

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.)

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