearings (OMVH).

On January 21st, 2019 I filed a motion for Reconsideration of his Order. A copy of this motion is included with this statement.

On February 6th, 2019 an order denying my Motion for reconsideration was entered.

STANDRAD OF REVIEW

I am not an Attorney and is therefore proceeding in this matter on a Pro-Se basis. Not because I choose to, but because I can't find an attorney who is willing to represent me.

The Standard of review I seek is that The Appellate Court review this matter on a "de novo" basis.

ARGUMENT

The Argument in this matter is the same filed with the Administrative Law Court for reconsideration; which was denied.

Your Honorable Body;

I begin this argument for a review of the decision of the Administrative Law Court, presided over by Judge S. Philip Lenski by stating that I am not an attorney and am proceeding in this matter purely on a Pro-Se basis. In so stating, I pray that the assimilation of points so stated may provide a clear understanding of the matter before This Appellate Court and guide you to a lawful and just conclusion.

1. I begin with page # 1 of the Order affirming the ruling of the Office of Motor Vehicle Hearings beginning with reference to the footnote. And I paraphrase ... 'The appellant asserts that he is also appealing the assessment of three (3) ignition interlock device points, However, pursuant to SC code 56-5-2941(H)(5) "a person may appeal less than four (4) ignition interlock device points received to an administrative hearing officer with The Department of Probation Parole and Pardon Service (PPP) through a process established by
2. The statue was misquoted SC 56-5-2941(H)(6) does state "A person MAY appeal less than four ignition interlock device points received to an administrative hearing officer with the Department of Probation, Parole and Pardon Services through a process established by the Department of Probation, Parole and Pardon Services. The administrative hearing officer's decision on appeal is final and no appeal from such decision is allowed."

The Order goes on to say ... "Therefore that issue is not properly before this court and this order only addresses the suspension of the Appellant's license for the assessment of four (4) or more ignition interlock points."

MY DISAGREEMENT

1. Had I appeal the three (3) IID points with the Department of Probation, Pardon and Parole Hearing Officer, I would have lost the right to be heard if I disagree with his findings which would have been a violation of my due process right as guaranteed by the Constitution of these United States.
2. The Issue of weather The Department of Probation, Parole and Pardon Services was acting lawfully was unsettled

3. South Carolina Statue SC 56-5-2941(H)(6) states that a person MAY appeal Which indicates an option. And Judge Lanski ruling is denying me of that option.

On page two (2) of the ORDER, paragraph one (1), second sentence;

1. "On May 22nd, 2017, the Department sent the Appellant a letter requesting that he take his IID in for a final inspection before the IID could be remove from his vehicle"

This is FACTUALLY INCORRECT;

The letter referred to was never introduced at the OMVH HEARING nor was one ever included in the RECORDS ON APPEAL. Please refer to Exhibit # 6 of the Records on Appeal.

With reference to paragraph 3, on page two (2) of the ORDER, sentence number 2;

1. "Absent a final inspection report which would have resulted in the removal of the device, the appellant was statutorily required to continue having an IID inspection every sixty (60) days."

The Statue that required my participation was never quoted. However, SC code 56-1-400 does set forth the time requirement for my participation in the program.

The Department of Probation, Parole and Pardon Services did not established its statutory authority to request a final inspection, but instead relied upon a STANDARD OF REVIEW that was adopted by the Administrative Law Judge.

South Carolina Code laws, section 1-23-40 clearly states these requirements

SECTION 1-23-40. Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

The Department is required by statute to make these regulations public.

SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

- (1) That it was duly issued, prescribed or promulgated subject to further action required under this article
- (2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;
- (3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

CONCLUSION

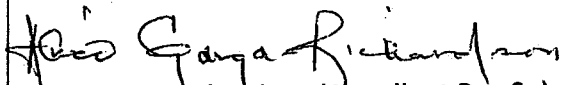
In conclusion, The Department of Probation, Parole and Pardon Services does not have the authority to request a final inspection. The Department of Motor Vehicle should have been aware of this.

The Administrative Law Court inexcusably should not have affirmed the decision of the Office of Motor Vehicle Hearings without these findings.

I seek the reinstatement of my driving privileges compensatory and punitive damages for the violation of my civil rights under the color of Law.

Dated this 8th day April 2019

Sincerely,



Alieo Garga-Richardson (Appellant Pro-Se)

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

April 8th, 2019

**Mrs. Jenny A. Kitching
Clerk
South Carolina Court of Appeals**

Dear Mrs. Kitching,

I could not complete printing of My Initial Brief before the post office close today.

**Therefore, I am sending it by Fax in order that it not be deemed as late. Please
excuse this untimely event.**

Sincerely,



**Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
agargarichardson@yahoo.com**

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

May 1, 2019

Alieo Garga-Richardson, Pro Se
1435 Ebinport Road
Rock Hill, S.C. 29732

Dear Mr. Garga-Richardson:

Please find enclosed copies of the matter we designated for inclusion in the Record on Appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Nicholson", written over the printed name.

Thomas W. Nicholson
Legal Counsel

TWN:dn

cc: The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals

Alieo Garga-Richardson

DL # 11567821

Customer# 23368087

On 1/5/18, Mr. Garga-Richardson filed a suspension notice dated 12/27/17, from the SC DMV in which he was being suspended for failing to meet IID requirements (3 points).

I contacted Thomas at PPP for clarification and he is unclear why DMV sent that suspension notice. PPP did issue a suspension notice on January 4, 2018, after a one point violation on 12/29/17 which caused him to have four points. However, this all occurred after the date of the DMV notice.

I spoke with Mr. Garga-Richardson today and he asked that the filing fee be applied to the PPP 1/4/18 suspension letter. Therefore, we are accepting this as a hearing request on the PPP 1/4/18 suspension.

He asked me if it would stop the suspension in the 12/27/17 letter from SC DMV. I told him he would have to contact DMV because I was not sure what that was about.

I reached him at 803-389-4456.

Ester Haymond, 1/10/18

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Department of Motor Vehicles
Office of Hearings
Columbia, SC 29201

NOTICE OF APPEAL

Dear Sir/Madame,

On the 30th of December 2017, I received a notice from the Department of Motor Vehicles informing me that my license was suspended effective 12/27/2017 due to a violation of SC Code 56-5-2941 and 56-5-2990 failure to comply with ignition interlock device assessment requirements awarding me 3 points.

I did not receive any notice from the Department of Probation Pardon and Parole regarding these points assessment or an opportunity to appeal said assessment.

And therefore I am as of this date 1/05/2018 requesting a hearing regarding the assessment of these points and request the reinstallation of my driving privileges until said hearing is held.

Attached is a copy of the Notice I received from the Department of Motor Vehicle.

With Kindest Regards;

Shirley

Alfred C. Richardson

RECEIVED

JAN 08 2018

SCOMVH

FILED

JAN 05 2018

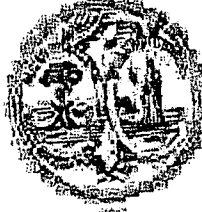
SCOMVH

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176--

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

Henry McMaster
Governor



Jerry B. Adger
Director

2018-OMVH-14-(C)A

2221 DEVINE STREET, SIXTH FLOOR
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-0019
Facsimile: (803) 734-9307
www.dppps.sc.gov/ignition_interlock.html

FILED

JAN 10 2018

SCOMVH

January 04, 2018

ALIEO GARGA-RICHARDSON
1435 EBINPORT RD
ROCK HILL, SC 297322020

Customer No: 23368087
DL No: 11567821
VIN No: 1FMZU63E02ZA05098
Offense: DUI 2nd

Notice of Mandatory Six Month Suspension and Mandatory Substance Abuse Assessment
Notice of Your Right to a Contested Case Hearing

NOTICE OF SUSPENSION: Four or more Ignition Interlock Device Points have been assessed against your driving record in the Ignition Interlock Device Program (the IIDP). Therefore, pursuant to South Carolina Code of Laws Section 56-5-2941, your Ignition Interlock Restricted License (II Restricted License) will be suspended for six (6) months. Details of the points assessed are given below.

Violation Date/Time	Points	Type
12/29/2017 12:00 AM	1	Missed Inspection

The South Carolina Department of Motor Vehicles will notify you when the suspension begins and ends. If you want the Breath Alcohol Ignition Interlock Device (BAIID) removed from your vehicle while your II Restricted License is suspended, you must first contact the IIDP. *Note that so long as you keep the BAIID installed in any vehicle you own, you continue to be responsible for any fees relating to its rental and maintenance, whether your II Restricted License is suspended or not.*

NOTICE OF MANDATORY SUBSTANCE ABUSE ASSESSMENT You are subject to a mandatory substance abuse assessment. You have thirty (30) calendar days from January 04, 2018 to report to a local DAODAS certified substance abuse program. Please be sure to take a copy of this letter with you when you report. Visit www.daodas.state.sc.gov or call 1-888-727-7383 for further information. If the DAODAS program recommends treatment, you will be required to complete the treatment plan before your II Restricted License will be reissued.

YOUR RIGHT TO A CONTESTED CASE HEARING This suspension is imposed pursuant to S.C. Code of Laws Sec. 56-5-2941. If you believe that you should not be suspended under this statute, you may request a contested case hearing by submitting your request in writing to the South Carolina Office of Motor Vehicle Hearings, 1205 Pendleton Street, Suite 325, Columbia, SC 29201 within thirty (30) days of the date of this letter. Enclose a copy of this letter. There is a \$200 filing fee. You may file the request by mail or in person with a Money Order, Cashier's Check or cash. Please do not send cash through the mail. If you choose to appeal, your suspension

000047

177-22-

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 18-ALJ-21-0201

Appellant Case No. 2019-000389

ALIEO GARGA-RICHARDSON.....RESPONDENT

v.

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

DESIGNATION OF MATTER

Respondent proposes the following to be included in the Record on Appeal:

1. Transcript Dated April 3, 2018
2. Pages, 45, 46 and 47 of OMVH Record on Appeal Dated August 2, 2018.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to
this appeal.


Thomas W. Nicholson
Legal Counsel

May 1, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 18-ALJ-21-0201

Appellant Case No. 2019-000389

ALIEO GARGA-RICHARDSON.....RESPONDENT

v.

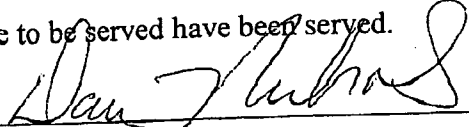
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within Initial Brief and Designation of Matter dated May 1, 2019, on Appellant this 1st day of May, 2019, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Alieo Garga-Richardson, Pro Se
1435 Ebinport Road
Rock Hill, S.C. 29732

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


Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

May 1, 2019

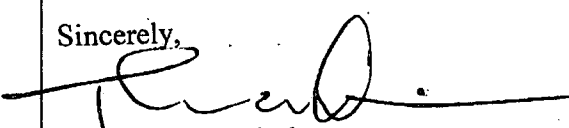
The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Alieo Garga-Richardson v. SCDPPPS

Dear Ms. Kitchings:

Please find enclosed the Initial Brief of Respondent and Designation of Matter dated May 1, 2019, along with proof of service in the above referenced case.

Sincerely,


Thomas W. Nicholson
Legal Counsel

TWN:dn

Enclosures

cc: Alieo Garga-Richardson, Pro Se

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No. 2018-ALJ-21-0201

Appellate Case No. 2019-000389

ALIEO GARGA-RICHARDSON ... APPELLANT

v.

SOUTH CAROLINA DEPARTMENT OF PROBATION,
PAROLE AND PARDON SERVICES ... RESPONDENT

INITIAL BRIEF OF RESPONDENT

Thomas W. Nicholson,
Legal Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 50666
Columbia, South Carolina 29250

ATTORNEY FOR THE RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

- 1. Did the Respondent Properly Assess A Missed Inspection Point
Against the Appellant?**

STANDARD OF REVIEW

In his brief the Appellant requests the Court apply a de novo standard of review. The correct standard of review is stated by S.C. Code § 1-23-610(B):

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

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

STATEMENT OF THE CASE

The Appellant started participating in the South Carolina Ignition Interlock Device Program (the Program) on May 22, 2015. He was required to drive a vehicle equipped with a Breath Alcohol Ignition Interlock Device (Device). According to records received from the South Carolina Department of Motor Vehicles (DMV) by the Department of Probation, Parole and Pardon Services (the Department or the Respondent), he was required to participate in the Program for a minimum of two years.

On May 22, 2017 the Department sent the Appellant a letter requesting that he take the vehicle in which the Device was installed to have a final inspection. This inspection was necessary before the Department could consider him to have successfully completed the Program. Nonetheless, the Appellant did not have the final inspection performed, so the Program continued to actively monitor him pending reception of a final inspection report. The Program requires every active driver to obey the Program's rules, which include the requirement to have the vehicle equipped with the Device inspected at least once every sixty days. Failure to do so causes a one-point assessment.¹

After the Program sent the request for the final inspection, the Appellant proceeded to skip four inspections in a row earning one point for each skipped inspection. For each skipped inspection, the Program mailed the Appellant a point assessment notice. The fourth notice, dated January 4, 2018, informed the Appellant of his suspension for an accumulation of four or more points.²

¹ S.C. Code Ann. § 56-5-2941(H)(1).

² S.C. Code Ann. § 56-5-2941(E)(3).

The Appellant requested a hearing at the Office of Motor Vehicle Hearings to contest this suspension. The hearing was held on April 3, 2018 before Hearing Officer Phillip T. Addington. The subject of the hearing was whether or not the Program had properly assessed the single point detailed in the January 4, 2018 suspension notice, and whether four total points had been assessed against the Appellant by the Program. On April 9, 2018 Hearing Officer Addington issued a final order and decision finding that the point assessment recorded by the January 4, 2018 notice had been properly assessed, that four total points had been assessed against the Appellant, and that his suspension should be sustained.

The Appellant filed an appeal of the final order in the Administrative Law Court. On January 10, 2019 Administrative Law Judge S. Phillip Lenski issued an order affirming the final order. The Appellant filed a motion for reconsideration, which was denied. This appeal followed.

ARGUMENT

A. THE DEPARTMENT HAS THE AUTHORITY TO REQUIRE A FINAL INSPECTION BEFORE A DRIVER'S PROGRAM TERM IS COMPLETED.

The Appellant's essential complaint is about the administrative structure of the Ignition Interlock Device Program (the Program). In his brief he lists three matters in his statement of the issues on appeal, but emphasizes that he wants this Court to decide the third: "Did the Department of Probation, Parole and Pardon Services have the right to assess[] IID Points against me after my program completion date?" Appellant's Initial Brief, p. 1. This statement is based on the assumption that the Appellant had completed his term in the Program when the Respondent assessed points against him. However, the Respondent's position has been that the Appellant had not completed his term in the Program when the

points were assessed. Administrative Law Judge Lenski agreed with the Respondent. R *, p.

5. Whether or not this was the correct conclusion, and thus whether points were properly assessed against the Appellant, will require a discussion of the Program's procedures for when drivers enroll in and subsequently complete their terms in the Program.

Please note that consistent with Rule 208(B), SCACR, this brief will not address any arguments, statements or statutory provisions discussed in the Appellant's brief that do not appear to be related to the third item in the Appellant's statement of issues on appeal.

1) The Program Requires a Final Inspection at the End of Program Terms.

Drivers who are subject to an ignition interlock requirement and who want to participate in the Program must first have a Breath Alcohol Ignition Interlock Device (Device) installed in any vehicle they intend to drive. S.C. Code Ann. § 56-5-2941(A). The South Carolina Department of Motor Vehicles (DMV) will not issue such drivers an ignition interlock restricted license (IIR license) until the driver has confirmed that a Device has been installed. S.C. Code Ann. § 56-1-400(A). Participation in the Program begins when DMV issues the IIR license. Drivers issued this license "must be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services." S.C. Code Ann. § 56-5-2941(E). The General Assembly established penalties for point assessments under this system, which can include extensions of time served in Program and the suspension of the driver's IIR license. *Id.* Drivers who have been issued a IIR license must have the vehicle in which the Device is installed inspected at least once every sixty days, and are subject to penalty if they refuse to do so:

The person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation

of an ignition interlock device inspection report by the service provider indicating the person's alcohol content at each attempt to start and running retest during each sixty-day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

S.C. Code Ann. § 56-5-2941(H)(1) (emphasis added).

The ignition interlock device inspection report (the Inspection Report) contains the data recorded by the Device while the driver has been operating the vehicle. This data is downloaded at the inspections and reported to the Department. The Inspection Report is what allows the Program to monitor the driver's conduct and subject them to the Ignition Interlock Device Point System (Point System). Therefore, in order to carry out its legislative mandate, the Department must have access to the Inspection Reports, and the drivers must have their vehicles inspected to allow their preparation. For those drivers who are subject to the interlock requirement, the General Assembly has specified the minimum length of time they must participate in the Program and thus be subject to the Department's supervision under the Point System. S.C. Code §§ 56-5-2945(C)(2); 56-5-2947(D)(2); 56-5-2951(I); 56-5-2990(A). Therefore, the Department must also have access to Inspection Reports that cover the entirety of the drivers' required Program terms.

The Department's responsibility to monitor drivers' *entire* Program term poses a problem at the end of a driver's mandatory term, because the Program cannot access data recorded by the Device until it has been inspected. On the day a driver's term ends, there will inevitably be data recorded by the Device that the Program has not been able to review. The data might show that the driver should be subject to penalties under the Point System that will extend his term in the Program or cause his suspension. Therefore the Department established a procedure to ensure that it monitors the entire term for which drivers must participate in the Program. At the hearing of the contested case, Mrs. Ruth Ann Cartwright, Administrator of the Program, testified about

this procedure. She stated that when drivers reach the end of their Program term they must take their vehicles in for a final inspection so that an Inspection Report of the data recorded by the Device may be prepared for review by the Program. The Program first sends a letter to the drivers requesting that they take their vehicles in for an inspection. T-7, ll. 9-14. This is consistent with Section 56-5-2941(H)(1) as set forth above, which requires drivers to undergo inspections "to allow for the preparation of an ignition interlock device inspection report". Mrs. Cartwright further stated:

We cannot close out their case without the information from that final inspection. We rely on that to make sure that up until the point that the driver was to satisfy the period of time on [the Program], that they are free and clear of violations. If for some reason there are violations assessed during that final inspection period, it may result in extensions. So we have to look at that final download before the driver could be program complete.

T-7, ll. 15-24.

Ms. Cartwright emphasized that merely having the final inspection performed does not complete the driver's Program term: "... you have to have a final inspection and then based upon the results of that final inspection, then it's determined whether or not they've completed the Program. They're not program complete at the final inspection." T-13, ll. 12-20; T-39, ll. 15-20. If the inspection report from the final inspection contains no penalties that cause a suspension or extension of time in the Program, then the Program will send a letter to the driver informing him that his term in the Program is complete.³ T-13, ll. 16-18; T-32, ll. 14-20.

³ On enrolling in the Program Drivers are sent an information packet detailing this procedure, which is also published online at <https://www.dppps.sc.gov/ignition-Interlock/Program-Procedures>.

2) The Department Has the Authority to Establish the Final Inspection Procedure.

The General Assembly has granted the Department broad authority to administer the State's Ignition Interlock Device Program. See generally S.C. Code Ann. § 56-5-2941. The final inspection procedure is compelled by the General Assembly's intent that drivers participating in the Program "*must* be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services." S.C. Code Ann. § 56-5-2941(E)(emphasis added). Further, the Department must assess points against drivers for their violations of the Program's rules:

A person accumulating a total of:

- (1) two points or more, but less than three points, *must* have the length of time that the device is required *extended by two months*;
- (2) three points or more, but less than four points, *must* have the length of time that the device is required *extended by four months*, shall submit to a substance abuse assessment pursuant to Section 56-5-2990, and shall successfully complete the plan of education and treatment, or both, as recommended by the certified substance abuse program. [].
- (3) four points or more *must* have the person's ignition interlock restricted license suspended for a period of six months . . . [].

S.C. Code Ann. § 56-5-2941(E)(emphasis added).

Further, drivers must have the Device installed in their vehicles inspected to provide the Department with the data it needs to monitor the drivers under the Point System:

The person shall have the device inspected every sixty days to verify that the device is affixed to the motor vehicle and properly operating, and to allow for the preparation of an ignition interlock device inspection report by the service provider indicating the person's alcohol content at each attempt to start and running retest during each sixty-day period. Failure of the person to have the interlock device inspected every sixty days must result in one ignition interlock device point.

S.C. Code Ann. § 56-5-2941(H)(1) (emphasis added).

Finally, the General Assembly has established the minimum time the Department must monitor drivers while they are subject to the Point System. S.C. Code Ann. §§ 56-5-2945(C)(2); 56-5-2947(D)(2); 56-5-2951(I); 56-5-2990(A).

The General Assembly clearly intended that the Department monitor drivers enrolled in the Program, that the drivers should be subject to the Point System to penalize them for various infractions of the Program's rules, and that the drivers should be monitored for defined lengths of time. However, the General Assembly did not set forth how the Department should manage the end of the drivers' Program terms. Therefore the Department established the final inspection procedure to do so while carrying out the intent of the law. It is within the Department's discretion to establish this procedure:

While the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board "to fill up the details" by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.

McNickel's Inc. v. S.C. Dep't of Revenue, 331 S.C. 629, 634, 503 S.E.2d 723 (1998) (Citing Heyward v. South Carolina Tax Comm'n, 240 S.C. 347, 126 S.E.2d 15 (1962) (internal quotes in original)).

Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency's interpretation of the statute. Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 33, 766 S.E.2d 707 (2014)(Citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)). In South Carolina, courts defer to an administrative agency's interpretation of the statutes it is tasked with enforcing unless there is a compelling reason to differ with the agency's interpretation:

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.

Id. at 34-35.

Further, “[i]n South Carolina, operating a motor vehicle is a privilege of the State, not a right of the individual.” Taylor v. S.C. Dep't of Motor Vehicles, 368 S.C. 33, 36, 627 S.E.2d 751 (Ct. App. 2006). This privilege is subject to reasonable regulation under the State's police power to further public safety and welfare. See e.g. Chisolm v. S.C. Dep't of Motor Vehicles, 402 S.C. 593, 597, 741 S.E.2d 42 (Ct. App. 2013); Peake v. S.C. Dep't of Motor Vehicles, 375 S.C. 589, 595, 654 S.E.2d 284 (Ct.App.2007); State v. Collins, 253 S.C. 358, 361, 170 S.E.2d 667 (1969).

The Department has interpreted the statutory scheme set forth in S.C. Code Ann. § 56-5-2941 and its related statutes⁴ to require that drivers participating in the Program must be monitored for the entire duration of their statutorily defined Program terms. The Department developed the final inspection procedure to carry this out. It is not arbitrary, because it is designed to provide the Department with the final Inspection Report it needs to implement the General Assembly's mandate. It is not capricious for the same reason, but also because it is structured to obtain the final Inspection Report with as little inconvenience as possible to the drivers. Further, possession of a IIR license is a privilege the State has granted to eligible drivers, and thus is subject to the State's reasonable regulation. Finally, in all instances, participation in the Program is voluntary, and its terms, conditions and procedures available for public review.

⁴ Broadly enacted by 2014 South Carolina Laws Act 158 (S.B. 137), known as “Emma's Law”.

Drivers who have enrolled in the Program cannot claim to be ignorant of what is required of participants.

The only alternative to the Program's final inspection procedure would be to allow the drivers to immediately remove the device from their vehicles at the final inspection. There are two principle problems with this. First, if the final inspection report indicates that points should be assessed, and the assessment causes an extension of time in the Program, then the driver would be required to go to the expense of having the Device reinstalled so that the extension in time could be served.⁵ Second, drivers issued the IIR license must drive a vehicle equipped with a working Device. S.C. Code Ann. § 56-5-2941(A). Drivers who fail to do so commit a misdemeanor; repeated failures may result in a felony. S.C. Code Ann. § 56-5-2941(K). Until the Department has determined that the driver has successfully completed the Program, DMV will not issue the driver an unrestricted driver's license. So long as the driver holds the IIR license, his vehicle must be equipped with a Device. Given the statutory scheme, the procedure the Department has implemented is the best available option for handling the end of drivers' Program terms while satisfying the General Assembly's intent that the Department monitor the entirety of drivers' terms. The Court should defer to the Department's interpretation of the statutory scheme implementing the Program and recognize that it has the authority to establish the final inspection procedure.

B. THE DEPARTMENT HAS THE AUTHORITY TO CONTINUE MONITORING A DRIVER WHO REFUSES TO UNDERGO A FINAL INSPECTION.

Drivers issued the IIR license "*must* be subject to an Ignition Interlock Device Point System managed by the Department of Probation, Parole and Pardon Services." S.C. Code §

⁵ Without question the Department will not simply "write off" the data recorded on the device without reviewing it for potential violations.

56-5-2941(E)(emphasis added). Drivers are subject to various penalties for violations of the Program's rules, which may include extensions of time a driver must participate in the Program. S.C. Code § 56-5-2941(E)(1, 2, 3). Therefore drivers in the Program must have their vehicles regularly inspected so that the Program can review the Inspection Report containing data recorded by the Device installed in driver's vehicles. S.C. Code § 56-5-2941(H)(1). As discussed in Subsection (A)(1) of this brief, the Department must have the Inspection Reports to carry out the General Assembly's mandate to monitor the drivers, and the Program must be able to review Inspection Reports that cover the entire term the driver is required to serve in the Program. As also discussed, the Department established a procedure at the end of the drivers' terms to request a final inspection of the Device be performed so that the Program can review the data recorded by the Device. Only after reviewing this final Inspection Report will the Program consider the driver to have completed the Program.

In general, having a driver's license of any kind is not a property right, but is only a privilege that is subject to reasonable regulation under the State's police power in the interest of the public safety and welfare. See e.g. Chisolm v. S.C. Dep't of Motor Vehicles, 402 S.C. 593, 597, 741 S.E.2d 42 (Ct. App. 2013); Peake v. S.C. Dep't of Motor Vehicles, 375 S.C. 589, 595, 654 S.E.2d 284 (Ct.App.2007); State v. Collins, 253 S.C. 358, 361, 170 S.E.2d 667 (1969). The purpose of the Ignition Interlock Device Program is to protect the interest of public safety and welfare by requiring drivers who have violated State laws relating to drinking and driving to drive a vehicle equipped with a Device. While drivers are subject to the interlock restriction they must participate in the Program, *if they want to drive legally*. S.C. Code Ann. § 56-5-2941(A, K). However, they are not compelled to do so. It is their choice whether to have a Device installed in

their vehicle and to acquire the IIR license. Further, at any time, drivers enrolled in the Program may remove the Device from their vehicles and surrender the IIR license.

Any driver who has volunteered to participate in the Program has also consented to its rules and regulations. To begin participating in the Program at all, the driver must follow statutorily set procedure. S.C. Code § 56-1-400(A)(requiring drivers to have a Device installed in their vehicle before DMV will issue the IIR license). The driver's participation begins when he obtains the IIR License. Any driver who, while holding the IIR license, refuses to have a final inspection performed is preventing the Department from monitoring the entire period of the driver's Program term, and is thus thwarting the General Assembly's intent that the entire term be monitored. Without the final Inspection Report, the Department cannot consider the driver to have successfully completed the Program term. Under such circumstances, so long as the driver continues to possess the IIR license, then the Department has no choice but to continue to monitor the driver per its statutory mandate.

As discussed in section (A)(2) of this brief, here is another instance where the Department must "fill up the details by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose." McNickel's Inc., 331 S.C. 629, 634 (1998). Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency's interpretation of the statute. Kiawah Dev. Partners, II, 411 S.C. 16, 33, (2014). In South Carolina, courts defer to an administrative agency's interpretation of the statutes it is tasked with enforcing unless there is a compelling reason to differ with the agency's interpretation, and so long as it is not arbitrary, capricious, or manifestly contrary to the statute. Id. at 34-35.

Here, the General Assembly did not speak to a scenario where a driver enrolled in the Program refuses to have a final inspection performed, thereby preventing the Department's access to information it needs before the driver's term is complete, *and while the driver continues to possess the IIR license and to keep the device installed in his vehicle.* The Department's practice of continuing to monitor such drivers until it receives a final Inspection Report is consistent with the General Assembly's intention that the Department monitor the drivers until their terms are complete, even if the Department must continue monitoring them beyond what would have been the formal end date of the driver's term. This is not arbitrary because the Department is required to monitor the drivers until their terms are complete; it is not capricious for the same reason, but also because the driver in such a situation has consented to participate in the Program, and has by their own inaction prevented the Department from designating their Program term complete. Nor is this manifestly contrary to statute -- the Program has no idea what information the Device may have recorded that would require the Department to assess points against the driver; it would be contrary to statute for the Department to simply write this possibility off and designate the drivers as having completed the Program. Drivers should not be allowed to thwart the General Assembly's intent by refusing to comply with rules and procedures they consent to when they enroll in the Program, and the Court should defer to the Department's discretion to continue monitoring drivers in the above circumstances.

1) The Department Properly Continued to Monitor the Appellant After He Failed to Have a Final Inspection.

The Appellant's behavior is singular and unprecedented thus far among drivers who have enrolled in the Program, and deserves clear explanation for the Court's understanding of the circumstances. The Appellant had a Device installed in his vehicle, obtained the IIR license, and started participating in the Program for a two-year requirement on May 22, 2015. At the hearing,

Mrs. Cartwright testified that on May 22, 2017 the Department mailed the Appellant a letter requesting a final inspection. T-8, ll. 4-8. He admitted to receiving this letter. T-27, ll. 16-21; T-32, ll. 4-5. However, he did not take his vehicle in for an inspection. As Ms. Cartwright explained, without the final Inspection Report the Program could not consider the Appellant to have completed the Program. T-7, ll. 15-24; T-13, ll. 12-20. He continued to possess the IIR license and the Device remained in his vehicle. Therefore the Program continued to actively monitor him pending the reception of the final Inspection Report. Drivers who are actively monitored by the Program are subject to the Program's terms and conditions. Therefore the Appellant continued to be subject to the Program's rules, including the requirement to have the device inspected regularly. T-32, ll. 21-14. Failure to do so at least once every sixty days will cause a one-point penalty assessment. S.C. Code Ann. § 56-5-2941(H)(1).

Prior to May 22, 2017 the Appellant's previous inspection had occurred on May 2, 2017. T-9, ll. 12-14. He failed to have an inspection within sixty days of that date, causing a point to be assessed against him pursuant to Section § 56-5-2941(H)(1). The Program mailed him a letter advising him of the assessment. He acknowledged receiving this letter. T-16, ll. 12-17. He did not appeal this point assessment or contact the Program. T-16, ll. 24-25. Mrs. Cartwright noted that prior to May 22, 2017 the Appellant had filed with the Department at least one successful appeal of a point assessment, so he should have been familiar with the procedure.⁶ T-10, ll. 20-23; T-39, ll. 1-8.

Sixty more days passed without an inspection. The Appellant continued to possess the IIR license and the Device remained in his vehicle. This caused a second one-point assessment.

⁶ All the Department's assessment notices include instructions on how to appeal the assessment.

The Program sent him a letter dated September 6, 2018 advising him of the assessment and a two-month term extension pursuant to S.C. Code Ann. § 56-5-2941(E)(1). The Appellant admitted to receiving this letter also. T-17, ll. 5-12. He did not appeal this point assessment. Id. A two-point assessment notice not only advises the driver of the term extension, it states the new projected Program end date. The Appellant noted that the September 6 letter stated "your adjusted program completion date is July 21st, 2017." T-17; ll. 10-12. This date was calculated from what might have been the end date, May 22, 2017.⁷

Sixty more days passed during which the Appellant failed to have the vehicle inspected. The Appellant continued to possess the IIR license and the Device remained in his vehicle. The Program mailed the Appellant a one-point assessment dated November 6, 2017. Pursuant to S.C. Code Ann. § 56-5-2941(E)(2), the third point caused a four-month Program extension and required the Appellant to contact the Department of Alcohol and Other Drug Abuse Services (DAODAS) for a mandatory substance abuse assessment. If a driver fails set up the substance abuse assessment, DMV will suspend the driver's license. S.C. Code § 56-5-2941(E)(2). The Appellant did not appeal the third point assessment, nor did he contact DAODAS to set up a substance abuse assessment. At the hearing the Appellant claimed he did not receive the third point assessment letter, though he did receive DMV's notice that he would be suspended for failing to set up the substance abuse assessment.⁸ T-18, ll. 6-9. The Program mailed all notices to the Appellant's record of address as maintained by DMV; at the hearing the Appellant confirmed that his address had not changed. T-22, ll. 19-24.

⁷ The Appellant got credit against this term extension, and for the subsequent four-month extension, from the extended time he was active in the Program. By the time he received notice of the extensions, he had already satisfied them.

⁸ When the Department issues a suspension notice, DMV mails the driver a notice advising the driver of the nature of the suspension, when it will start, and when it will end.

Sixty days after the third point assessment, the Appellant had failed to have his vehicle inspected. The Appellant continued to possess the IIR license and the Device remained in his vehicle. The Program issued a fourth skipped inspection point. Dated January 4, 2018, this notice advised the Appellant that his license would be suspended for accumulating four points. R-*. It appears that before he received the January 4 notice, the Appellant attempted to file an appeal of the third point assessment with the Office of Motor Vehicle Hearings. R-*, *; T-18, ll. 10-11. Thereafter he received the January 4 notice, which he forwarded to OMVH, who converted his attempted appeal of the third point assessment into the appeal of the fourth point assessment.⁹ R-*, *; T-18, ll. 12-23.

On January 26, 2018, the Appellant's II Restricted license was suspended because he had failed to contact DAODAS as required as a consequence of the third point assessment.¹⁰ On February 13, 2018 he contacted the Program for the first time since it had mailed the May 22, 2017 request for a final inspection. T-32, ll. 1-12. He wanted to discuss the three-point assessment letter; he also stated that he had received the final inspection letter, but could not get his vehicle in for the inspection. Id. At this time he requested a removal letter so he could have the device removed from his vehicle. Id. This letter authorizes the installer to remove the Device. The letter was provided, and the Device was removed on February 19, 2018.¹¹ T-20, ll. 17-20. The installer attempted to download what data may have been recorded by the Device but Ms. Cartwright testified that it contained no data. T-30, ll. 22-25; T-31, ll. 1-4.

⁹While a driver's total points are under four, they must file appeals with the Department. S.C. Code § 56-5-19414(H)(6); see also SCDPPPS v. Brewer, 2015 WL 6410107 (S.C.Admin.Law.Judge.Div.)(2015).

¹⁰Note that this suspension started after the Department assessed the fourth point. Had it started before, it would have paused his active status on the Program until the suspension cleared.

¹¹This letter was issued due to his suspension by SCDMV, not because he had completed the Program. When drivers are suspended for any reason, they stop getting credit in the Program and are allowed to remove the Device rather than continue paying for it.

At the hearing the Appellant testified that he had contacted the Program around the time of the second point assessment to explain that his vehicle had broken down and he could not take it in for an inspection. T-17, ll. 16-18. However, Mrs. Cartwright testified that the Program's records showed that after it mailed the request for a final inspection in May 2017, the Appellant did not contact the Program until February 13, 2018. T-31, ll. 18-22. T-32, ll. 1-12; T-39, ll. 3-5. She stated it was possible he contacted the installer with this information, but that the Program would not necessarily learn of this.¹² T-32, ll. 14-15; T-39, ll. 1-8. Mrs. Cartwright testified that it is the driver's responsibility to get their vehicles in for inspections. T-39, ll. 12-18. This would be true whether the vehicle was broken down or not. She noted that had he simply had the final inspection performed, if there were no violations recorded by the Device, he would have completed the Program, but because he did not he remained active and the system continued to assess points against him for skipping inspections. T-32, ll. 16-24.

Here the Appellant volunteered to participate in the Program, and at what could have been the end of his Program term he simply refused to comply with the Program's rules. He would not have a final inspection performed, denying the Department the data it needed to designate him as Program complete. He did not contact the Program, but continued to possess the IIR license and to keep the Device installed in his vehicle. Under these circumstances the Program reasonably continued to monitor him, as required by the General Assembly until his term was complete, and reasonably continued to assess points against him for skipping inspections so long as he possessed an active, unsuspended IIR license. As argued above in Section B of this brief, the Department has the authority to do so. The Court should find that not

¹² Drivers rent the Devices from their manufacturers, who contract with local businesses (installers) to install and inspect the Devices. Drivers routinely contact the installers to set up inspection appointments, but the Department is not automatically privy to such communications.

only was it within the Department's discretion to continue monitoring the Appellant, it was required to do so under its mandate from the General Assembly to administer the Program.

C. THE POINT RECORDED IN THE SUSPENSION NOTICE WAS CORRECTLY ASSESSED.

The Department mailed the Appellant a suspension notice dated January 4, 2018. R-*. The notice stated that on December 29, 2017, one point had been assessed against him for a skipped inspection, and that because at least four points had been assessed against him he would be suspended. *Id.* Drivers must have their vehicles inspected at least once every sixty days or a point is assessed against them. S.C. Code Ann. § 56-5-2941(H)(1). Drivers in the Program must be suspended if they accrue four or more points. S.C. Code Ann. § 56-5-2941(E)(3). Therefore, at the hearing the Department was required to show that at least four points in total had been assessed against the Appellant. With regards to any point assessments that occurred prior to those detailed in the notice, the Department bore a burden of production that those points had been assessed. S.C. Dep't of Prob., Parole & Pardon Servs., Appellant, No. Docket No.: 15-ALJ-30-0061-AP, 2015 WL 6410107, at *7 (Oct. 13, 2015). With regards to the point assessment detailed in the suspension notice, the Department was required to prove by a preponderance of the evidence that the point was correctly assessed. *Id.*; see also S.C. Code Ann. § 1-23-600(A)(5); Rule 15(B), OMVHR.

At the hearing Mrs. Cartwright testified about a record of the Department she identified as the violations page, a screenshot from the Department's ignition interlock management system.¹³ She testified that it recorded any point assessments and the penalties caused by them.

¹³ Note that this document is misidentified by the Transcript on page 8, as Mrs. Cartwright's subsequent testimony makes clear. Further, though it was entered into evidence without objection (See T-12, ll. 10-17), it is absent from both the transcript and the Record on Appeal. It was a certified record of the Department prepared by Mrs. Cartwright, who is also the custodian of records for the Ignition interlock Device Program.

T-9, ll. 1-11. She testified that four total missed inspection points were assessed against the Appellant. T-9, ll. 9-24; T-12, ll. 7-8. The Program's system automatically assesses skipped inspection points when sixty days have passed from the previous inspection, but the Program checks with the manufacturer to make sure that there had not in fact been an inspection before the Program will officially assess the point. T-11, ll. 9-18. She noted that the Appellant's last inspection had been on May 2, 2017. T-9, ll. 12-16. July 1st was sixty days later, the next day a point was assessed. August 30th was sixty days after July 1st; the next day a point was assessed. October 29th was sixty days from August 30th; the next day a point was assessed. Finally, December 28th was sixty days after October 29th; on December 29, 2017 the fourth skipped inspection point was assessed, and the suspension notice was mailed on January 4, 2018. *Id.*, ll. 17-24. After May 2017, the Appellant did not visit the device installer again until February 19, 2018. T-30, ll. 11-20.

Mrs. Cartwright's testimony established the Department's prima facie case that four points were assessed, and that the fourth was correctly assessed for skipping an inspection in violation of S.C. Code Ann. § 56-5-2941(H)(1). In South Carolina, "[o]nce a party establishes a prima facie case, the burden of proof shifts to the opposing party." Daisy Outdoor Advertising Co., Inc. v. South Carolina Dept. of Transp., 352 S.C. 113, 118, 572 S.E.2d 462(Ct. App. 2002). However, at the hearing the Appellant presented no evidence to rebut the fact that he had not taken his vehicle in for an inspection between October 29 and December 28, 2017. He did not even deny that he had not done so, or that he had not done so before the previous three points were assessed. Rather, he complained of the final inspection process the Program has established for drivers at the end of their Program terms. T-13; T-14, ll. 1-5.

The court may reverse or modify the decision if substantial rights of the

appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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

S.C. Code Ann. § 1-23-380(5)

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910(2010). That the record, considered as a whole, may present the possibility of drawing two inconsistent conclusions from the evidence does not prevent an agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913 (1996). When applying the substantial evidence rule, reviewing courts will not overturn an agency's finding of fact "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 582 S.E.2d 413(2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304 (1981)). When applying this rule, the agency's factual findings are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the

burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226.

Here the Appellant provided no evidence whatsoever that the point assessment detailed in the January 4, 2018 suspension notice was not supported by substantial evidence. He has not shown that the Department's decision was arbitrary, capricious, contrary to statutory provisions, in excess of the Department's authority or made upon unlawful procedure. The Court should therefore affirm the Administrative Law Court's order supporting the Respondent's suspension of the Appellant.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the Court affirm the order of the Administrative Law Court.

Respectfully submitted,

Thomas W. Nicholson, Esq.
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Columbia, South Carolina
April 30, 2019

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

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May 9, 2019

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

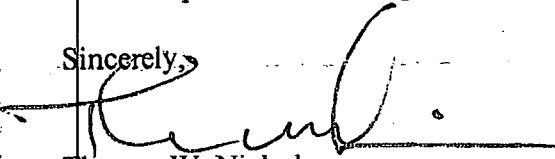
Re: Alieo Garga-Richardson v. SCDPPPS
Appellate Case No. 2019-000389

Dear Ms. Kitchings:

I received a deficiency notice dated May 7, 2019 stating that the Respondent's initial brief in the above-named matter had been filed without the signature required by Rule 267(b), SCACR.

Enclosed please find the signature page to be incorporated into the Respondent's initial brief.

Sincerely,


Thomas W. Nicholson
Legal Counsel

TWN:dn

Enclosures

cc: Alieo Garga-Richardson, Pro Se
Frank Valenta, Esquire, DMV

207-222

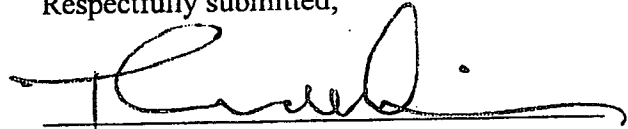
burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226.

Here the Appellant provided no evidence whatsoever that the point assessment detailed in the January 4, 2018 suspension notice was not supported by substantial evidence. He has not shown that the Department's decision was arbitrary, capricious, contrary to statutory provisions, in excess of the Department's authority or made upon unlawful procedure. The Court should therefore affirm the Administrative Law Court's order supporting the Respondent's suspension of the Appellant.

CONCLUSION

Based on the foregoing reasons the Respondent respectfully requests that the Court affirm the order of the Administrative Law Court.)

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Columbia, South Carolina
April 30, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge
Case No.: 18-ALJ-21-0201

Appellant Case No. 2019-000389

ALIEO GARGA-RICHARDSON.....RESPONDENT

v.

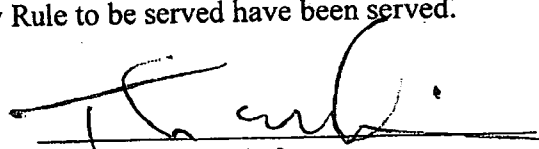
S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES.....APPELLANT

CERTIFICATE OF SERVICE

I, legal counsel for the Department of Probation, Parole and Pardon Services, certify that I have served the within signature page for the Initial Brief on the Appellant this the 9th day of May, 2019, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Alieo Garga-Richardson, Pro Se
1435 Ebinport Road
Rock Hill, S.C. 29732

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


Thomas W. Nicholson
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The State of South Carolina
In the Court of Appeals

IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No. 2009-000389

REPLY BRIEF

ALIEO GARGA-RICHARDSON

Appellant (Pro-Se)

v

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PARDON AND PAROLE
SERVICES AND THE SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES

Respondent

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STATEMENT OF ISSUES IN THESE PROCEEDINGS

I begin this reply brief with the following observations. Throughout these proceedings, the department of Probation, Parole and Pardon Services, through its represented Counsel Mr. Thomas W. Nicholson (Esquire), has continually misstated my positions on issue raised in this Contested Case Hearing. Case in point;

- 1) In the Designation of Matter submitted by Counsel, I am declared as the Respondent.
- 2) The Issue I presented in my Initial Brief was not addressed.
- 3) The Transcript does not accurately reflect the proceedings.

ISSUE # 1

In the Designation of Matter submitted by Counsel, Alieo Garga-Richardson is designated as Respondent and proposes that the Transcript Dated April 3rd 2018 and pages 45, 46 and 47 be included in the Records. I have no objections to the inclusion of these documents in the Records except that I am not the one making such proposal.

The Issue presented in my Initial Brief was not addressed; however, I would like to address the issue raised by Counsel in his Respond Brief which he titled "initial Brief".

The Standard of Review; Counsel contends that my request for a de novo review was incorrect. However SC code 1-23-380 does state;

HISTORY: 1977 Act No. 176, Art. II, Section 7.

SECTION 1-23-380. Judicial review upon exhaustion of administrative remedies.

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the

South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted

exercise of discretion.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

Effect of Amendment

The 2006 amendment rewrote this section to provide for review by an administrative law judge and appeal to the South Carolina Court of Appeals.

The 2008 amendment deleted subsection (B) relating to review by an administrative law judge of a final decision in a contested case; deleted the designation of the first paragraph as subsection (A) and at the end of the first sentence substituted "pursuant to this article and Article 1" for "under this article, Article 1, and Article 5"; in paragraph (1) deleted ", the Administrative Law Court," following "agency"; in the fourth sentence of paragraph (2) deleted "or administrative law judge" following "agency"; and in the second sentence of paragraph (4) deleted "or the Administrative Law Court" following "agency" in two places.

DID THE RESPONDENT PROPERLY ASSESS A MISSED INSPECTION POINT AGAINST APPELLANT?

With reference to my respond brief in the proceedings with the Administrative Law Court page

3 lines 1 – 3; I asked, with my license suspended for 3 IID points, how do you justify a fourth point?

In his brief, Counsel stated several times that the IID program was one in which participant voluntarily participated and could therefore terminate his/her participation at will. No reference made to any SCDPPP rules.

During my participation in the program, I was not aware of this. Neither was I made aware after I received the 3rd IID point. I only became aware of this by mail after the 4-point assessment and consequent suspension which I immediately accepted and had the device removed.

ISSUE # 2

The issue presented in my initial brief was not addressed instead Counsel defends the actions of the Department of Probation, Parole and Pardon Services by referring to a mandate and the intentions of the General Assembly.

In the matter of McNickels's Inc. v. S. C. Dept. of Revenue.

While the Legislature may not delegate its power to make laws, in enacting a law complete in itself, it may authorize an administrative agency or board "to fill up the details" by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. *Heyward v. South Carolina Tax Comm'n*, 240 S.C. 347, 126 S.E.2d 15 (1962). An administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation. *Hunter & Walden Co. v. South Carolina State Licensing Bd. for Contractors*, 272 S.C. 211, 251 S.E.2d 186 (1978). Although a regulation has the force of law, it must fall when it alters or adds to a statute. *Society of Professional Journalists v. Sexton*, 283 S.C. 563, 324 S.E.2d 313 (1984). A rule may only implement the law. *Banks v. Batesburg Hauling Co.*, 202 S.C. 273, 24 S.E.2d 496 (1943).

With regard to the requirement of a final inspection by the Department of Probation, Parole and Pardon Services, the final inspection is not conducted until the end of the participant's statutory end date. In my case, that occurred on May 22, 2017. And therefore added additional time to my participation in the program.

S. C. Code 56-5-2990(3) States;

(3) For a second offense, a person shall enroll in the Ignition Interlock Device Program pursuant to Section 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to Section 56-1-400. The ignition interlock device is required to be affixed to the motor vehicle for two years.

Counsel also acclaims that in the State of South Carolina,

Where an agency is tasked with enforcing a law, and the statute is silent or ambiguous with regards to a specific issue, a court must give deference to the agency's interpretation of the statute.

But, here the intent of the General Assembly is clarified by enacting

SECTION 1-23-40. Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

And

SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a

document filed in the office of the Legislative Council creates a rebuttable presumption:

- (1) That it was duly issued, prescribed or promulgated subject to further action required under this article;
- (2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;
- (3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

SECTION 1-23-70. Duty of Attorney General.

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

ISSUE # 3

When I ordered the transcript from the OMVH hearing, I was mailed a CD and told I had to find a Transcriber. One was located on - line and they sent me a link to upload the CD. A couple of days later, I received a call from them stating that they were having problems understanding what was being said on the CD and wanted to know if I could send them original I had in my possession. I told them that I would like to keep the original but would request an additional copy. I contacted the office and was told to have the company contact them which I relayed. When the transcript arrived, I was just about out of time to have it file; I did not check it for accuracy. Not until recently, in preparation for this Reply Brief Some of what is mentioned and attributed to me are not true. In one instance, page 40, line 14 - 17.

CONCLUSION

In view of the foregoing, I request a DE NOVO review and pray that the Almighty guide you in your decision making.

With Kindest Regards,

I remain

Sincerely,



Alteo Garga-Richardson

Appellant Pro-Se

1435 Ebinport Rd.

Rock Hill, SC 29732

(803) 389-4456

agargarichardson@yahoo.com

cc: The Honorable S. Philip Lenski
Mr. Thomas W. Nicholson (Esquire)
Mr. Frank L. Valenta (Esquire)
Office of Motor Vehicle Hearings

PROOF OF SERVICE

May 13th, 2019

I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail with sufficient postage affixed, copies of my Reply Brief addressed to;

The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta (Esquire)
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,

Alieo Garga-Richardson
Appellant Pro-Se
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
Agargarichardson@yahoo.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Rock Hill Municipal Court
The Honorable Ray Long (presiding Judge)

Docket # 280121604

ROCK HILL MUNICIPAL COURT

v.

Alieo Garga-Richardson

I, Alieo Garga-Richardson, on this 19th day June 2019 submit this letter requesting an Appeal in the above captioned case from the decision rendered by Judge Ray Long of the Rock Hill Municipal Court.

On May 19th, 2019, as per instruction given me by the clerk of the Rock Hill Municipal Court, I requested a rescheduling of my case because I could not appear on the day of the 20th of May which was my scheduled appearance.

A copy of my request is attached; which was faxed to the Rock Hill Municipal Court. I followed up with a phone call a week later when I had not received a redress and was informed that my request was denied and a trial in absentia was held and I was found guilty.

I am submitting this appeal to the court of appeals to be combined with my appeal which is before the Court reference Case # 2019-000389.

With Kindest Regards

I remain

Sincerely,



Alteo Garga-Richardson (Appellant Pro-SE)

1435 Ebinport Road

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

cc: The Clerk of Court; Rock Hill Municipal Court

The Honorable S. Philip Lenski Administrative Law Judge

Mr. Thomas W. Nicholson

Mr. Frank L. Valenta

Office of Motor Vehicle Hearings

June 2nd, 2019

The Clerk
City of Rock Hill Municipal Court
120 Black Street
Rock Hill, SC 29730

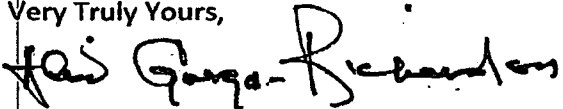
Dear Sir/Madame

On the 19th of May 2019, I submitted a request to the Rock Hill Municipal Court requesting a continuance for case number 280121604. As of today date, I have not received a return to my letter.

I like a redress to my request and an attached disposition of the case.

With Kindest Regards,

Very Truly Yours,


Alieo Garga-Richardson

May 19, 2019

The Clerk
City of Rock Hill Municipal Court
120 Black Street
Rock Hill, SC 29730

Dear Sir/Madame,

This is to inform you that I will not be able to appear in Municipal Court on Monday, May 20th, 2019 due to the following reason.

I am out of town on a job assignment. This is the first assignment I have gotten in three (3) months. I know I had a court appearance, but this assignment is a three (3) days assignment.

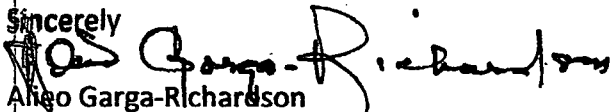
I hope to be back in Rock Hill on Wednesday of this week.

Please reschedule my appearance for another date. I will greatly appreciate.

With Kindest Regards,

I remain

Sincerely


Aliso Garga-Richardson

STATE OF SOUTH CAROLINA
YORK COUNTY
City of Rock Hill Municipal Court
120 E. Black St
Rock Hill, SC 29730

SUMMARY COURT SUMMONS

Defendant's Name: **ALIEO GARGA GARGA-RICHARDSON**
Defendant's Address: **1435 EBINPORT ROAD**
ROCK HILL, SC 29732

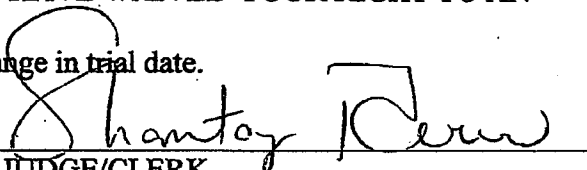
STATE VS. **GARGA-RICHARDSON, ALIEO GARGA**
CASE #(S) **280121604**
OFFICER **BRASWELL, E**
AGENCY **RHPD**
CHARGE **DUS (1ST)**

Please be advised that the above-referenced case(s) has been continued from its original trial date and is now scheduled to be heard on **May 20, 2019** at **1:00 PM**.
You are hereby summoned to appear on the above date in the

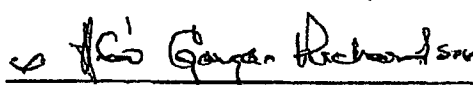
Rock Hill Municipal Court
120 E. Black St
Rock Hill, SC 29732
Phone: 803-329-5695
Fax: 803-326-3818

IF YOU ARE UNABLE TO APPEAR FOR TRIAL ON THIS DATE, YOU MUST CONTACT THE COURT BEFORE THE TRIAL DATE TO RESCHEDULE. IF YOU DO NOT CONTACT THE COURT IN ADVANCE OR DO NOT APPEAR FOR THIS HEARING, YOUR TRIAL CAN BE HELD WITHOUT YOU. IN ADDITION, IF YOU DO NOT CONTACT THE COURT OR APPEAR FOR THIS HEARING YOU MAY BE FOUND TO HAVE WAIVED YOUR RIGHT TO AN ATTORNEY.

Please notify any witnesses you may have of the change in trial date.


JUDGE/CLERK

Rock Hill Municipal Court
120 E. Black St
Rock Hill, SC 29730
Phone: 803-329-5695
Fax: 803-326-3818


DEFENDANT

3-25-19
DATE

SCCA/519 (11/2017)



mailing
instructions.
please see the
bottom of this
form.

COVERING THE COSTS FOR THE VIOLATION
DESCRIBED HEREIN.

AUTH. SIGNATURE: I CASTILLO

DATE PAID: 06-10-19

Citation No.	Date of Violation	Location of Violation	Section Violated
20182280121604	11/29/2018	US 21	56-01-0460(A)(1)(a)
Description of Violation DUS (1ST)		Fine and Costs \$647.50	Trial Date and Time 5/20/2019 at 1:00 PM

Driver's License No.	State	Date of Birth	
11567821	SC	11/17/1959	
Last Name	First	Middle	Sex
GARGA-RICHARDSON	ALIEO	GARGA	MALE
Street Address			
1435 EBINPORT ROAD			
City	State	Zip Code	
ROCK HILL	SC	29732	
Registration (Tag) & State	Year	Make	Model
KBN558 -South Carolina	2013	NISS	

C O U R T	Name of Court		
	Rock Hill Municipal Court		
	Address of Court:		
	120 East Black Street		
I N F O	City	State	Zip Code
	Rock Hill,	SC	29730
	Telephone of Court		
	Area Code (803) 329-5695 Fax: (803) 326-3818		
	Authorized By:		Date
	Shelley Channell		6/10/2019

FORM DL-53

#3 HOME JURISDICTION (SUSPENSION WITHDRAWAL)

(SEE INSTRUCTIONS BELOW)

TRIAL OFFICER INSTRUCTIONS: Upon the defendant complying with the citation, the top portion of Form DL-53 copies are completed and the DL-53 Suspension Withdrawal is forwarded to the defendant.

IMPORTANT DRIVER INSTRUCTIONS:

SOUTH CAROLINA DRIVERS: SCDMV MUST RECEIVE THIS FORM. You may take this form to a DMV office or mail it to the address below. If this form is not received, your driving privilege will remain suspended. If this fine is paid on or after the beginning date of the suspension, a \$100.00 reinstatement fee must also be paid before the suspension is withdrawn.

MAILING INSTRUCTIONS: This form and reinstatement fee, if required, may be mailed to:

South Carolina Department of Motor Vehicle

Driver Records

Post Office Box 1498

Blythewood, South Carolina 29016-0028

OUT OF STATE DRIVERS: YOU must present or mail this FORM DL-53 along with any applicable reinstatement fees to the state in which you are a licensed driver. Any question you may have concerning reinstatement fees or driver license suspension must be directed to your home state.

GARGA-RICHARDSON, ALIEO GARGA
1435 EBINPORT ROAD
ROCK HILL, SC 29732

C# #	280121604	Viol #	1	Long Citi	20182280121604	-- Comments --	Docket #	2801216041
Name	GARGA-RICHARDSON, ALIED GARGA				* Adult *	Age at time of Violation		59
	B. M. 11/17/1959. 11567821-SC				In Queues		None	

Violation	Fees	History	Receipts	Clerk Comments	Docket Comments	Prosecutor Comments	Judgment
-----------	------	---------	----------	----------------	-----------------	---------------------	----------

Status	TA	TRIED IN ABSENTIA FOUND GUILTY	Date	5/20/2019	Mon	Time	01:00 PM
Alt. Status #1			Date			Time	12:00 AM
Alt. Status #2			Date			Time	12:00 AM
Plea	BT	BENCH TRIAL/FOUND GUILTY	Date	5/20/2019	Mon	Docket Weight Override	
Judge	475	RAY LONG					
Court Location	RHC	ROCK HILL COURT					
Type of Trial	by Judge						
Conviction Date	5/20/2019						
Attorney	<no Attorney>						
County	YO	YORK					
Review Attorney	<none>						

Bonds	
Bond Set Override ☐	
Set	647.50
Posted	0.00

Fine/Costs		Credits	
Fine	300.00	Cash	0.00
Fees	347.50	NCsh	0.00
Totl	647.50	Pend	0.00
		Bal	647.50

Collect Fees Only ☐	
Collections	
Collections	
Send to Queue	

Offense	DUS (1ST)	Exit
---------	-----------	------

View	ashley.wheel
------	--------------

TRUE & CERTIFIED
 ROCK HILL MUNICIPAL COURT
 120 E. BLACK ST.
 ROCK HILL, SC 29730

RECH: 00134911 6/10/2019 10:21 AM
 OPER: 00 TERM: 016
 REF:
 TRAN: 2.0000 COURT BONDS
 GARGA-RICHARDSON, ALIED GARGA
 20182280121604 -01 647.5000
 TENDERED: 660.00 CASH
 APPLIED: 647.50-
 CHANGE: 12.50

PROOF OF SERVICE

June 19th, 2019

I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail with sufficient postage affixed, copies of this appeal addressed to;

The Clerk of Court
Rock Hill Municipal Court
120 Black Street
Rock Hill, SC 29730
803-329-5695

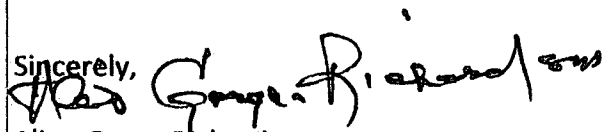
The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta (Esquire)
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,

A handwritten signature in black ink, appearing to read "Alieo Garga-Richardson". The signature is written in a cursive style with a large, stylized "A" and "R".

Alieo Garga-Richardson

Appellant Pro-Se

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

Agargarichardson@yahoo.com

May 5th, 2019

Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Alieo Garga-Richardson v. SCDPPS (SCDMV)
Appellate Case No. 2019-000389

Dear Mrs. Kitchings,

Your letter dated on the 24th of April 2019 was received on the 26th of April.

Please find attached a Designation of Matters to be Included in the Record on Appeal.

With Kindest Regards,

I remain;

Sincerely,


Alieo Garga-Richardson

CC: Honorable S. Philip Lenski
Frank L. Valenta, Jr., Esquire
Thomas Wells Nicholson, Esquire
Office of Motor Vehicle Hearings

The State of South Carolina
In the Court of Appeals

IN THE APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No. 2009-000389

Designation of Matter to be included in the Record on Appeal

ALIEO GARGA-RICHARDSON

Appellant (Pro-Se)

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PARDON AND PAROLE
SERVICES AND THE SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES

Respondent

PLEADING TITLE - 1

230 - - -

CC: The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney-at-Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta (Esquire)
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Designation of Matters to be included in the Record on Appeal

By the Standard of Review requested by the Appellant, the following are designated to be included in the Record on Appeal.

- 1) The Records on Appeal filed by Appellant with the Administrative Law Court;
- 2) Appellant Brief filed with the Administrative Law Court;
- 3) Brief of Respondent filed with the Administrative Law Court;
- 4) Appellant Response Brief filed with the Administrative Law Court;
- 5) Judge S. Philip Lenski order, dated January 10, 2019 affirming the decision of the Office of Motor Vehicle Hearings;
- 6) Appellant Motion to reconsider the order dated January 21, 2019;
- 7) Judge S. Philip Lenski order dated February 6, 2019 denying Appellant's Motion.

Also to be included in the Records are the Initial Brief of Appellant to the Court of Appeals, the Respondent's Brief and the Appellant's Reply Brief to include any final briefings.

May 6, 2019

I, Alieo Garga-Richardson finds these records to be relevant for a thorough understanding of the matter before The South Carolina Court of Appeals.

Sincerely,



Alieo Garga-Richardson

Appellant Pro-SE

1435 Ebinport Rd.

Rock Hill, SC 29732

803-389-4456

agargarichardson@yahoo.com

PROOF OF SERVICE

May 6th, 2019

I, Alieo Garga-Richardson, do hereby attest under penalty of perjury that I deposited in the US mail with sufficient postage affixed, copies of my Initial Brief addressed to;

The Honorable S. Philip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803-734-0550

Mr. Thomas W. Nicholson (Esquire)
Attorney at Law
P. O. Box 50666
Columbia, SC 29250
803-734-9220

Mr. Frank L. Valenta (Esquire)
Office of General Counsel
P. O. Box 1498
Blythewood, SC 29016
803-895-9902

Office of Motor Vehicle Hearings
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Sincerely,

Alieo Garga-Richardson
Appellant Pro-Se
1435 Ebinport Rd.
Rock Hill, SC 29732
803-389-4456
Agargarichardson@yahoo.com



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 10, 2019

Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill SC 29732

Re: Alieo Garga-Richardson v. SCDPPPS (SCDMV)
Appellate Case No. 2019-000389

Dear Mr. Garga-Richardson:

This office has received your material attempting to file a direct appeal from the decision of the City of Rock Hill Municipal Court in Case No. 280121604. The South Carolina Court of Appeals has no subject matter jurisdiction over direct appeals from a municipal court. Appeals from municipal court are to the Court of Common Pleas of the county where the trial was held. S.C. Code Ann. §14-25-95 (2017). This material cannot be combined with the appeal in Case No. 2019-000389. No further action will be taken on this material.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Frank L. Valenta, Jr., Esquire
Thomas Wells Nicholson, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 13, 2019

Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill SC 29732

Mr. Frank L. Valenta, Jr., Esquire
PO Box 1498
Blythewood SC 29016-0020

Mr. Thomas Wells Nicholson, Esquire
PO Box 50666
2221 Devine Street
Columbia SC 29250

Re: Alieo Garga-Richardson v. SCDPPPS (SCDMV)
Appellate Case No. 2019-000389

Dear Counsel:

Please be advised our records indicate that the respondent, South Carolina Department of Motor Vehicles, has not served and filed an initial brief and designation of matter. Therefore, you should proceed to serve and file your final brief and file the record on appeal, as provided in Rules 210(b) and 211(a) of the South Carolina Appellate Court Rules, within twenty (20) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 13, 2019

Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill SC 29732

Mr. Thomas Wells Nicholson, Esquire
PO Box 50666
2221 Devine Street
Columbia SC 29250

Re: Alieo Garga-Richardson v. SCDPPPS (SCDMV)
Appellate Case No. 2019-000389

Dear Counsel:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

We suggest that large parcels such as copies of final briefs and the record on

appeal be sent directly to the Court via the street address: **1220 Senate Street, Columbia, S.C. 29201**. Thank you for your attention to this.

According to our records, the correct caption for this appeal should read as follows on the record on appeal and all final briefs:

Alieo Garga-Richardson, Appellant,

v.

South Carolina Department of Probation, Pardon and Parole Services and South Carolina Department of Motor Vehicles, Respondents.

Furthermore, the Court anticipates that the attorney information for all attorneys receiving a copy of this letter will appear on the cover of the record on appeal. The attorney information for the party submitting the brief should appear on the final briefs.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Frank L. Valenta, Jr., Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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July 16, 2019

Alieo Garga-Richardson
1435 Ebinport Rd.
Rock Hill SC 29732

Mr. Thomas Wells Nicholson, Esquire
PO Box 50666
2221 Devine Street
Columbia SC 29250

Re: Alieo Garga-Richardson v. SCDPPPS (SCDMV)
Appellate Case No. 2019-000389

Dear Counsel:

Pursuant to this Court's letter dated June 13, 2019, the record on appeal and all final briefs were due to be served and filed no later than July 3, 2019. Within ten days of the date of this letter, the record on appeal and all final briefs must be filed and served, along with a motion to allow late filing.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Frank L. Valenta, Jr., Esquire

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

HENRY McMASTER
Governor



JERRY B. ADGER
Director

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July 17, 2019

The Honorable Jenny Kitchings
Clerk of the S.C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Alieo Garga-Richardson v. SCDPPPS, 2019-000389
Record on Appeal; Final Briefs.

Dear Ms. Kitchings:

We have received your letter dated July 16, 2019 regarding the overdue record on appeal and final briefs. Please be advised that this Department has only been prevented from filing its final brief because, as of this date, the Appellant has neither filed nor served to us a copy of the record. When the Appellant files the record, we will promptly file our final brief. If the Appellant fails to file the record as instructed, we would move to dismiss his appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Nicholson".

Thomas W. Nicholson
Legal Counsel

cc: Mr. Alieo Garga-Richardson
Frank L. Valenta, Jr., Esquire