22-6193

ORIGINAL

No A 22-

BEFORE THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

Marie Assa'ad-Faltas, MD, MPH,
And Marie Assa'ad-Faltas, MD, MPH, *ex rel* the Arab Republic of Egypt **Petitioner for *certiorari***
vs.
The State of South Carolina and the Supreme Court of South Carolina, **Respondents**

ON PETITION FOR A WRIT OF *CERTIORARI*
TO THE SUPREME COURT ("S Ct") OF SOUTH CAROLINA ("SC") ("SC S Ct")

PETITION FOR A WRIT OF *CERTIORARI*

Respectfully submitted by:

Marie Assa'ad-Faltas, MD, MPH, Petitioner for *certiorari*
P.O. Box 9115, Columbia, SC 29290
Phone (803) 783 -4536 Cell Phone: (330) 232 – 4164
e-mail: Marie_Faltas@hotmail.com and MarieAssaadFalts@gmail.com

Questions Presented

After *Pounders* v. *Watson,* 521 U.S. 982 (1997) (with Justices Stevens and Breyer dissenting), South Carolina's Supreme Court ("SC S Ct"), in conflict with many courts, assumed ever-expanding contempt powers. Meanwhile, *Kennedy* v. *Louisiana,* 554 U.S. 407 (2008), *basically* held the risk of *arbitrary* entry of *any* punishment violates the Eighth Amendment, especially when lesser punishment is effective; and *Alabama* v. *Shelton,* 535 U.S. 654 (2002), held that risk of even brief incarceration for minor misdemeanor conviction triggers all the constitutional protections due to a criminal defendant. Also, *Florence* v. *Board of [...] Burlington,* 566 U.S. 318 (2012), and *Brown* v. *Plata,* 563 U.S. 493 (2011), recognized, respectively, that "jails are often crowded, unsanitary, and dangerous places," imperiling "both correctional employees and inmates," and "*immediate* action is necessary to prevent **death** and harm caused by" prison overcrowding, for example by "diverting low-risk offenders" to non-incarceration, which would "lower the prison population without releasing violent convicts."

After a series of bizarre orders amounting to Jim Crowe revisited on *lawful* immigrants, SC S Ct convicted Petitioner of *criminal* contempt for no more than, during two years of *physical* closure of SC's courthouse buildings and *interim* and *permanent* orders instituting service and filing by e-mail and electronically *statewide,* having sent the then-SC S Ct clerk a total of two e-mails inquiring about the status of Petitioner's cases before SC S Ct (after that clerk "elected" to remove those cases from SC's public access website) and two more emails after that clerk retired, inquiring of his availability in private practice. **Nothing** in the *content* of the four emails was held improper *or even unjustified.* Yet, without opportunity to present a defense or compel witnesses therefor, **without a *truly* public trial, *and without realistic opportunity for Petitioner's Consul to monitor the* quasi-*trial before SC S Ct,***, Petitioner was sentenced to six months suspended upon service of ten days in a fearsome local jail. There, she was struck with atrial fibrillation and remained untreated for a day, with jail personnel later actively preventing her recovery when there was a chance of it.

In light of the evolution of this Court's jurisprudence, the questions presented are:

1. Given that: (a) CoViD-19 and monkey-pox make even an hour in jail a peril to life or limb, (b) jails are generally overcrowded and do nothing to "reform" minor non-violent offenders, (c) alternate but civilized measures can control *genuine* contempt, (d) the six-month-sentence line between summary punishment and due-process-mandated guarantees of fair trial was elsewise eroded or overruled, (e) the potential for abuse of contempt powers by temperamental and/or vindictive judges, (f) six-month incarceration being long enough to cause irreparable injury but short enough to be capable of repetition yet evading review, and (g) this Court's exercise of its own judgment in Eighth Amendment cases, has civilized society evolved enough for this Court to find that **incarceration for up to six months for alleged *indirect* contempt *without trial by jury* is always *per se* cruel and unusual**?
2. Where a state constitution provides for jury trial *for all offenses,* and the state legislature provides trial by jury for petty offenses, even those punishable by fines only, may a state court of last resort deny an alleged *indirect* contemnor a jury in a trial before that court?
3. When a state court of last resort livestreams all proceedings before itself, and given that *one* consul cannot *realistically* travel to monitor all criminal trials of his/her nationals here, was due process denied when SC S Ct denied Petitioner remote access by her consul?
4. Does due process allow a court to be the judge of the validity of its own orders?

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LIST OF PARTIES: All parties appear in the caption of the case on the cover page.

Petition for a Writ of Certiorari

Petitioner prays this Court to issue a writ of *certiorari* to review the 10 June 2022 ORDER of conviction and sentence by SC S Ct in SC Appellate Case 2021-000815 and 21 June 2022 ORDER denying rehearing.

OPINIONS BELOW

SC S Ct's January and June 2022 orders are not reported *and are not even accessible online* but are included as Appendices 1 and 5-6 hereto.

JURIDICTION

This Court's jurisdiction over this timely petition for *certiorari* is respectfully invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution are invoked but not quoted in deference to this Court's intimate knowledge of them.

Article I, Section 14 of the South Carolina Constitution provides:

Trial by jury; witnesses; defense.

> The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

Sections 14-1-100, 14-1-150, and 40-45-80, South Carolina Code of Laws, provide, respectively, with emphasis added:

> ***SECTION 14-1-100. Rights in court shall not be affected by race or color.***
>
> *Whenever authority has heretofore been conferred by law upon any free white person or persons to institute any suit or proceedings or to prefer any information or complaint in any matter, civil, penal or criminal, the same rights shall be enjoyed by and the same remedies shall be applicable to all persons whatsoever, regardless of race or color,* ***subject to the same conditions and none other.*** [emphasis added]
>
> **SECTION 14-1-150.** Contempt of court; offenders shall be heard.
>
> In case any person shall commit any misbehavior or contempt in any court of judicature in this State, by word or gesture, the judges of such court may set a fine on such offender in any sum not exceeding fifty dollars, for the use of this State, and may commit the offender till payment. But if any person shall in the presence and during the sitting of the court strike or use any violence therein, such person shall be fined at the discretion of the court and shall be committed till payment; provided, that no citizen of this State shall be sent to jail for any contempt of court or supposed contempt of court, committed during the sitting of the court and in disturbance of the court, until he be brought before the court and there be heard by himself or counsel or shall stand mute.
>
> **SECTION 14-1-160.** Breach of peace within hearing of court.
>
> When any affray shall happen during the sitting of any court within this State and within the hearing or to the disturbance of the court, the court shall order the sheriff or other lawful officer to take the affrayers or other disturbers of the peace or those guilty of contempt and bring the offenders before the court and the court shall make such order thereon as may be consistent with law, justice and good order.

SECTION 40-5-80. Citizen may prosecute or defend own cause. This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.

Statement of the Case

Petitioner, Marie Assa'ad-Faltas, MD, MPH, is a first-generation legal immigrant Coptic Orthodox Christian quadrilingual physician (MD) and master of public health (MPH) from a family of naturalized and natural-born U.S. citizens and has been since September 2005 lawfully admitted for permanent residence. Dr. Assa'ad-Faltas is talented, highly-educated, and a sincere pacifist who *trusted* courts for *civilized* resolution of disputes. She also values speaking for oneself *as a basic human right* in addition to being guaranteed *by federal and SC law.* She was effective (often after long litigation) as a *pro se* civil plaintiff and defendant—so effective that her opponents began throwing *false* criminal charges at her to gain unfair advantages in the civil litigations. After she, thank God, defeated false misdemeanors charges *pro se,* her **new** opponents made a well-connected and dually-paid prosecutor (Sara Heather Savitz Weiss {"Weiss"}) bring more serious *but also known false* criminal charges to defeat state civil case 2009-CP-40-02219, *Assa'ad-Faltas* v. *Steele* et al., in Richland County, SC, Circuit Court of Common Pleas ("RCCCCP"). The search and arrest warrants procured by Weiss issued on 1 December 2009, *the same day* SC Circuit Judge Lee heard in 2009-CP-40-02219 Dr. Assa'ad-Faltas' motion for preliminary injunction upon her *plausible, later-proven-correct, inference* of plans to fabricate false criminal charges and get her imprisoned for life to defeat her civil action. Judge Lee took it under advisement and Dr. Assa'ad-Faltas was falsely arrested the morning of 2 December 2009 and had a bond hearing that afternoon.

Those warrants (and later indictments) falsely and *summarily* (without the constitutionally-required specificity) pretended that Dr. Assa'ad-Faltas had "harassed" her then-landlady Steele (lead defendant in 2009-CP-40-02219) and Steele's-then-tenant Teresa Felicia Ingram-Jackson, AKA Teresa (or Therese) Ingram (or Hampton), Nikki Ingram (or Icecream), *etc.*

***Solely* by Weiss' choice,** the false indictment pretended by Steele was never called for trial.

The false indictment pretended by Ingram was tried to a jury on 22-26 February 2010, with SC Circuit Judge Clifton Newman presiding. Weiss had listed *to the jury* 36 witnesses but called only seven, of whom then-Columbia-Police-Department ("CPD")-Investigator Amanda Star Blanton ("Blanton") had also testified *in camera* in opposition to Dr. Assa'ad-Faltas' motion to quash the indictments and suppress the search warrants. After having called three witnesses in addition to herself for the *in camera* hearing, Dr. Assa'ad-Faltas called before the jury nine witnesses, four (Steele, Mason, Jones and Curry) from Weiss' uncalled 29, one (Delaney) was Steele's attorney in 2009-CP-40-02219, one (Reynolds) was an employee of Weiss' office, and one (Tandy Carter, who had also testified *in camera*) was then CPD's chief. Dr. Assa'ad-Faltas and her sometime-lawyer-in-other-cases Orin Briggs were the only pro-Defense witnesses to the jury. The jury remained hung after six hours of deliberations, four questions, and an *Allen* charge, causing Judge Clifton Newman to declare a mistrial circa 11:00 pm, without *any* directions to the Prosecution on speedy retrial and without revisiting the conditions of Dr. Assa'ad-Faltas' bond which distressed her. Dr. Assa'ad-Faltas promptly began investigating testimony presented for the first time in the 22-26 February 2010 trial and uncovered shocking *objective* contradictions ***known to Weiss* before the trial.** Also, Ingram was extra-judicially evicted from Steele's two rental quadriplexes circa 15 March 2010 for non-payment of rent, raising a strong presumption that Steele had kept the unemployed-since-June-2009 Ingram (a fact *objectively* confirmed by Dr. Assa'ad-Faltas after the trial and debunking a central false pretense of "harassment" by her) rent-free as a *bribe* for her testimony against Dr. Assa'ad-Faltas. That, along with Weiss' refusal to call the false indictment

pretended by Steele for trial and all courts' refusal to revisit the extremely-oppressive conditions of Dr. Assa'ad-Faltas' bond, proved that the interval between Dr. Assa'ad-Faltas' 2 December 2009 arrest and her 22-26 February 2010 trial **was NOT a concession to her speedy trial rights *but an indulgence of the financial limits of Steele's willingness to bribe witnesses.***

Convinced by her post-mistrial research that Weiss had no *non-refutable* facts with which to retry the false Ingram indictment or try the false Steele indictment, Dr. Assa'ad-Faltas justifiably feared that, in the range of evils of a prosecutor who had already suborned so much perjury and herself **lied** about her witnesses' criminal records, Weiss will: (1) call the cases for trial **without notice to Dr. Assa'ad-Faltas** and try her *in absentia;* or (2) **never call the cases for trial but fabricate another arrest of Dr. Assa'ad-Faltas to revoke her bond,** which, oppressive as it otherwise was, allowed her to be *physically* outside the fearsome Alvin S. Glenn Detention Center ("ASGDC"), so re-named because, on 17 September 2000, inmates at that Richland County, SC, pretrial-detention facility (also misused for misdemeanor sentences shorter than 90 days) over-powered and killed Officer Alvin Sherman Glenn in a first-step in an escape attempt. (Appendix 7) Dr. Assa'ad-Faltas filed well-founded motions for speedy retrial of the false Ingram-pretended indictment and speedy trial of the false Steele-pretended indictment or dismissal of both. She also filed motions to lift or modify the conditions of her bond, specially after it was *objectively* proven that the Prosecution is unable to mount trials on the charges and was unable to obtain a conviction in the one trial it mounted. **None of Dr. Assa'ad-Faltas' *pro se* post-22-26-February-2010-trial motions was ever scheduled by any chief judge for administrative purposes. Only the Prosecution's motion for mental evaluation and the forced stand-by counsels' motions to be relieved were scheduled on the General Sessions ("GS") side and the Defense's motion for summary judgment in 2009-CP-40-02219 was scheduled on the CP side—the latter *only* after a decree that Dr. Assa'ad-Faltas, who had begun that case *pro se,* cannot continue to prosecute it *pro se.***

Dr. Assa'ad-Faltas moved for reconsideration of the second bizarre order limiting her access to the courts the day after it was served on her. **But her motion remained unheard from 2 April 2010 to 6 June 2016, when SC Circuit Judge Lee, then-successor in administrative capacities to Judges Cooper and Barber, heard it and GRANTED it on 23 June 2016 but only *after* Dr. Assa'ad-Faltas had been falsely arrested (but later acquitted) under the 31 March 2010 ORDER on 23 March 2011.** Weiss' *initial* response to Dr. Assa'ad-Faltas' post-22-26-February-2010-trial motions was to move to have her declared incompetent to defend *pro se.*

Thank God, ***even the presumed-vindictive*** now-retired **SC Circuit Judge Cooper** found, albeit begrudgingly, the idea that Dr. Assa'ad-Faltas is too "mentally incompetent" to defend herself *pro se* **strange and DENIED Weiss' motion.** Weiss' subsequent pressures failed to get Dr. Assa'ad-Faltas to plead guilty to criminal charges of which all knew her to be *actually* innocent. Weiss then "remanded" the false "first-degree" harassment charges to the City of Columbia's Municipal Court ("CMC") over Dr. Assa'ad-Faltas' objections **which ***remained unheard for two more years.*** In those two years between August 2010 and August 2012, CMC's Marion Oneida Hanna ("Hanna") entered five contempt-of-court pronouncements against Dr. Assa'ad-Faltas, all in the course of, and to derail, her efforts to have the false harassment charges speedily retried or dismissed. The fourth and fifth of those were, thank God, dismissed with finality on 31 December 2021, when SC's Court of Appeals ("SC CoA") sent the remittitur after denying the State-sought *certiorari* to reverse the grant of post-conviction-relief ("PCR") to Dr. Assa'ad-Faltas based on her *pro se* advocacy. The first to third of those *all show the same pattern* of abuse of contempt-of-court powers to thwart **a pre-known, and later proven, *actually innocent* criminal defendant's able *pro se* defense** in the criminal court

stages and later *pro se* efforts to gain just compensation for the malicious prosecution inflicted on her. Hanna would have continued her abuse of Dr. Assa'ad-Faltas had discipline, albeit private, not been imposed on Hanna by SC's Office of Disciplinary Counsel ("ODC") based on a complaint by Dr. Assa'ad-Faltas. On 13 August 2012, Dr. Assa'ad-Faltas *pro se*, thank God, obtained **dismissal *with* prejudice** of the two *false* first-degree-harassment charges on which she was falsely arrested on 2 December 2009 and had since then been under extremely oppressive bond conditions which, in that interim, induced four more false arrests and incarcerations during which she suffered injuries to her hands, wrists, knees and psyche and as a result of which she developed a right-hand tremor.

It became then obvious to Weiss and to Dr. Assa'ad-Faltas' opponents in 2009-CP-40-02219 that their use of *these* false arrests to thwart the case will back-fire since she could then have amended her complaint to include the now-proven malicious prosecution. **Weiss quickly then enlisted then-SC-Chief Justice and notoriously pro-prosecution Jean Toal to do by *literal* judicial fiat,** all without notice to Dr. Assa'ad-Faltas *or opportunity for her to respond* but under Toal's misused "administrative authority," what could not be achieved by adversarial motions: bar Dr. Assa'ad-Faltas from defending herself *pro se* in criminal and civil cases and from initiating or continuing to prosecute already-initiated civil cases *pro se.* Toal's orders were so bizarre, extreme, and against the *true* facts that, when Toal stood for an unprecedented contested re-election as chief justice, and Dr. Assa'ad-Faltas filed a complaint against Toal's re-election with SC's Judicial Merit Selection Commission ("SC JMSC"), Toal retreated *somewhat* and Dr. Assa'ad-Faltas' *Faretta* rights were restored, but with restrictions. In the 2011-2013 interim between the suspension and restoration of Dr. Assa'ad-Faltas' *Faretta* rights, lawyers forced on Dr. Assa'ad-Faltas had gotten her convicted of two misdemeanors in CMC with sentences totaling fifty (50) days in that fearsome ASGDC. Dr. Assa'ad-Faltas' remaining avenue were state PCRs. The SC circuit judge, D. Craig Brown, assigned to hear those PCRs decided it is to his political advantage to mistreat Dr. Assa'ad-Faltas and announced in written orders that she should be held in contempt for using e-mails. What transpired between Judge Brown's mid-2021 announcement that he would like Dr. Assa'ad-Faltas held in contempt and incarcerated for six months and SC S Ct's ORDER for her to answer to contempt charges for *solely* having inquired of public court employees *during business hours* about the *administrative* aspect of her cases has never been disclosed to her; but on 25 January 2022, she was served with an order in a case numbered 2021-000815 which does not appear on any public website and which SC S Ct has, under threat of penalty of further incarceration, prevented Dr. Assa'ad-Faltas from seeing the record of before *and after* her 22 March 2022 *quasi*-trial. The official transcripts of Dr. Assa'ad-Faltas' 22 February and 22 March 2022 appearances before SC S Ct are Appendices 2 and 3 hereto and incorporated herein by reference. **This Court is prayed to request the complete record from SC S Ct.**

On 10 June 2022, SC S Ct convicted Petitioner of contempt and denied rehearing on 21 June 2022. Petitioner served her ten days at ASGDC and there and then was struck with atrial fibrillation which did not since remit and which causes her physical and emotional pain and puts her at risk of stroke or death.

REASONS FOR GRANTING THE PETITION

I. On the First Question Presented

A. Unjust Incarceration for Contempt is a Major Hazard for *Every* Trial Lawyer and *Every Pro Se* Litigant, and thus is an Issue of Great Public Importance Ripe for Revisiting.

While repeatedly recognizing the potential of abuse of contempt powers, this Court has not revisited the issue since *Pounders, supra,* despite major societal and legal developments

which leave no doubt that policing of the contempt powers is impossible and that such unchecked powers inflicts irreparable *physical* harm on the innocent and can otherwise squelch effective advocacy. In no *modern* endeavor other than trial advocacy does the professional or self-helper risk six months in jail if (s)he displeases a temperamental/vindictive superior. For no other *modern* alleged crime, however minor, is the same person allowed to be the victim, *sole* judge, and executioner. The quality of advocacy in courts, and the restraint of all judges from the temptations of unchecked contempt powers, are issues of great public importance.

This Court is NOT asked to decriminalize contempt, to reduce the current six months limit on contempt convictions without jury trial to another arbitrary length, OR to reiterate established differences between civil contempt and criminal contempt, BUT only to admit: (a) the impossibility of ensuring obedience to this Court's teachings if contempt sentences *continue* to be *executed* without the necessary safeguards of appeals and *habeas,* and (b) the counterproductive effect of the threat contempt sentences on the efficient functioning of trial courts.

In the following quotations from three of this Court's Eighth Amendment cases, "a" in place of "the death" or "capital" proves that summary incarceration, however brief, for contempt is *per se* cruel and unusual.

Graham v. ***Florida,*** 560 U.S. 48, 68-9 (2010):

> Community consensus, while "entitled to great weight," is not itself determinative of whether a punishment is cruel and unusual. *Kennedy* [v. *Louisiana*, 128 S.Ct. at 2658]. In accordance with the constitutional design, "the task of interpreting the Eighth Amendment remains our responsibility." *Roper*, 543 U. S., at 575. The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. *Id.,* at 568; *Kennedy* [at 2559-60]; cf. *Solem*, 463 U. S., at 292. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals. *Kennedy* [at 2661-65]; *Roper* [at] 571–572; *Atkins* [at] 318–320.

Kennedy v. ***Louisiana,*** 554 U.S. 407 (2008), Parts IV and V:

> ("[A] penalty statute[must] be structured so as to prevent the penalty from being administered in an arbitrary and unpredictable fashion" (citing *Gregg,* 428 U.S. 153; *Furman,* 408 U.S. 238)); *Godfrey v. Georgia,* 446 U.S. 420, 428, (1980) (plurality opinion) (requiring a State to give narrow and precise definition to the aggravating factors that warrant its imposition). At the same time the Court has insisted, to ensure restraint and moderation in use of [a] punishment, on judging the "character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting [a] penalty[.]" *Woodson,* 428 U.S., at 304 (plurality opinion); *Lockett v. Ohio,* 438 U.S. 586, 604-605 (1978) (plurality opinion). ***** In this context, [...] we have no confidence that the imposition of [a] penalty would not be so arbitrary as to be "freakis[h]," *Furman,* 408 U.S., at 310 (Stewart, J., concurring). We cannot sanction this result when the harm to the victim [...] cannot be quantified [.] ***** Although narrowing aggravators might be used to ensure [a] penalty's restrained application in this context, [...] all such standards have the potential to result in some inconsistency of application. The Court, for example, has acknowledged that the requirement of general rules to ensure consistency of treatment, see, *e.g., Godfrey* v. *Georgia*, 446 U. S. 420, and the insistence that [...] sentencing be individualized, see, *e.g., Woodson* v. *North Carolina*, 428 U. S. 280, have resulted in tension and imprecision. ***** [T]he resulting imprecision and the tension between evaluating the individual circumstances and consistency of treatment [....] should not be introduced into our justice system[.] ***** Evolving standards of decency are difficult to reconcile with a regime that seeks to expand [a] penalty to an area where standards to confine its use are indefinite

> and obscure. ***** *Gregg* instructs that [a] punishment is excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct social purposes served by [a] penalty: retribution and deterrence of [a] crime[.] See *id.*, at 173, 183, 187 (joint opinion of Stewart, Powell, and Stevens, JJ.); see also *Coker,* 433 U. S., at 592 (plurality opinion) ("A punishment might fail the test on either ground"). ***** [We] conclude, in our independent judgment, that [a] penalty is not proportional[.] ***** [T]he Eighth Amendment is defined by "the evolving standards of decency that mark the progress of a maturing society." *Trop,* 356 U. S., at 101 (plurality opinion). Confirmed by repeated, consistent rulings of this Court, this principle requires that use of [a] penalty be restrained.

Miller v. *Alabama,* 567 U.S. 460, 507 (2012), Chief Justice Roberts dissenting:

> Our Eighth Amendment cases have also said that we should take guidance from "evolving standards of decency that mark the progress of a maturing society." [] *Estelle* v. *Gamble,* 429 U. S. 97, 102 (1976); internal quotation marks omitted). Mercy toward the guilty can be a form of decency, and a maturing society may abandon harsh punishments that it comes to view as unnecessary or unjust.

Under *contemporary* independent judgment of this Court, imposition of incarceration of up to six months, *without a jury* for an unquantifiable crime not physically damaging the victim, proves inherently "freakish." Incarceration is also utterly unnecessary given individual characteristics of likely offenders and ease of other deterrence. Offending court spectators can simply be removed by the ample security personnel available in all modern courtrooms. Otherwise, advocates in court have built-in incentives to please, not insult. the presiding jurist.

Professional advocates have undergone years of study and examination of their character before acquiring their law licenses and know that a judge always has a right, and often an ethical duty, to report unethical behavior for professional sanctions. A *pro se* civil plaintiff has survived, or needs to survive, dispositive motions to get to a live trial. A *pro se* criminal defendant has survived, or proven above any need for, mental competency evaluation and is forewarned that (s)he can be removed from the courtroom and replaced by imposed counsel upon misbehaving. Self-destructive or even *usually*-self-disciplined advocates or courtroom observers *might* commit direct contempt. But modern realities *and standards of decency* cannot leave courtroom observers or advocates, *pro se* or professional, all of whom being essential to the *disciplined* functioning of the judicial branch, under perpetual threat of *summary* incarceration for up to six months without any *timely* due process.

B. The Conflict Between South Carolina's Supreme Court and United States Courts of Appeals Is Fully Developed, *Deepening*, and Soluble Only by a Ruling of This Court.

In ***Brandt v. Gooding,*** 368 S.C. 618, 628, 630 S.E.2d 259 (2006), SC's then-Chief Justice Toal wrote for a unanimous court:

> "South Carolina courts have always taken a liberal and expansive view of the 'presence' and 'court' requirements." Kennerly, 524 S.E.2d at 838. The "presence of the court" extends beyond the mere physical presence of the judge or the courtroom to encompass all elements of the system. *Id.* This Court has recognized that depositions are judicial proceedings and are within the "presence of the court." Matter of Golden, 496 S.E.2d 619 (1998). In *Golden,* the Court held that "although a deposition is not conducted in a courtroom in the presence of a judge, it is nonetheless a judicial setting." Because there is no presiding authority, it is even more incumbent upon attorneys to conduct themselves in a professional and civil manner during a deposition. *Id.* at 343, 496 S.E.2d at 623.

The U.S. District Court granted *habeas* relief, *Brandt v. Ozmint,* 664 F.Supp.2d 626 (D.S.C. 2009), and the U.S. Court of Appeals affirmed that relief, *Brandt v. Gooding,* 636 F.3d 124,

134 (4th Cir. 2011) [footnotes omitted]:

> The *In re Oliver* Court emphasized that summary criminal contempt proceedings are available only in limited circumstances where an individual's misconduct not only occurs "within the 'personal view' of the judge, 'under his own eye,'" *id.* at 274, but also "disturbs the court's business." *Id.* At 275. Unless "all of the essential elements of the misconduct . . . are actually observed by the court" and "immediate punishment is essential to prevent 'demoralization of the court's authority,'" *id.,* an individual must be afforded "reasonable notice of [the] charge against him[ ] and an opportunity to be heard in his defense," including "a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." *Id.* at 273. Because *In re Oliver* involved a factual scenario in which "essential elements" of the witness' alleged "offense" were not within the personal knowledge of the judge, thus requiring the judge to "depend upon statements made by others for his knowledge," *id.* at 275, the Supreme Court held that the witness should have been "accorded notice and a fair hearing. *Id.* At 275-76. The same reasoning evident in *Cooke* and *In re Oliver* applies to the case at bar. Brandt's alleged offense consisted of knowingly introducing a fraudulent letter into the state court proceedings. The judge's knowledge of the letter's fraudulent nature depended, however, on the testimony of others, including the views of an expert witness. And the allegedly criminal act of knowingly introducing the fraudulent letter into the state court proceedings occurred in a deposition, not in open court. We therefore cannot conclude that "all of the essential elements of [Brandt's alleged] misconduct" occurred "under the eye of the court," as the judge "depend[ed] upon statements made by others for his knowledge." *Id.* at 275, 68 S.Ct. 499. Accordingly, clearly established Supreme Court precedent required that Brandt receive the traditional protections provided by the Due Process Clause of the Fourteenth Amendment.

SC S Ct is also in conflict with the U.S. Courts of Appeals for the Second Circuit ((*United States v. Rangolan,* 464 F.3d 321 (2006)(Contact with juror in cafeteria not *direct* contempt)) and the Ninth Circuit ((*United States v. Glass,* 361 F.3d 580) (*Summary* contempt *reversed* for defendant who misrepresented her indigency)) and with courts of last resort of other states: *State v. Dugan,* 979 P.2d 858 (Washington 1999); *Kauffman v. 21st Judicial District Court,* 966 P.2d 715 (Montana 1998) (Contemptuous pleadings cannot be punished summarily); *Ramirez v. State,* 608 S.E.2d 645 (Georgia 2005) (Lawyer's phone call to media not *direct* contempt); *In re Byrnes,* 54 P.3d 996 (New Mexico 2002) (Judge cannot summarily suspend attorney even for in-court conduct); *Scialdone v. Commonwealth,* 689 SE2d 716 (Virginia 2010) (Discrepancy in document introduced by defense counsel not *direct* contempt); *Gardiner v. York,* 233 P.3d 500 (Utah 2010) (Vexatious litigation is not *direct* contempt); *Commonwealth v. Nicholas,* 74 Mass. App. Ct. 164 (Massachusetts 2009) (Judge who witnessed courtroom fight but not the gesture that started it cannot sentence for *direct* contempt); *Harrington v. Commonwealth,*(Virginia Court of Appeals 2010) (Harassment of judge's wife is not *direct* contempt); *Newton v. Golden Grove Pecan Farm,* 711 S.E.2d 351 (Georgia Court of Appeals 2011) (Receiver mismanagement of court-order tasks not *direct* contempt.); *In re Contempt of Gregg,* 2005 Ohio 4996 (Ohio Court of Appeals, 8th Appellate District 2005) (Judge abused discretion in summarily sentencing defendant for perjury).

Against the weight of authority, SC S Ct *continues* to *summarily* sentence to incarceration advocates whose conduct does not remotely approach contempt; *e.g., In Re Boyd,* Appellate Case No. 2013-000884 (Lawyer sentenced to six months imprisonment for continuing to represent clients); *In Re Cooper,* Appellate Case No. 2013-001095 (same but suspended upon purge of *separate* civil contempt); and *In Re Lapham,* Appellate Case No. 2013-00806 (suspended lawyer sentenced to 60 days' incarceration for failure to cooperate with attorney appointed to protect interests of suspended lawyer's clients).

Most significantly, in Petitioner's case, **SC S Ct *in June 2013,* held an *internal* hearing *in***

absentia, **based on affidavits Petitioner never saw to consider holding her in *summary* contempt for having *successfully* defended herself *pro se* and for having e-mailed the lawyers imposed on her and concerned others to the effect that she wishes to resume *pro se* defense.** Although SC S Ct "declined" *then* to "issue a Rule to Show Cause" for Petitioner, it nonetheless punished her with further restriction on her plenary constitutional rights of access to the courts and self-representation and threatened her with further *summary* contempt findings *in absentia* if she even called the lawyer then-imposed on her to appeal two misdemeanor convictions incurred due to the ineffectiveness of *a prior lawyer* who had also been imposed on Petitioner against her will. *Vide* 28 June 2013 Order (Appendix 11). It bears repeating that, when Petitioner defended herself *pro se* against *other* false criminal charges brought against her by the City of Columbia, she always ultimately prevailed in trial or on appeal.

But SC S Ct continued to harbor this nefarious intent to punish Dr. Assa'ad-Faltas for winning *pro se*; and the contrast between the 22 February and 22 March 2022 transcripts and the 10 and 21 June 2022 ORDERs shocks the conscience.

C. This is an Excellent Vehicle for this Court to Examine Abuses of Contempt Powers.

The *quasi*-trial was before SC S Ct itself. Without *certiorari* by this Court, a zone of darkness and unreviewability incompatible with the rule of law is created.

II. On the Second Question Presented

Nowhere is the interposition of a jury between a temperamental and/or vindictive judge and a powerless defendant more crucial than where the judge is also the self-perceived victim and the executioner. No impartial jury would have convicted a peer for using e-mail instead of paper letter at a time the court buildings were *physically* closed; but vindictive judges did.

III. On the Third Question Presented

Unlike lawyers whose availability may be increases by graduating or recruiting more for criminal defense, a foreign country can have *only one ambassador to the U.S.* at a time.

A consul needs to be admitted by diplomatic conventions and cannot be "multiplied" on a moment's notice to satisfy the needs of monitoring criminal trials *in addition to other consular duties.* The touchstone of due process is meaningfulness. A mere letter to a consul that one of his/her nationals is a criminal defendant is meaningless if the consul cannot *realistically* travel to the trial location due to other duties. The denial of live streaming and remote access to Petitioner's consul was unjustified. This Court's guidance is necessary for comity among countries and to promote reciprocal accommodation for U.S. citizens tried abroad.

IV. On the Fourth Question Presented

Not only was there no chance SC S Ct would find its own orders invalid, it found them valid under a false pretext which is anathema to the republican form of government and recidivist to tyranny: SC S Ct approved of its clerk's idea that SC S Ct **can, *of its own volition and without an underlying case or controversy,* issue permanent injunctions upon whom no personal jurisdiction was acquired.** This person can then be held in contempt even though the permanent injunction was ambiguous and benefited no one.

Kings act "of their own volition." America's judges may act only on cases or controversies.

The departure of SC S Ct from normal *and basic* understanding of judicial power calls for this Court's grant of *certiorari.*

CERTICATE OF WORD COUNT

This petition is 5150-words long exclusive of appendices and matter not to be counted.

Marie Assa'ad- Faltas, MD, MPH, Petitioner *pro se*
P.O. Box 9115, Columbia, SC 29290
Cell Phone: (330) 232 – 4164
e-mail: Marie_Faltas@hotmail.com AND MarieAssaadFaltas@GMail.com

CONLCUSION

Certiorari should be granted and the 10 and 21 June 2022 ORDERs of SC S Ct should be reversed, and Petitioner's contempt of court convictions should be vacated and expunged.

Marie Assa'ad- Faltas, MD, MPH, Petitioner *pro se*
P.O. Box 9115, Columbia, SC 29290
Cell Phone: (330) 232 – 4164
e-mail: Marie_Faltas@hotmail.com AND MarieAssaadFaltas@GMail.com

Date: 19 September 2022, revised 18 November 2022.

No A 22-

BEFORE THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

Marie Assa'ad-Faltas, MD, MPH,
And Marie Assa'ad-Faltas, MD, MPH, *ex rel* the Arab Republic of Egypt — **Petitioner for *certiorari***

vs.

The State of South Carolina and the Supreme Court of South Carolina, — **Respondents**

ON PETITION FOR A WRIT OF *CERTIORARI*
TO THE SUPREME COURT ("S Ct") OF SOUTH CAROLINA ("SC") ("SC S Ct")

APPENDICES (1-11) TO
PETITION FOR A WRIT OF *CERTIORARI*

Respectfully submitted by:

Marie Assa'ad-Faltas, MD, MPH, Petitioner for *certiorari*
P.O. Box 9115, Columbia, SC 29290
Phone (803) 783 -4536 Cell Phone: (330) 232 – 4164
e-mail: Marie_Faltas@hotmail.com and MarieAssaadFalts@gmail.com