BEFORE THE SOUTH CAROLINA ("SC") COURT OF APPEALS ("CoA"), ("SC CoA")

Appellate Case No. 2019-000708

On Petition for a Writ of *Certiorari* to RICHLAND COUNTY Court of Common Pleas,
The Honorable Perry H. Gravely, Circuit Judge on Case No. 2017-CP-40-06831

Marie-Thérèse Assa'ad-Faltas, MD, MPH, ("Dr. Assa'ad-Faltas") *Respondent,*
v.
The State of South Carolina ("SC"), *Petitioner.*

Respondent's *Timely* Motions for Rehearing *en banc* (without involvement of recused judges)
Of Single Judge McDonald's Denial of Respondent's Motion to Relieve Counsel
***Because that Denial* Has the Effect of *Realistically* Disposing of *This* Case.**

I. Finality is judged by *effect,* NOT by Label, of Ruling to be Appealed/Reconsidered.

A. U.S. Supreme Court's ("SCOTUS") Guidance on Construction of Reviewability Rules

***Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949), reads in relevant part:**

> This decision [...] fall[s] in that small class which finally determine [...] rights asserted in the action, **too important to be denied review** [...] **until the whole case is adjudicated.** The Court has long given this provision of the statute **this practical rather than a technical construction**. *Bank of Columbia* v. *Sweeny*, 1 Pet. 567, 569; *United States* v. *River Rouge Co.*, 269 U.S. 411, 414; *Cobbledick* v. *United States*, 309 U.S. 323, 328. [¶] We hold this order appealable because it is a final disposition of a claimed right which is not an ingredient 547*547 of the cause of action and does not require consideration with it.

In *this* section of *this* motion, Dr. Assa'ad-Faltas' **basic human right to speak for herself is *the* issue** and is **"too important to be denied review until the whole case is adjudicated."** Further, were this Court to, God willing, ultimately deny the State's *certiorari* petition, Dr. Assa'ad-Faltas, as the prevailing party, will have no right of appeal. Conversely, were this Court to ultimately, God forbid, grant the State's *certiorari* petition and reverse the PCR grant, the three winningest arguments would not have been preserved ***in this Court's record*** for further review by SC's Supreme Court ("SC S Ct") and/or by federal courts.

B. SC S Ct Treats Decisions on Appointment/Relief of Counsel as Warranting Rehearing.

In *In the Matter of Marie Assa'ad-Faltas, Respondent,* [SC] Appellate Case 2013-000862, then-SC-Chief-Justice Toal ORDERED appointment of counsel for Dr. Assa'ad-Faltas to seek rehearing of *that* Court's *technically-non-final* 28 June order denying Dr. Assa'ad-Faltas' *Faretta* rights. (Exx 1-6 hereto)

C. Rehearing *en banc* is ABSOLUTELY Necessary for Public Confidence in the Judiciary.

Ms. Lindsey A. McCallister, current supervisor of SC's Attorney General's ("SCAG") PCR Division is leaving SCAG's office **(Ex. 28)**, most likely to become this Court's Chief of Staff Counsel to replace Ms. Patricia Howard, who became SC S Ct's Clerk. Dr. Assa'ad-Faltas has no proof that Ms. McCallister authored the one-paragraph decision for Judge McDonald's perfunctory signature; **but this Court is *very plausibly* covered by U.S. Court of Appeals' for the Fourth Circuit's Judge Wilkerson's candid 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.**

II. Judge McDonald's One-Paragraph Order Sought to be Reheard is Wrong on the Law.

A. Zealous defense of the Innocent does not harm the courts; their prosecution does.

Justice O'Connor's dissent in ***TXO Production Corp. v. Alliance Resources Corp.*, 509 US 443, 499-500 (1993),** reads in relevant part:

> The Supreme 500*500 Court of Appeals of West Virginia, at the same time it recognized *Haslip* as law, itself warned:
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> > **"[W]e understand as well as the next court how to … articulate the correct legal principle, *and then perversely fit into that principle a set of facts to which the principle obviously does not apply*. *[All judges] know how to mouth the correct legal rules with ironic solemnity while avoiding those rules' logical consequences."* *Garnes, supra,* at 666, 413 S. E. 2d, at 907 (footnote omitted).** [emphasis added]
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> I fear that the Supreme Court of Appeals followed such a course in this case.

To the grandiose references to "integrity" and "busy courts" "mouthed" "with ironic solemnity," *TXO, supra,* Dr. Assa'ad-Faltas' response for 12 years remains the same: "I did not falsely arrest myself, nor did I inflict on the courts and on myself long trials on *known* false criminal charges." Dr. Assa'ad-Faltas now justifiably notes she did not take *this* appeal against herself. SCAG did.

B. Both *City of Columbia* and *Frazier-El* Were *Effectively* Overruled by *McCoy* v. *Lousiana*.

After ***McCoy* v. *Lousiana*, 584 U.S. _ (2018),** no "manipulative effort to present particular arguments" is needed. Suffice it now *for the client* to state his/her desired defense to put ***counsel's to the choice*** of mounting the client's preferred defense or withdrawing from representation.

C. That One-Paragraph Order Sought to be Reheard *Totally* Ignores *Hiott* v. *State*.

In ***Hiott* v. *State*, 381 SC 622, 628-9, 674 SE2d 491 (2009),** now-SC-Chief-Justice Beatty wrote:

> Courts treat PCR actions differently than [sic] traditional civil cases:
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> > Courts treat PCR differently than [sic] traditional civil cases. For example, **PCR actions are the only type of case which this Court mandates appellate counsel must brief all arguable issues, despite counsel's belief the appeal is frivolous.** *A lawyer knowingly filing a frivolous claim in any other civil case violates Rule 11, SCRCP.* Additionally, a PCR applicant who is granted a hearing has a statutory right to be represented by a court-appointed attorney. This right does not generally exist for plaintiffs in civil cases.
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> *[Wade]* at 263, 559 S.E.2d at 847 (internal citations and footnote omitted) (emphasis added).

Thus Dr. Assa'ad-Faltas, is entitled to self-representation regardless of whether her forced counsel wants to brief all the winning issues or not.

III. The One-Paragraph Order Sought to be Reheard Bears NO Relationship to the Facts.

A. Dr. Assa'ad-Faltas Prevailed *pro se* below *Twice* in *this* Case alone.

That disconnect reinforces the suspicion that Ms. McCallister, not a real judge, likely wrote that order. In *this* case, **four SC Circuit Judges** and in a contemporaneous PCR case, **four *more* SC Circuit Judges** (in respective chronological order, SC Circuit Judges J. Newman, B. Goldsmith, P. Gravely, and D. Goodstein; and SC Circuit Judges R. Hood, W. McLeod, R. Sprouse, and C. Newman) **had no problem with Dr. Assa'ad-Faltas' *pro se* advocacy;** neither did SC's Office of Court Administration. **(Exx 7-17) Indeed,** SC S Ct's *previous* clerk could not produce documents to support *City of Columbia.* **(Exx 18-20)**

B. A Contrast Between Treatment of Dr. Assa'ad-Faltas and that of Similarly-Situated Others Must Shock Any Decent and Civilized Conscience.

As an MD, MPH and victim of perjury and false criminal charges, Dr. Assa'ad-Faltas believes Trey Williams and other working-class men are innocent of *physically-impossible* CSCWM charges; **and it is partly *for them* that she wants to make PCR grants unappealable.** But no basis appears for Mr. Williams to have been allowed to defend his PCR grant *pro se* **(Ex 22)** while Dr. Assa'ad-Faltas is denied that right, specially after SC S Ct itself admitted that all applicants may initiate PCR *pro se*. **(Ex 21-b)**

But only stony racists accept that a DISBARRED Kathleen P. Jennings/NKA Kathleen J. Gresham advocates *pro se* unencumbered in *all* postures in *all* SC courts (Exx 23-26), while Dr. Assa'ad-Faltas is forced, *even as a respondent*, to have lawyers, one of whom (Mark Schnee) is also now disbarred. The late Judge Perry (Ex 27, pp 3-4) best expressed the ever-*renewed* insult Dr. Assa'ad-Faltas feels.

IV. Personal Statement to Judges McDonald and Gravely and Conclusion

The one-paragraph 13 October 2021 ORDER sought to be reheard spews mean-spiritedness, not only at Dr. Assa'ad-Faltas, but also at the truly honorable SC Circuit Judge Gravely, who is curiously copied with that order as if to shame him for having been fair to Dr. Assa'ad-Faltas.

Being the objective person she is, Dr. Assa'ad-Faltas read Judge McDonald' biography, then watched three of her guest-benching for oral arguments in SC S Ct, then read *To Kill a Mockingbird,* a character from which Judge McDonald takes pride in her daughter having played. Having long ago seen the movie, Dr. Assa'ad-Faltas was never impressed with Atticus Finch. After all, his innocent client got convicted; and the movie had omitted that he also got killed in prison. The movie had also omitted that Dill, at the age boys are taught to no longer cry, exploded in tears and left the courthouse after hearing Mr. Robinson being persistently contemptuously addressed as "boy." Judge McDonald cannot expect her daughter to learn decency from fiction when the mother had no scruples against calling an MD, MPH near the age of the judge's mother "frivolous, vexatious, harassing, abusive, *etc.*" **without any basis the judge could possibly have seen in person or in a transcript or a video or an audio.**

As Dr. Assa'ad-Faltas can now copy SC Circuit Judge Gravely with this motion without risking *new* contempt of court which the Saint Paul of the SC Bench would not want inflicted *again* on Dr. Assa'ad-Faltas, she notes that this generation saw *Notre Dame de Paris* burn and the Lord-God-bird (the ivory-billed wood-pecker) become extinct. She asks Judge Gravely, and Mr. Creighton Waters, who is also copied, to be remain steadfast so that this generation does not also become the one which completed the genocide of decency. Mr. Waters is now seeing first-hand the character of children of prosecutors who ruled with impunity. He knows that Dr. Assa'ad-Faltas did NOT stand and interrupt the January 2011 oral argument of *State* v. *Duncan* but waited after its conclusion to share her ideas. Decency goes beyond not joining oppression to defending the oppressed. But decency, God forbid, can go extinct.

Wherefore, this Court *en banc* should have the decency to let Dr. Assa'ad-Faltas speak for herself.

Sincerely submitted through ctappfilings@sccourts.org on 20 October 2021 and served *the same day* by e-mail as shown on Judge Gravely at pgravelyj@sccourts.org, on Mr. Waters at cwaters@scag.gov, on Ms. McCallister at lmccallister@scag.gov, on Mr. Davidson at michaeldavidson@scag.gov, and on Ms. Saxon at jsaxon@sccid.sc.gov, all God so willing.

[s/] Marie-Thérèse Assa'ad-Faltas, MD, MPH, Applicant/Respondent/Movant *pro se*
P.O. Box 9115, Columbia, SC 29290
Phone: (803) 783 -4536 e-mail: Marie_Faltas@hotmail.com