26-5954

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
AUG 19 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Trevor Desrosiers — PETITIONER
(Your Name)

vs.

State of Maine — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Maine Supreme Judicial Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRITE OF CERTIORARI

Trevor Desrosiers, MDOC # 173314
(Your Name)
Maine State Prison
807 Cushing Road
Warren, ME 04864-4600
(Address)

Warren ME 04864
(City, State, Zip Code)

N/A - Incarcerated
(Phone Number)

QUESTION(S) PRESENTED

Whether the Fifth and Sixth Amendments permit a State to revoke probation and impose incarceration upon a probationer who (1) seeks to invoke the constitutional privilege against self-incrimination during a compelled sex-offender-treatment polygraph examination and (2) requests the assistance of counsel during a compelled sex-offender-treatment polygraph examination.

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:

1. State of Maine, Attorney General Office

   Aaron M. Frey

   6 State House Dr. Station

   Augusta, ME 04333-0101

   ATTN: Attorney General, State of Maine

2. Trevor Desrosiers, **MDOC # 173314**

   Maine State Prison

   807 Cushing Road

   Warren, ME 04864-4600

RELATED CASES

1. Underlying Criminal Case and Probation Revocation Docket – The underlying criminal case that led to the State court appeal that is now being appealed by Petitioner to this Court is State of Maine v. Trevor Desrosiers, Superior Court Unified Criminal Docket, Region Number 5, Penobscot County, Maine. The Docket Number in this case is PENCD-CR-2022-01923.

2. Maine Supreme Judicial Court Appeal of Conviction – Petitioner timely appealed his convictions in PENCD-CR-2022-01923 to the Maine Supreme Judicial Court. On November 26, 2024, the Maine Supreme Judicial Court affirmed Petitioner's convictions. The decision of the Maine Supreme Judicial Court is *State v. Desrosiers*, 2024 ME 77, Par. 1, 327 A.3d 64 (Me. November 26, 2024).

3. Law Court Appeal of Probation Revocation That Occurred In PENCD-CR-2022-01923 – On November 4, 2025 The Penobscot County Superior Court, Justice Mallonee presiding, entered a decision revoking Petitioner's probation on the underlying PENCD-CR-2022-01923 and imposed a sentence of 22 months, the balance of the total sentence, as a sanction for the Probation Revocation. The Docket Number in the Law Court Appeal is PEN-25-514. Petitioner's Appellate Counsel at the time, Zachary Smith, filed a timely discretionary appeal of the Probation Revocation in the Law Court on February 11, 2026. On May 21, 2026 The Maine Supreme Judicial Court issued a final judgment in the form of an Order Denying Certificate of Probable Cause.

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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

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A, p. 17 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was MAY 21, 2026. A copy of that decision appears at Appendix A, Page 17

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Maine Revised Statutes (M.R.S.), Title 17-A: Maine Criminal Code, § 1812(4) which states that,

   "Failure to comply with requirement of probation – If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person on probation has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. This subsection does not apply to a violation of a condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when there is no alleged violation that constitutes a crime, except as set out in section 1814."

2. U.S. Const. amend. V, which states that,

   "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

3. U.S. Const. amend. VI, which states that,

   "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

4. Me. Const. art. 1, § 6, which states that,

"In all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused; To demand the nature and cause of the accusation, and have a copy thereof; To be confronted by the witnesses against the accused; To have compulsory process for obtaining witnesses in favor of the accused; To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. The accused shall not be compelled to furnish or give evidence against himself or herself, nor be deprived of life, liberty, property or privileges, but by judgment of that person's peers or the law of the land."

STATEMENT OF THE CASE

Petitioner Trevor Desrosiers was convicted in Maine state court of three counts of Sexual Abuse of a Minor and was sentenced to a term of imprisonment followed by probation. One of the conditions of probation required him to complete sex-offender evaluation, counseling, and treatment as directed by his probation officer. APP. A, Pages 22-23.

Following Petitioner's direct appeal, Probation Officer Chad Cooper required Petitioner to enroll in sex-offender treatment through Northern Lighthouse. APP A, Pages 23, 30-31. The treatment provider required Petitioner to complete a sexual-history polygraph examination as an initial component of treatment. APP. A, Pages 24-27, 32.

Petitioner did not refuse treatment. Instead, he informed both his treatment provider and probation officer that he wished to have counsel present during the polygraph process and wished to preserve his constitutional right against self-incrimination while pursuing post-conviction relief from his underlying conviction. APP. A, Pages 34-48. Petitioner testified that he told the treatment provider:

"I would like to have an attorney present to fill out the questionnaire. And I also instructed him that I would like to have an attorney present for the polygraph." APP. A, Page 34.

Petitioner further explained that he had retained counsel to pursue post-conviction review of his conviction and was concerned that statements made during the polygraph examination could later be used against him if his conviction were vacated and retried. APP. A, Pages 35-37. According to Petitioner, counsel advised him to exercise his constitutional right to remain silent regarding matters related to his pending post-conviction proceedings. APP. A, Pages 35-36, 41-42.

The treatment provider rejected Petitioner's request for attorney participation. Petitioner testified that when he requested counsel's presence, the provider responded that "that's not the

way we do things here" and terminated the treatment process. APP. A, Pages 37-38. Petitioner was then discharged from treatment for noncompliance. APP. A, Pages 23-24, 31.

The State subsequently filed a motion to revoke probation alleging that Petitioner violated a probation condition requiring completion of sex-offender treatment. APP A, Page 20. At the probation revocation hearing, Probation Officer Cooper testified that Petitioner consistently expressed concerns that participation in the polygraph would violate his constitutional rights. APP A, Pages 24-25, 32. Cooper testified that Petitioner believed he was being forced to choose between incarceration and surrendering constitutional protections. APP. A, Page 24.

Petitioner testified that he was not refusing treatment and was not refusing a polygraph examination. Rather, he was requesting counsel's presence and seeking to avoid answering specific questions concerning matters that could affect his pending collateral challenge to his conviction. APP. A, Pages 34-37. Petitioner stated:

"I'm simply asking for a lawyer to be present for that." *Apr. 24 Tr. 19.*"I have the right to remain silent, and anything I say would be used against me. I don't believe that that's changed any." APP. A, Page 36.

Defense counsel argued that revoking probation based upon Petitioner's insistence on exercising his Fifth Amendment privilege and obtaining assistance of counsel would violate clearly established constitutional principles, relying in part upon *Minnesota v. Murphy* and *United States v. York*; *see also* APP. A, Pages 44-47.

The trial court nevertheless found that Petitioner's failure to participate in the sexual-history polygraph constituted an "inexcusable" violation of probation. APP. A, Pages 50-52. In doing so, the court acknowledged that Petitioner was seeking an attorney for the polygraph examination. APP. A, Page 51. During the hearing, Petitioner directly asked the court:

"So I do not have the right to remain silent, and I do not have the right to an attorney for the polygraph?" APP. A, Pages 51-52. The court responded: 'you take that up with your attorney." *Id.*

Although the court found a probation violation, it continued sentencing to allow Petitioner an additional opportunity to discuss the polygraph issue with counsel and attempt compliance. *Id.* At the subsequent disposition hearing, Petitioner's counsel again explained that Petitioner's position was not a refusal to participate in treatment, but rather a request "to have a lawyer present while he's being questioned by a polygraph examiner" and to preserve his privilege against self-incrimination concerning potentially incriminating questions. APP. A, Pages 62-64.

Petitioner personally reiterated that position, explaining: "I am willing to take a polygraph test. I simply ask that I can have an attorney there for specific questions about specific details of the post-conviction review." APP. A, Page 67.. He further informed the court: "[i]'m simply exercising my right to remain silent, and I just can't imagine being punished, taken from my family, and put in a cage for exercising that right." APP. A, Page 68.

The treatment provider and probation authorities rejected Petitioner's proposal and insisted that any polygraph examination proceed without counsel and under the examiner's chosen conditions. APP. A, Pages 67-69. The sentencing court initially announced that it intended to impose a twelve-month sanction for the probation violation. APP. A, Page 77. When Petitioner again stated that he was willing to take the polygraph but desired counsel's presence, the court rejected that request, stating: "The answer is no." APP. A, Page 78.

Faced with imminent incarceration, Petitioner then stated that he would submit to the polygraph examination rather than be jailed. APP. A, Pages 78-79. The court continued sentencing and ordered that Petitioner complete the polygraph examination "on the terms and conditions set by the polygraph examiner and the counselor and the probation officer." APP. A, Page 79.

Subsequent proceedings confirmed that the basis for the violation remained Petitioner's request for counsel and his desire to preserve constitutional protections during the polygraph process. At a later hearing, the court summarized the underlying probation proceedings, noting that

Petitioner had stated: "I'm simply asking for a lawyer to be present for the polygraph," and had questioned whether he retained "the right to remain silent" and "the right to an attorney for the polygraph." APP. A, Pages 89-90.

REASONS FOR GRANTING THE PETITION

1. The State Cannot Revoke Probation And Impose Incarceration Because A Probationer Seeks To Exercise The Fifth Amendment Privilege Against Self-Incrimination And The Sixth Amendment Right To Counsel During Court-Ordered Sex Offender Polygraph Examinations.

This case presents a fundamental constitutional question that arises with increasing frequency in sex-offender-treatment programs throughout the Nation: whether the government may withdraw a probationer's liberty and incarcerate him because he insists upon exercising his constitutional rights against self-incrimination and to consult with counsel before answering potentially incriminating questions.

Petitioner was not accused of committing a new crime. Nor was he alleged to have failed to report to probation, missed appointments, absconded supervision, or engaged in dangerous conduct. The sole basis for revocation was his insistence that he be permitted to have counsel present during a compelled sexual-history polygraph examination and that he retain the ability to invoke his privilege against self-incrimination concerning questions that could affect pending post-conviction proceedings.

Throughout the proceedings below, Petitioner consistently expressed his willingness to participate in treatment and even to submit to a polygraph examination. His objection was limited: he sought the presence of counsel and the ability to refrain from answering questions that could incriminate him while his post-conviction proceedings remained pending.

The courts below treated Petitioner's invocation of constitutional protections as equivalent to refusal to comply with treatment. As a result, the State sought a twelve-month period of incarceration, and the trial court found Petitioner in violation of probation. APP. A, Pages 50-52, 77-79.

The question presented is exceptionally important because probationers retain constitutional protections notwithstanding their status. This Court has repeatedly recognized that government may not impose a penalty for invocation of the Fifth Amendment privilege. *See Minnesota v. Murphy*, 465 U.S. 420 (1984). Yet that is precisely what occurred here.

2. This Case Presents The Classic "Penalty Situation" Forbidden By The Fifth Amendment.

Under *Minnesota v. Murphy*, the Fifth Amendment is violated when the government conditions liberty upon surrendering the privilege against self-incrimination. Defense counsel expressly raised *Murphy* below and argued that Petitioner's situation constituted precisely the type of unconstitutional penalty condemned by this Court. APP. A, Pages 44-46. Petitioner thus faced a stark choice:

a. Answer potentially incriminating questions concerning his sexual history and the underlying allegations against him while post-conviction proceedings remained available; or

b. Refuse to answer and face revocation of probation and imprisonment.

The record repeatedly demonstrates that Petitioner asserted concern that compelled disclosures could later be used against him should his conviction be overturned or retried. Most importantly, the courts never afforded Petitioner the option recognized in *Murphy*: to assert the privilege on a question-by-question basis without suffering loss of liberty. Instead, Petitioner was informed that successful completion of treatment required submission to the polygraph under whatever terms the examiner demanded. APP. A, Page 52. The court ultimately held that failure to comply with those requirements constituted a probation violation. *Id.*

The State thus transformed the exercise of the Fifth Amendment privilege into grounds for incarceration. This Court has repeatedly rejected governmental efforts to coerce surrender of constitutional rights through threats of punishment. Yet the entire rationale for revocation in this case rested upon Petitioner's refusal to abandon his constitutional objections.

3. In Addition To The Clear Fifth Amendment Concerns, The Proceedings Below Also Raise A Significant Sixth Amendment Question Concerning Counsel's Presence During Compelled Interrogative Polygraph Examinations.

Petitioner repeatedly requested the presence of counsel. At the revocation hearing he testified: "I would like to have an attorney present to fill out the questionnaire. And I also instructed him that I would like to have an attorney present for the polygraph." APP. A, Page 34.

The treatment provider refused. Petitioner testified:

"[The provider] became very irritated when I told him I'd like to have a lawyer present. And his response was, that's not the way we do things here." APP. A, Page 37. At sentencing, defense counsel again informed the court that Petitioner sought "the ability to have a lawyer present while he's being questioned by a polygraph examiner." APP. A, Page 62.

The constitutional problem is particularly acute because the polygraph examination was designed to elicit detailed admissions concerning sexual conduct. The probation officer testified that the examiner first goes through "the entire history" before administering the polygraph questions. APP A, Page 27. Thus, this was not an administrative reporting requirement. It was a compelled interrogation process intended to obtain potentially incriminating admissions.

Whether a State may revoke probation and incarcerate an individual for demanding counsel's presence during such questioning is an important constitutional issue warranting this Court's review. The Sixth Amendment guarantees the assistance of counsel at critical stages of criminal proceedings. *See United States v. Wade*, 388 U.S. 218, 227-28 (1967); *Massiah v. United States*, 377 U.S. 201, 205-06 (1964). This Court has never directly addressed whether a State may incarcerate a probationer because he requests counsel before participating in a compelled sexual-history polygraph tied to ongoing criminal litigation and post-conviction proceedings.

4. Supreme Court Review Is Necessary To Provide Guidance To Courts Nationwide.

Sex-offender-treatment programs across the United States frequently require polygraph examinations and compelled disclosures as conditions of probation or supervised release. Courts

have struggled to reconcile these programs with the Fifth Amendment and related constitutional protections. The record here presents the issue cleanly:

- Petitioner asserted the Fifth Amendment privilege.
- Petitioner requested counsel;
- Petitioner remained willing to participate in treatment but wanted to have counsel present and be able to consult him regarding Fifth Amendment concerns during the polygraph examination;
- The treatment provider refused accommodation;
- The State pursued revocation; and
- The court found a violation and imposed imprisonment based upon noncompliance.

The constitutional issue is squarely presented and outcome determinative. This Court has repeatedly recognized that government may not impose a penalty for invocation of the Fifth Amendment privilege. *See Minnesota v. Murphy*, 465 U.S. 420 (1984). Yet that is precisely what occurred here.

In *Lefkowitz v. Turley*, the Court held that government may not compel individuals to waive the Fifth Amendment by threatening substantial penalties for remaining silent. *Lefkowitz v. Turley,* 414 U.S. 70, 82-85 (1973). Likewise, in *Lefkowitz v. Cunningham*, the Court reaffirmed that government may not force a citizen to choose between self-incrimination and the loss of important rights. *Lefkowitz v. Cunningham*, 431 U.S. 801, 805-09 (1977).

The same principle appears in *Garrity v. New Jersey*, where the Court invalidated a scheme requiring police officers to choose between self-incrimination and loss of employment. *Garrity v. New Jersey*, 385 U.S. 493, 497-98 (1967). The Constitution, this Court explained, prohibits government from coercing waiver of the privilege through threats of substantial penalties.

Similarly, in *Spevack v. Klein*, the Court held that government cannot impose sanctions upon a person for invoking the Fifth Amendment, emphasizing that constitutional rights must remain free from governmental coercion. *Spevack v. Klein*, 385 U.S. 511, 514-15 (1967).

In *United States v. York*, 357 F.3d 14 (1st Cir. 2004) A supervised release condition requiring sex offender treatment and polygraph testing is permissible where it is reasonably related to the defendant's criminal history and rehabilitation needs, and only where the condition is construed so as not to compel self-incriminating statements in violation of the Fifth Amendment.

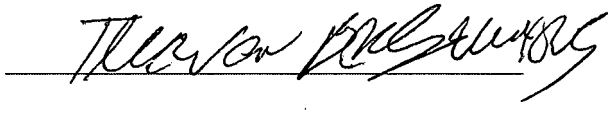
The Sixth Amendment guarantees the assistance of counsel at critical stages of criminal proceedings. *See United States v. Wade*, 388 U.S. 218, 227-28 (1967); *Massiah v. United States*, 377 U.S. 201, 205-06 (1964). This Court has never directly addressed whether a State may incarcerate a probationer because he requests counsel before participating in a compelled sexual-history polygraph tied to ongoing criminal litigation and post-conviction proceedings.

The Probation Revocation proceedings in this case created exactly the type of unconstitutional penalty situation condemned in the above jurisprudences from this Court. Therefore, this Court should grant certiorari to clarify whether the government may revoke probation and incarcerate an individual because he seeks to exercise the Fifth Amendment privilege against self-incrimination and the assistance of counsel during compelled sex-offender polygraph examinations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 23, 2026