No A 18-

BEFORE THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

Marie Assa'ad-Faltas, MD, MPH, Petitioner

vs.

South Carolina, Respondent

PETITION FOR A WRIT OF *CERTIORARI* TO THE SUPREME COURT OF SOUTH CAROLINA

Respectfully Submitted by:
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QUESTIONS PRESENTED

South Carolina has no exoneration act or other avenues to compensate one who had been wrongly incarcerated, wrongly convicted and/or wrongly prosecuted; it was the last state to return control of the criminal docket from prosecutors to the courts; and it requires indigent criminal defendants who choose to proceed *pro se* to front their defense expenses and seek court-ordered reimbursement under a very low cap. But *Ex Parte Brown*, 393 S.C. 214, 711 S.E.2d 899 (2011), held that a lawyer's time is private property which may not be taken by the state for the defense of indigent persons accused of crimes without just compensation.

Petitioner chose to defend herself *pro se* against two indictments of harassment in the first degree initiated in December 2009. One indictment was tried to a jury on 22-26 February 2010, ending in a deadlocked jury and mistrial. The prosecutors contrived to keep that indictment from being retried and to keep the other indictment from ever being tried until 13 August 2012, when Petitioner, still *pro se*, finally succeeded, thank God, in having her motion to have both indictments dismissed with prejudice heard and granted. In the interim, she had incurred considerable costs for investigations, transcripts, audio and visual exhibits, *etc.* in preparation for trial/retrial. Upon her exoneration, she moved for reimbursement of her defense expenses. Her motion remained unheard for three years and was ultimately denied because South Carolina's Defense of Indigents Act allows these expenses to be reimbursed if incurred by a lawyer but not by *pro se* defendant.

The questions presented, therefore, are:

1. **Does South Carolina's Defense of Indigents Act, SC Code of laws 17-3-5 *et seq.*, without rational basis, deny equal protection between criminal defendants who choose to proceed *pro se* and those who accept state-chosen-and-appointed counsel?**

2. **Does South Carolina take *pro se* criminal defendants, indigent or not, private property without just compensation in its failed efforts to convict them of crimes?**

3. **If a sovereign uses Rule of Civil Procedure 11 or its equivalent to compensate a civil defendant for expenses incurred in defeating a frivolous civil claim, does equal protection require the same sovereign to use add a similar provision to its criminal rules so as to render one exonerated of false and frivolous criminal charges whole at the end of the criminal trial without requiring the exonerated criminal defendant to sue separately?**

PETITION FOR WRIT OF *CERTIORARI*

Petitioner ("Dr. Faltas") prays this Court by *certiorari* to review South Carolina's ("SC") supreme court's 4 October 2017 affirmance of the trial court's denial of her *pro se* indigent criminal defense expenses and 7 March 2018 denial of rehearing.

OPINIONS BELOW: SC's supreme court's opinion and denial of rehearing are not reported but are appended hereto, as are the trial court's orders.

JURIDICTION: On 8 June 2018, the Honorable Chief Justice Roberts kindly extended the time to file petition to 6 August 2018 **(17-A-1356).** This Court's Jurisdiction of this timely petition is thus invoked under 28 U.S.C. §1257.

Constitutional and Statutory Provisions Involved: Amendments V, VI and XIV to the U.S. Constitution are not here recited in deference to this Court's profound knowledge thereof. South Carolina's Defense of Indigents Act, §§ 17-3-5 *et seq.,* SC Code of Laws, is reprinted in the appendix hereto.

Statement of the Case

In September 2008, Dr. Faltas rented an apartment in one of two quadriplexes owned by Dinah Steele. In March 2009, Dr. Faltas and her mother bought vacant land adjacent to Steele's south quadriplex, unaware that (1) the latter is built in violation of legal set-back from the vacant lot and (2) the sewer lines from both quadriplexes ran illegally and surreptitiously across and under the lot without easement.

Upon learning of said purchase, Steele and her consort, Larry Wayne Mason, started, against Dr. Faltas and her mother, a war ultimately found by SC Circuit Judge Lee to have been **"designed to harass [Dr. Faltas] to the point of frustration with the hope that she will abandon her appeal, vacate the rented apartment, and abandon any plans to develop the property she purchased next door"** based on evidence adduced in a 1 December 2009 injunction hearing Dr. Faltas sought in a state civil suit she filed against Steele and Mason *inter alia* to halt their interference with Dr. Faltas' life and building plans and to reroute their sewer lines away from her land.[1]

Judge Lee took the motion under advisement. The next morning, Mason, a private detective, led ten Columbia Police Department ("CPD") officers in a long preplanned raid on Dr. Faltas' apartment and car, therefrom to take evidence she had gathered for, and presented in, her civil suit. CPD's false pretext was that said evidence proves Dr. Faltas harassed Steele and one of her tenants, Ingram. Before 2 December 2009, Dr. Faltas had sought to add, to her state civil suit against Steele and Mason, the City of Columbia as a defendant for using Dr. Faltas' land, against her will, to run sewer lines to Steele's two quadriplexes. Leave to amend was not heard and granted until May 2010 by then-SC-trial judge Childs.[2] Dr. Faltas chose to defend herself *pro se* against the harassment charges. Through pre-trial discovery and investigations, Dr. Faltas obtained massive proof of extensive collusion to harm her among defendants in her civil suit and her eventual prosecutors.

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1 The full transcript of that hearing and relevant documents from Petitioner's pre-arrest civil suit in SC state court are on file with the U.S. Court of Appeals for the Fourth Circuit in # 17-1672.

2 Shortly thereafter, Judge Childs assumed a federal judgeship; but her order is also on file below.

Judge Lee wrote in the 22 December 2009 order belatedly granting in part the injunction Dr. Faltas had sought before her arrest:

> **[C]ombined with the additional actions of [...] instituting criminal proceedings against [Dr. Faltas], *this court has no doubt that such conduct is done solely for the purpose of harassing [Dr. Faltas.* .... Dr. Faltas] will suffer irreparable harm in the form of continued criminal prosecution and undue mental stress and anguish if the injunction is not granted.**

Unable to survive the harsh bond conditions or get a hearing on the falsity of her arrest, but certain of her innocence, Dr. Faltas pressed *pro se* for speedy trial. Based on then-Prosecutor Weiss' assurance of readiness and that Dr. Faltas will have all due discovery by then, an administrative judge set both charges for trial in the 22-26 February 2010 session. But at trial, Weiss insisted on trying only the charge pretended by Ingram; and the judge yielded to an SC law, later held unconstitutional, which then vested exclusive control of the criminal docket in SC's circuit solicitors.[3]

Dr. Faltas defended herself ably *pro se;* the jury deadlocked after six hours of deliberation, causing a mistrial. Thereafter, Dr. Faltas' research ***objectively*** documented **378 perjuries and forgeries in Ingram's trial testimony alone.** Equipped therewith, Dr. Faltas sought speedy retrial or dismissal of the charges for lack of evidence. But Weiss falsely pretended to have evidence to retry the Ingram count and try the Steele count, in the interim causing Dr. Faltas to be arrested three more times on false charges of trespass and bond violation. Dr. Faltas was exonerated of all Weiss' new fabrications.[4] The initial harassment charges were not again called for trial until 13 August 2012, whereupon Dr. Faltas *pro se* sought **and won** their dismissal ***with* prejudice.**[5] On 13 January 2014, Dr. Faltas moved for reimbursement of her *pro se* criminal defense expense. Her motion was not heard until 18 May 2016 but was denied on 14 July 2016. Dr. Faltas timely appealed; but SC's Court of Appeals dismissed her appeal. SC's supreme court granted Dr. Faltas' petition for writ of *certiorari* but, on 4 October 207, affirmed. **During pendency of her case before SC's Supreme Court, Dr. Faltas amply documented, not only her actual innocence by clear and convincing evidence, but also that the false criminal charges had knowingly been brought against her to give an unfair advantage to her opponents in the civil litigation.** Rehearing was denied on 7 March 2018; and this petition follows.

REASONS TO GRANT THE PETITION

A. To Answer Important Questions Left Open since *Pottawattamie County* v. *McGhee,* No. 08-1065, was Settled and Withdrawn before a Decision.

Pottawattamie, Justice Breyer's dissent in *Glossip, Manuel* v. *City of Joliet, Ill,* 137 S.Ct. 911 (2017), and *Nelson* v. *Colorado,* 137 S.Ct.1249 (2017. *inter alia,* demonstrate this Court's awareness of both the increasing magnitude of inadvertent or intentional

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3 SC's circuit solicitors are state prosecutors elected by SC's 46 counties forming 16 judicial circuits.

4 For judicial economy, Dr. Faltas incorporates by reference her case No. 16-329, before this Court, and the factual records of her cases below which are too voluminous to be appended to this petition.

5 The transcripts of the 22-26 February 2010 trial and relevant hearings are also on file with the state courts.

inaccuracies in the states' criminal justice system on one hand and the inadequacies of the currently available remedies for the innocent victims of those inaccuracies on the other. Petitioner compiled a thorough record below which makes this case an excellent vehicle to explore different solutions to the relevant problems.

B. To Harmonize *Faretta* v. *California,* 422 U.S. 806 (1975), with *Ake* v. *Oklahoma,* 470 U.S. (1986), and *Indiana* v. *Edwards,* 554 U.S. 164 (2008).

Self-defense against criminal charges, when properly exercised, may yield better results for the self-represented than for her counselled comparable; but the right remains hollow without the "tools of a complete defense" *expressly* guaranteed by this Court *to counsel* for criminal defendants, but not to *pro se* criminal defendants.

Though *theoretically* self-evident that the rights belong to the defendant herself, not her counsel, *in reality,* most states, by rule or practice, deny the *pro se* criminal defendants access to compulsory process and to necessary defense expenses. Here, a trial judge found Petitioner's *pro se* defense expense "necessary or helpful" for her trial but still could not approve them under SC's statute and implementing rules.

C. To Establish or Improve Equal Protection.

The oral argument and result in *Nelson, supra,* favor a *quasi*-ministerial, self-executing law-suit-obviating device to refund the exonerated criminal defendant's money. This case may help this Court complete the remedy. Petitioner urges: (1) failure of the State to reimburse her defense expenses necessarily incurred against known-false criminal charges amounts to: (a) imposition of fines without a conviction; (b) taking of her property without due process of law; and/or (c) breach of the trust/contact of the Defense of Indigents Act; (2) **the State discriminates *without rational basis* between indigent defendants who accept appointed lawyer and those who choose to defend themselves *pro se* if the latter are denied reimbursement of such "tools of effective defense" as transcripts, experts, audio-visuals, private investigations of adverse witnesses, *etc.,* which are routinely reimbursed for appointed counsel;** (3) prevailing *civil* defendants are doubly protected by SC's Civil Procedure Rule 11 and SC's Frivolous Claims Act. **For equal protection, SC must provide a trial-court-motion cost shifting device for the exonerated (*i.e.,* prevailing) criminal defendant, *indigent or not.*** Lack of such avenue for the exonerated criminal defendant discriminates *without rational basis* between two classes of prevailing defendants before SC's "one circuit court". Criminal defendants face the State, a much more powerful and potentially harmful adversary than any civil plaintiff can be. So, a trial-court-based cost-shifting avenue is more necessary for the prevailing criminal defendant who would otherwise flounder against sovereign immunity.

CONCLUSION

WHEREFORE, *certiorari* should be granted and SC's supreme court's judgment should be reversed; and the conviction and sentence should be vacated.

Respectfully submitted on 6 August 2018.

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