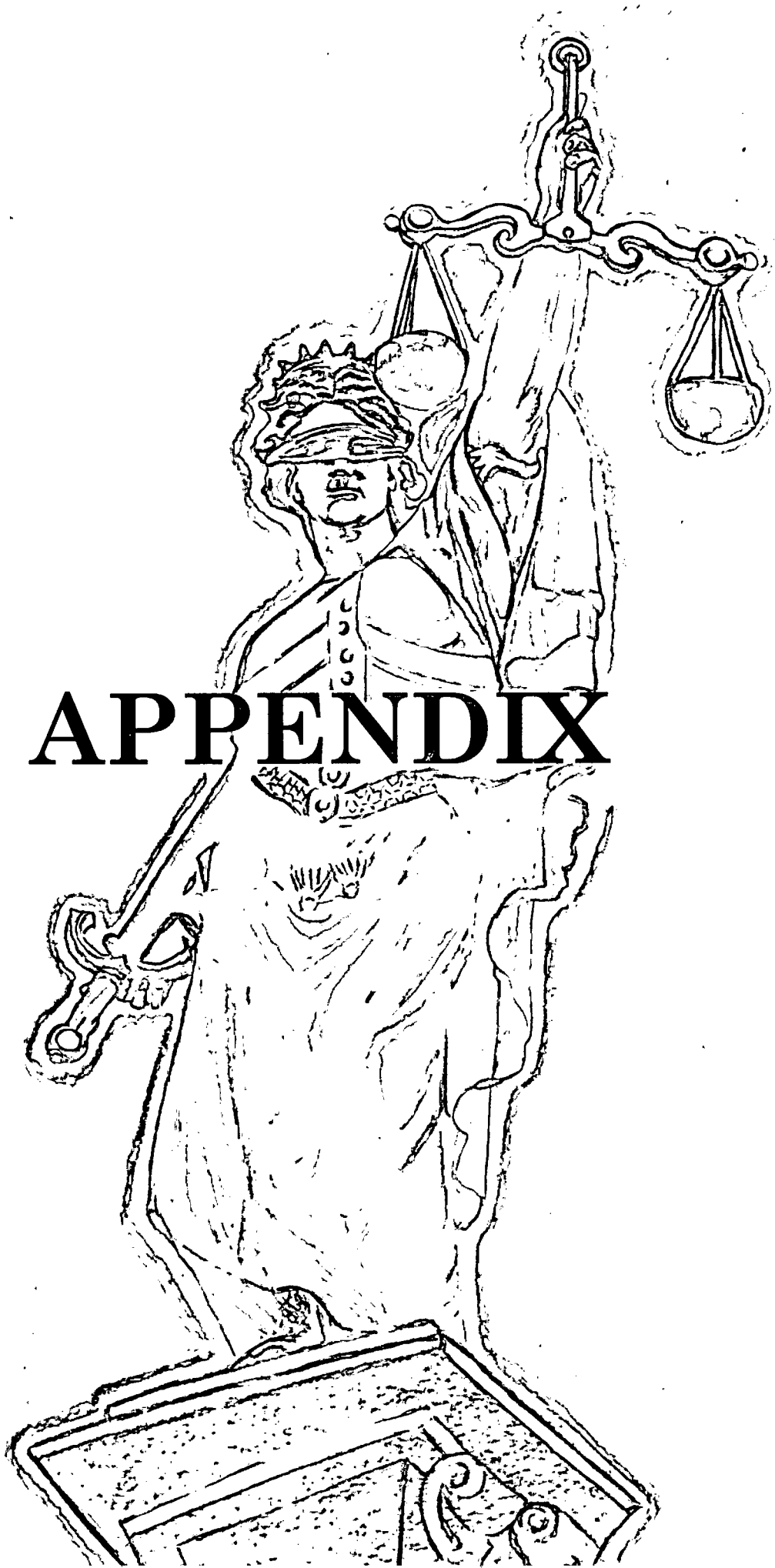

APPENDIX

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7232

MICHAEL T. BRAXTON,

Petitioner - Appellant,

v.

WARDEN OF THE ANDERSON COUNTY DETENTION CENTER,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Anderson. Richard Mark Gergel, District Judge. (8:22-cv-02806-HMH)

Submitted: July 20, 2023 Decided: July 24, 2023

Before NIEMEYER and THACKER, Circuit Judges, and KEENAN, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Michael T. Braxton, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael T. Braxton, a state prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on Braxton's 28 U.S.C. § 2241 petition, which sought relief from his confinement pursuant to a state civil commitment proceeding. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Braxton has not made the requisite showing. Specifically, the district court properly applied *Younger v. Harris*, 401 U.S. 37 (1971), which mandates abstention under certain circumstances. While Braxton asserts that he was prejudiced by a delay in his state commitment proceedings rendering *Younger* inapplicable, we find that the delays were not unreasonable given the COVID-19 pandemic and other circumstances. Moreover, following the district court's ruling, the state court committed Braxton following a jury trial, which further undercuts any claim of prejudice and moots many of Braxton's claims. Accordingly, we deny a

certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

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FILED: November 16, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7232
(8:22-cv-02806-HMH)

MICHAEL T. BRAXTON

Petitioner - Appellant

v.

WARDEN OF THE ANDERSON COUNTY DETENTION CENTER

Respondent - Appellee

ORDER

The court grants leave to proceed in forma pauperis.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: July 24, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7232
(8:22-cv-02806-HMH)

MICHAEL T. BRAXTON

Petitioner - Appellant

v.

WARDEN OF THE ANDERSON COUNTY DETENTION CENTER

Respondent - Appellee

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Michael T. Braxton, Petitioner, vs. Warden of the Anderson County Detention Center, Respondent.	)	C.A. No. 8:22-02806-HMH-JDA **OPINION & ORDER**

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Jacquelyn D. Austin, made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 of the District of South Carolina.[1] Petitioner Michael T. Braxton ("Braxton") is currently detained at the Anderson County Detention Center, where he is awaiting a civil commitment trial under the South Carolina Sexually Violent Predator Act ("SVPA").[2] Braxton filed this action on August 18, 2022,[3] seeking habeas corpus relief under 28 U.S.C. § 2241, alleging, among other things, that he "remains in illegal detention" based "solely on a probable cause determination." (§ 2241 Pet. 7, ECF No. 1.) (internal quotations omitted). In

[1] The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

[2] S.C. Code Ann. §§ 44-48-10 to -170.

[3] See Houston v. Lack, 487 U.S. 266 (1988).

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her Report and Recommendation, Magistrate Judge Austin recommends dismissing Braxton's petition without requiring the Respondent to file a return because (1) Braxton's claims are not properly before the court based on Younger[4] abstention and (2) Braxton has failed to exhaust his state court remedies. (R&R 5, ECF No. 12.)

Braxton timely filed objections to the Report and Recommendation on September 22, 2022.[5] (Objs., ECF No. 14.) Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that many of Braxton's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. However, the court was able to glean two specific objections. Braxton specifically objects (1) that his "failure to exhaust should be excused, due to the inordinate delay that has occurred" in his SVPA case, and (2) that Younger does not apply because the delay has caused him "irreparable injury." (Objs. 1, 3, ECF No. 14.)

Younger instructs that federal courts should not interfere with "pending state court proceedings except under special circumstances." 401 U.S. at 41. To determine whether

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[4] 401 U.S. 37 (1971).

[5] See Houston v. Lack, 487 U.S. 266 (1988).

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Younger applies, the court follows a three-step analysis. See Air Evac EMS, Inc. v. McVey, 37 F.4th 89, 96 (4th Cir. 2022). The court first must determine whether the state court proceeding falls within one of three narrow categories: (1) "ongoing state criminal prosecutions," (2) "certain civil enforcement proceedings" that are "akin to a criminal prosecution in important respects," or (3) "pending civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 78-79, 82 (2013) (internal quotations and citations omitted) (clarifying that Younger extends to three "exceptional categories" of cases "but no further"). Next, the court considers the "*additional* factors" of whether (1) there is "an ongoing state judicial proceeding"; (2) the proceeding "implicates important state interests"; and (3) the petitioner has "an adequate opportunity to raise [federal] challenges" in the state proceeding. Id. at 81 (emphasis in original and citation omitted); see Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982). Third, and finally, the court considers whether any of Younger's exceptions apply. Abstention is not appropriate if:

> (1) there is a showing of bad faith or harassment by state officials responsible for the prosecution; (2) the state law to be applied in the criminal proceeding is flagrantly and patently violative of express constitutional prohibitions; or (3) other extraordinary circumstances exist that present a threat of immediate and irreparable injury.

Nivens v. Gilchrist, 444 F.3d 237, 241 (4th Cir. 2006) (quoting Kugler v. Helfant, 421 U.S. 117, 124 (1975)).

SVPA proceedings fit within the second Sprint category – that is, "civil enforcement proceedings" that are "akin to a criminal prosecution in important respects." Sprint, 571 U.S. at 78, 79. Sprint characterized cases falling within the second category as those "initiated by the

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State in its sovereign capacity" following a "preliminary investigation" and upon "filing of a formal complaint or charges." Id. at 79-80 (internal quotations and citations omitted). These hallmarks are present in an SVPA proceeding.

Upon notice from a state agency that a person convicted of a sexually violent offense is scheduled to be released, a multidisciplinary team appointed by the Department of Corrections conducts an "investigation" into the individual's criminal and medical history. S.C. Code Ann. §§ 44-48-40, 44-48-50. If the team believes that the person meets the statutory definition of a sexually violent predator, the team forwards its findings to a prosecutor's review committee appointed by the Attorney General. Id. §§ 44-48-50, 44-48-60. If the review committee, in turn, finds probable cause that the person is a sexually violent predator, the Attorney General "formally" "initiates" the proceeding by petitioning the court in the jurisdiction where the person committed the underlying offense for a probable cause hearing. Id. § 44-48-70. At the hearing, the individual is entitled to be represented by an attorney, to present evidence, and to cross examine witnesses. Id. § 44-48-80(C). If the court finds probable cause, the person is taken into custody until a final determination is made. Id. § 44-48-80(A).

Finally, and critically, if the person is found to be a sexually violent predator beyond a reasonable doubt at trial, either by the court or a unanimous jury – if the person elects to be tried by a jury – he or she is involuntarily committed to a state facility. Id. §§ 44-48-90(B), 44-48-100(A). Based on the foregoing, SVPA proceedings fall within the second category of cases to which Younger applies. South Carolina's SVPA proceedings are "brought by the State in its sovereign capacity" following an "investigation" and the filing of a "formal" petition and possess many similarities to traditional criminal proceedings. Sprint, 571 U.S. at 79-80 (citations omitted).

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Next, all three Middlesex factors are present. First, Braxton's SVPA case is still ongoing in state court because no final judgment has been entered.[6] Second, South Carolina has a substantial interest in addressing "the special needs of sexually violent predators and the risks that they present to society." See S.C. Code Ann. § 44-48-20 (describing legislative findings). Third, Braxton has an adequate forum to raise his constitutional challenges.

Lastly, none of the Younger exceptions apply. There is no evidence that the proceeding was instituted in bad faith or to harass Braxton, and the South Carolina Supreme Court has upheld the SVPA against due process and equal protection challenges. See In re Treatment & Care of Luckabaugh, 568 S.E.2d 338, 346-52 (S.C. 2002). Moreover, the two-plus year delay in bringing Braxton's SVPA case to trial does not constitute an extraordinary circumstance that presents a threat of immediate and irreparable injury sufficient to justify federal intervention, especially when Braxton is partly responsible for the delay.[7] See Page v. King, 932 F.3d 898, 902 (9th Cir. 2019) (holding that a thirteen-year delay in bringing the petitioner's SVPA case to trial was not an extraordinary circumstance under Younger); Barrett v. Scott, No. 16-cv-3073, 2016 WL 3661103, at *2-3 (N.D. Ill. July 5, 2016) (unpublished) (nine-year delay in SVPA case not an exceptional circumstance); James v. Harris, No.19-CIV-21836, 2022 WL 1686494, at *1, 5 (S.D. Fla. May 26, 2022) (unpublished) (abstaining under Younger despite seven-year delay in SVPA proceeding).

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[6] See Anderson County Tenth Judicial Circuit Public Index, https://publicindex.sccourts.org/Anderson/PublicIndex/PISearch.aspx (search by case number "2020CP0401330") (last visited Oct. 13, 2022). The court may take judicial notice of the records and docket entries in Braxton's SVPA action. See Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009); United States v. Garcia, 855 F.3d 615, 621 (4th Cir. 2017).

[7] The court notes that Braxton's counsel has twice requested a continuance and has agreed to a continuance sought by the State.

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Accordingly, based on the above, the court finds that Braxton's objection is without merit and abstention is warranted under Younger.[8]

It is therefore

ORDERED that Braxton's petition is dismissed without requiring the Respondent to file a return. It is further

ORDERED that a certificate of appealability is denied because Braxton has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).[9]

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
October 13, 2022

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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[8] Having found that Younger abstention applies, the court need not address Braxton's objection regarding his exhaustion of state remedies.

[9] District courts must issue certificates of appealability when entering "a final order adverse to the applicant." Rule 11(a), Rules Governing § 2254 Cases. These rules may be applied to other types of habeas corpus petitions. Rule 1(b), Rules Governing § 2254 Cases.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Michael T. Braxton, Petitioner, v. Warden of the Anderson County Detention Center, Respondent.	C/A No. 8:22-cv-02806-HMH-JDA **REPORT AND RECOMMENDATION**

Michael T. Braxton ("Petitioner"), proceeding pro se, brings this habeas action pursuant to 28 U.S.C. § 2241.[1] [Doc. 1.] Petitioner is a detainee at the Anderson County Detention Center (the "Detention Center"). [*Id.* at 1.] Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d), D.S.C., the undersigned Magistrate Judge is authorized to review such petitions for relief and submit findings and recommendations to the District Court. For the reasons below, the undersigned concludes that the District Court should dismiss the Petition without issuance and service of process.

BACKGROUND

Petitioner filed this action seeking habeas relief related to his present incarceration at the Detention Center. Petitioner has filed a Petition on the standard court form; he has attached 61 pages of supporting documents to his Petition; and he has filed a memorandum in support of his Petition. [Docs. 1; 1-1; 1-2.] The Court has carefully

[1]The Court notes that, in an unpublished case, the Fourth Circuit stated a petition filed by a person "civilly committed under the South Carolina Sexually Violent Predator Act" was properly construed as a petition under § 2241 rather than under 28 U.S.C. § 2254. *See, e.g., Gaster v. S.C. Dep't of Corr.*, 67 F. App'x 821 (4th Cir. 2003). Regardless of whether this action is analyzed under § 2241 or § 2254, the Petition is subject to summary dismissal for the reasons below.

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reviewed each of Petitioner's submissions as well as his previously filed or currently pending cases in this Court, the South Carolina state courts, and the state and federal courts of Tennessee.[2]

Petitioner makes the following allegations. Petitioner contends he is being detained at the Detention Center pursuant to a civil commitment petition filed by the State of South Carolina under the Sexually Violent Predator Act ("SVP") in the Anderson County Court of Common Pleas at case number 2020-cp-04-01330. [*Id.* at 1–3.] Petitioner contends that the SVP proceedings remain pending against him, resulting in his continued detention even though his sentence has expired and the statutory time to pursue SVP proceedings has lapsed, all in violation of his rights. [*Id.* at 1–3.]

Petitioner contends that his current pretrial detention is unconstitutional, and he notes that he has sought to challenge his detention in the state courts at case numbers 2020-cp-04-1330, filed in the Anderson County Court of Common Pleas, and case number 2022-000-651, filed in the Supreme Court of South Carolina. [*Id.* at 2–4.] Petitioner contends that both of these cases remain pending at this time. [*Id.*]

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[2]Importantly, the undersigned takes judicial notice of the pending action against Petitioner in the Anderson County Court of Common Pleas at case number 2020-cp-04-01330, *see* Anderson County Tenth Judicial Circuit Public Index, available at https://publicindex.sccourts.org/Anderson/PublicIndex/PISearch.aspx (search by case number "2020cp0401330") (last visited Sept. 7, 2022), as well as Petitioner's many prior actions filed in this Court, his actions previously filed or currently pending in the South Carolina state courts, and his actions filed in the state and federal courts in Tennessee. *See Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (explaining that courts "may properly take judicial notice of matters of public record"); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that 'the most frequent use of judicial notice is in noticing the content of court records.'").

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Petitioner asserts four grounds for relief in the present Petition, which are provided substantially verbatim below:

GROUND ONE: An unlawful "tolling" effect was implemented by the Sate of South Carolina, after the termination of the Petitioner's supervised release.

Supporting facts: The "expiration" of the Petitioner's sentence, prior to the illegal extradition back to South Carolina, without a timely probable cause or revocation hearing. The service of (5) years and (2) months on a void sentence. Then subsequently being detained for (535) days under a rouge probable cause determination.

GROUND TWO: Failure of the South Carolina Department of Corrections to implement a thorough process, before submitting the Petitioner into a rouge procedure.

Supporting facts: The erroneous and "incomplete" data used in their determination. Failure to recognize relevant federal and state mandatory statute.

GROUND THREE: The lack of consideration given to (3) three continuances all filed "outside" the requisite time period; they were granted outside this period as well.

Supporting facts: The Petitioner remains in "illegal" detention! Held solely on a "probable cause" determination. (1st) continuance granted after (71) days, within a (60) day mandatory process, (2nd) continuance granted (207) days, within a (90) day mandatory process, (3rd) continuance granted (311) days, within a (90) day mandatory process.

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GROUND FOUR: The ineffectiveness of the Petitioner's former counsel, that has him "illegally" confined.

Supporting facts: The exhibits and recorded actions submitted in support of the Petitioner's claim. The awareness exhibited by Petitioner's former counsel, pertaining to the validity of the pre-trial motions.

[*Id.* at 7–8.] Based on these grounds, Petitioner seeks immediate release from custody. [*Id.* at 8.] Additionally, in his memorandum, Petitioner acknowledges that he has failed to exhaust his state court remedies. [Doc. 1-2 at 1.] However, Petitioner contends that his failure to exhaust should be excused as he is unlawfully detained. [*Id.* at 1–3.]

STANDARD OF REVIEW

Under established local procedure in this judicial district, a careful review has been made of the pro se pleadings pursuant to the procedural provisions of the Anti-Terrorism and Effective Death Penalty Act of 1996. The review has been conducted in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490 U.S. 319, 324–25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); *Loe v. Armistead*, 582 F.2d 1291 (4th Cir. 1978); and *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978).

Because Petitioner is a pro se litigant, his pleadings are accorded liberal construction. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Cruz v. Beto*, 405 U.S. 319 (1972). Even under this less stringent standard, however, the Petition is subject to summary dismissal. The requirement of liberal construction does not mean that the Court

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can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

Further, this Court is charged with screening Petitioner's lawsuit to determine if "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4 of Rules Governing Section 2254 Cases in the United States District Courts; *see also* Rule 1(b), Rules Governing § 2254 Cases (allowing district courts to apply the rules to other § 2241 petitions).

DISCUSSION

As noted, Petitioner seeks release from incarceration at the Detention Center, claiming his constitutional rights have been denied. Nevertheless, this action should be dismissed because Petitioner's claims are not properly before this Court based on the *Younger* abstention doctrine and because Petitioner has failed to exhaust his state court remedies.

Petitioner's Criminal History and Prior Cases

Before addressing the issues noted above, the undersigned provides a brief overview of Petitioner's criminal history and his prior cases filed in this Court and the state courts. Petitioner's criminal history was summarized by the South Carolina Court of Appeals as follows:

> On November 17, 1983, [Plaintiff] was sentenced to thirty years' incarceration after pleading guilty to first degree criminal sexual conduct (CSC). [Plaintiff] served ten years and four months of his sentence, and on March 31, 1994, he was conditionally released to the state of Tennessee on parole. On April 16, 1996, while on parole in Tennessee, [Plaintiff] was arrested for two counts of aggravated rape. On May 28, 1996, while he was in custody for those arrests, South Carolina

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> issued a parole violation warrant, and a parole violation hold was placed on [Plaintiff]. [Plaintiff] was held in pretrial detention until he was sentenced to twenty-three years' imprisonment in the custody of the Tennessee Department of Corrections (TDOC), and he was transferred to TDOC on June 1, 1998. On June 8, 1998, South Carolina issued a second parole violation warrant on [Plaintiff]. [Plaintiff] completed his sentence in Tennessee on November 2, 2015. Thus, from the time of his arrest in 1996 until he finished serving his sentence in 2015, [Plaintiff] served approximately nineteen years and five months in Tennessee. Following his release, beginning November 8, 2015, [Plaintiff] was incarcerated in Anderson County, South Carolina. Following an appearance before the Full Board of the South Carolina Board of Pardons and Parole on January 20, 2016, [Plaintiff] was transferred back into the custody of SCDC with a release date of June 22, 2022.
>
> [Plaintiff] timely filed a Step 1 grievance with SCDC, claiming SCDC failed to give him credit towards his remaining CSC sentence for the time he spent on successful parole supervision and for the time he spent incarcerated in Tennessee. [Plaintiff's] Step 1 grievance was denied. [Plaintiff] then filed a Step 2 grievance with SCDC, restating the allegations set forth in his Step 1 grievance and also arguing he should be credited for time served "incarcerated in Tennessee . . . (which includes the time served during the extradition process)." His Step 2 grievance was subsequently denied.
>
> [Plaintiff] then appealed SCDC's denial of his grievances to the [Administrative Law Court ("ALC")]. He argued SCDC erred in refusing to give him credit (1) for the time he spent on parole, (2) for the time he spent in pretrial detention and incarcerated for unrelated charges in Tennessee while there were parole violation warrants from South Carolina in place, and (3) for the time he served for the period he was held in Anderson County before returning to the custody of SCDC. By order dated August 24, 2017, the ALC affirmed SCDC's final decision regarding the calculation of [Plaintiff's] sentence.

Braxton v. SCDC, 846 S.E.2d 383, 385 (S.C. Ct. App. 2020) (footnotes omitted). Petitioner has filed various appeals, post-conviction relief actions in the state court, and habeas actions and civil rights actions under 28 U.S.C. § 1983 in this Court, all challenging his

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conviction, sentence, and/or parole. In *Braxton v. Warden of Kershaw Correctional Institution*, No. 8:20-cv-03168-HMH-JDA (D.S.C. Sept. 3, 2020), the undersigned explained as follows:

> Addressing [Plaintiff's] claims, the South Carolina Court of Appeals held that "the ALC erred in affirming SCDC's refusal to grant him credit for time served while he was successfully on parole prior to his Tennessee arrest" and therefore remanded that "issue to the ALC to recalculate [Plaintiff's] sentences such that he receives credit for the time he served while on parole." *Id.* at 386. Regarding [Plaintiff's] arguments that the ALC erred in refusing to give him credit for time served before and after he was sentenced on charges in Tennessee and in refusing to give him credit for the time he was held in Anderson County, the South Carolina Court of Appeals affirmed. *Id.* at 387–88.
>
> On remand, Administrative Law Judge H. W. Funderburk, Jr. determined that the time [Plaintiff] was on parole prior to his Tennessee arrest was two years and 16 days and therefore ordered that [Plaintiff] be credited with that amount toward his sentence. [Doc. 15-2 at 10–11.] In response to that order, SCDC wrote a letter to Judge Funderburk dated September 1, 2020, notifying him that [Plaintiff] "ha[d] already been given credit for the time he successfully served on parole prior to his Tennessee arrest," although SCDC acknowledged that its prior court filings had "caused confusion" regarding this issue. [Doc. 18-2 at 1.] In the letter, SCDC explained in detail how [Plaintiff's] release date had been calculated and informed Judge Funderburk that "once [he had] had an opportunity to review th[e] letter, SCDC w[ould] adjust [Plaintiff's] credits according to any further instruction." [*Id.* at 1–2.]
>
> Judge Funderburk responded to the letter in his own letter dated September 9, 2020. [*Id.* at 3.] In it, he noted that he understood from the letter and attached printouts that SCDC "had this information before the case came to [the ALC] or to the Court of Appeals." [*Id.* at 3.] He s[t]ated that he could "only follow the directions given [to him] by the Court of Appeals," and thus, he suggested that SCDC "forward [its] explanation to the Court of Appeals and ask for its guidance." [*Id.*] SCDC subsequently sent [Plaintiff] a letter dated September 28, 2020, stating its position that "SCDC [wa]s in compliance with" Judge Funderburk's order on remand

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> because [Plaintiff's] March 25, 2021, release date already gave [Plaintiff] credit for the two years and 16 days in question, as well as additional days. [Doc. 15-2 at 1.] On that basis, SCDC noted that it "consider[ed] the matter closed," that "no further action will be taken," and that [Plaintiff] had "already been given more parole time than" Judge Funderburk had ordered in his decision on remand. [*Id.*]

Braxton, 2021 WL 260482, at *1–2 (D.S.C. Jan. 4, 2021) (some alterations in original) (footnote omitted), *Report and Recommendation adopted by* 2021 WL 252582 (D.S.C. Jan. 26, 2021), *appeal dismissed*, No. 21-6264, 2021 WL 4902109 (4th Cir. Oct. 21, 2021).

At this time, Petitioner's underlying sentences described above have expired. However, he remains incarcerated at the Detention Center, pending the outcome of the SVP action in the Anderson County Court of Common Pleas. Petitioner's challenge to that detention, which is the basis for this action, is without merit for the reasons below.

***Younger* Abstention Doctrine**

In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that a federal court should not equitably interfere with state criminal proceedings "except in the most narrow and extraordinary of circumstances." *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996) (en banc) (internal quotation marks omitted). The *Younger* Court noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger*, 401 U.S. at 43–44; *see also Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72–73 (2013) (explaining the circumstances when *Younger* abstention is appropriate). The Fourth Circuit has held that the *Younger* abstention doctrine applies "to noncriminal judicial proceedings when important state interests are involved," *Harper v. Public Serv. Comm'n of W. Va.*, 396 F.3d 348, 351 (4th

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Cir. 2005) (internal quotation marks omitted), and courts in this district have held that *Younger* applies to South Carolina state-court SVP proceedings, *see Tyler v. Bogle*, No. 9:18-cv-1513-MGL-BM, 2018 WL 4017687, at *2 (D.S.C. Aug. 7, 2018) (collecting cases), *Report and Recommendation adopted by* 2018 WL 4005792 (D.S.C. Aug. 22, 2018).

From *Younger* and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: "[1] there are ongoing state judicial proceedings; [2] the proceedings implicate important state interests; and [3] there is an adequate opportunity to raise federal claims in the state proceedings." *Martin Marietta Corp. v. Md. Comm'n on Hum. Rels.*, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing *Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)). Here, Petitioner is involved in ongoing state court proceedings, and he asks this Court to award relief for alleged constitutional violations and to require his immediate release; thus, the first element is satisfied. *See Lott v. Sheek*, No. 8:19-cv-00954-DCC-JDA, 2019 WL 3308415, at *8 (D.S.C. Apr. 4, 2019) (noting the first prong of the abstention test was satisfied where the petitioner was involved in ongoing state civil commitment proceedings under the SVP Act), *Report and Recommendation adopted by* 2019 WL 2511253 (D.S.C. June 18, 2019). The second element is satisfied as the South Carolina Court of Appeals has held that protecting its citizens from sexual predators is an important state interest. *See State v. Reid*, 679 S.E.2d 194, 201 n.6 (S.C. Ct. App. 2009). The third element is also satisfied, as Petitioner can raise his constitutional claims in the state court. *See Lott*, 2019 WL 3308415, at *8.

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In sum, a ruling in Petitioner's favor in this case would call into question the validity of the state court proceedings against him and would significantly interfere with those ongoing state proceedings. *See Younger*, 401 U.S. at 43–45; *Cinema Blue of Charlotte, Inc. v. Gilchrist*, 887 F.2d 49, 52 (4th Cir. 1989) ("[F]ederal courts should abstain from the decision of constitutional challenges to state action, however meritorious the complaint may be, 'whenever [the] federal claims have been or could be presented in ongoing state judicial proceedings that concern important state interests.'") (citation omitted); *Washington v. Tilton*, No. 2:10-cv-997-HFF-RSC, 2010 WL 2084383, at *1 (D.S.C. May 19, 2010). Thus, this Court should dismiss this case on abstention grounds pursuant to *Younger*. *See Nivens v. Gilchrist*, 444 F.3d 237, 247 (4th Cir. 2006) (explaining that "when a district court abstains from a case based on *Younger*, it should typically dismiss the case with prejudice; not on the merits"); *Hamm v. South Carolina*, No. 9:16-cv-2922-RMG-BM, 2016 WL 11214095, at *3 (D.S.C. Nov. 17, 2016) (dismissing § 2241 habeas petition as barred by *Younger* where the petitioner asserted a claim related to ongoing SVP proceedings), *Report and Recommendation adopted by* 2017 WL 176294 (D.S.C. Jan. 17, 2017).

Exhaustion of State Court Remedies

Additionally, this action should be dismissed as Petitioner has failed to exhaust his state court remedies. "Any person seeking federal habeas corpus relief must first exhaust any state court remedies that are available to them." *Smith v. Blanton*, No. 8:09-cv-01506-HFF-BHH, 2009 WL 1922301, at *2 (D.S.C. June 30, 2009); *see also LaSure v. South Carolina*, No. 9:18-cv-2399-RBH-BM, 2019 WL 2146992, at *2 (D.S.C. Feb. 15, 2019) ("a writ of habeas under 28 U.S.C. §§ 2241 or 2254 can be sought only after a petitioner has

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exhausted his state court remedies") (footnote omitted), *Report and Recommendation adopted by* 2019 WL 1614841 (D.S.C. Apr. 16, 2019). Specifically, the State of South Carolina provides the following state court remedies for challenging an SVP action:

> The South Carolina SVP Act (S.C. Code Ann. §§ 44–48–10 through 44–48–170) provides for certain steps such as a "probable cause" determination by a state civil judge and an evaluation by professional specialists, § 44–48–80, and the opportunity for the civilly committed person, through appointed counsel, to challenge "at trial" any unfavorable results of the evaluation before a state civil judge. S.C.Code Ann. § 44–48–90. Additionally, if the civilly committed individual does not prevail at the civil trial level, the state of South Carolina also provides appellate judicial review of findings made by the civil trial judge under the Act. *See Care & Treatment of Beaver[v.] State*, 372 S.C. 272, 642 S.E.2d 578 (S.C. 2007); *White v. State*, 375 S.C. 1, 649 S.E.2d 172 (S.C. Ct. App. 2007).

Blanton, 2009 WL 1922301, at *2.

Here, because "Petitioner has not proceeded through the statutory mechanism of South Carolina's SVP Act, he has not exhausted his state court remedies." *Hamm v. Magill*, No. 9:11-cv-3098-RMG-BM, 2011 WL 7164424, at *3 (D.S.C. Dec. 2, 2011), *Report and Recommendation adopted by* 2012 WL 393632 (D.S.C. Feb. 6, 2012); *see also Jordan v. McMaster,* No. 8:09-cv-0051-CMC-BHH, 2010 WL 419928, at *3 (D.S.C. Jan. 29, 2010) ("Therefore, as Petitioner cannot establish cause and prejudice for his failure to exhaust his state court remedies, consideration of the merits of this petition is foreclosed.").

CONCLUSION AND RECOMMENDATION

Accordingly, for the reasons stated above, it is recommended that the Petition filed in this action be DISMISSED without requiring the Respondent to file a return.

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IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

September 9, 2022
Greenville, South Carolina

Petitioner's attention is directed to the important notice on the next page.

Appx - B

FILED: December 1, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7232
(8:22-cv-02806-HMH)

MICHAEL T. BRAXTON

Petitioner - Appellant

v.

WARDEN OF THE ANDERSON COUNTY DETENTION CENTER

Respondent - Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk