No. 25-255

IN THE

Supreme Court of the United States

DION HORTON, *et al.*,

Petitioners,

v.

BRUCE R. BEEMER,
ADMINISTRATIVE JUDGE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

NICOLE FEIGENBAUM
Counsel of Record
MICHAEL DALEY
SEAN CONCANNON
ADMINISTRATIVE OFFICE
OF PENNSYLVANIA COURTS
1515 Market Street,
Suite 1414
Philadelphia, PA 19102
(215) 560-6326
legaldepartment@pacourts.us

Attorneys for Respondents

389557

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

In the rare instance where a probationer is detained for an alleged probation violation in Allegheny County, a probable cause hearing is held before a hearing officer. If the hearing officer finds probable cause of a violation, the officer also makes a suitability for release determination about whether the probationer should be released pending a final revocation hearing. Petitioners brought a putative class action claiming that Allegheny County's policies and procedures are unconstitutional. The District Court disagreed and granted summary judgment for Respondents. The Third Circuit affirmed in part and reversed in part, holding that while due process does not require a suitability for release determination, disputed issues of material fact remained regarding whether Allegheny County followed established due process rules. The case was remanded to the District Court for further proceedings on those unresolved issues.

The questions presented are:

1. Whether the Third Circuit's decision—which correctly applied *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), in holding that a suitability for release determination hearing was not required—conflicts with a decades-old Seventh Circuit decision addressing a distinguishable statutory scheme that mandated detention, unlike the case here.

2. Whether this case is a proper vehicle to address whether due process requires a suitability for release determination, given that Respondents already provide such a determination, that the Third Circuit reversed summary judgment and remanded due to disputed material facts regarding those proceedings and detention length, and that standing and immunity defenses remain unresolved.

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INTRODUCTION

This Court's longstanding cases of *Morrissey* and *Gagnon* have established the constitutional process owed to a detained probationer who is alleged to have violated probation: notice of the alleged probation violations, an opportunity to appear and present evidence on their behalf, a conditional right to confront adverse witnesses, an independent decisionmaker, and a written report of the hearing.[1]

Petitioners present an abstract question to the Court divorced from the facts of this case: Does due process require an additional procedure—namely, a suitability for release determination—upon the finding of probable cause of a probation violation at the preliminary revocation hearing? The Third Circuit correctly answered no, holding that *Morrissey* provides a comprehensive due process framework.

Petitioners attempt to manufacture a circuit conflict by citing a distinguishable 1988 case from the Seventh Circuit. That case, *Faheem-El v. Klincar,* 841 F.2d 712 (7th Cir. 1988) (*en banc*), involved a detention statute and factual scenario unlike the one presented either in this case or to the Court in *Morrissey.* The Seventh Circuit addressed an Illinois statute that *mandated automatic detention* upon the finding of probable cause of a probation violation, with no initial, preliminary, or subsequent availability of release before the final revocation hearing.

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1. *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973). The *Gagnon* case extended *Morrissey*, which involved parolees, to probationers.

The Seventh Circuit majority relied upon the automatic detention to distinguish *Morrissey*. Notably, this almost 40-year-old case from the Seventh Circuit has not once been relied upon by other courts to hold that a release determination is required at the preliminary revocation hearing.

Thus, the foundation for the Seventh Circuit's holding was a unique statutory scheme and system in which detention was mandatory. There is no mandatory detention statute or policy in the case at bar. Instead, hearing officers in every case consider whether the defendant should remain detained or be released pending the final revocation hearing. Pet. App. 41a-42a, F.O.F. 17, 26.

What is more, the Seventh Circuit did not hold that a suitability for release determination hearing was constitutionally required; like the Third Circuit, it remanded the matter to the district court for further factual development. Consequently, the Seventh Circuit's outcome is no different than in the instant case: both courts remanded for further factual development necessary for the due process analysis.

All in all, Petitioners' imagined conflict rests on two cases involving different facts and procedures, neither of which has been relied upon by other courts. Thus, under both circuits' methodology, the instant case would come out the same—a remand for further factual development.

Beyond the absence of an actual conflict, Petitioners have picked a poor vessel for their question. First, Respondents already provide a suitability for release

determination for every detained probationer. Upon finding probable cause of a violation, "[t]he hearing officers may make recommendations as to whether a probationer should be released pending the *Gagnon II* hearing (*i.e.*, that the probationer's probation detainer should be lifted). Pet. App. 41a., F.O.F. 17; C.A.J.A. 230. Thus, Petitioners' question presented is purely academic.

Next, the Third Circuit reversed a grant of summary judgment for Respondents and remanded the case for further factual findings. The Court held that genuine issues of material fact remained, including whether there "could be a material dispute" about whether hearing officers make independent findings of probable cause, the sufficiency of prehearing notice to probationers, and whether probationers have an adequate opportunity to speak at the hearings. Pet. App. 11a.

In seeking this Court's attention, Petitioners try to conflate the length of detention with the legal question of whether a suitability for release determination is required. The length-of-detention issue is not ripe for decision. The Third Circuit remanded to allow Petitioners to pursue their claim that the overall length of detention is unreasonably long and, therefore, may distinguish this matter from *Morrissey*. Pet. App. 11a. Even the Third Circuit dissent agreed that "further factual finding is needed for a proper procedural due process analysis." Pet. App. 21a.

While Petitioners attempt to cast the Third Circuit's decision as allowing the detention of probation violators for months on end without a release determination hearing, they fail to point to any entities or jurisdictions that rely

on the decision to do so. It does not happen in Allegheny County: detained probationers receive a determination at the initial violation hearing and may seek to have a detainer lifted thereafter. In cherry-picking a handful of cases to argue that Allegheny County's entire system is unconstitutional, Petitioners not only ignore the context of those fact-specific cases, but also ask this Court to conduct error review of individual probation cases.

At bottom, no circuit split exists that warrants this Court's review. Moreover, this case would be a poor vehicle to address the question presented where a resolution would not be outcome-determinative and multiple factual matters—including facts that pertain directly to the due process analysis—remain to be developed on remand. This Court should not grant certiorari.

STATEMENT

A. Background—Allegheny County's Policies to Reduce Detainers

In 2018, the Court of Common Pleas of Allegheny County and the Adult Probation Department ("Probation"), along with Allegheny County, joined the MacArthur Foundation's Safety and Justice Challenge with the goal of reducing the county jail population. Pet. App. 41a., F.O.F. 19.[2] The Challenge's strategy is to reduce the number and length of probation detainers. C.A.J.A. 531.

2. Unless otherwise noted, Respondents will be referred to collectively as "Allegheny County," although Probation, the Probation employees, and the Judges come within Pennsylvania's Unified Judicial System and are not Allegheny County entities or officials.

In 2019, Allegheny County adopted a Detainer Policy to have a consistent practice in deciding whether to lodge a detainer for a violation. Pet. App. 41a., F.O.F. 18-21. Detaining a probationer is a "last resort," and except for limited circumstances, Probation must exhaust all efforts to "safely maintain" probationers in the community. Pet. App. 41a., F.O.F. 22; C.A.J.A. 132, 605.

The Vera Institute for Justice, whose mission is to "end the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty," has praised Respondents' efforts and the Detainer Policy, stating that one way to prevent "people from being sent to jail for probation violations in the first place" is "*by adopting a policy like Allegheny County's that limits the use of detainers*." *(The Perils of Probation*, October 2021 at 30) (emphasis added).[3]

From the outset, Probation issues detainers for an alleged violation only in limited circumstances: 1) when a sentencing judge orders detention for violation of a specific condition, 2) after a determination that the offender's new criminal charge represents a serious risk to public safety, or 3) after all other efforts to maintain them in the community have been exhausted. C.A.J.A. 133. As the District Court recognized: "detention appears to be the exception rather than the rule," and as of April 4, 2023, "just 6% of people being supervised by Adult Probation in Allegheny County were detained in the Allegheny County Jail or alternative housing sites in the county." Pet. App. 43a., F.O.F. 35; C.A.J.A. 546. Further demonstrating the

3. https://www.vera.org/downloads/publications/the-perils-of-probation.pdf (accessed January 22, 2026).

rarity of detention, as of April 4, 2023, 78% of probationers who had new criminal charges were not in detention. Pet. App. 44a., F.O.F. 36.

1. Respondents Provide the Required Probable Cause Determination at the *Gagnon I* Hearing.

After a probationer is detained, they have a *Gagnon I* hearing before a hearing officer. Pet. App. 39a., F.O.F. 6-7; C.A.J.A. 353, 430.[4] The central question in *Gagnon I* hearings—whether probable cause exists that a probationer violated probation—is decided in every *Gagnon I* hearing. Pet. App. 40-41a., F.O.F. 15-16; C.A.J.A. 230.

All probationers are represented by counsel, who may make arguments and present evidence. Pet. App. 40a., F.O.F. 10, 13; C.A.J.A. 355, 918. The hearing officer explains that the probationer is there for an alleged probation violation and describes the alleged violation, counsel is allowed to make an argument, and the probationer is given a chance to speak. Pet. App. 40a., F.O.F. 11-12; C.A.J.A. 411.

The District Court found that Petitioners' own court watchers confirmed that "the probationer and counsel are present at the hearing, are able to put on evidence, and then the hearing officer makes a probable-cause determination." Pet. App. 64a.; C.A.J.A. 144, 150-51.

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4. In Pennsylvania, the preliminary revocation hearing is referred to as a "*Gagnon I*" hearing, and the final revocation hearing is referred to as a "*Gagnon II*" hearing.

2. Probationers Are Also Afforded a Suitability for Release Determination, Which Involves Evaluating Public Safety.

If probable cause of a violation is established, the hearing officer then recommends whether the detainer should stay in place, be lifted, or if alternative housing or electronic monitoring is appropriate. Pet. App. 42a., F.O.F. 26.[5] Public safety is a factor in whether to recommend continued detention. C.A.J.A. 642, 649-50.[6]

Petitioners state that probationers are detained either two-thirds or four-fifths of the time following the *Gagnon I* hearing. Petition 8. Because Probation uses detention as a last resort and uses multiple rehabilitation strategies to avoid reaching the detention stage, it is not surprising that a significant proportion of those who do get initially detained for an alleged violation end up remaining detained after the *Gagnon I* hearing.

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5. In remanding, the Third Circuit noted that "there could be a material dispute about whether detention is mandatory" depending on whether hearing officers are "truly making independent findings of probable cause." Pet. App. 11a. Thus, this issue has not been settled for this Court to rely upon in a due process analysis.

6. Thus, Petitioners' assertion that Respondents' *Gagnon I* hearings and the suitability for release determination do not require a hearing officer to find that detention pending the revocation hearing is "required to protect public safety, prevent flight, facilitate the probationer's rehabilitation, or further any other legitimate government interest" is incorrect and contradicted by the record. Petition 21.

3. Status Reviews Continue Post-*Gagnon I*.

After the *Gagnon I* hearing, Probation and the Court of Common Pleas continue to review each detainee's status, and Court Liaison Officers advise judges about relevant factors, such as whether a treatment program is available or if a detainee's new charges are dismissed (thereby leading to a detainer lift). C.A.J.A. 537-39. A working group meets twice a month to review detainers with complex issues and to identify release options to present to judges. C.A.J.A. 537-38, 565.

About the outcome of probation violation proceedings, as detailed in Probation's data analyst's report: "89% of those detained post-Gag I *were found to have violated probation at the Gag II hearing*, while the remining 11% had their violation resolved prior to the Gag II (for example, if their new charges were dismissed and they were held only for the new charges)." C.A.J.A. 545-46 (emphasis added.)

And importantly, a probationer has the right to file a motion to lift a detainer at any time, which is heard by a judge. C.A.J.A. 376-77, 439, 458, 476.

4. Petitioner Strategy and Length of Detention.

Petitioners' assertions about the length of time that probationers are detained without an opportunity to be heard are misleading at best. First, Respondents' evidence at the injunction hearing showed that the median length from initial detention until resolution of the revocation for detainers issued from January 1, 2019, through November 16, 2022, was about two months. C.A.J.A. 545.

Next, strategic and procedural considerations in particular cases often affect the length of detention after the *Gagnon I* hearing. As the District Court noted, "it appears that sometimes the delay may be by design of the parties," and that after the *Gagnon I* hearing, "the probationer may remain detained, and, based on mostly strategic decisions of counsel, counsel confers with the trial judge for scheduling the final hearing." Pet. App. 54a, 65a. As an illustration, Petitioner Oden-Pritchett's counsel discussed with him the possibility of filing a motion to lift his probation detainer, but counsel apparently did not do so for strategic reasons, and Mr. Oden-Pritchett received credit for time-served while awaiting a global resolution of his new charges and probation violation. Pet. App. 45a.-46a, F.O.F. 54-55; C.A.J.A. 439.[7]

B. Proceedings Below

1. District Court.

Petitioners initiated this putative class action on October 2, 2022, alleging Fourteenth Amendment procedural and substantive due process violations related to Allegheny County's probation violation, detention, and revocation proceedings. Following months of discovery, a preliminary injunction hearing occurred on April 18, 2023.

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7. The Supreme Court of Pennsylvania discourages resolving probation violations prior to resolution of a new case. *See Commonwealth v. Infante,* 888 A.2d 783, 793 (Pa. 2005), *abrogated on other grounds*, *Commonwealth v. Foster,* 214 A.3d 1240 (Pa. 2019). For that reason, a probationer often remains detained (and earns time-served credit) as a strategic choice while their new case is resolved.

Concurrent with the discovery period, Respondents' respective Motions to Dismiss the Complaint were briefed and reviewed by the District Court. Dist. Ct. Docket ECF 49, 62-68, 72, 75, 80-81. The District Court denied the Motions to Dismiss without prejudice on the eve of the Preliminary Injunction Hearing. Dist. Ct. Order 4/14/23. The court noted that the defense of failure to state a claim required more factual development and that the immunity defenses were better addressed later in the case. Dist. Ct. Order 4/14/23 at 7-9.

The District Court denied Petitioners' Motion for Preliminary Injunction by Order of December 22, 2023. Pet. App. 69a-70a. The Court held that Respondents provided constitutional due process at the *Gagnon I* hearing and that a suitability for release determination is not constitutionally necessary under *Morrissey* and *Gagnon.* Pet. App. 55a-57a, 62a. The District Court also conducted a *Mathews v. Eldridge*, 424 U.S. 319 (1976), analysis and found that Respondents' procedures did not violate due process under that balancing test. Pet. App. 61a.

The court notified Petitioners that it intended to convert the preliminary injunction decision to summary judgment and provided over a month for Petitioners to create a genuine issue of material fact. Pet. App. 69a-70a. After Petitioners and Respondents filed their respective responses, the District Court entered an Order on February 21, 2024, granting summary judgment for Respondents on Petitioners' federal claims and declining to exercise supplemental jurisdiction over the state claims. Pet. App. 35a.

2. Third Circuit Decision and Remand.

The Third Circuit, in a 2-1 decision, reversed and remanded. The court held that *Morrissey*'s comprehensive decision established the minimum due process constitutionally required and, therefore, a suitability for release hearing is not constitutionally required. The court also held, however, that genuine issues of material fact remained, including whether there "could be a material dispute" about whether hearing officers make independent findings of probable cause, the sufficiency of prehearing notice to probationers, and whether probationers have an adequate opportunity to speak at the hearings. Pet. App. 11a. The Third Circuit also held that a remand would allow Petitioners to pursue their claim that the overall length of detentions could be unreasonably long. Pet. App. 11a.

The dissenting judge stated that while she believed a suitability for release determination was required, "At the very least, I would conclude that further factual finding is needed for a proper procedural due process analysis." Pet. App. 21a.

Although an alleged conflict with another circuit is a ground to seek an *en banc* rehearing, Petitioners did not do so. *See* Fed.R.A.P. 40(b)(2)(C).

REASONS FOR DENYING THE PETITION

This Court should deny discretionary review because this petition from the Third Circuit's summary judgment reversal and remand is an improper vehicle to address the issue. First, no circuit conflict exists. Next, Respondents already provide a suitability for release determination at

Gagnon I hearings. Finally, the procedural posture leaves numerous defenses and core factual matters unresolved.

I. The Third Circuit's Decision Does Not Conflict with Other Circuits.

The Third Circuit's holding that a probationer is not constitutionally entitled to a suitability for release determination is on all fours with this Court's holding in *Morrissey* and does not conflict with the Seventh Circuit case as Petitioners claim. That case, *Faheem-El v. Klincar,* 841 F.2d 712 (7th Cir. 1988) (*en banc*), addressed a distinct statutory scheme and a system in which mandatory detention was required, which is not present here. Moreover, no other court has relied on the Seventh Circuit case to hold that a suitability for release determination must be held.

A. The Third Circuit Correctly Analyzed the Due Process Issue On the Factual Record Before It.

1. The Third Circuit relied upon *Morrissey*'s due process framework and procedures and correctly held that this Court "already identified the contours of the substantive right and what process must be followed to deprive someone of it." Pet. App. 5a. This Court in *Morrissey* conducted a comprehensive recitation of the competing interests of a probationer's conditional liberty interest and the state's overwhelming interest in ensuring that a probationer abides by their probation conditions and return to incarceration if they do not. *Morrissey.* 408 U.S. at 480-82

The Court then set forth the elements for what that process looks like: a preliminary revocation hearing with a notice of the alleged probation violation, an opportunity for the probationer to appear and present evidence on their behalf, a conditional right to confront adverse witnesses, an independent decisionmaker, and a written report of the hearing. *Id*. at 485-87, 489. The Court next addressed the final revocation hearing, again setting forth specific requirements and steps. *Id.* at 487-89.

2. This Court recognized the comprehensive due process nature of *Morrissey* in *Black v. Romano*, 471 U.S. 606 (1985). There, the Court rejected a claim that due process required the factfinder to provide a statement that incarceration alternatives were considered. The Court noted that neither *Morrissey* nor *Gagnon* required such a statement. *Id.* at 612. To the point, the Court held that "procedures already afforded by *Gagnon* and *Morrissey* protect the defendant against revocation of probation in a constitutionally unfair manner." *Id*. at 613.[8]

Because probationers have been convicted and have correspondingly limited due process rights, Petitioners' citation to cases involving pretrial defendants, civil commitment, and deportation are irrelevant here. Petition 15-20. *See Zadvydas v. Davis*, 533 U.S. 678, 692 (2001) (discussing risk of "potentially permanent" detention when deportation is not feasible); *Foucha v. Louisiana*, 504 U.S. 71, 82, 85 (1992) (addressing indefinite civil

8. Justice Marshall in a concurrence cited to the *Mathews* balancing test in analyzing the issue. *Black*, 471 U.S. at 618 (Marshall, J. concurring). The majority, however, did not and relied on *Morrissey* and *Gagnon*'s framework as comprehensive.

commitment for insanity); *Washington* v. *Harper*, 494 U.S. 210, 220 (1990) (treatment of mentally ill prisoner with drugs); *United States v. Salerno*, 481 U.S. 739, 751 (1987) (pretrial detainees); *Schall v. Martin*, 467 U.S. 253, 263–64 (1984) (juvenile pretrial detainees); *Gerstein v. Pugh*, 420 U.S. 103 (1975) (pretrial restraint on liberty).

B. Petitioners Rely on a Seventh Circuit Case That Involved a Distinct Statutory Scheme Not Present in This Case.

1. Petitioners depend on an almost 40-year-old Seventh Circuit decision involving a detention statute and factual scenario unlike the one presented to the Third Circuit. In *Faheem-El*, the Seventh Circuit addressed an Illinois statute that *mandated automatic detention* upon the finding of probable cause of a probation violation, with no initial, preliminary, or subsequent availability of release before the final revocation hearing. *See id.* at 724 n.16.

While the Seventh Circuit majority reviewed Illinois' revocation procedures through the *Mathews* balancing test, it did not hold that a suitability for release determination hearing was required.[9] Instead, the court reversed the District Court's holding that a suitability for release determination was required and remanded the matter to the District Court for further factual development. *Id.* at 726-27.

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9. The Seventh Circuit was split 6-5. The five concurring judges would not have used a *Mathews* balancing test but instead followed this Court's *Morrissey* framework.

Thus, the Seventh Circuit's outcome is no different than in the instant case: both courts remanded the matters for further factual development necessary to evaluate due process issues.

2. The Seventh Circuit majority relied upon the automatic detention requirement to distinguish *Morrissey*: "The Court in *Morrissey* was not reviewing a system where a determination of probable cause to believe parole had been violated resulted in mandatory detention." *Id.* To that point, the Seventh Circuit noted that Illinois' mandatory detention statute is "*significantly different* from the statutory scheme anticipated by the *Morrissey* Court." *Id.* (emphasis added).

Hence, the foundation for the Seventh Circuit's holding was a statutory scheme and a system in which mandatory detention was required. That is not the case here—no mandatory detention statute or policy exists. Instead, the hearing officers consider in every case whether the defendant should remain detained or be released pending the final revocation hearing. Pet. App. 41a-42a, F.O.F. 17, 26.

What is more, on remand Petitioners still have an opportunity to establish that detention might be mandatory (at least for some probationers). The Third Circuit stated that a remand would allow Petitioners to explore this issue: "there could be a material dispute about whether detention is mandatory: Are the hearing officers truly making independent findings of probable cause?" Pet. App. 11a.

Thus, the Third Circuit addressed a probation violation procedure that was akin to *Morrissey* and distinct from that in *Faheem-El*. That does not create a circuit split to warrant this Court's review. The distinction is readily discernable to any court examining both cases in applying *Morrissey*.

Indeed, given the Seventh Circuit's reliance on Illinois's mandatory detention requirement and how it differed from *Morrissey*, the court may very well not have conducted a *Mathews* analysis if presented with a procedure akin to that in the case at bar and *Morrissey*.

4. Further, *Faheem-El*'s reasoning and holding are murky. While six of the eleven judges held that due process in parole revocation proceedings must be examined under the *Mathews* balancing test, the majority also stated prior to that exercise, "We therefore hold that due process does not require that parolees receive a bail hearing conducted by a judicial officer prior to the conclusion of the revocation proceedings." *Faheem-El*, 841 F.2d at 724.

Ultimately, *Faheem-El*'s 6-5 split decision is based on statutory procedures not present in the instant case or *Morrissey* and, therefore, is not in conflict with the Third Circuit.

5. Petitioners' attempt to create a circuit split is further undermined by the fact that *Faheem-El*'s reasoning and interpretation of *Morrissey* has not been cited by other courts in the almost 40 years since it came down. Counsel has not located a decision that has relied upon *Faheem-El* to require a *Mathews* balancing test to determine whether a suitability for release hearing is

required in a revocation context.[10] And no courts have cited the Third Circuit's decision.

Thus, not only are the Third and Seventh Circuits not in conflict, but it is premature to conclude that a circuit split exists that requires this Court's review given the lack of reliance on either case. Instead, the Court should refrain from taking up this issue unless and until lower courts have had the opportunity to analyze it further and a true conflict emerges.

6. Next, Petitioners point to *Kell v. U.S. Parole Commission*, 26 F.3d 1016, (10th Cir. 1994), to claim that probationers are entitled to protections beyond *Morrissey*. Yet *Kell* did not involve the issue of whether a probationer is entitled to a bail-like determination upon a probable cause violation. Instead, that court addressed *Morrissey*'s notice requirement and used a *Mathews* balancing test to determine what notice is required, not whether additional procedures were required. In short, *Kell* is of no moment here.

10. In *Metcalf v. Donalds*, No. 10-C-0615, 2012 WL 2050823 (E.D. Wis. June 7, 2012), the district court cited to *Faheem-El* in support of applying the *Mathews* test, but that case did not involve revocation procedures, but the process due to a defendant who was held in jail due to an inability to find housing as a convicted sex-offender. The court highlighted that *Morrissey* did not control because no revocation proceedings were initiated. *Id*. at *5.

II. This Case Is A Poor Vehicle For Deciding Whether Due Process Requires A Suitability For Release Determination.

A. Respondents Already Provide a Suitability for Release Determination, and an Opinion from this Court Would be Advisory.

Petitioners' certiorari petition is based on their belief that a suitability for release determination is constitutionally required upon finding probable cause of a violation. Yet even if that were so, Respondents already provide it. Thus, the Court would be rendering an advisory opinion divorced from what is occurring in Allegheny County.

1. The District Court found that every probationer receives a suitability for release hearing. Thus, upon a probable cause finding, the hearing officer recommends whether the detainer should stay in place, be lifted, or if alternative housing or electronic monitoring is appropriate. Pet. App. 41a-42a, F.O.F. 17, 26. In other words, Respondents provide what Petitioners are seeking.

Moreover, the criteria that the hearing officer applies in making a suitability for release determination is public safety. Again—precisely what Petitioners seek.

While Petitioners claim that some hearing officers are not making independent decisions about whether some probationers should be released, depending on the identity of the assigned trial judge, the Third Circuit remanded for further factual development on that issue. Pet. App. 75a, 82a, 90-91a.; Pet. Third Circuit Brief at 14-15. Further,

the judges that Petitioners reference to support the claim that mandatory detention exists are no longer serving in criminal court. Judge Mariani retired, and as of December 29, 2025, Judge Bigley is now in Orphans' Court.

2. Petitioners do not ask the Court to review a judgment, but instead a holding that does not have a practical effect in this case. A ruling by this Court that the Third Circuit erred in concluding that a suitability for release determination is not constitutionally required on the current factual record would have little impact on remand and would not change the parties' position: a suitability for release determination based on public safety is already provided. *See Montana v. Imlay,* 506 U.S. 5, 6 (1992) (Stevens, J. concurring) (concurring in dismissal of writ of certiorari as improvidently granted where, regardless of which party prevailed, prisoner's sentence would not change); *Preiser v. Newkirk*, 422 U.S. 395, 401 (U.S. 1975) (a federal court has neither the power to render advisory opinions nor decide questions "that cannot affect the rights of the litigants before them").

Instead, the case will proceed with discovery on factual issues that the Third Circuit already identified in reversing summary judgment. This Court "reviews judgments, not statements in opinions." *California v. Rooney*, 483 U.S. 307, 311 (U.S. 1987) (quoting *Black v. Cutter Laboratories*, 351 U.S. 292, 297 (1956)). Petitioners ask this Court to do the latter.

3. Petitioners claim that the question presented is of "paramount importance" because probationers could be detained for months or years on a probable cause finding of a violation only. Petition 30. Not in Allegheny County:

Respondents have procedures and policies that provide for a release determination hearing.[11] And Petitioners do not point to entities or jurisdictions that have or will rely on the Third Circuit's decision to detain people without providing a suitability for release determination or other opportunity (such as a motion to lift a detainer) to have their detention reviewed within a reasonable time.

In sum, Petitioners' concern about the Third Circuit's decision allowing regimes to detain probationers for years without a release determination hearing or timely opportunities to be heard is entirely speculative.

B. The Procedural Posture Weighs against Review.

1. The interlocutory posture of this case weighs strongly against the Court accepting review. The Third Circuit reversed a grant of summary judgment for Respondents and remanded the matter to the District Court for further factual development. Even the dissenting judge below understood that further factual development on remand would inform the due process issues. Given the lack of a final judgment in this case, certiorari should be denied. *See Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096-97 (2022) (Alito, J., regarding denial of certiorari); *Abbott v. Veasey*, 580 U.S. 1104 (2017) (Roberts, C.J., regarding denial of certiorari). *Wrotten v. New York,* 560 U.S. 959 (2010) (Sotomayor, J., regarding denial of certiorari); *DTD Enterprises v. Wells,* 558 U.S.

11. Whether Petitioners like the outcome of hearings is of no moment. Due process provides an opportunity to be heard, not a particular outcome.

964 (2009) (Kennedy, J., Roberts. C.J., and Sotomayor, J., addressing denial of certiorari); *Columbia Union College v. Clark,* 527 U.S. 1013, 1015 (1999) (Thomas, J., dissenting) (noting that the Court likely denied certiorari because "the case comes to us in an interlocutory posture").

2. Further, Respondents have yet to file an answer, and certain core issues raised in their respective motions to dismiss—including standing—remain at issue, since those motions were denied without prejudice. Although the District Court ruled that "at least some of the plaintiffs have standing," that determination was made at the motion to dismiss stage, where the facts alleged in the complaint are taken as true. Dist. Ct. Order 4/14/23. The standing issue was not raised to the Third Circuit and remains a viable defense in the case. Thus, upon further factual development the District Court may well conclude that Petitioners do not have standing to bring their claims. That reason alone is sufficient for the Court to deny review.[12]

In addition, the District Court held that Respondents' absolute immunity defenses remained in the case and may be raised later upon further factual development. Dist. Ct. Order 4/14/23.

3. Petitioners repeatedly emphasize the amount of time probationers are detained, which they claim is unreasonable. Again, that claim, which is disputed, is

12. Although Petitioners seek a class action, they must have individual standing to bring a class action. *See Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 40 (U.S. 1976).

still at issue. The Third Circuit held that a remand would allow Petitioners to pursue this claim. Indeed, the length of time between the *Gagnon I* and *Gagnon II* hearings could be a factor in the due process analysis. Pet. App. 6a-7a (citing *Morrissey*'s holding that a two-month delay was "not unreasonable" to conclude that the reasonable-time limitation itself provides adequate protection without requiring a separate suitability determination.)

Without a full factual record, this Court would be unable to make an informed due process analysis. Indeed, even the Third Circuit dissenting judge stated that while she believed a suitability for release determination was required, "At the very least, I would conclude that further factual finding is needed for a proper procedural due process analysis." Pet. App. 21a.

Remand will clarify the disputed legal defenses and factual issues the Third Circuit identified, and there may never be a basis for further review.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Nicole Feigenbaum
Counsel of Record
Michael Daley
Sean Concannon
Administrative Office
of Pennsylvania Courts
1515 Market Street,
Suite 1414
Philadelphia, PA 19102
(215) 560-6326
legaldepartment@pacourts.us

Attorneys for Respondents