

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Viktar Makarevich v. Pamela Bondi, et al.

Makarevich · No. 1:25-cv-01002-KG-JHR · Decided December 17, 2025

SUMMARY

The United States District Court for the District of New Mexico grants the Government’s motion to dismiss Viktar Makarevich’s habeas petition under 28 U.S.C. § 2241. The court holds that his challenge to his discretionary bond determination is barred by 8 U.S.C. § 1226(e), and that he fails to state a plausible procedural or substantive due process claim. The petition is dismissed without prejudice.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Kenneth J. Gonzales
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	December 17, 2025
DOCKET	1:25-cv-01002-KG-JHR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner's 28 U.S.C. § 2241 habeas petition challenged his immigration detention and the denial of bond. The Government moved to dismiss. The court granted the motion and dismissed the petition without prejudice.
STANDARD OF REVIEW	On a motion to dismiss, the court accepted well-pleaded factual allegations as true and viewed them in the light most favorable to the petitioner, while requiring the petition to plead enough facts to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Viktar Makarevich v. Pamela Bondi, et al.

TOPICS

- immigration detention
- procedural due process
- substantive due process
- motions to dismiss
- removal proceedings

PRACTICE AREAS

immigration law

habeas corpus

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether Makarevich stated a procedural due process claim based on the alleged lack of neutral review of his § 1226(a) bond determination and alleged bias within ICE.
2. Whether Makarevich stated a substantive due process claim by alleging that there was no significant likelihood of his removal in the reasonably foreseeable future.
3. Whether 8 U.S.C. § 1226(e) barred judicial review of the discretionary bond determination.

HOLDINGS

1. A challenge to the Immigration Judge's discretionary bond determination is barred from judicial review by 8 U.S.C. § 1226(e).
2. The petition failed to state a plausible procedural due process violation because the Immigration Judge's bond decision was subject to review by the Board of Immigration Appeals, and the petition alleged no facts connecting alleged ICE bias to the decision-making of the Immigration Judge or the Board.
3. The petition failed to state a substantive due process claim because the significant-likelihood-of-removal standard applies to detention under 8 U.S.C. § 1231 after a final order of removal, not to pre-removal detention under § 1226(a), and Makarevich alleged no facts showing that his § 1226(a) detention violated substantive due process.

KEY QUOTATIONS

“An IJ’s bond determination is “discretionary” and “not subject to review.””

“He therefore fails to state a plausible procedural due process violation.”

“Mr. Makarevich’s substantive due process claim also fails.”

FACTUAL BACKGROUND

Makarevich, a Belarusian citizen, entered the United States in 2019 with a B-2 visitor visa and filed a pending application for asylum and withholding of removal in 2020. ICE arrested him on September 25, 2025, and detained him at the Torrance County Detention Facility. An Immigration Judge denied release after a bond hearing, and Makarevich appealed that decision to the Board of Immigration Appeals. He alleged that his detention violated substantive and procedural due process because of the absence of a neutral review mechanism and the lack of a significant likelihood of removal in the reasonably foreseeable future.

PROCEDURAL HISTORY

Makarevich, a Belarusian citizen detained under 8 U.S.C. § 1226(a), received a bond hearing before an Immigration Judge, whose decision he appealed to the Board of Immigration Appeals. He then filed a § 2241 habeas petition alleging substantive and procedural due process violations. The district court granted the Government's motion to dismiss without prejudice.

DISPOSITION

dismissed

CASES CITED

- Smith v. United States, 561 F.3d 1090, 1098 (10th Cir. 2009)
- Bell Atl. v. Twombly, 550 U.S. 544, 570 (2007)
- Aguilera v. Kirkpatrick, 241 F.3d 1286, 1290 (10th Cir. 2001)
- Salazar v. Dedos, 2025 WL 2676729, at *6 (D.N.M.)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
VIKTAR MAKAREVICH, Petitioner, v. No. 1:25-cv-01002-KG-JHR PAMELA BONDI, et al.,
Respondents. ORDER This matter is before the Court on Viktor Makarevich’s Habeas Petition
under 28 U.S.C. § 2241, Doc. 1, and the Government’s Motion to Dismiss, Doc. 10.

For the reasons below, the Court grants the Government’s motion and dismisses the petition
without prejudice. Mr. Makarevich, a Belarusian citizen, “lawfully entered the United States” in
2019 “with a B-2 visitor visa.” Doc. 1 at 3.

In 2020, “he timely filed an I-589 Application for Asylum and Withholding of Removal, which
remains pending,” based on his “fear of future persecution in Belarus due to his political opinion
and opposition activities.” Id. Mr. Makarevich is employed as a commercial truck driver and has
“no criminal history.” Id. On September 25, 2025, ICE arrested Mr. Makarevich and placed him in
the Torrance County Detention Facility in New Mexico.

Doc. 1 at 2–3. During a bond hearing, an Immigration Judge (“IJ”) denied Mr. Makarevich’s
release, which he timely appealed with the Board of Immigration Appeals (“BIA”). Doc. 1 at 4.
Mr. Makarevich argues that his detention violates his substantive and procedural due process
rights. Doc. 1 at 5–7.

The Government responds that this Court lacks jurisdiction over the petition and that Mr.
Makarevich has failed to exhaust administrative remedies. Doc. 10 at 7–8. In reviewing a motion
to dismiss, the Court “accept[s] as true all well-pleaded factual allegations” and views them “in the
light most favorable” to the petitioner. Smith v. United States, 561 F.3d 1090, 1098 (10th Cir.

2009). A habeas petition must plead “enough facts to state a claim to relief that is plausible on its
face.” Bell Atl. v. Twombly, 550 U.S. 544, 570 (2007); see also Aguilera v. Kirkpatrick, 241 F.3d
1286, 1290 (10th Cir. 2001).

Under 8 U.S.C. § 1226(a), DHS may detain certain noncitizens “on a warrant issued by the
Attorney General” while removal proceedings are pending. Those detainees are entitled to a bond

hearing at which “the burden is on the noncitizen to demonstrate” that release is warranted. *Salazar v. Dedos*, 2025 WL 2676729, at *6 (D.N.M.). An IJ’s bond determination is “discretionary” and “not subject to review.” § 1226(e).

Here, Mr. Makarevich fails to allege facts that, if true, entitle him to relief. He acknowledges that he received a § 1226(a) bond hearing. See Doc. 1 at 4. Any challenge to the IJ’s bond determination seeks review of a discretionary judgment that § 1226(e) expressly bars. Mr. Makarevich contends that, despite receiving a hearing, there is “no administrative mechanism...to obtain” review of that bond decision “from a neutral arbiter” because ICE exhibits “substantial bias.” Doc.

1 at 6. The Court disagrees. The IJ’s bond decision is subject to review by the BIA, a neutral adjudicator within the Department of Justice’s Executive Office for Immigration Review—indeed, Mr. Makarevich has filed a BIA appeal. See Doc. 1 at 4. Furthermore, Mr. Makarevich alleges no facts connecting any alleged bias within ICE, a DHS component, to the decision-making of the IJ or BIA, adjudicators under a separate executive agency.

He therefore fails to state a plausible procedural due process violation. Mr. Makarevich’s substantive due process claim also fails. He alleges that there is “no significant likelihood” he will be removed in the reasonably foreseeable future, Doc. 1 at 5, but that standard applies only to detention under 8 U.S.C. § 1231 after a final order of removal. Mr. Makarevich is detained under § 1226(a), which governs pre-removal detention, and he alleges no facts showing that such detention violates substantive due process.

For the reasons above, the Government’s motion, Doc. 10, is hereby GRANTED. Mr. Makarevich’s habeas petition, Doc. 1, is DISMISSED without prejudice. IT IS SO ORDERED.
/s/Kenneth J. Gonzales_____ CHIEF UNITED STATES DISTRICT JUDGE •
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