

No A 22-6193

**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
vs.
The State of South Carolina and the Supreme Court of South Carolina,**

Petitioner for *certiorari*

Respondents

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

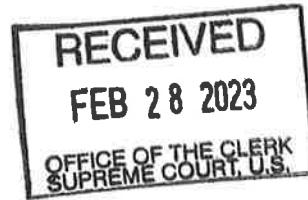
TIMELY PETITION FOR REHEARING OF DENIAL OF A WRIT OF CERTIORARI (Rule 44.2)
And Certificate of Advocate as Required by Rule 44.2

Respectfully submitted by:

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

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Questions Presented {Rule 14.1(a)} and Supplemental Questions Presented {{Rule 15.8}}

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 otherwise 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?

After the main petition was, thank God, docketed on 1 December 2022, Appendix 4 thereto (stamp-marked “Exhibit 4”) was not seen among the rest of the appendices scanned on the docket. Whether App./Ex. 4 had been inadvertently omitted by Petitioner *ab initio* or was lost in the mail or in the clerical processing, it is attached hereto. Also, the Clerk (“Cl”) of South Carolina’s (“SC”) Supreme Court (“S Ct”) (“SC S Ct”) (“SC S Ct Cl”) **did not** note this petition in SC Advance Sheets (“SCAS”), despite having received **direct notice** from this Court’s Clerk, and despite **all other** petitions to SC S Ct pending before *this* Court appearing on SCAS.

After decades of the Americans with Disabilities Acts, SC S Ct still **lacks** an ADA ramp but *hopes* one *may be* constructed in 2023. SC S Ct Cl just devised an alternative evidenced by the attached exchange of letters. That drive-by filing denies disabled litigants’ and members of the public’s ability to view in person public records *unavailable* outside SC S Ct’s building, extends SC S Ct’s revisiting Jim Crow on Dr. Assa’ad-Faltas, and maintains an oppressive secrecy of most matters concerning Dr. Assa’ad-Faltas in SC state courts, **even in this *indirect* contempt *criminal* case tried before SC S Ct *itself*, not any lower state court.**

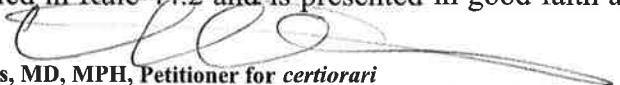
Alarmingly, Richland County’s, SC, *purportedly*-short-term facility, the Alvin S. Glenn Detention Center (“ASGDC”), just reported the death there of a second young male, presumably previously healthy, inmate *this year alone*. That is, not a coincidence, but a trend caused by the now-documented *gross* mismanagement of ASGDC, where Dr. Assa’ad-Faltas was sent to serve the *active* part of her six-month contempt sentence and where she was struck with atrial fibrillation (“A-Fib”) which could have, God forbade, killed her there and then.

In light of these post-docketing developments, the supplemental questions presented are:

5. Should this Court impose a nation-wide moratorium **on incarcerations of any length for contempt of court convictions not tried by a jury and/or on the service of a contempt sentence in a facility where the statistical likelihood of inmate death is inordinately high?**
6. Should this Court add to its Rule 12.b this language, **“or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power,”** present in Rule 12.a?
7. Should a lawful resident alien be allowed to remove, under 28 U.S.C. § 1251 (b)(3), to this Court in its original jurisdiction a *criminal* prosecution by a state court of last resort?
8. Alternatively, could a lawfully resident alien **tried as a *criminal* contemnor before a state highest court appeal as of right to *this* Court because mere availability of discretionary review creates the disfavored “black hole” where liberty is taken without review as of right in any forum?**

Certificate of Advocate (Rule 44.2)

I, Marie Assa'ad-Faltas, MD, MPH, Petitioner *pro se*, hereby certify that this Petition for Re-hearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.


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Timely Petition for Rehearing (Rule 44.2)

Within 25 days of this Court's 9 January 2023 ORDER denying *certiorari*, Petitioner sincerely moved for reversal of that denial for the strongest possible reason: **the complete petition was never considered *ab initio* because it was never distributed**. This is NOT Petitioner's imagination or "conspiracy theories" but the *sole* conclusion from a comparison of the case docket with the attached letter *on this Court's letter head*. The letter claims the timely-received Rule 15.8 supplement was "placed in the file" but the docket does not show it having been distributed *at all*. Nor were members of this Court's Clerk's Office able to locate it in the file *before a decision was made on the initial petition*. What was done to conceal, confuse, and excuse this non-distribution is unbecoming of this Court, of its Clerk, and of his subordinates who should uphold this Court's integrity and restore all shaken public confidence in it.

Also, the initial petition asked whether incarceration *without appellate review* for *indirect* contempt-of-court convictions has become cruel and unusual under current life-threatening conditions of jail and short-term incarceration facilities in general and **in the facility where Petitioner was incarcerated in particular**. Four months before Petitioner's incarceration for the *indirect* contempt conviction *sub judice* at Alvin S. Glenn Detention Center ("ASGDC"), one young male detainee had died there; between the initial petition and the tendered-but-never-distributed supplement, another young male detainee died in ASGDC; **and between this Court's denial of the original petition and the date of this petition for rehearing, a third young male detainee was killed by five other detainees at ASGDC**, where Petitioner, a 69-year old female had been struck by atrial fibrillation and left untreated for two days.

In addition to the important question affecting the powers of **all courts in the nation**, the different treatment of *pro se* papers is cited by Justice Sotomayor in her STATEMENT respecting denial of *certiorari* in *Schexnayder v. Vannoy*, 589 U.S. ___ (2019), slip opinion p 1:

In 2007, a former employee of Louisiana's Fifth Circuit Court of Appeal shot himself in his courthouse office. The employee left a suicide note claiming that he had been tormented by his involvement in that Court of Appeal's secret 13-year policy of summarily denying *pro se* appeals.

It is not unique to that Louisiana court but is replicated nationwide minus the suicide; *e.g.*, **USCA 4th Cir.'s Judge Wilkerson's concurrence in *Nassim v. Warden*, 64 F.3d 951 (4th Cir. 1995)**:

[Courts] resort to adjudicative systems in which decisions are handed down with only the tangential involvement of Article III judges. The use of staff counsel and other alternative modes of judicial decision-making has been increased for the specific purpose of handling these claims. Doumar, *supra*, at 27-29. Whenever claims are disposed of without the closest attention of the judges, **the legitimacy of the federal courts is at risk.**

That violates the **28 U.S.C. § 453. Oaths of justices and judges**:

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

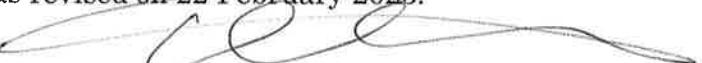
The previously non-distributed supplement and *most* appendices thereto, *along with three more reports of* after-occurring third inmate death within 11 months at the fearsome ASGDC are enclosed herewith for the Court's ready access. Also enclosed, and served on opposing counsel are copies of the envelope from this Court containing Mr. Meek's 30 December 2022 letter to Petitioner.

CONLCUSION

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* and assertion of supervisory powers over states' highest courts. *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.

Date: 3 February 2023, resubmitted as revised on 22 February 2023.



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Certificate of Word Count

The body of this revised two-page Petition for Rehearing consists of 810 words exclusive of the resubmission of the questions presented, the cover, the certificate of service, the appendix cover and contents, and the appendices.

Date: 22 February 2023.



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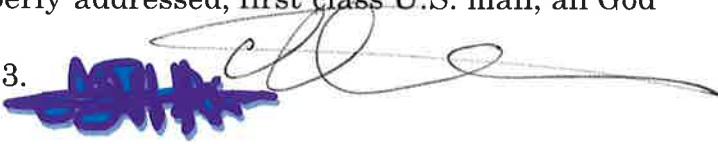
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CERTIFICATE OF SERVICE OF PETITION FOR REHEARING
And of Certificate of Advocate as Required by Rule 44.2

I, Marie Assa'ad-Faltas, MD, MPH, hereby certify that I have served a copy of my Petition for Rehearing of denial of my Petition for a writ of *certiorari* and Certificate of Advocate as Required by Rule 44.2 on Wednesday, 22 February 2023, on SC's Attorney General by postage-prepaid, properly-addressed, first-class U.S. mail, all God so willing.

Respectfully submitted 22 February 2023.



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**Additional material
from this filing is
available in the
Clerk's Office.**