[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-14192

Non-Argument Calendar

BRIAN PATRICK KANE,
ZAYNE ANEED ELIAS OTERO,
CAMILO ANDRES OROZCO ELIAS,
DANIELA ESTHER OROZCO ELIAS,

Plaintiffs-Appellants,

versus

U.S. ATTORNEY GENERAL,
BOARD OF IMMIGRATION APPEALS,
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION,
ASSOCIATE DIRECTOR SERVICE CENTER
OPERATIONS DIRECTORATE, U.S. CITIZENSHIP
AND IMMIGRATION SERVICES,
DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION

SERVICES,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cv-81287-AHS

Before BRASHER, ABUDU, and HULL, Circuit Judges.

PER CURIAM:

Plaintiff Brian Kane appeals the district court's order granting summary judgment in favor of the government defendants. Kane, a U.S. citizen, filed three Form I-130 petitions seeking immigrant visas for his wife, Zayne Aneed Elias Otero, and her two children, all of whom are natives and citizens of Colombia.[1] The United States Citizenship and Immigration Services ("USCIS") denied Kane's petitions because he failed to prove the bona fide nature of his marriage to Otero, had not submitted a certified copy of Otero's divorce from a prior husband,

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[1] Kane's beneficiaries—his wife, Otero, and her children, Camilo Orozco Elias and Daniela Orozco Elias—are also plaintiffs in the instant appeal. For clarity, we refer to plaintiffs collectively as "Kane." And we refer to the eight named defendants collectively as the government defendants or the government.

and had not shown Otero "[wa]s free to marry" Kane. The Board of Immigration Appeals ("BIA") agreed and dismissed Kane's appeal.

Kane then filed this federal court action challenging the final agency decision under the Administrative Procedure Act ("APA") and the Fifth Amendment Due Process Clause. The district court entered summary judgment in favor of the government defendants. After review, we affirm.

I. ADMINISTRATIVE PROCEEDINGS

The following facts are undisputed unless noted.

A. Kane's I-130 Petitions

In February 2015 in Florida, Kane, a U.S. citizen, married Otero, a citizen of Colombia. At that time, Otero and her two minor children were in the United States on B-2 visitor's visas.

In June 2016, Kane filed with USCIS three I-130 petitions on behalf of Otero and her children seeking immigrant visas for them as immediate relatives of a U.S. citizen, pursuant to Immigration and Nationality Act ("INA") § 201(b)(2)(a); 8 U.S.C. § 1151(b)(2)(A).[2] Concurrently, Otero and her children filed I-485 applications for adjustment of status to lawful permanent residents.

[2] Because Kane's I-130 petitions on behalf of Otero's children are related to, and thus rise or fall based on, his I-130 petition on behalf of Otero, we refer to the three I-130 petitions collectively as Kane's I-130 petition.

On the I-130 petition for Otero, Kane indicated that Otero had only one prior spouse, Arturo Marmolejo Diaz, and that Otero's prior marriage ended on October 24, 2014. By February 23, 2015, Otero had married Kane.

USCIS scheduled an initial interview with Kane and Otero for February 16, 2017. The interview notice instructed Otero and Kane to bring various documents, including "all divorce decrees/death certificates for each prior marriage/former spouse."

B. USCIS Interview and Response to Request for Evidence

During the February 16, 2017 interview, the immigration officer asked Otero and Kane about Otero's prior marriages. Otero acknowledged that while living in Panama, she twice married and then divorced Marmolejo Diaz. According to Otero, she married Marmolejo Diaz in May 2007, divorced him in June 2010, married him again in June 2011, and divorced him again in October 2014.

But as it turned out, Otero had also married another man, Aaron Ellis, in Colombia in July 2010, but neither Otero nor Kane disclosed this prior Ellis marriage during their interviews. Ellis, a U.S. citizen, had also filed an I-130 petition for alien relative on behalf of Otero based on their marriage, but the petition was denied on May 30, 2011 due to abandonment.

In any event, as to Kane's I-130 petition on Otero's behalf, USCIS issued Otero a request for evidence ("RFE") dated February 28, 2017. The RFE stated that Otero had failed to disclose her prior marriage to Ellis. The RFE instructed Otero, *inter alia*, to explain why she had failed to disclose her marriage to Ellis and to "submit

a certified copy of [her] divorce, along with the English translation," for her marriages to Ellis and Marmolejo Diaz. The RFE warned Otero (1) that the I-130 petition would be denied if she failed to comply by May 23, 2017, (2) that, pursuant to 8 C.F.R. § 103.2(b)(11), she must submit all evidence responding to the RFE at the same time, and (3) that submission of only some of the requested evidence would be construed as a request for a decision based on the record.

In April 2017, USCIS received Otero's letter response. In it, Otero explained that she had not disclosed her marriage to Ellis because it was a "grave mistake" about which she was embarrassed and ashamed. Otero said her marriage to Ellis was very brief because she realized her mistake just after the wedding, she never lived with Ellis, she saw Ellis only once after the wedding, and the marriage "was legally dissolved as shown."

Otero attached several documents to her April 2017 letter, including copies of two different certificates of matrimony to Arturo Marmolejo Diaz, each indicating that marriage was dissolved, along with English translations of the certificates.

Otero also attached a document pertaining to her July 2010 marriage to Ellis entitled "Divorce translation." That document purports to translate a letter dated September 17, 2012, from a notary in Barranquilla, Colombia to another notary in Santa Marta, Colombia. No letter is attached to that translation document. Rather, the translation document merely indicates that the September 17, 2012 letter stated (1) that Otero "got divorced from

Mr. Aaron J. Ellis and voided the matrimony bond through a public record # 1.299 in this notary on September 15, 2012 Book 9 page 100"; and (2) "[p]lease add this note to the Birth Certificate." Importantly, at no point did Otero file or attach a copy of the underlying, untranslated letter or a copy of the public record of divorce from Ellis or even the birth certificate referred to in the letter.

C. Notice of Intent to Deny

On July 10, 2017, USCIS issued Kane a Notice of Intent to Deny ("NOID") his I-130 petition on behalf of Otero. The NOID, *inter alia*, advised Kane that (1) there was "no evidence in file to confirm" that Otero and Ellis were divorced, (2) Otero "willfully withheld information about her previous marriage [to Ellis], in an attempt to misguide the interviewing officer," (3) "the evidence submitted does not meet the criteria of credible bona fides of your marital relationship," and (4) thus Kane had not met his "burden of establishing eligibility for the benefit sought."

The NOID gave Kane thirty days to "submit any additional evidence" and specifically instructed Kane to submit "an original certified copy of court documents reflecting the termination of the marriage between" Ellis and Otero with an English translation. The NOID warned Kane that his failure to respond within the time allotted would result in the denial of his petition.

D. USCIS's Denial of the I-130 Petition

On October 26, 2017, USCIS denied Kane's I-130 petition. The USCIS decision stated that (1) "[a]s of October 10, 2017," Kane

had not submitted a certified copy of Otero's divorce from Ellis along with an English translation and (2) thus Kane had not shown "Otero is free to marry you and your marriage is not valid."

The USCIS decision further explained, "Based on the review of the testimony and documentation in the record, USCIS finds that [Kane has] not met [his] burden of proof in demonstrating the bona fide nature of [his] marriage to the beneficiary by a preponderance of the evidence."

E. BIA Appeal Where Kane Submits Otero's Birth Certificate

Kane *pro se* appealed the USCIS decision to the BIA. Before the BIA, Kane claimed that he "DID send the needed proof that the marriage ended in divorce Sept[.] 15, 2012, with the English translation." Kane asserted he sent USCIS the "divorce note, dated July 19, 2017" via certified mail on July 27, 2017, along with Otero's birth certificate and an apostille showing authenticity.

Before the BIA, Kane filed a copy of a U.S. Postal Service certified mail receipt showing that a package was *mailed* to USCIS on July 27, 2017. Although Kane's own documents show he paid an additional fee for a return receipt, he did not submit to the BIA a copy of a return receipt showing that USCIS *received* the package.

Also before the BIA, Kane filed copies of the documents he claimed to have sent to USCIS ("the NOID response"), which included a copy of the front and back of Otero's Colombian birth certificate and the apostille, along with an English translation. The front of Otero's birth certificate contained a notary stamp, dated July 19, 2017. The notary stamp stated (1) that the document was

a true copy of the original record filed in the Santa Marta notary office and (2) that the document "CAN BE USED TO SHOW KINSHIP" and is "PERMANENTLY VALID *EXCEPT FOR MARRIAGE PURPOSES*." (Emphasis added).

The back of Otero's birth certificate contained a section entitled "NOTES" with two notations. Each notation was stamped by the same notary in Santa Marta on July 18, 2017. The first notation stated, "Through public deed No. 1299 dated September 15, 2012 issued at the eleventh notary office in Barranquilla the divorce, dissolution and liquidation of marriage between Aaron J Ellis & Zayne Aneed Elias Otero was duly authorized." The other notation indicated there was a civil wedding contract with Aaron J Ellis through Public Deed 828 dated July 15, 2010, also from the eleventh notary office in Barranquilla.

The administrative record includes the documents Kane filed before the BIA. However, to date, none of Kane's documents filed in the administrative record include a certified copy of Otero's divorce decree, i.e., "public deed No. 1299," or an English translation of that document.

F. BIA Decision

On April 16, 2021, the BIA dismissed Kane's appeal and affirmed the USCIS decision to deny the I-130 petition. Reviewing *de novo*, the BIA agreed with USCIS that Kane had not met his burden to establish by a preponderance of the evidence that "he was free to marry" Otero. The BIA noted that USCIS's decision had "cited to the fact that [Kane] had not submitted sufficient

evidence to show that [Otero's] marriage to Aaron Ellis was legally terminated."

The BIA then addressed Kane's claim on appeal that "he had already submitted proof" of Otero's divorce. The BIA observed that Kane's only proof was the notation on Otero's birth certificate and that Kane "did not explain why no divorce decree or official document was forthcoming or not available."[3] Accordingly, the BIA found Kane had "not established that the current marriage is valid for immigration purposes such that [Otero] may be considered to be his spouse." The BIA noted that Kane could file "a new visa petition that is supported by the necessary evidence."

II. DISTRICT COURT PROCEEDINGS

In 2022, Kane, now represented by counsel, filed this action in the district court challenging the BIA's decision.

A. Complaint

Kane's complaint alleged, in relevant part, that the annotation found in Otero's birth certificate was based "on a copy of a divorce that a [notary] prepared," and that Kane did not provide "a copy of the Notarial documents because USCIS never asked him for them." Kane further alleged that after receiving the

[3] The BIA mistakenly referred to Otero's birth certificate as "a document entitled 'Recognition of Child Born out of Wedlock.'" Just above the section of the birth certificate entitled "Notes," there was a separate section with that title indicating that Otero was born out of wedlock and was recognized by her father as his child.

BIA's decision, he learned from his counsel that, per the Department of State, original versions of divorce decrees processed by notaries are kept in the Civil Registry office of the city where the divorce was registered and that a "birth certificate with the required divorce annotation is also a certified copy" of the divorce.

In Count I, Kane alleged that the government defendants violated his Fifth Amendment right to due process by failing to comply with 8 C.F.R. § 103.2(b)(8), the regulation governing USCIS's RFEs and NOIDs. In Count II, Kane alleged the government defendants' denial of his I-130 petition "[wa]s erroneous as a matter of law" and violated 5 U.S.C. § 706 of the APA. Kane sought: (1) a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that he established his beneficiaries' eligibility for classification as immediate relatives and that the government's denial of the I-130 petition was unlawful and (2) injunctive relief under the APA requiring the government to reopen the I-130 petition.

B. Cross Motions for Summary Judgment

After the certified administrative record was submitted to the district court, both parties filed motions for summary judgment.

On August 22, 2023, a magistrate judge's report recommended that the district court grant Kane's motion and deny the government's motion. That report concluded, *inter alia*, that (1) the BIA violated its own regulations when it considered Kane's new evidence—Otero's annotated birth certificate—rather than

remanding the case to USCIS, and (2) that the BIA's error in considering this new evidence was not harmless and rendered its decision arbitrary and capricious.

The report declined to reach whether Otero's annotated birth certificate was sufficient to satisfy Kane's I-130 burden, whether the agency gave Kane sufficient notice of the type of divorce document sought, or whether the agency violated Kane's due process rights.

The government objected to the report on multiple grounds.

C. District Court's Order

In December 2023, the district court entered an order overruling the report, denying Kane's motion for summary judgment, and granting the government's motion for summary judgment.

As to Kane's APA claim, the district court agreed with the report that the BIA had erred in considering Kane's "new" evidence—Otero's annotated birth certificate. The district court, however, determined that the BIA's error was harmless because, had the BIA disregarded the new evidence, as required by agency regulations, "the record on appeal [to the BIA] would have contained no official documentation supporting Otero's divorce."

The district court also concluded under the regulations that the BIA was prohibited from remanding Kane's case to USCIS for consideration of the new evidence. The district court ruled that

the proper remedy before the BIA was for Kane to file a motion to reopen "with evidence offered in [his] NOID response" or to refile his I-130 petition with the proper evidence.

The district court further concluded that: (1) the RFE requesting a certified copy of Otero's divorce with an English translation gave Kane sufficient notice of the deficiencies in his I-130 petition; (2) "[a]lthough [Kane] submitted a translation of Otero's official annotated birth certificate, USCIS had not received the official birth certificate and the underlying divorce decree ('public deed No. 1299') referenced in the annotations on her birth certificate"; and (3) the BIA's decision affirming the denial of Kane's I-130 petition was not arbitrary and capricious.

As to Kane's Fifth Amendment due process claim, the district court determined it failed because Kane did not have a constitutionally protected interest in residing with his alien spouse in the United States.

III. STANDARD OF REVIEW

We review *de novo* a district court's grant of summary judgment, using the same legal standards applied by the district court and viewing the evidence in the light most favorable to the nonmoving party. *Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1263-64 (11th Cir. 2010). *De novo* review also applies to questions of constitutional law. *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1181 (11th Cir. 2017) (en banc).

Additionally, in APA actions, the district court, and in turn this Court, review whether an agency's actions, findings, or

conclusions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "[T]his standard is exceedingly deferential," *Fund for Animals, Inc. v. Rice*, 85 F.3d 535, 541 (11th Cir. 1996), and limited to "assess[ing] whether the agency arrived at a rational conclusion connected to the evidence." *Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1288 (11th Cir. 2019).

IV. APA CLAIM

To understand why Kane's claims fail on appeal, we briefly review the legal principles governing an I-130 petition on behalf of a noncitizen spouse.

A. I-130 Petition to Classify a Noncitzen as an Immediate Relative

A United States citizen seeking to bring a noncitizen spouse to reside lawfully in the United States must file an I-130 petition on the spouse's behalf requesting that USCIS formally recognize the relationship and classify the noncitizen spouse as an "immediate relative." INA § 204(a)(1)(A)(i), 8 U.S.C. § 1154(a)(1)(A)(i); 8 C.F.R. § 204.1(a)(1). The I-130 petitioner has the burden to establish by a preponderance of the evidence that his noncitizen spouse is entitled to the requested immigrant visa, including proving that the marriage is legally valid and was not entered into for the purposes of evading the immigration laws. INA § 291, 8 U.S.C. § 1361; 8 C.F.R. §§ 103.2(b)(1), 204.2(a).

This burden includes proving that any previous marriages of both the petitioner himself and also of the beneficiary were legally

terminated. 8 C.F.R. § 204.2(a)(2); *Matter of Kodwo*, 24 I. & N. Dec. 479, 479, 482 (BIA 2008). Because fraud associated with I-130 spousal petitions is so widespread, "[a]ppropriate deference must be accorded [to the agency's] decisions" to deny such petitions. *INS v. Miranda*, 459 U.S. 14, 18 n.4, 19 (1982).

B. RFEs and NOIDs

If the I-130 petitioner fails to submit with the petition all required initial evidence, USCIS may, in its discretion, either deny the petition or request the missing evidence, i.e., issue an RFE. 8 C.F.R. § 103.2(b)(8)(ii). Similarly, if the initial evidence fails to establish eligibility, USCIS may deny the I-130 petition, request more evidence, or notify the petitioner of the intent to deny the I-130 petition and the basis for the proposed denial and require the petitioner to submit a response within a specified time, i.e., issue an NOID. *Id.* § 103.2(b)(8)(iii).

When responding to an RFE or NOID, the I-130 petitioner must submit all requested evidence "together at one time," and "[s]ubmission of only some of the requested evidence will be considered a request for a decision on the record." *Id.* § 103.2(b)(11). The I-130 petition "shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility" at the time the petition was filed. *Id.* § 103.2(b)(12).

If the decision will be "adverse to" the I-130 petitioner, the petitioner "shall be advised of this fact and offered an opportunity to rebut the information and present information in his . . . own

behalf before the decision is rendered." *Id.* § 103.2(b)(16)(i). And any explanation, rebuttal, or information from the I-130 petitioner "shall be included in the record of proceeding." *Id.*

With this background, we return to Kane's appeal.

C. Kane's APA Arguments on Appeal

On appeal, Kane argues the BIA's denial of his I-130 petition was arbitrary and capricious and an abuse of discretion because the agency violated its own regulations (1) when the BIA itself considered the new evidence—Otero's annotated birth certificate—on the merits as opposed to remanding to USCIS to do so and (2) when USCIS's RFE and NOID failed to specify the type of divorce document required.

As to the first issue, the government appears to agree on appeal that Otero's annotated birth certificate was new evidence. And because there is new evidence, the next question becomes whether the BIA itself had discretion to consider it or whether the BIA was required to remand to USCIS. We need not answer that question because any error by the BIA here was harmless. *See Salmeron-Salmeron*, 926 F.3d at 1286-87 (applying harmless error to an APA claim); 5 U.S.C. § 706 (providing that in a review of agency action the "rule of prejudicial error" applies). There is no prejudicial error because Otero's annotated birth certificate would not have changed the outcome of Kane's I-130 petition in any event. As the BIA explained, this evidence was "only a notation" and not a divorce decree or other official document, as USCIS's

RFE had requested, and thus it did not establish that Kane's current marriage was valid.

That BIA determination is supported by substantial evidence. The annotated birth certificate merely notes that a divorce has been registered and is not "a certified copy of [the] divorce" itself, as requested by the RFE or "an original certified copy of court documents," as requested by the NOID. While the notation states that a public notary in Barranquilla issued a divorce through public deed No. 1299, Kane did not explain to either USCIS or the BIA why he failed to provide a certified copy of that document along with a translation.

Furthermore, the BIA's determination was reasonable given that the annotated birth certificate was *facially* insufficient evidence of a divorce. Indeed, a notary stamp on the birth certificate warned that the document was not valid "FOR MARRIAGE PURPOSES." In short, "the agency arrived at a rational conclusion connected to the evidence." *See Salmeron-Salmeron*, 926 F.3d at 1286.

We note that the State Department's website, relied upon by both parties in the district court, indicates that an annotated birth certificate is generally insufficient proof of divorce when not accompanied by a separate divorce decree. *See U.S. Visa: Reciprocity and Civil Documents by Country > Colombia*, U.S. Dep't of State, https://perma.cc/T4YQ-6844 ("Proof that the divorce was registered with civil authorities (either an annotated birth certificate or marriage certificate) is required in addition to the civil divorce decree or religious annulment decree."); *U.S. Embassy*

Bogota, Colombia – BGT, U.S. Dep't of State, https://perma.cc/2X3M-LG2S ("DOS Bogota") (stating that to prove eligibility for a family-based visa application, an applicant who was previously married must submit an "**original** divorce or spouse's death certificate, and a photocopy" because "[p]roof that a Colombian divorce was registered with civil authorities (either an annotated birth certificate or marriage certificate) is required in addition to the original divorce decree"). While the State Department's website is not binding on agency determinations, this information also supports the conclusion that the BIA's determination was not arbitrary and capricious.[4]

We also reject Kane's assertions that USCIS failed to consider relevant evidence and failed to afford him an opportunity to rebut derogatory information. Reviewing the record as a whole, the agency provided Kane an opportunity to present information and added his NOID response, including Otero's annotated birth certificate, to the record of proceedings before the final agency decision was rendered by the BIA. *See* 5 U.S.C. § 706; 8 C.F.R. § 103.2(b)(16)(i).[5]

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[4] While not in the administrative record, both parties cited the State Department's website in the district court and did not object to the district court taking judicial notice of its contents.

[5] In both this Court and the district court, the government argued in the alternative that summary judgment in its favor is appropriate because there is clear evidence in the administrative record that Otero's previous marriage to Ellis was fraudulent and the marriage fraud bar in 8 U.S.C. § 1154(c) mandates the denial of Kane's subsequent I-130 petition on her behalf. Neither USCIS

Finally, Kane argues USCIS violated 8 C.F.R. § 103.2(b)(8)(iv), which requires an RFE or NOID to "specify the type of evidence required." We find no merit to Kane's contention that USCIS's RFE and NOID did not provide him "with sufficient notice of the documents that it wanted to establish Otero's divorce from [Ellis]." The RFE's request for "a certified copy of [Otero's] divorce" and the NOID's request for "an original certified copy of court documents reflecting the termination of" Otero's marriage to Ellis sufficiently informed Kane that a copy of the divorce decree itself was being requested and required. In addition, the BIA correctly observed that Kane failed to "explain why no divorce decree or official document was . . . not available," as required by 8 C.F.R. § 103.2(b)(2)(ii).

V. DUE PROCESS CLAIM

In the immigration context, to prevail on a Fifth Amendment due process claim, petitioners must show that "they were deprived of liberty without due process of law, and that the asserted errors caused them substantial prejudice." *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1299 (11th Cir. 2015) (quotation marks omitted).

While this appeal was pending, the Supreme Court squarely addressed this same due process issue in *Dep't of State v. Muñoz*, 602 U.S.___, 144 S. Ct. 1812 (2024). In *Muñoz*, a United States citizen,

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nor the BIA addressed this marriage fraud issue, and we decline to do so in the first instance.

Sandra Muñoz, like Kane here, filed a petition to obtain an immigrant visa for her noncitizen spouse as an immediate relative. 144 S. Ct. at 1818. Muñoz's I-130 petition was denied, in her case by a consular officer with the State Department. *Id.* at 1818-19. Muñoz filed a civil action alleging under the Due Process Clause of the Fifth Amendment "that the State Department had abridged Muñoz's constitutional liberty interest in her husband's visa application" by failing to give a sufficient reason for its decision. *Id.* at 1819. The Ninth Circuit "held that Muñoz, as a citizen, had a constitutionally protected liberty interest in her husband's visa application." *Id.*

The Supreme Court reversed, pointing out that the Ninth Circuit was "the only Court of Appeals to have embraced this asserted right." *Id.* at 1821, 1827. The Supreme Court held "that a citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country." *Id.* at 1821.

In light of the Supreme Court's *Muñoz* decision, the district court did not err when it concluded Kane did not have a protectable liberty interest in living with his noncitizen wife in the United States. Kane posits that his liberty interest relates to the grant of an I-130 petition rather than a right to live in the United States with his noncitizen family members. But Muñoz attempted a similar distinction. *Id.* at 1822 (noting Muñoz's contention that she had an implied "marital right . . . sufficiently important that it cannot be unduly burdened without procedural due process as to an inadmissibility finding that would block her from residing with her

spouse in her country of citizenship" (quotation marks omitted)). Despite Muñoz's characterization of her asserted liberty interest, the Supreme Court resolved the case by concluding that the right to bring a noncitizen spouse to the United States is not deeply rooted in the country's history and tradition. *Id.* at 1822-23.

In short, the Supreme Court's *Muñoz* decision controls Kane's case. Accordingly, we affirm the district court's entry of summary judgment in favor of the government on Kane's Fifth Amendment due process claim.

VI. CONCLUSION

For the forgoing reasons, we affirm the district court order granting the government defendants' motion for summary judgment and denying the plaintiffs' cross-motion for summary judgment on their APA and due process claims.

AFFIRMED.