

26-5662
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT, U.S.

Aaron Cortez — PETITIONER
(Your Name)

vs.
Agape Adoption Agency of Arizona, Inc., et al. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Court of Appeals, Division One
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Aaron Cortez #319924
(Your Name)
CACHF-GEO
801 E. Jefferson Street
(Address)

Phoenix, Arizona 85034
(City, State, Zip Code)

incarcerated
(Phone Number)

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QUESTION(S) PRESENTED

Whether the Fourteenth Amendment permits a State to treat failure to satisfy a mandatory paternity-filing deadline as irrevocable waiver supporting permanent termination when State-controlled custodial procedures prevented an incarcerated potential father, despite documented diligent efforts, from meaningfully using the prescribed procedure through which he was required to grasp the parental opportunity recognized in Lehr v. Robertson, 463 U.S. 248 (1983).

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Petitioner Aaron Cortez was the appellant in the Arizona Court of Appeals.

Agape Adoption Agency of Arizona, Inc. was an appellee.

S.C., a minor child, was also identified as an appellee.

Petitioner is an individual and has no corporate disclosure to make under Rule 21.6

RELATED CASES

- Superior Court of Arizona in Maricopa County, Juvenile Division, No. JS22201, In re Termination of Parental Rights as to S.C. Order dismissing Petitioner as a party and precluding further participation signed July 15, 2024 and filed July 18, 2024; termination judgment signed February 27, 2025 and filed March 4, 2025.
- Arizona Court of Appeals, Division One, No. CAJV 25-0030, In re Termination of Parental Rights as to S.C. Memorandum Decision filed February 18, 2026.
- Supreme Court of Arizona, No. CV-26-0088-PH, In re Termination of Parental Rights as to S.C. Petition for Review denied June 26, 2026.
- Arizona Court of Appeals, Division One, No. 1 CA-JV 24-0123, In re Termination of Parental Rights as to S.C. Notice of Appeal filed July 23, 2024 from the July 2024 preclusion order; appellate case number assigned July 25, 2024; appeal dismissed December 2, 2024 for lack of jurisdiction because the preclusion ruling was not yet a final appealable juvenile order. The dismissal order expressly stated that nothing precluded a timely appeal following entry of a final appealable order.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Arizona Court of Appeals' unpublished memorandum decision affirming the termination and the prior order precluding Petitioner's participation was filed February 18, 2026, in *In re Termination of Parental Rights as to S.C.*, No.

1 CA-JV 25-0030. (App. 1a-4a.)

The Arizona Supreme Court denied review on June 26, 2026, in No. CV-26-0088-Ph. The clerk's notice reporting that action is dated

June 29, 2026. (App. 15a.)

The Superior Court's order dismissing Petitioner as a party and precluding further participation was signed July 15, 2024 and filed July 18, 2024. (App. 5a-9a)

The Order Terminating Parent-Child Relationship was signed February 27, 2025 and filed March 4, 2025. (App. 10a-14a)

JURISDICTION

The Arizona Court of Appeals entered judgment on February 18, 2026.

Petitioner timely sought discretionary review, which the Arizona Supreme Court denied on June 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1257(a).

Under Rule 13.1, the petition is due within 90 days after the order denying discretionary review. Because this petition draws into question the constitutionality of Arizona statutes and neither Arizona nor a state agency, officer, or employee is a party, 28 U.S.C. § 2403(b) may apply. Pursuant to Rule 29.4(c), Petitioner is serving the Attorney General of Arizona with this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in pertinent part: "No State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. (App. 65a)

This case also involves A.R.S. §§ 8-106(G), 8-106(J), 8-106.01(E), 8-533(B)(5), and 25-804. Their pertinent operative text is reproduced in Appendix (66a-67a).

STATEMENT OF THE CASE

A. Arizona made timely paternity filing the gateway to participation.

Arizona law provides a procedure through which a potential father served with notice under A.R.S. § 8-106(G) may preserve his ability to assert parental rights. The potential father must file a paternity action and serve the mother within thirty days after completion of service. A.R.S. § 8-106(G)(J). Section 8-106(J) attaches waiver consequences to noncompliance, and § 8-533(B)(5)

separately authorizes termination when the potential father fails to file a paternity action within the statutory period.

Petitioner was incarcerated in the Maricopa County jail when the statutory notice was served. The Certificate of Service records personal service on January 17, 2024, at 3:49 p.m. Certificate of Service, (App. 45a) The Court of Appeals later recited January 23, 2024. (App. 2a, 972). Petitioner does not rely on that discrepancy to claim that the paternity action ultimately filed was timely; the federal question concerns the process available to him during the statutory period.

B. Petitioner repeatedly used the jail's prescribed legal-request process to seek the means of compliance.

MCSO Policy BP-6 confirms the institutional structure Petitioner was required to navigate. Its Policy provision states that ILS assists

Self-represented inmates with legal papers and documents in enumerated criminal, fugitive of justice, civil rights, conditions of confinement, habeas corpus, and government entity civil matters; family law and paternity matters are not among the matters listed. (App. 46a). DP-6 further provides that an ILH is date-stamped by ILS upon receipt and again when a response has been issued. (App. 47a)

The contemporaneous ILHs separately record Petitioner's Current Date and the receiving officer's date and time. They show requests dated January 17, January 23, January 30, April 4, April 10, April 17, and May 8, 2024. (App. 49a-51a, 54a-57a.)

On January 17, the day of service, petitioner wrote: "I need the forms to file a paternity action under Title 25 Chapter 6, Article 1, Arizona Revised Statutes." (App. 49a)

On January 23 he submitted the Superior Court Law Library Resource

Center ('LLHC') packet; ILS returned the five-page original because it required a different jail mailing address designation. (App. 50a)

On January 30 Petitioner resubmitted the LLHC packet. The ILS response, returned February 1, states 'Delivered 5 pages', identifies the document as an 'LLHC Order form', and identifies the destination as 'Maricopa County Superior Court; LLHC mailbox'. (App. 51a) In the LLHC submission Petitioner contemporaneously wrote, "I wish to withhold my consent to the adoption of the child." (App. 53a)

Petitioner does not contend that this statement itself satisfied Arizona's paternity action filing requirement; it documents his affirmative effort during the statutory period to resist the adoption and protect the parental opportunity Arizona required him to pursue.

The later "paternity packet" terminology is reconciled by the contemporaneous documents. Counsel's May 24, 2024 response referred to the item delivered

to ILS as a "paternity packet." (App. 20a). But the actual February 1 ILS response identifies that item as the "LLHC Order Form." (App. 51a). After a fuller discussion with Petitioner, counsel's February 19, 2025 Notice of Filing clarified the record and stated: "The forms speak for themselves and anything on the form would and does override any prior inconsistent statement." (App. 27a). Thus, counsel's "paternity packet" reference concerned the LLHC packet submitted through ILS; it did not establish that Petitioner possessed a completed paternity action complaint that he simply failed to file.

C. Petitioner's efforts continued after the statutory period and corroborated his earlier attempts.

On April 4 he submitted an ILH stating that he wanted "to establish paternity" and, if established as the father, wanted custody. (App. 54a)

On April 10 he requested a notary for a Notice of Claim of Paternity;

ILS stamped the request received April 11 and returned April 17. (App. 55a)

On April 17 Petitioner asked ILS to mail the notarized Notice and provide him

a copy. ILS returned it that day stating that it "will not process the

Notice of Claim of Paternity" and that the document was personal mail that

had to be routed through the mailroom (App. 56a). A Notice of Claim of

Paternity was thereafter received by Arizona Vital Records, and Petitioner's

later May 8 ILH sought information concerning DNA paternity testing. (App. 57a-60a.)

A paternity action was filed on his behalf on May 7, 2024. (App. 2a, 973)

The May 31, 2024 affidavit of Agape's counsel recounts her conversation with

Inmate Legal Services concerning the limits of ILS assistance and inmate

mailing procedures. (App. 61a-61a) Read together with DL-6 and the

contemporaneous ILHs, that affidavit corroborates that Petitioner's family law

paternity request had to be pursued through institutional channels outside the

matters expressly listed in DFL's Policy provision.

D. The juvenile court treated the missed deadline as dispositive and excluded Petitioner.

Agepe sought termination under A.H.S. § 8-533(B)(5) and moved to dismiss Petitioner as a party because the paternity action had not been timely filed and served. Petitioner opposed dismissal and raised Due Process. His May 24 response stated that the proposed application of A.H.S. § 8-106 "violates multiple constitutional provisions such as due process," and requested a trial on the merits. (App. 20a.)

At the July 8, 2024 hearing, counsel again identified "due process" as a constitutional issue and argued that Petitioner had made "multiple efforts to comply" while dependent on Inmate Legal Services. (App. 23a-24a.) The juvenile court nevertheless treated the deadline as dispositive. Its written order stated:

"For the purposes of this ruling, the Court assumes that everything that

father has asserted is true." (App. 6a). The court further concluded that Cox imposed a "clear mandate" requiring strict compliance despite Petitioner's "seemingly good faith efforts," and stated that it was precluded from excusing him "even though that result could be reasonably viewed as unfair to him." (App. 8a). It ultimately held that it had no discretion to allow Petitioner to assert an interest in the child, granting the motion, and legally precluded him from appearing. (App. 9a). The order was signed July 15, 2024 and filed July 18, 2024.

After the preclusion order, the termination proceedings continued without Petitioner's participation. The juvenile court entered final judgment terminating Petitioner's parental rights under A.R.S. § 8-533(B)(5). In paragraph 7, the court expressly concluded that Petitioner had received his constitutional rights because he received notice of the adoption and an opportunity to file a

paternity action within thirty days; it then treated his failure to meet that deadline as dispositive and stated that no equitable relief was available under § 8-106(d). The judgment was signed February 27, 2025 and filed March 4, 2025. (App. 10a-14a). The Court of Appeals later affirmed that final judgment, holding that the § 8-533(b)(5) ground existed because the paternity action was not filed within thirty days. See (App. 4a 912).

E. The federal Due Process question was preserved at every level.

The federal Due Process question was timely and repeatedly raised. In Superior Court, the May 24 response expressly asserted Due Process and requested a trial on the merits. (App. 20a). At oral argument on July 8, counsel stated: "Another legal issue regarding the interpretation of 8-106 is due process," and argued that Petitioner's repeated efforts while dependent on ILS made the statute unconstitutional as applied. (App. 23a-24a). The court passed on the claim while assuming Petitioner's factual assertions true,

yet held that Arizona law left it no discretion to excuse strict compliance. (App. 6a, 8a-9a).

The February 19, 2025 Notice of Filing again stated that the statutes were unconstitutional as applied because they deprived Father of "due process" and further provided that the forms themselves controlled over any inconsistent prior statement. (App. 25a-27a).

After final judgment, Petitioner again challenged the preclusion and termination in No. 1 CA-JV 25-0030. His Opening Brief documented that, from January 17, he had sought to file a paternity action "with diligence and persistence without any procrastinations or delay." (App. 29a). His Reply Brief expressly stated: "Appellant has a fundamental constitutional right to Due Process," and argued that the State-controlled process made the opportunity to be heard not meaningful but "illusory." (App. 33a). The Court of Appeals expressly passed on the federal claim, holding that by failing to timely file, Father waived participation and that "[t]he Court did not deny Father due process." (App. 4a, 971). It separately rejected the statutory impossibility argument and applied

Cox to § 8-106(d). (App. 3a-4a)

Petitioner then squarely presented the Arizona Supreme Court. His Petition for Review expressly asked whether the Due Process Clause permits categorical termination under § 8-533(b)(5) when strict noncompliance resulted from circumstances beyond father's control.

(App. 36a). Under "The Lehr v. Robertson Distinction: Opportunity vs. Impossibility," he argued that Lehr protects the father's opportunity interest and that Lehr did not authorize impossible hurdles. (App. 38a). Under "Due Process Prohibits Illusory Deadlines," he argued that when the State controls an incarcerated father's mail, forms, and ability to file, an opportunity consumed by the State-controlled system is "being withheld by the State" (App. 39a).

He further distinguished Cox because, unlike counsel error there, the jail controlled his movement, mail, and access to forms, and argued that applying Cox to these circumstances would create "an unconstitutional procedural trap." (App. 40a-41a). The Arizona Supreme Court denied review on June 26, 2026. (App. 15a).

REASONS FOR GRANTING THE WRIT

1. This Court has never decided whether a State may make the prescribed parental opportunity functionally unavailable and then terminate because it was not timely exercised.

This Court has never decided the question presented here. Lehr v. Robertson, 463 U.S. 248 (1983), supplies the starting point but not the answer. Lehr recognized that a potential father's connection to his child affords an opportunity to develop a constitutionally protected relationship and that constitutional significance depends on affirmative action. *Id.* at 261-262.

But the mechanism in Lehr was available: New York maintained a putative father registry, and the Court emphasized that the father's ability to secure notice by registering was "completely within appellant's control." *Id.* at 261. This case presents the converse. Petitioner did not ask Arizona to dispense with affirmative action. He repeatedly attempted to invoke Arizona's prescribed process while State custody controlled his access to forms,

legal request channels, and institutional mail. The question is whether the State may make timely completion of that process indispensable, materially prevent meaningful use of it despite documented diligence, and then characterize non completion as irrevocable waiver supporting permanent termination. That distinction preserves Lehr rather than undermines it. A father who ignores an available opportunity is different from a father who timely attempts to use the State's exclusive mechanism but is prevented by State controlled circumstances from completing the required act. Lehr resolved the former situation. It did not decide the latter.

11. Lehr's opportunity principle requires an opportunity that is meaningfully capable of exercise.

States have compelling practical interests in prompt resolution of parental status and in stability for children. Nothing in Petitioner's proposed rule disables reasonable deadlines.

But when government both imposes the deadline and controls an incarcerated person's

practical access to the indispensable procedure, due process requires more than an opportunity that exists only on paper. The issue can recur wherever a litigant dependent on State controlled access must complete a short, status determinative civil procedure through State controlled channels. Without a constitutional boundary, the same government that controls access to the means of compliance may treat the resulting noncompliance as conclusive proof that the opportunity was voluntarily abandoned.

III. Arizona's categorical rule makes the remaining question distinctly Federal, not a request for equitable tolling.

In *Cox v. Ponce*, the Arizona Supreme Court construed § 8-106B's thirty day requirement as a statute of repose and rejected judicially created equitable exceptions. Petitioner does not ask this Court to reinterpret Arizona law, create equitable tolling, or excuse ordinary neglect.

Cox resolves the Arizona state law question whether § 8-106B's deadline admits

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equitable exceptions; it does not resolve the distinct federal question presented here. Whether Arizona courts may create an equitable exception is a question of state law. Whether the Fourteenth Amendment permits irrevocable waiver and permanent termination when State controlled circumstances prevented meaningful compliance despite diligent efforts is a federal constitutional question.

IV. This case is an unusually clean vehicle for deciding the federal question.

The statutory default is undisputed. The federal Due Process claim was raised in the Superior Court, renewed in the Court of Appeals, expressly decided there, and again presented to the Arizona Supreme Court. (App. 20a, 23a-27a, 33a, 36a-41a, 4a). The trial court expressly assumed Petitioner's factual assertions true for purposes of its preclusion ruling. (App. 6a). The final termination judgment then expressly treated notice plus the thirty day filing opportunity as constitutionally sufficient and terminated under § 8-533(B)(5). (App. 10a-14a). The Court therefore can decide the constitutional question

without first resolving a disputed evidentiary record concerning what Petitioner asserted occurred.

The antecedent question is narrow and outcome-determinative: before noncompliance may be treated as irrevocable waiver supporting permanent termination, must the State provide a meaningful opportunity to demonstrate that State controlled circumstances prevented compliance despite diligent efforts? This record squarely presents that question.

V. This Court's parental rights precedents reject conclusive procedures that disregard constitutionally material circumstances.

Stanley v. Illinois, 405 U.S. 645 (1972), reject a conclusive procedure that treated an unwed father as unfit without an individualized determination. Santosky v. Kramer, 455 U.S. 745 (1982), emphasized the extraordinary gravity and finality of termination proceedings. Those cases do not establish that every potential father already possesses the full constitutional status of an established parent. They do

establish that permanent severance of a parental relationship demands fundamentally fair procedure. Lehr refines the analysis for a potential father: the State may require him to take affirmative steps to grasp the opportunity to develop a protected relationship. 463 U.S. at 261-62. But Lehr's conclusion rested in part on an accessible mechanism whose use was within the father's control. *Id.* at 264. It does not authorize the State to prevent meaningful use of the required mechanism and then equate the resulting noncompletion with a voluntary failure to act.

VI. Little confirms that the formal existence of a paternity procedure is not enough when State controlled conditions make the necessary mechanism unavailable.

Little v. Streater, 452 U.S. 1 (1981), arose in the paternity context. Connecticut formally provided blood testing but conditioned access on payment that the indigent alleged father could not make. The Court held that due process required meaningful

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access to the procedure necessary to protect the interest at stake. The point is not that Little and this case are factually identical. The point is that due process looks beyond the paper existence of a procedure. Here, Arizona made a time sensitive paternity action the gateway to participation while petitioner's custody placed his practical access to the necessary forms and transmission channels within State controlled systems.

VII. Boddie, M.L.B., Loudermill, and Armstrong reinforce the same Due Process principle.

Boddie v. Connecticut, 401 U.S. 371 (1971), recognized the constitutional significance of meaningful access where the State controls the exclusive judicial mechanism for altering family status. M.L.B. v. S.L.J., 519 U.S. 102 (1996), likewise distinguished ordinary civil litigation from proceedings permanently severing the parent-child relationship. Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985),

forecloses the proposition that a State may define an interest and simultaneously make its own statutory procedure the complete measure of federal due process.

Arizona may prescribe a thirty day requirement. But the existence of that deadline cannot itself answer whether constitutionally adequate process existed when the same State controlled Petitioner's practical ability to use the required mechanism.

Armstrong v. Manzo, 380 U.S. 545, 553 (1965), arising in the adoption context, requires an opportunity to be heard at a meaningful time and in a meaningful manner. Here, once the deadline passed, Arizona treated the consequence as irrevocable. When Petitioner attempted to explain State controlled prevention only after the decisive consequence has become irreversible is not meaningful in the constitutional sense.

VIII. The procedure below made the statutory default self-validating.

The missed deadline produced statutory waiver. Waiver produced Petitioner's exclusion. Exclusion prevented full participation in the proceeding that
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permanently terminated the asserted parental relationship. And the same missed filing supplied a statutory ground for termination. The procedure therefore never squarely answered petitioner's constitutional contention that the State controlled system prevented meaningful compliance despite his documented diligence.

Noncompliance cannot be the complete answer to a claim about why noncompliance occurred. Lehr allows affirmative action requirements; Little requires meaningful access to necessary paternity procedures; Woodruff prevents State procedure from defining the full measure of federal due process; and Armstrong requires the opportunity to be heard when it can still protect the interest.

IX. Petitioner's proposed rule is narrow and preserves Arizona's legitimate interests.

Petitioner does not ask the Court to invalidate Arizona's thirty day deadline, create automatic tolling for incarceration, excuse ordinary neglect,
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require correctional officials to act as family law counsel, or constitutionalize every institutional delay.

The requested rule is narrower: when a State makes timely completion of a mandatory procedure indispensable to preserving an emerging parental interest, due process requires a meaningful opportunity to demonstrate that State controlled circumstances prevented compliance despite diligent efforts before the resulting noncompliance may be treated as irrevocable waiver supporting permanent termination.

Arizona remains free to require prompt action, demand proof of diligence, reject unsupported claims of State prevention, and pursue permanency and finality. The Constitution requires only that the opportunity on which permanent forfeiture depends be meaningfully capable of exercise and that a litigant be allowed to establish State controlled prevention before noncompliance is conclusively treated as voluntary abandonment.

X. Vacatur and remand are the appropriate disposition.

This Court need not decide whether Petitioner's evidence ultimately proves State controlled prevention, and it need not adjudicate paternity, custody, fitness, adoption, or best interests. It need only hold that due process requires a meaningful opportunity to establish State controlled prevention of compliance before the default is treated as irrevocable waiver supporting permanent termination. The judgment should be vacated and the case remanded for application of that Constitutional rule.

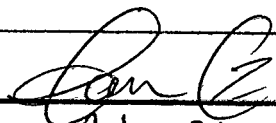
CONCLUSION

The petition for a writ of certiorari should be granted. Petitioner respectfully requests that this Court vacate the judgment below and remand for proceedings consistent with the Fourteenth Amendment requirement that, before noncompliance with a mandatory paternity procedure may be

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treated as irrevocable waiver supporting permanent termination, a potential father receive a meaningful opportunity to demonstrate that State controlled circumstances presented compliance despite diligent efforts.

Respectfully submitted this 15th day of September 2026.


Aaron Cortez-Petitioner, Pro Se