

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

CLIVE E. FOSTER,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-117-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
Respondent.	:	

**RESPONSE TO PETITIONER’S MOTION
FOR IMMEDIATE RELEASE FROM DETENTION**

On April 8, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. On May 7, 2025, Respondent filed a Motion to Dismiss the Petition. ECF No. 4. Petitioner has not filed a response to the Motion to Dismiss. Instead, on June 2, 2025, the Court received Petitioner’s Motion for Immediate Release from Detention. ECF No. 6. Petitioner’s Motion does not address the arguments raised by Respondent in the Motion to Dismiss. Rather, Petitioner appears to raise two arguments: (1) he has been denied a custody redetermination, and (2) he is entitled to release from custody pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). Mot. for Imm. Release 1, ECF No. 6. The Petition should be dismissed in full pursuant to the four grounds raised in the Motion to Dismiss. *See* Mot. to Dismiss 6-12, ECF No. 4. But to the extent the Court separately considers Petitioner’s Motion for Immediate Release, that Motion should be denied for two reasons.

First, to the extent Petitioner claims he has been denied a custody redetermination, he has failed to exhaust administrative remedies. Petitioner argues that he “is entitled to a timely and meaningful opportunity to demonstrate the [sic] [he] should not be detained” and claims he “has

been denied that opportunity.” Mot. for Imm. Release 1. This is false. Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) conducted an initial custody determination when Petitioner was encountered on December 11, 2024. Atkinson Decl. ¶ 11, ECF No. 4-1; Atkinson Decl. Ex. E, ECF No. 4-6. Because Petitioner is detained pre-final order of removal pursuant to 8 U.S.C. § 1226(a), *see* Mot. to Dismiss 10-12, he may request a custody redetermination—or bond—hearing from an immigration judge (“IJ”), 8 C.F.R. §§ 236.1(d), 1003.19(b). But here, Petitioner has failed to do so. Atkinson Decl. ¶ 17. Indeed, Respondent has moved to dismiss one claim raised in the Petitioner based on this failure because Petitioner has not exhausted administrative remedies. Mot. to Dismiss 10-12. Thus, Petitioner is not entitled to relief based on any alleged failure to provide him a custody redetermination. Rather, he has simply failed to *request* a custody redetermination in his removal proceedings.

Second, to the extent Petitioner claims he is entitled to release pursuant to *Zadvydas*, that case is inapplicable to Petitioner’s current detention status. As stated in the Motion to Dismiss, Petitioner is detained pre-final order of removal pursuant to 8 U.S.C. § 1226(a). *Id.* at 1, 3, 10-12. *Zadvydas*, by contrast, concerns only *post*-final order removal detention pursuant to 8 U.S.C. § 1231(a)(6). *See Zadvydas*, 533 U.S. at 700-01. “[I]n order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months[.]” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Here, Petitioner cannot show *any* period of post-final order of detention because he remains detained *pre*-final order of removal with ongoing removal proceedings. Thus, he cannot state a claim under *Zadvydas*, and his Motion for Immediate Release should be denied.

CONCLUSION

For the foregoing reasons, Petitioner's Motion for Immediate Release from Detention should be denied. For the reasons raised in Respondent's Motion to Dismiss (ECF No. 4), Respondent respectfully requests that the Petition be dismissed.

Respectfully submitted this 20th day of June, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Response to Petitioner's Motion for Immediate Release from Detention with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Clive Foster
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 20th day of June, 2025.

BY: s/ Michael P. Morrill
MICHAEL P. MORRILL
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