

DETAINED

The Honorable Theresa L. Fricke

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAE A. SAELEE,

Petitioner,

v.

PAMELA BONDI, *et al.*;

Respondents.

CASE NO.: 2:25-cv-02677-TLF

PETITIONER'S SUPPLEMENTAL REPLY
BRIEF

NOTED FOR CONSIDERATION:
January 26, 2026

PETITIONER'S SUPPLEMENTAL REPLY BRIEF

A. Because the government has conceded error, the question of whether 8 C.F.R. § 241 sufficiently complies with Due Process is now moot.

The Court's order directing supplemental briefing notes a lack of briefing on "whether the relevant sections of 8 C.F.R. 241 (cited by respondents as being applicable) provided sufficient process under *Mathews* and related cases...." Dkt. 10, at 4. The relevant sections of

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the regulation are 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Both parties agree that 8 C.F.R. § 241.4 does not apply because there is no allegation that the petitioner, Mr. Kae Saelee, violated the conditions of release. Dkt. 6, at 5; Dkt. 11, at 1-2.

The parties also agree that ICE did not comply with 8 C.F.R. § 241.13, because, as the government states, the notice of revocation “provided [Mr. Saelee] with incorrect information and thus insufficient notice of the reason for his revocation as required by 8 CFR § 241.13(i)(3).” Dkt. 15, at 4-5; *see also*, Dkt. 1, at 5; Dkt. 11, at 2. Because the government has conceded that the detention is improper here, the Court could grant Mr. Saelee habeas relief and wait for another case, in a more adversarial posture, to delve into the Due Process requirements in this context. But Mr. Saelee also offers the following reply to the government’s supplemental argument.

B. 8 C.F.R. § 241.13 does not provide sufficient process under the Fifth Amendment.

1. First *Mathews* factor: Mr. Saelee’s liberty interest

As to the first factor under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the government argues, “[T]he general liberty interest to be free from detention should not equate to a separate or heightened liberty interest in the continuation of conditional release pursuant to an OSUP [order of supervision].” Dkt. 15, at 4. However, “The Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is

1 conditional, have a liberty interest in their continued liberty.” *Doe v. Becerra*, 787 F. Supp. 3d
2 1083, 1093 (E.D. Cal. March 3, 2025).

3 As *Doe* notes, the cases concerning parole and probation revocation are most apt, since
4 parole and probation serve many of the same functions as supervision. In the leading case of
5 *Morrissey v. Brewer*, the Supreme Court recognized a liberty interest in continued parole and
6 ruled, “Its termination calls for some orderly process, however informal.” *Morrissey v.*
7 *Brewer*, 408 U.S. 471, 482 (1972). The Court required both a preliminary hearing at the time
8 of detention to establish probable cause, as well as a comprehensive hearing prior to a final
9 revocation decision. *Id.*, at 485. It required a neutral and detached decision maker, who did
10 not need to be a judicial officer. *Id.*, at 486. It required notice of both hearings, disclosure of
11 evidence, a limited opportunity for confrontation and cross-examination, and written findings.
12 *Id.*, at 487-89. *See also*, *Board of Pardons v. Allen*, 482 U.S. 369, 371 (1987); *Johnson v.*
13 *Williford*, 682 F.2d 868, 869 (9th Cir. 1982) (recognizing a liberty interest and Due Process
14 protections even when the petitioner was paroled by mistake); *Vitek v. Jones*, 445 U.S. 480
15 (1980) (applying *Morrissey* to civil commitments).

16 The year after *Morrissey*, the Supreme Court ruled that a probation revocation also
17 implicates a liberty interest and requires similar process. *Gagnon v. Scarpelli*, 411 U.S. 778
18 (1973). It went further than *Morrissey* by ruling that a probation revocation hearing requires
19 counsel for indigent people under the Sixth Amendment:

20 Despite the informal nature of the proceedings and the absence of technical rules
21 of procedure or evidence, the unskilled or uneducated probationer or parolee may

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1 well have difficulty in presenting his version of a disputed set of facts where the
2 presentation requires the examining or cross-examining of witnesses or the
offering or dissecting of complex documentary evidence.

3 *Id.*, at 786-87. Immigrants do not have the same Sixth Amendment right to counsel as
4 criminal probationers, which means for immigrants the importance of the other procedural
5 protections is even greater.

6
7 **2. Second *Mathews* factor: Risk of erroneous deprivation of liberty**

8 As to the second *Mathews* factor, this case illustrates the need for greater procedural
9 protections to prevent erroneous detention, because Mr. Saelee was detained on what the
10 government agrees was “incorrect information.” Dkt. 15, at 4. The error remained
11 undiscovered until this habeas litigation revealed it.

12 The government argues, “But this error alone does not demonstrate that the regulations
13 their face are constitutionally deficient or that Petitioner is required to more process than what
14 is provided in the current regulations.” Dkt. 15, at 5. But this is exactly what it shows. If the
15 regulations were sufficient, Mr. Saelee would not have been erroneously detained. The
16 government further argues, “Thus, the government’s failure to comply with ‘the due process
17 of 8 CFR §§ 241.(l)(1) and 241.13(i)(3),’ presumes that compliance with the regulations
18 satisfies due process.” *Id.* (citations omitted). This is a logical fallacy. Put in formal terms, the
19 government argues that “if p implies q, then not p implies not q”—if noncompliance does not
20

1 meet Due Process, then compliance does meet Due Process. This is an inverse fallacy, and the
2 Court should reject the reasoning.

3
4 **3. Third Mathews factor: Government interest**

5 The government argues that 8 C.F.R. § 241.4 offers sufficient process where the
6 immigrant has broken the terms of the supervision, but it also admits that that regulation is not
7 at issue in this case. Dkt. 15, at 6, Dkt. 6, at 5. Because it is not at issue, any opinion on 8
8 C.F.R. § 241.4 would be advisory only and therefore inappropriate in this case. *Hayburn's*
9 *Case*, 2 U.S. 409 (1792). A decision on that regulation should wait for a case where it is at
10 issue.

11 Regarding 8 C.F.R. § 241.13, the government argues that the immigration courts are
12 bound by the current regulatory scheme and that the scheme does not provide for a pre-
13 detention hearing like the one Mr. Saelee seeks. Dkt. 15, at 6-8. But the regulatory scheme
14 does provide for an “informal interview,” as follows:

15 Upon revocation, the alien will be notified of the reasons for revocation of his or
16 her release. The Service will conduct an initial informal interview promptly after
17 his or her return to Service custody to afford the alien an opportunity to respond
18 to the reasons for revocation stated in the notification. The alien may submit any
19 evidence or information that he or she believes shows there is no significant
20 likelihood he or she be removed in the reasonably foreseeable future, or that he or
21 she has not violated the order of supervision. The revocation custody review will
include an evaluation of any contested facts relevant to the revocation and a
determination whether the facts as determined warrant revocation and further
denial of release.

8 C.F.R. § 241.13(i)(3). The regulation does not say how much notice is needed, who should conduct the interview, or who bears the burden of proof. *Morrissey* sets these out in the similar context of parole—a preliminary hearing promptly after detention, notice of about two months before the final hearing, a neutral and detached decision maker, and the burden on the government. If this Court interprets the phrase “informal interview” to require not only the processes in the regulation but also the processes in *Morrissey*, the regulation would align with the mandates of Due Process.

In this case, if a hearing had been conducted before detention, Mr. Saelee could have been allowed sufficient notice to secure counsel and to gather evidence that would allow him to rebut an allegation of changed circumstances (after being accurately notified of what those circumstances were). In particular, he could have researched the existence of any recent Memorandum of Understanding with Laos, investigated internal ICE processes regarding travel documents to Laos, and filed requests under the Freedom of Information Act regarding the current likelihood of removal to Laos, all while he was out of custody. As it is, the informal interview he received left him with inadequate time to prepare, a biased decision maker, and a burden to prove a negative (no substantial likelihood of removal) rather than to rebut the government’s evidence.

1 **C. Conclusion.**

2 Countless immigrants are receiving habeas corpus relief, both in this district and across
3 the country, which means that countless immigrants are being detained unlawfully. Rather
4 than laboring to correct the unlawfulness after the fact, everyone would be better served by
5 preventing it in the first place. Mr. Saelee believes the process suggested here would be fair to
6 both sides, as it is both time-tested and grounded in the Constitution.

7 Mr. Saelee asks this Court to recognize that he has been unlawfully detained, because
8 the government gave him inadequate notice of the reasons for the detention and there is no
9 substantial likelihood of removal in the reasonably foreseeable future. He asks for the relief in
10 his petition, including immediate release.

11
12 I certify that this memorandum contains 1,480 words, in compliance with the Local Civil
13 Rules.

14 Dated this 26th day of January, 2026.

15 /s/ Kelly Vomacka

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