

District Judge John H. Chun
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HAJI FOFANA, *et al.*,

Petitioners,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:25-cv-01417-JHC-MLP

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for consideration on:
September 30, 2025

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) detains Petitioner Haji Fofana, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1231. Fofana brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention.²

¹ For the purposes of this habeas brief, Federal Respondents refers to U.S. Immigration and Customs Enforcement (“ICE”) Seattle Field Office Director Cammila Wamsley, U.S. Department of Homeland Security (“DHS”) Secretary Kristi Noem, DHS, and U.S. Attorney General Pamela Bondi. Respondent Bruce Scott is not represented by undersigned counsel.

² Plaintiffs’ writ of mandamus and Administrative Procedure Act claims concerning their Form I-130 and Form I-485 pending with U.S Citizenship and Immigration Services will be responded to separately. *Pet.*, ¶¶ 51-60.

1 Pursuant to this Court’s Order (Dkt. No. 5), Federal Respondents submit the following
2 factual background as contained in the records of Fofana’s immigration case and as set forth in the
3 Declaration of Deportation Officer Jiarong Du (“Du Decl.”), as well as the relevant detention
4 authority. ICE does not believe that an evidentiary hearing is necessary.

5 **II. DETENTION AUTHORITIES**

6 The INA governs the detention and release of noncitizens during and following their
7 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021). The general
8 detention periods are generally referred to as “pre-order” (meaning before the entry of a final order
9 of removal) and “post-order” (meaning after the entry of a final order of removal). *Compare* 8
10 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

11 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
12 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
13 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
14 removal and to protect the community from noncitizens who may present a danger, Congress
15 mandated detention during the “removal period,” which is the 90-day period following the
16 issuance of a final order of removal. 8 U.S.C. § 1231(a)(2).

17 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
18 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
19 and does not place any temporal limit on the length of detention under that provision:

20 [A noncitizen] ordered removed who is inadmissible under section 1182,
21 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
22 who has been determined by the [the Secretary of Homeland Security] to be a risk
23 to the community or unlikely to comply with the order of removal, *may* be detained
24 *beyond the removal period* and, if released, shall be subject to the terms of
supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

1 During the removal period, ICE³ is charged with attempting to effectuate removal of a
2 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time
3 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen
4 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
5 from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has
6 further identified six months as a presumptively reasonable time necessary to bring about a
7 noncitizen’s removal. *Id.*, at 701.

8 Once it is determined that there is no significant likelihood of removal in the reasonably
9 foreseeable future, noncitizens may be released on an Order of Supervision (“OSUP”). 8 C.F.R.
10 § 241.13(h). ICE may revoke a noncitizen’s OSUP and return the noncitizen to custody when, on
11 account of changed circumstances, there becomes a significant likelihood of the noncitizen’s
12 removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).

13 III. FACTUAL BACKGROUND

14 Fofana is a native of and citizen of Sierra Leone who entered the United States on or about
15 March 2000 and again in December 2005. Du Decl., ¶ 4; Lambert Decl., Ex. A, Form I-213. On
16 September 22, 2008, DHS issued a Notice to Appear charging Fofana as removable under 8 U.S.C.
17 § 1182(a)(7)(A)(i)(I), which was later amended in 2009 to 8 U.S.C. § 1182(a)(6)(A)(i). Lambert
18 Decl., Ex. B, Notice to Appear; Ex. C, Amended Charges. On February 25, 2010, an Immigration
19 Judge (“IJ”) ordered Fofana removed to Sierra Leone and denied Fofana’s applications for relief
20 from removal. Lambert Decl., Ex. D, Order of the IJ. In 2011, the Board of Immigration Appeals
21 (“BIA”) dismissed Fofana’s appeal of the Order. Du Decl., ¶ 5. The Ninth Circuit subsequently
22

23 _____
24 ³ Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s
authority to execute removal orders.

1 denied and dismissed in part Fofana's Petition for Review of the BIA's dismissal. Du Decl., ¶ 6;
2 *Fofana v. Holder*, No. 11-73851, Dkt. No. 19 (9th Cir. Dec. 17, 2013). The mandate issued on
3 May 7, 2014. *Fofana*, No. 11-73851, Dkt. No. 24.

4 On January 6, 2015, ICE released Fofana on an OSUP. Lambert Decl., Ex. F, OSUP.

5 In 2019, the BIA denied Fofana's motion to reopen his removal proceedings so that he
6 could pursue adjustment of status based on his marriage to a lawful permanent resident. Du Decl.,
7 ¶ 9; Lambert Decl., Ex. G, BIA Decision.

8 In 2020, the BIA denied Fofana's second motion to reopen his removal proceedings. This
9 time he sought to reopen the proceedings to apply for asylum. Du Decl., ¶ 10; Lambert Decl.,
10 Ex. H, BIA Decision. The Ninth Circuit denied his Petition for Review of this decision in
11 November of 2021. Du Decl., ¶ 11; Lambert Decl., Ex. I, Memorandum; *Fofana v. Garland*,
12 No. 20-72373, Dkt. No. 30-1 (9th Cir. Nov. 15, 2021).

13 Throughout this period, Fofana checked in with ICE pursuant to the conditions on his
14 release. *See* Lambert Decl., Ex. F. At his May 23, 2025 check-in, ICE detained Fofana for the
15 execution of his removal order. Du Decl., ¶ 14; Lambert Decl., Ex. A, at 278; Ex. J, Warrant for
16 Arrest; Ex. K, Notice of Custody Determination. He is in ICE detention at the Northwest ICE
17 Processing Center.

18 On May 27, 2025, Fofana applied to stay his removal with ICE. Lambert Decl., Ex. L,
19 Application. ICE denied his application on August 12, 2025. Lambert Decl., Ex. M, Letter.

20 ICE requested a travel document for Fofana on August 29, 2025. Du Decl., ¶ 15. It is
21 estimated that it will take approximately six months for a travel document to issue. *Id.* However,
22 Fofana is scheduled for a remote interview with the Sierra Leone Embassy on September 4, 2025.

1 *Id.*, ¶ 16. ICE anticipates that it will know whether a travel document will be issued shortly after
2 the interview. *Id.*

3 DATED this 2nd day of September, 2025.

4 Respectfully submitted,

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17 *I certify that this memorandum contains 1,063 words, in*
18 *compliance with the Local Civil Rules.*