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S.C. SUPREME COURT

BEFORE THE SUPREME COURT ("S Ct") OF SOUTH CAROLINA ("SC") ("SC S Ct")

Appellate Case No. 2023-000616

APPEAL from Former SC Circuit Judge D. Craig Brown ("JDCB"), sitting in CIRCUIT COURT OF COMMON PLEAS IN RICHLAND COUNTY and Denying Applications for Post-Conviction Relief (PCR) No. 2019-CP-40-001122

Marie Assa'ad-Faltas, MD, MPH

v.

State of South Carolina, and City of Columbia, SC

Applicant/Petitioner's *TIEMLY* MOTION to RECONSIDER 26 June 2023 ORDER which has the effect of dismissing this appeal COMBINED WITH Motions for Other Relief, all in light of *303 Creative v. Elenis*, 600 U.S. _ (30 June 2023), and of Events Subsequent to 26 June 2023 ORDER.

Introduction and Motions to Recuse Justice Kittredge and De-Recuse SC Chief Justice Beatty

"Korematsu," she wrote on 16 November 2021, SC Appellate Case 2019-000708, *certiorari* (sought by SC Attorney General ["SCAG"]) denied 10 December 2021, <https://ctrack.sccourts.org/public/caseView.do?csIID=69765>. Counter relief sought by Dr. Assa'ad-Faltas was denied as "moot" in **curiously re-numbered** SC Appellate 2021-001344, *hidden* from public view (Ex. 31, numbered *seriatim* to the exhibits in SC Appellate Cases 2023-000617, 618 and 619, with all antecedent exhibits incorporated herein by reference) despite then-Acting-SC-Chief-Justice Kittredge's promises of equal and transparent treatment in SC Appellate Case 2021-000815 (Exx 33-36) which, itself **still remains hidden from public view as does the PCR application from it numbered 2023-000383 (Exx 39-40)**. (Ex 37 hereto is Ex 3 to 25 May 2022 entry in SC Appellate 2022-000339 <https://ctrack.sccourts.org/public/caseView.do?csIID=75112> available *there* in word-searchable format and incorporated *here*.)

"Korematsu," she wrote again on 11 October 2022, SC Appellate Case 2021-000047, from 2010-CP-40-7063, Dr. Assa'ad-Faltas' *basic* human right speak for herself mischaracterized "extra-ordinary relief" and denied on 13 October 2022. <https://ctrack.sccourts.org/public/caseView.do?csIID=73216>

"Korematsu," he said <https://media.sccourts.org/videos/2023-000896.mp4> on 27 June 2023, minute 52 of oral argument (Ex 41), echoing Dr. Assa'ad-Faltas' reference to wrongly-decided cases. Yet, SC Associate Justice Kittredge *continues* to *falsely* disparage Dr. Assa'ad-Faltas as "frivolous" and *silences* all other jurists who had complimented Dr. Assa'ad-Faltas' advocacy in transcripts and/or ruled for her when she advocated *pro se* often against "bulldog" lawyers from defending her.

SC Associate Justice Kittredge's *persistent* demonization of Dr. Assa'ad-Faltas has all the durability of Mickey Rooney's portrayal of the Japanese photographer in *Breakfast at Tiffany's*, the 1961 movie.

In violation of Dr. Assa'ad-Faltas' First Amendment, Equal Protection, and Privacy rights, the 26 June 2023 ORDER seeks to force her to write applications for SC Appellate Defense representation she does not want to write and to associate with a lawyer with whom she does not want to associate.

Dr. Assa'ad-Faltas previously explained that SC Appellate Defense has a conflict *in this very case* which alleges ineffective assistance of SC Appellate Defense. She has also learned that Gary Howard Johnson, who represented the City of Columbia in 2009-CP-40-02219, is now there, too. (Ex. 42)

A fortiori from *303 Creative*, the harm is certain if reconsideration is denied. The 26 June Order 2023 **promises dismissal of this case unless** Dr. Assa'ad-Faltas succumbs to government-forced speech and government-forced association. And *a multo fortiori* from *303 Creative*, Dr. Assa'ad-Faltas is not selling to the public, only advocating *her own case*. All who witnessed, and marveled at, her live *pro se* advocacy saw her without pre-written oral arguments. She *religiously* lets the Holy Spirit guide her.

Dr. Assa'ad-Faltas has absolute constitutional rights to choose *the* Holy Spirit over lawyers. Nor does this tyranny of older orders make *any sense* under this Court's own practices. If Dr. Assa'ad-Faltas' appeals were found frivolous by a lawyer, **she still gets to write her own pro se Anders/Johnson brief**. If her appeals are genuinely meritorious, what is the idea of not letting her brief them *pro se*? If she briefs them less ably than a lawyer and loses, she bears the consequences of her own choice.

The obsession with forcing a lawyer on Dr. Assa'ad-Faltas is *solely* due to Justice Kittredge's unwillingness to admit that he was wrong in branding Dr. Assa'ad-Faltas frivolous, *or worse, infra*.

Dr. Assa'ad-Faltas has great affection for *inter alia* now-Senior U.S. District Judge Joe Anderson (DSC) (whose nurturing look evoked the Mother Superior of Dr. Assa'ad-Faltas' childhood Catholic school), now-U.S.-Circuit-Judge (DCC) J. Michelle Childs (whose aura reminds Dr. Assa'ad-Faltas of her baby sister), and Retired SC Chief Justice Toal (whose phrase "no worries" is balm to the ear and heart).

But Dr. Assa'ad-Faltas keeps discovering that these and other personally-very-pleasant SC jurists have been so ingrained that "southern manners" means doing favors for friends *even when the anxious eyes of litigants see it as nepotism and abuse of authority leaving no chance of justice for an outsider; e.g.* at the screening of now-SC-Circuit-Judge McCaslin (*née* Chapman) on 18 November 2019 before SC's Judicial Merit Selection Commission ("JMSC"), (Ex 43), SC JMSC member Pete Strom recounted:

So Debbie worked full-time, raised a baby that wasn't hers, and finished the College of Charleston. During this time she handled all the judicial elections on the -- on the federal side for Senator Thurmond. So she became friends with Judge Anderson and Wilkins, and Judge Joe McCrory and Traxler, all the judges we know that Senator Thurmond appointed. And they decided that she needed to go to law school. [¶] And those judges raised the money for her books. I remember somebody else bought her a computer. I got a call from Judge Joe McCrory, and said, "We'd like for you to hire this woman as a law clerk." [¶] I said, "Judge McCrory, I appreciate you all considering me, but I've got more than I need." And I hung up the phone. And three minutes later, Judge Joe Anderson called me. And I said, "Yes, sir. When does she need to start and how much do I need to pay her?" [¶] And, you know, again, you've seen her personality. And she's had just a phenomenal work ethic. She's the kind of person that everybody likes.

And Representative and SC JMSC member Rutherford added reminiscences about "The Salty Nut" of which Dr. Assa'ad-Faltas heard for the first time upon reading that transcript and left her no doubt that much *ex parte* happens among lawyers and judges **and they are grateful for it.**

Dr. Assa'ad-Faltas has no illusion about changing that culture; **but she sees a short step between a sitting federal judge making lawyer hire a friend of that judge and another sitting federal judge making *this Court* certify to itself the case and rule for his second wife's close friend to evict her long-time tenant and brutally set her out to enable that friend to practice occupancy fraud.**

Is *Koon v. Fares and Faltas* "related" to this case or not? Justice Kittredge inserted it in *City of Columbia v. Marie Assa'ad-Faltas* but at Exhibit 37, Tr. p 114-121 said:

[2-25] JUSTICE KITTREDGE: [2-6] *At this stage the State has established a prima facie case that you violated the September 2017 order by your contacts with Mr. Shearouse. [7-13] Whether you filed meritorious cases in the past or not, what happened in 2009 or didn't happen, has nothing to do with anything that's before our decision of whether or not you have any defense to your contacts with Mr. Shearouse vis-à-vis the 2017 order from this Court. If you do not have a defense we are obligated by law to find you in contempt of court. [14-19] Now if we make that decision then you can speak to us about mitigation or reasons why you think of what you think would be an appropriate remedy here. One of which we've gone back and forth with is you want to have some specific right and opportunity, maybe a day and time periodically, to access your records here at the Court. [20-21] That doesn't strike us as unreasonable at all. So that's a productive way going forward to remedy this. [22-25] But right now we've got to back up and see what your position is regarding whether or not you contacted Mr. Shearouse. Then we can discuss what is the appropriate way forward.*

[Page 115, lines 1-4] DR. FALTAS: I thought you said that you will review the basis of the orders and whether I had previously filed frivolous things. Was that my wishful thinking?

[5-14] JUSTICE KITTREDGE: *That was your wishful thinking. We're going to look at the evidence. But based on what's presented, and we've spoken at the last break, we want to give you a chance to present a defense. Perhaps you did not send the emails to Mr. Shearouse. I don't know. But you*

have a right to present a defense to that. But that's the parameters of the defense. **Not what happened in 2009. Not some glorious case that had merit that was filed.** That is not germane, it's not relevant to the issue of contempt. And if you want to be heard --

[15] **DR. FALTAS:** Did you say contempt or intent?

[16] **JUSTICE KITTREDGE:** Contempt.

[17] **DR. FALTAS:** Okay. I'm sorry.

[18 to page 116, line 2] **JUSTICE KITTREDGE:** [18-23] So that's where we are. And if you want to proceed you can testify today and we'll hear from you and your evidence. But this idea that we're simply going to walk out of here and reconvene three weeks from now and come back and start over another full day, no, ma'am. [24 to page 116, line 2] We've heard testimony, really the relevant part was very limited. And this is your opportunity, if you want to present evidence in response to that this is your opportunity.

[3-5] **DR. FALTAS:** How can I present evidence without compulsory process if my evidence comes from other witnesses like people who called or sent emails?

[6-11] **JUSTICE KITTREDGE:** If you want to submit documents that you have tried to procure witnesses and subpoena witnesses and they haven't appeared, we'll let you supplement the record with that. But this case was set for today, and it's our intent if at all possible to conclude the matter today.

[12-13] **DR. FALTAS:** I thought you said you weren't going to conclude it today.

[14 to page 117, line 1] **JUSTICE KITTREDGE:** [14-21] Well the receipt of the evidence, then we have to study it and look at it. You're going to walk out of here today, you're not going to jail. We want to look at what's been presented. But I don't want us, we don't want to give you the message that somehow you're not going to be in contempt. Right now the chances are you will be in contempt. So here's an opportunity to present evidence if you want to. [22 to page 117, line 1] And if you would rather just continue to focus as you have on explaining why you did certain things, we'll hear from you in that, but in terms of mitigation to any possible penalty, but not as it relates to whether or not you are in contempt.

[2-5] **DR. FALTAS:** Well let me ask you this, how can I create a record for further review that -- I know you made your ruling that the order was valid, but how can I create a record for further review that it was not?

[6-11] **JUSTICE KITTREDGE:** Well you can appeal. We will issue an order. And you will say I disagree with that, so I'm going to appeal it. And you've told us you are going to appeal to the Federal District Court and you're going to appeal to the US Supreme Court. You can appeal as provided by law. But we're going to issue an order.

[12-17] **DR. FALTAS:** All right. May I recall Mr. Shearouse? I mean I need to if you're requiring me to put my defense now, I have to recall him. And I have to recall such of the witnesses that are available for the Court. But I mean can we take a lunch break, have we already had a lunch break? No?

[18-19] **JUSTICE KITTREDGE:** No. And you would call Mr. Shearouse for what purpose?

[20] **DR. FALTAS:** For the Rule of Lenity evidence.

[21-22] **JUSTICE KITTREDGE:** No, that's a legal thing. You ask us for lenity under the Rule of Lenity.

[23 to page 118, line 2] **DR. FALTAS:** I want to put fact that he once sent me an email because he thought that it was necessary, or two or three times, as a fact, as a fact. So it cannot be that he can email me and I am a criminal if I email him back.

[3-5] **JUSTICE KITTREDGE:** I'm telling you, and I'm going to consider this with my colleagues so they may disagree with me.

[6] **DR. FALTAS:** Okay.

[7-9] **JUSTICE KITTREDGE:** That what you just said, even if true, is not relevant to the discrete dates and times where you allegedly sent him emails.

[10-13] **DR. FALTAS:** It is relevant to his saying that he sometimes in an email that he sometimes interpreted the order as allowing email, so it has, I think it strengthen it.

[14-15] **JUSTICE KITTREDGE:** *That deals with a penalty for contempt. And you have already established that.*

[16] **DR. FALTAS:** I'm sorry?

[17 to page 119, line 2] **JUSTICE KITTREDGE:** [17-25] *That last point you've already pursued and received evidence on, on your original cross-examination of him. So on that issue we would not allow him to be called back. You've got to give me some bases that you did not have, even if you did have the opportunity, what questions or what evidence relates to the specific charges of contempt? This case is about whether or not you emailed certain court employees, and here we're talking about Mr. Shearouse, on certain dates? [Page 119, lines 1-2] Either you did it or you didn't do it. We've already ruled on the validity of the court order.*

[3-4] **DR. FALTAS:** **Have you ruled that the court order is susceptible to interpretations?**

[5-6] **JUSTICE KITTREDGE:** *The order speaks for itself, and we'll address that in our final order.*

[7-8] **DR. FALTAS:** **Can I put evidence that others interpreted it as not to bar emails after the pandemic?**

[9-12] **JUSTICE KITTREDGE:** *Well you should have come today prepared to present your mitigation evidence or how other people may have considered the court order. We will interpret the court order.*

[13-18] **DR. FALTAS:** I am, I am. I even filed the order of Judge Brown that says that I may file by email. And you said Judge Brown doesn't affect our order. But I was, I had used Judge Brown's order as proof of the ambiguity of the order, which under the Rule of Lenity allows different interpretations and even judges.

[19-23] **JUSTICE KITTREDGE:** *That's a valid point. In relation to Judge Brown's order, which we're very familiar with, it was issued on July the 8th of 2021. So it did not exist concerning the alleged email you sent to Mr. Shearouse on January 22nd, 2021.*

[24 to page 120, line 4] **DR. FALTAS:** What existed was the ambiguity of the order. And it's not that I'm saying Judge Brown can or cannot give me permission. I'm saying that the ambiguity of the order is inherent in the order itself, and proof of it comes several ways. In fact, Judge Jocelyn Newman interpreted it as --

[5] **JUSTICE KITTREDGE:** *Here's what we'll do --*

[6] **DR. FALTAS:** Okay.

[7-9] **JUSTICE KITTREDGE:** *-- you've given no legal basis to recall Mr. Shearouse. That request is denied. Do you have any other witnesses present you want to call?*

[10] **DR. FALTAS:** I would like to call Ms. Howard. * * * * *

[13-15] **JUSTICE KITTREDGE:** *What information does she have related to the allegations of contempt involving Mr. Shearouse?*

[16-20] **DR. FALTAS:** That the motion to reconsider the order, or I call it to lift the injunction, if it's treated as a permanent injunction was not returned to me saying no, we will not file it until after those emails. I'm sorry, can I rephrase, can I rephrase?

[21-22] **JUSTICE KITTREDGE:** *Please do because I couldn't quite follow you, ma'am.*

[23 to page 121, line 19] **DR. FALTAS:** [23-25] Yes, yes. I think even I was very happy when you agreed with me that a permanent injunction can be lifted, and that someone who is subject to it can. [Page 121, lines 1-4] But when I filed for that permanent injunction, if that's

what the order is, to be lifted she did not respond to me. She did not say I cannot file it or file it by hand instead of filing it by email or anything. [5-15] And part of the lenity proof is that parallel with that there was a case that I asked for appointment of counsel so I could file an amicus in it. And my motion was filed by email. And you, sir, ruled on it on behalf of the Court. So, you know, before you put somebody, a penalty on somebody, it's another way of the Rule of Lenity. But the evidence I'm getting is that, number one, reasonable people, a whole lot actually, more than not read it as allowing me to file by email when the rest of creation could. And those emails happened after the pandemic. [16-19] The other thing is that that very order can be lifted or modified. But my efforts to have that done were not properly addressed. She received it on the 27th, I have the email showing that it was transmitted.

[20 to page 122, line 13] **JUSTICE KITTREDGE:** [20-25] *I'm being admonished because I've let you just go off on a tangent that has nothing to do with the issue that I'm trying to address with you, ma'am. And I've tried to give you obviously too much latitude. There is no legal basis, there's no basis whatsoever to call Ms. Howard.*

SC Chief Justice Beatty Deserves a Chance to Re-Examine His Own Conscience.

No hyperbole: Dr. Assa'ad-Faltas' *literal* life is at stake, not only from ever more frequent stabbings at Alvin S. Glenn Detention Center ("ASGDC"), and not only because she was struck with atrial fibrillation ("A-fib") on her first evening there on 27 June 2022, which A-Fib has now become incurable, but also because **the same people who caused "what happened in 2009" are still after Dr. Assa'ad-Faltas' person and cherished property AND are now secure that she has no recourse to the courts for protection or redress.** And Justice Kittredge *knew it* and nothing refutes that he *intended* it. Exhibit 37 pp 50-51 and the subsequent documents and events leave no doubt:

[11-13] **JUSTICE KITTREDGE:** *We're trying to treat you with the utmost respect, ma'am.*

[14-16] **DR. FALTAS:** **You're trying to put me in prison for six months, and you know very well that that's a death sentence.**

[17-19] **JUSTICE KITTREDGE:** *No one wants you to go to jail. But you're examining a witness. An objection has been made. It's appropriate. And I sustain it.*

[20] **DR. FALTAS:** All right, I'll rephrase the question.

[21 to page 51, line 1] **JUSTICE KITTREDGE:** *You want us to be patient with you, and we are, we're doing our best. We're not perfect, you're not perfect, and maybe Mr. Shearouse is not perfect. But there's no reason for you to belittle him and try to mock him. So treat him with the same respect that you want us to treat you.*

[2-6] **DR. FALTAS:** **But sir, I have been treated like a leper, so don't tell me that I've been treated with respect. I have a cheat sheet from him saying hang up on her, that's treating me like a leper, that's the opposite of respect.**

[7-11] **JUSTICE KITTREDGE:** *That argument may be appropriate when you testify or you make your legal presentation of why this order, underlying order is not valid. But right now you're questioning a witness. I'm asking you to proceed with questioning the witness.*

Dr. Assa'ad-Faltas had a Holter Monitor in November 2022, the results of which came back:

Study Result

Narrative

Patient was monitored for 2 days, 12 minutes, and 30 seconds. During this time, patient was in atrial fibrillation continuously with a variable heart

rate with the highest heart rate of 142 bpm. There was a 2.2-second pause at 2 AM on November 2. This likely occurred during sleep. In summary, patient is in continuous atrial fibrillation during this monitoring.

Images

Scan on 11/17/2022 8:42 AM

Scan on 11/15/2022 2:00 PM

This is self-explanatory; yet, Dr. Assa'ad-Faltas was not allowed to exercise her own judgment *as a physician and patient* that it was dangerous for her to go to a courtroom when WebEx was *routinely* available, even preferred, for non-jury common pleas matters, and **when her forced lawyer knew that Dr. Assa'ad-Faltas would exercise her right to refuse to testify.** *Vide, e.g., Gaskins v. State, 2015-CP-40-03169, p1 of 10 October 2017 Order of Dismissal ("Applicant was also present but did not testify as is his right.")* Also, the day Dr. Assa'ad-Faltas' PCRs were dismissed due to her need to attend by WebEx rather than in person, now-SC-Circuit-Judge Patrick Fant was testifying remotely to SC JMSC. And at least four previous PCR hearings in Dr. Assa'ad-Faltas' cases had been held by WebEx.

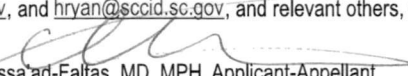
The false pretexts to put a lien on Dr. Assa'ad-Faltas' tiny vacant lot continue: after she informed Appellate Defense and consequently *this* Court that she does not wish to submit an affidavit of indigency due to its lien provision, the City of Columbia hatched another conspiracy to put that lien. It encouraged, enabled, or even possibly hired thugs to trespass on Dr. Assa'ad-Faltas' 324 Byron Road, Columbia, SC 29209 lot and serially vandalize *every piece of glass* of her hitherto *drivable*, insured, registered and licensed truck, then trespassed again on that land and stole that cherished truck, then either LIED to Officer Hunter or caused Officer Hunter to LIE to Dr. Assa'ad-Faltas and deny that the City of Columbia towed that truck under false pretext that the truck was "abandoned." Though Dr. Assa'ad-Faltas filed reports of the vandalism and now theft of her truck, no investigator contacted her and she fears going to CPD headquarters lest false pretexts of "disorderly conduct" be manufactured against her and she be taken again to that fatal ASGDC. **It is NOT as if none of that was done to her before; but none of her proven victimizers was punished or even questioned in any way.** Does SC Chief Justice Beatty want this on his conscience and in his legacy? If SC does not want foreign-born, it should say so and stop recruiting foreign car manufacturers, foreign students for its universities, foreign nurses and doctors for its rural health care needs, and foreign tourists for its beaches.

SC Chief Justice Beatty should guide his judges to have more culture, conscience, and creativity, not pride themselves on tyranny and xenophobia.

WHEREFORE, SC Chief Justice Beatty should de-recuse himself and investigate or appoint a non-biased judge to investigate what is being done to Dr. Assa'ad-Faltas (Ex 38).

Certificate of Submission AND Certificate of Service AND of Copies

Submitted **and served by hand-delivery** to SC Attorney General's ("SCAG") office at 1000 Assembly Street Columbia, SC 29201, **and by hand-delivery** to Richland County's Clerk of Court at 1701 Main Street Columbia, SC 29201, and *courtesy-copied* to: Griffith at tlgriffith@tlgriffith.com, and to SCCOID at hyoung@sccid.sc.gov, and hryan@sccid.sc.gov, and relevant others, all on 11 July 2023, and all God so willing.


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