

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Igor Borbot v. Warden Hudson County Correctional Facility

Borbot v. Warden Hudson County Correctional Facility, 906 F.3d 274 (3d Cir. 2018) · No. 17-2814 · Decided October 16, 2018

SUMMARY

The Third Circuit held that an alien detained under 8 U.S.C. § 1226(a) pending removal proceedings is not entitled to a second bond hearing with the government bearing the burden of proof based solely on the duration of detention, where the alien received a prompt initial bond hearing and an opportunity for a redetermination hearing upon showing changed circumstances. The court distinguished its prior holdings in **Diop** and **Chavez-Alvarez**, which required bond hearings for prolonged mandatory detention under § 1226(c) because those detainees lacked any initial bond hearing. The court also noted that **Jennings v. Rodriguez** overruled the statutory reasonableness limitation for § 1226(c) but did not address the constitutional due process issue. The dissent argued that the Interpol Red Notice underlying the detention may have been politically motivated, warranting a new hearing.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Hardiman; Smith; Roth
JURISDICTION	Federal
DECIDED	October 16, 2018
DOCKET	17-2814
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of New Jersey dismissal of habeas corpus petition.
STANDARD OF REVIEW	Plenary review (de novo) because the District Court dismissed without an evidentiary hearing.
PRECEDENTIAL VALUE	Published
PARTIES	Igor Borbot v. Warden Hudson County Correctional Facility

TOPICS

- immigration detention
- removal proceedings
- due process
- habeas corpus
- fifth amendment

PRACTICE AREAS

Immigration

Habeas Corpus

Constitutional Law

QUESTIONS PRESENTED

1. Whether a detainee held under 8 U.S.C. § 1226(a) is entitled to a new bond hearing with the government bearing the burden of proof based solely on the duration of detention, after having received the process contemplated by § 1226(a) and its regulations.

HOLDINGS

1. Duration alone cannot sustain a due process challenge by a detainee who has been afforded the process contemplated by § 1226(a) and its implementing regulations. The reasonableness inquiry from § 1226(c) cases (Diop, Chavez-Alvarez) does not apply to § 1226(a) detentions where the detainee has received a bond hearing.

KEY QUOTATIONS

“Borbot cites no authority, and we can find none, to suggest that duration alone can sustain a due process challenge by a detainee who has been afforded the process contemplated by § 1226(a) and its implementing regulations.” (906 F.3d at 277)

“Unlike § 1226(c) detainees such as Diop and Chavez-Alvarez, who were detained for prolonged periods without being given any opportunity to apply for release on bond, Borbot was granted meaningful process prior to filing his habeas petition.” (906 F.3d at 279)

“We therefore need not decide when, if ever, the Due Process Clause might entitle an alien detained under § 1226(a) to a new bond hearing in order to conclude that Borbot's due process rights were not violated.” (906 F.3d at 280-281)

FACTUAL BACKGROUND

Igor Borbot, a native of Russia, entered the United States in 2014 on a tourist visa and overstayed. In 2015, Russia requested an Interpol Red Notice identifying Borbot as a fugitive wanted for fraud. ICE detained Borbot in April 2016 under 8 U.S.C. § 1226(a) and initiated removal proceedings. Borbot had a bond hearing where an IJ found he failed to show he was not a danger. The BIA affirmed. Borbot later sought a redetermination hearing, which was denied for lack of changed circumstances. As of his habeas filing, Borbot had been detained for about 15 months.

PROCEDURAL HISTORY

Borbot was detained under 8 U.S.C. § 1226(a) pending removal proceedings. He received a bond hearing, was denied release, appealed to the BIA, and later sought a redetermination hearing which was denied. He then filed a habeas petition under 28 U.S.C. § 2241 in the District Court, challenging his continued detention and seeking a new bond hearing with the government bearing the burden. The District Court dismissed the petition. Borbot appealed.

DISPOSITION

affirmed

CASES CITED

- Reno v. Flores, 507 U.S. 292 (1993)
- Demore v. Kim, 538 U.S. 510 (2003)
- Zadvydas v. Davis, 533 U.S. 678 (2001)
- Diop v. ICE/Homeland Sec., 656 F.3d 221 (3d Cir. 2011)
- Chavez-Alvarez v. Warden York Cty. Prison, 783 F.3d 469 (3d Cir. 2015)
- Jennings v. Rodriguez, 138 S. Ct. 830 (2018)
- Fahy v. Horn, 516 F.3d 169 (3d Cir. 2008)
- Ezeagwuna v. Ashcroft, 325 F.3d 396 (3d Cir. 2003)
- Matter of Urena, 25 I. & N. Dec. 140 (BIA 2009)
- Matter of Joseph, 22 I. & N. Dec. 799 (BIA 1999)

CITED IN

- Igor Borbot v. Warden Hudson County Correctional Facility, Borbot v. Warden Hudson Cnty. Corr. Facility, 906 F.3d 274 (3d Cir. 2018)
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- Igor Borbot v. Warden Hudson County Correctional Facility, Borbot v. Warden Hudson County Correctional Facility, 906 F.3d 274, 276-80 (3d Cir. 2018)