25-5636

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

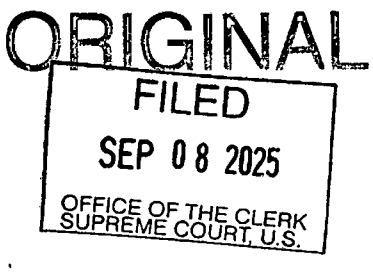
GORDON M MAYHEW

Petitioner,

v.

STATE OF ARIZONA

Respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARIZONA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, consistent with the **Free Exercise clause (App. B-1)** and **Due Process (App. B-3, B-4)** (Fifth and Fourteenth Amendments), a State may **compel secular therapy** while **refusing to credit an equivalent faith-based program**.
2. Whether a state court may **deny a probationer religious therapy for nearly a decade** despite sincerely held beliefs and eventual **probation approval**.
3. Whether reliance on **internal probation rules**—and assumptions that religious treatment is inherently insufficient—**instead of statutory authority** violates constitutional guarantees of **religious liberty (App. B-1) and due process (App. B-3, B-4)**.
4. Whether a State may invoke **"separation of church and state"** or funding restrictions to deny credit or vouchers for **religious therapy** when federal law places faith-based providers on **equal footing** with secular programs.
5. Whether the **summary, cursory denials** by the **Superior Court** and **Court of Appeals**—grounded in internal policy rather than law; while systematically ignoring **A.R.S. § 13-901(E)—(See App. B-6)** and ignoring a completed, probation-approved religious program—constitute an abuse of discretion and a **continuing denial of First Amendment Rights, (App. B-1)** when these **Orders Denying Relief were filed within two days**

of Petitioner's filing; compounding the **Free Exercise (App. B-1)** and **Due Process violations (App. B-3, B-4)** and whether prolonged denial of religious therapy requires immediate termination of probation as an appropriate remedy.

6. Whether this Petition should properly ***also*** be called a **Petition for Redress of Grievances (App. B-2) for wrongs committed under the constitutional First Amendment (App. B-1)** by the **State of Arizona** and the **Adult Probation Department** in Maricopa County **against Petitioner.**

PARTIES TO THE PROCEEDING

Petitioner:

GORDON M MAYHEW

Respondents:

STATE OF ARIZONA

MARICOPA COUNTY ATTORNEY'S OFFICE

- **Arizona Supreme Court caption:** ***GORDON M MAYHEW v. STATE, et al***
- **Court of Appeals caption: GORDON M MAYHEW *v.* STATE OF ARIZONA*; MARICOPA COUNTY ATTORNEY'S OFFICE***
- **Superior Court caption: STATE OF ARIZONA *v.* GORDON M MAYHEW**

(No Rule 29.6 statement is required.)

RELATED PROCEEDINGS

1. **Arizona Supreme Court**, ***GORDON M MAYHEW v. STATE, et al,*** **No. CR-25-0198** — Order denying review entered **Aug. 19, 2025** (Petition for Review filed **June 25, 2025**).
2. **Arizona Court of Appeals, Division One**, ***GORDON M MAYHEW v. STATE OF ARIZONA; MARICOPA COUNTY ATTORNEY'S OFFICE,*** **No. 1 CA-SA 25-0159** — Special Action filed **June 13, 2025**; order denying review/relief entered **June 16, 2025**.
3. **Superior Court of Arizona, Maricopa County**, ***STATE OF ARIZONA v. GORDON M MAYHEW,*** **No. CR2014-002075-001 DT** — Order denying motion for early termination of probation entered **May 15, 2025**.

Pursuant to: **Sup. Ct. Rule 14.1(b)(iii)**

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The **Arizona Supreme Court's** order denying review (***GORDON M MAYHEW v. STATE, et al*, No. CR-25-0198** (Aug. 19, 2025)) is **unreported**; it is reproduced at **App. A-1.**

The **Arizona Court of Appeals, Division One's** order denying review/relief (***GORDON M MAYHEW v. STATE OF ARIZONA; MARICOPA COUNTY ATTORNEY'S OFFICE*, No. 1 CA-SA 25-0159** (June 16, 2025)) is **unreported**; it is reproduced at **App. A-2.**

The **Superior Court of Arizona, Maricopa County's** order denying Petitioner's Motion for Early Termination of Probation (***STATE OF ARIZONA v. GORDON M MAYHEW*, No. CR2014-002075-001 DT** (May 15, 2025)) is **unreported**; it is reproduced at **App. A-3.**

JURISDICTION

This Court has jurisdiction under **28 U.S.C. § 1257(a)**. The **Arizona Supreme Court** denied review on **Aug. 19, 2025 (App. A-1)**. This petition is timely under **Sup. Ct. Rule 13.1, 13.3**.

The case presents federal questions under the **Free Exercise of Religion clause (App. B-1)** and the **Due Process clauses (App. B-3, B-4)** of the Fifth and Fourteenth Amendments, arising from an **egregious, continuing denial** of Petitioner's **First Amendment religious exercise rights (App. B-1)** over **approximately eight years** of probation supervision.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

(Full texts/excerpts at **APPENDIX B**)

- **U.S. Const. Amend. I** (Free Exercise clause)
- **U.S. Const. Amend. I** (Petition clause)
- **U.S. Const. Amend. V** (Due Process)
- **U.S. Const. Amend. XIV** (State Due Process)
- **U.S. Const. Art. VI** (Supremacy clause)
- **A.R.S. § 13-901(E)** (Early termination of probation)
- **A.R.S. § 41-1493.01** Arizona Free Exercise of Religion Act (FERA)
- **28 C.F.R. Pt. 38** (DOJ equal treatment for faith-based providers)
- **42 C.F.R. Pt. 54a** (SAMHSA charitable-choice protections)

STATEMENT OF THE CASE

1. **Probation condition and denial of religious accommodation.** Petitioner's probation required him to attend an approved treatment program. For **more than eight years**, he sought to satisfy this condition through **faith-based therapy consistent with his sincerely held beliefs (App. B-1). Probation repeatedly refused**, while routinely issuing **vouchers for secular programs** and refusing to fund any religious program, **but forcing secular therapy instead**. The record shows that **comparable religious therapy** had been approved for at least one other probationer a decade earlier. Petitioner **refused to compromise his religious convictions**; when ordered to submit to a probation-required assessment that violated his faith; **forcing him into sin, he declined**—and **served 77 days in jail for that refusal.**

2. **Completion of faith-based therapy and denial of early termination.** Probation eventually **approved Petitioner's treatment with Randall C. Rice, MC, LPC.** Petitioner eagerly **completed the program** and sought **early termination** of probation. On May 15, 2025, the **Superior Court denied the motion, dismissing the therapy as inadequate** and **citing a non-statutory** "two years post-treatment" probation policy:

> ***"Here, it is unclear whether the treatment the Defendant received ... is a sufficient substitute ... Even if it is ... which is not sufficient time ... the Court finds he will need***

longer than two years post-treatment. Also of great concern is his treatment history."

The **ruling relied not on statute**, but on internal Adult Probation Department policies and a **prejudicial presumption that religious therapy was inferior; see App. A-3.**

3. **Denial of meaningful appellate review.**

The **Arizona Court of Appeals denied** special-action relief **within three days of filing**, without addressing Petitioner's constitutional claims **(App. A-2).** The **Arizona Supreme Court** likewise denied review **(App. A-1).** These denials **compounded the injury**, elevating **internal policy over statutory law, secular orthodoxy over faith**, and **administrative convenience over the First Amendment; (App. B-1).** Petitioner specifically cited **Arizona's own rehabilitation-centered probation jurisprudence—*State v. Davis*** (rehabilitation, not punishment), together with ***State v. Lewis*** and related Court of Appeals decisions **emphasizing that early termination and probation conditions must serve rehabilitation rather than function as punitive extensions**—yet the **appellate courts did not engage those authorities**. *See* ***State v. Davis***, 108 Ariz. 335 (1972); ***State v. Lewis***, 224 Ariz. 512, 233 P.3d 625 (App. 2010).

Petitioner specifically invoked Arizona's rehabilitation-centered probation jurisprudence—*State v. Davis*, together with ***State v.***

Lewis, *State v. Rance*, *State v. Burrell*, *State v. Marquez*, and *State v. Church*—yet neither the **Court of Appeals nor the Arizona Supreme Court engaged those authorities.**

4. **Federal questions pressed and passed upon.**

Throughout the proceedings, Petitioner consistently argued that compelling secular therapy while **refusing to grant an equivalent, available religious program burdened his Free Exercise rights, (App. B-1)** and that conditioning continued **supervision and early termination on abandoning his religious choice violated Due Process (App. B-3, B-4).**

REASONS FOR GRANTING THE WRIT

This case cleanly presents recurring federal questions at the intersection of **Free Exercise (App. B-1)** and **community supervision.** The decision below conflicts with this **Court's Free Exercise precedents**, misapprehends funding neutrality, and **conditions liberty in ways that offend Due Process (App. B-3, B-4) and Arizona's rehabilitative premise of probation**; see ***State v. Davis***, 108 Ariz. 335, 336, 498 P.2d 202, 203 (1972). Review is warranted under **Rule 10(a), (c).**

Because Petitioner proceeds pro se, his filings ***"are to be liberally construed"*** and ***"held to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner***, 404 U.S. 519, 520–21 (1972) (per curiam).

I. Individualized exceptions and less-favorable treatment of religion trigger strict scrutiny; the courts failed to apply it.

Neutral, generally applicable rules may ordinarily pass muster under ***Employment Division v. Smith***, 494 U.S. 872 (1990), which held that laws of general applicability that incidentally burden religious practice do not violate the **Free Exercise clause (App. B-1).** But the State forfeits that safe harbor when it

(1) builds in individualized, discretionary exemptions or

(2) treats comparable secular conduct more favorably than religious exercise.

In those settings, the policy is not generally applicable and must satisfy strict scrutiny. See ***Fulton v. City of Philadelphia***, 141 S. Ct. 1868, 1877–80 (2021); ***Tandon v. Newsom***, 141 S. Ct. 1294, 1296–99 (2021) (per curiam); ***Church of the Lukumi Babalu Aye v. Hialeah***, 508 U.S. 520, 531–32, 546–47 (1993).

That is precisely this case. For more than eight years, the **State funded and credited secular therapy** while refusing to **credit or fund** a **functionally equivalent faith-based program—even after** probation approved Petitioner's provider and even though **similar exceptions** had been recognized previously. Those facts reveal **both** an individualized-exemption regime (***Fulton***) and **less-favorable treatment** of comparable religious activity (***Tandon***), demanding strict scrutiny the courts never applied.

This Court's cases **condemn "benefit penalties"** that pressure a believer to **modify or abandon religious practice.** *See* ***Sherbert v. Verner***, 374 U.S. 398, 403–09 (1963). Here, the State's denial of early termination and refusal to credit Petitioner's completed, probation-approved religious treatment ***conditions*** liberty on **surrendering his religious choice (App. B-1)**, imposing ***the archetypal Sherbert penalty*** **and independently triggering strict scrutiny.**

Finally, the modern jurisprudence confirms that government may not **single out religious exercise (App. B-1) for worse treatment** when

comparable secular personal activity is permitted. ***Kennedy v. Bremerton Sch. Dist.***, 142 S. Ct. 2407, 2421–26 (2022). The State's willingness to **embrace secular therapy** while **disfavoring religious therapy (App. B-1)** mirrors the unequal-treatment problem ***Kennedy*** rejected and only underscores the ***Tandon/Lukumi/Fulton*** violations here.

II. Neutrality and funding: the State's "separation of church and state" rationale conflicts with this Court's precedents.

This Court has repeatedly held that **government may not exclude religious providers** from generally available benefits solely because of their religious character or use. ***Trinity Lutheran v. Comer***, 137 S. Ct. 2012 (2017); ***Espinoza v. Mont. Dep't of Revenue***, 140 S. Ct. 2246 (2020); ***Carson v. Makin***, 142 S. Ct. 1987 (2022); ***Zelman v. Simmons-Harris***, 536 U.S. 639 (2002). By funding and crediting only secular therapy while refusing to fund or credit a functionally equivalent religious program, **Arizona imposed the very status/use discrimination these precedents forbid**. See also **28 C.F.R. Pt. 38 (App. B-8)** and **42 C.F.R. Pt. 54a, (App. B-9)** which codify federal rules requiring equal treatment of faith-based providers.

III. Arizona law underscores the error: probation exists to rehabilitate, not punish or enforce secular orthodoxy.

Arizona has long held that "**the purpose of probation is rehabilitation, not punishment.**" ***State v. Davis***, 108 Ariz. 335, 336 (1972). Building on ***Davis***, the Court of Appeals has reaffirmed that both **early termination** and **conditions of probation must be tethered to rehabilitation, not used as de facto punishment**: ***State v. Lewis***, 224 Ariz. 512, 233 P.3d 625 (App. 2010) (affirming **early termination appropriate** where **continued probation no longer advances rehabilitation**); *see also* ***State v. Rance*** (Ariz. App. 2004) (affirming **conditions must relate to the offense** or the **probationer's rehabilitation, not be merely punitive**); ***State v. Burrell*** (Ariz. App. 1985) (affirming **probation** is not an additional punishment but an opportunity for reform); ***State v. Marquez*** (Ariz. App. 1980) (affirming the **goal of probation** is supervision, treatment, and reintegration into lawful society); and ***State v. Church*** (Ariz. 1966) (affirming **probation** is recognized as rehabilitative and distinct from incarceration). **Each case recognized probation's rehabilitative function and requiring conditions and dispositions to relate to that end.** The refusal here to credit completed, probation-approved faith-based treatment—while elevating an internal "two-years" policy—contradicts that line of cases and punishes religious exercise rather than corrects a probationer's behavior. Petitioner cited ***Lewis***, ***Rance***, ***Burrell***, ***Marquez*** and ***Church*** in his filing with Superior Court on May 13, 2025.

By elevating internal policy over rehabilitation, the State and Adult Probation **punished religious exercise (App. B-1) rather than determining whether probation still served any rehabilitative purpose.**

IV. The Disparity Between Prison Chaplaincy and Probation Creates a Recurring Constitutional Injury.

This case is not about one man. It reflects a widespread, recurring injustice **facing thousands of inmates, probationers, and parolees across the Nation. In jails and prisons, chaplains routinely provide faith-based counseling that begins profound personal change**. But **upon release**, probationers and parolees are **forced into secular-only treatment programs** and **fearful and then silenced when requesting continued religious therapy**. These men and women hit a **"dead end," despite their First Amendment (App. B-1) guarantee of free exercise.**

This inconsistency — faith honored behind bars but discredited upon release — is unconstitutional (App. B-1) and destabilizing. It creates a two-tier system: **religious counseling inside prison, secular orthodoxy outside. Petitioner speaks not only for himself, but for this silent population whose rights are being trampled nationwide.**

V. The decisions reflect abuse of discretion and compound the federal injury, confirming the need for review.

The **Superior Court** Ruling stated the religious-based cognitive therapy was inadequate, and denied Petitioner early termination of probation, even though it was **probation-approved**. Additionally, the ruling **cited a requirement from the Adult Probation Department's internal policy requirement of "two-years"** after completion of therapy, compounding the generalized doubt about religious-based therapy. **Probation should have granted religious-based therapy eight (8) years ago—Petitioner would have had his liberty restored years ago.**

The **Court of Appeals** then **denied special-action relief three days after filing**, without addressing how **individualized exceptions** and **less-favorable treatment of religion (App. B-1)** trigger **strict scrutiny**. Those rulings constitute **abuse of discretion** under Arizona law and **embed** the federal constitutional violations—denying meaningful consideration of a rehabilitative, approved alternative. They also exemplify why **Due Process (App. B-3, B-4)** is offended when liberty turns on non-statutory policy rather than law.

VI. The "Department of Corrections" name affirms rehabilitation as the governing purpose.

The very name of the institution tasked with oversight — the **Department of Corrections** — reflects the constitutional and moral expectation that **punishment must serve a higher purpose than endless restraint.** By denying recognition of successful faith-based treatment **(App. B-1)**, Arizona abandoned that purpose and left probation functioning as **civil death under another name.**

Probation, like parole, **was never intended to be an eternal condition; *"lifetime probation"*.** It is meant to **test a person's progress, measure responsibility**, and **provide a structured path back to the liberties guaranteed by the Constitution.**

This Court has long recognized that **justice must serve not only deterrence and retribution, but <u>also rehabilitation and fairness</u>.**

VII. The Oath to the Constitution is betrayed when First Amendment rights are denied.

Petitioner is a Disabled American Veteran who swore an oath to defend and uphold the Constitution—<u>Petitioner has never rescinded that oath</u>. Judges also swear to that same basic oath, a **"Loyalty Oath of Office"**, and thereby violate and even ignore the **Supremacy clause (App. B-5)**, yet denied Petitioner the right of the **most sacred Rights** to the **First Amendment (App. B-1):** affirmed in Arizona by **FERA (App. B-7),** to practice his faith, to speak, **to petition** the government **(App. B-2)** and to be heard, **<u>expecting justice</u>**.

For a veteran who defended those freedoms, to be silenced in this way is not only a personal affront, but a threat to the rule of law itself.

CONCLUSION AND RELIEF REQUESTED

For nearly a decade, the State compelled Petitioner into secular therapy while refusing to credit an equivalent, probation-approved faith-based program—**burdening Free Exercise (App. B-1), offending Due Process (App. B-3, B-4)**, and contradicting **Arizona's own premise** that probation serves rehabilitation, not punishment; thus "...contradicting Arizona's premise that probation serves rehabilitation, not punishment; see ***State v. Davis***, 108 Ariz. 335, 336 (1972). The result has been not only unlawful discrimination against religion, but a continuing deprivation of liberty affecting thousands similarly situated nationwide.

This petition for a writ of certiorari should be granted. At minimum, this Court should:

1. **Grant the writ, vacate the judgment below, and remand** with instructions to apply strict scrutiny and neutrality principles consistent with this Court's precedents; and
2. Instruct that, on remand, the **lower courts must credit Petitioner's completed, probation-approved religious treatment** as satisfying any treatment condition and reconsider the remedy free from non-statutory policies or religious disfavor; and
3. Hold that under the **Free Exercise Clause (App. B-1)** as incorporated by the **Fourteenth Amendment (App. B-4), states may not deny approval, credit, eligibility, or funding to faith-based treatment**

solely because it is religious; that supervision regimes with individualized exemptions or secular comparators are not generally applicable and must satisfy strict scrutiny; and **that conditioning liberty on relinquishing religious exercise is unconstitutional.**

4. In light of the **prolonged constitutional violations**, direct the lower courts to **immediately terminate Petitioner's probation as the appropriate remedy**, unless the State can demonstrate a compelling interest and that continued supervision is the least restrictive means of serving that interest.

Executed on this 8th day of September, 2025.

Respectfully submitted,

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