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9 **UNITED STATES DISTRICT COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 FRANCOIS XAVIER OLIVIER BARRE,

13 Petitioner,

14 v.

15 CHRISTOPHER J. LAROSE, et al.,

16 Respondents.  
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Case No.: 26-cv-03088-JAO-VET

**RETURN TO PETITION FOR A  
WRIT OF HABEAS CORPUS**

1 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. The government has  
2 carefully reviewed this petition and determined that the legal issues presented concern the  
3 statutory authority for U.S. Immigration and Customs Enforcement's (ICE) detention of  
4 Petitioner under 8 U.S.C. § 1187. While reserving all rights, including the right to appeal,  
5 the government respectfully submits this abbreviated response to preserve the legal issues,  
6 to conserve judicial and party resources, and to expedite the Court's consideration of this  
7 matter.

8 Petitioner is a native and citizen of France, who previously entered the United States  
9 via a Visa Waiver Program between the U.S. and France. *See* Exhibit 1 (Notice of Referral  
10 to the immigration judge). On April 24, 2026, Petitioner was detained by ICE and was  
11 served with a Notice of Referral to an immigration judge (IJ). *See id.*; *see also* Exhibit 2  
12 (I-213). Given that Petitioner was referred to an IJ via a Notice of Referral, and not a Notice  
13 to Appear, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1187. *See* 8 C.F.R. §  
14 1236.1(d) (The Attorney General has not delegated authority to Immigration Judges, to  
15 redetermine the conditions of custody imposed by the Department of Homeland Security  
16 with respect to aliens who have not been issued and served with a Notice to Appear (Form  
17 I-862) in relation to removal proceedings pursuant to 8 C.F.R. Part 1240); *see also Matter*  
18 *of A-W-*, 25 I&N Dec. 45 (BIA 2009) (An alien admitted to the United States pursuant to  
19 the Visa Waiver Program who has not been served with a Notice to Appear pursuant to 8  
20 C.F.R. Part 1240 is not entitled to a custody hearing before an Immigration Judge under 8  
21 C.F.R. § 1236.1(d)).

22 It is the Government's position that Petitioner is lawfully detained pursuant to 8  
23 U.S.C. § 1187 and defers to the Court on the appropriate resolution of this matter.

24 DATED: May 22, 2026

ADAM GORDON  
United States Attorney

26 *s/ Antonio Estrada*  
ANTONIO ESTRADA  
27 Special Assistant United States Attorney