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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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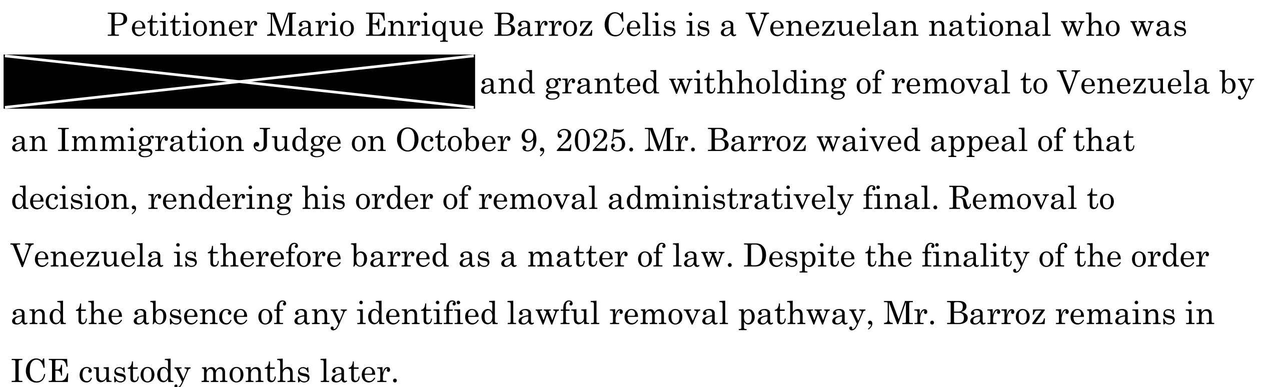
| Mario Enrique Barroz Celis,<br><br>Petitioner,<br><br>v.<br><br>Pam Bondi, U.S. Attorney General, et al<br><br>Respondents. | Case No. 2:26-cv-00079-GMN-DJA<br><br>**Reply to Respondent's Answer to pro se § 2241 Petition** |

## INTRODUCTION

Petitioner Mario Enrique Barroz Celis is a Venezuelan national who was  and granted withholding of removal to Venezuela by an Immigration Judge on October 9, 2025. Mr. Barroz waived appeal of that decision, rendering his order of removal administratively final. Removal to Venezuela is therefore barred as a matter of law. Despite the finality of the order and the absence of any identified lawful removal pathway, Mr. Barroz remains in ICE custody months later.

Respondents' Answer does not address the central issue presented by the petition: ICE's stated intent to remove Mr. Barroz to Mexico, a third country,

1 without having initiated any constitutionally required process. Respondents do not dispute that ICE informed Mr. Barroz it intended to remove him to Mexico, nor do they identify any lawful authority or procedures governing such removal. They provide no evidence that Mexico has agreed to accept Mr. Barroz, that travel documents exist, or that Mr. Barroz has received notice and an opportunity to present fear-based claims as required by due process.

Because Mr. Barroz is subject to a final order of removal, his detention is governed by *Zadvydas v. Davis*, 533 U.S. 678 (2001). The statutory removal period has expired, removal to Venezuela is prohibited by the grant of withholding, and Respondents have not demonstrated that lawful third-country removal is reasonably foreseeable. Continued detention under these circumstances violates due process.

Alternatively, if this Court determines detention is governed by 8 U.S.C. § 1226(a), Mr. Barroz was entitled to an individualized merits bond hearing. The immigration judge declined to consider bond for lack of jurisdiction and made no findings regarding flight risk or dangerousness. A jurisdictional refusal is not a bond hearing, and detention without such a hearing is not authorized by § 1226(a).

Under either framework, Respondents have not established a lawful basis for Mr. Barroz's continued detention. The petition should therefore be granted.

## Procedural Clarification

As an initial matter, this Court's appointment order dated January 16, 2026, authorized Mr. Barroz to file a counseled amended petition by February 7, 2026, or to notify the Court that no amended petition would be filed. (ECF No. 3.) The order further contemplated that Respondents' response would be due after service of any amended petition. (Id. at 3.) Respondents nevertheless filed their response on January 30, 2026, prior to the deadline to file Mr. Barroz's Amended Petition. (ECF No. 11.) It appears Respondents may have misread the appointment order as requiring an immediate response to the pro se petition, as courts sometimes direct such a procedure in their appointment orders.

Although premature, Respondents' filing addresses the central legal issues presented; namely, whether detention may be justified where the government has not identified a lawful removal pathway, and whether Mr. Barroz's continued detention without a meaningful bond hearing on the merits is lawful under 8 U.S.C. § 1226(a).

In the interest of expeditious resolution of this habeas petition, and because Respondents' response engages the substance of Mr. Barroz's primary claims, he elects to proceed on the existing briefing rather than file a separate Amended Petition. Nothing in this reply should be construed as a waiver of the right to amend should this Court later determine that amendment would be appropriate.

**FACTUAL BACKGROUND**[1]

Petitioner Mario Enrique Barroz Celis is a citizen of Venezuela and a former member of [redacted]

Mr. Barroz fled Venezuela and entered the United States on May 21, 2024, with his young autistic son and the child's mother. On May 22, 2024, U.S. Customs and Border Protection and U.S. Border Patrol issued Mr. Barroz a Notice to Appear. (ECF No. 11-4 at 3.) Notably, the administrative charge brought against Mr. Barroz alleged he was removable as a noncitizen present in the United States without being admitted or paroled. (Id.; ECF No. 11-3.) Immigration agents did not charge Mr. Barroz as an arriving alien.

After entering the United States, Mr. Barroz filed an application for asylum. He was taken into ICE custody on August 8, 2025. On September 30, 2025, Mr.

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[1] Factual statements are made on information and belief unless cited to the record.

[2] *Venezuela Military Personnel Increasingly Jailed, Tortured Amid Coup Fears, Report Says*, Jan. 9, 2019, https://www.miamiherald.com/latest-news/article224089810.html (last visited Feb. 4, 2026).

Barroz appeared before an Immigration Judge for a bond hearing. (ECF No. 11-2.) The Immigration Judge concluded that it lacked jurisdiction to consider bond under *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) because Mr. Barroz testified that he had not been admitted to the United States. (Id.)

On October 9, 2025, the Immigration Judge denied asylum but granted Mr. Barroz withholding of removal to Venezuela under INA § 241(b)(3). (ECF No. 11-1.) The removal order lists no alternative countries to which Mr. Barroz may be removed. (Id. at 4.) Mr. Barroz waived his right to appeal that decision, and the Department of Homeland Security initially reserved its right to appeal. (Id. at 5.)

In mid-October 2025, after receiving withholding of removal and while detained in ICE custody Mr. Barroz was informed by ICE that it intended to remove him to a third country, specifically Mexico. Mr. Barroz fears being removed to Mexico, and acting pro se, he filed an appeal with the Board of Immigration Appeals on November 10, 2025, in an effort to prevent removal to Mexico. (ECF No. 11 at 3.)[3] Although DHS initially reserved its right to appeal, Respondents now assert that DHS has "declined to pursue the appeal." (Id.)

On January 16, 2026, Mr. Barroz filed a pro se writ of habeas corpus. (ECF No. 4.) In it, he states that he ordered removed but granted withholding of removal on October 9, 2029. (ECF No. 4 at 2.) After he was granted withholding of removal to Venezuela, ICE agents gave him a notice that they were "working to deport [him] to Mexico." (Id. at 7.) Mr. Barroz does not wish to go to Mexico because his life would be in danger there. (ECF No. 4 at 7.) Because three months had past since his last hearing before an Immigration Judge, Mr. Barroz brought the instant writ due to his prolonged detention and ICE's efforts to remove him to a third-country without due process.

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[3] Notably, on information and belief, Mr. Barroz did not raise any claims in his appeal that his waiver was not knowing and voluntary.

This Court appointed the Federal Public Defenders Office to represent Mr. Barroz. (ECF No. 3.) Federal Respondent's filed their answer on January 30, 2026. (ECF No. 11.) This timely reply follows.

## Argument

### I. Jurisdiction

Respondents are mistaken in their assertion that this Court lacks jurisdiction over Mr. Barroz's habeas claims, which challenge the legality of his continued detention. This Court has jurisdiction pursuant to 28 U.S.C. § 2241, which grants federal district courts general habeas authority; Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 1331, which confers federal question jurisdiction; and 28 U.S.C. §§ 2201 and 2202, the Declaratory Judgment Act.

Federal district courts have long exercised jurisdiction over habeas petitions brought by noncitizens challenging the lawfulness of their immigration detention. *See, e.g., Zadvydas,* 533 U.S. 678. Nothing in the immigration statutes divests district courts of jurisdiction to review constitutional and statutory challenges to prolonged or unlawful detention.

This Court also has federal question jurisdiction to review agency action under the Administrative Procedure Act ("APA"). The APA authorizes courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas proceedings. 5 U.S.C. § 703. The APA further affords a right of judicial review to any person "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

Mr. Barroz's continued detention violates the Due Process Clause of the Fifth Amendment, constitutes arbitrary and capricious agency action, and represents an abuse of discretion where removal is not reasonably foreseeable and Respondents have not complied with constitutionally required procedures. Thus, this Court has jurisdiction over this petition.

## II. Third-country removal

### A. Mr. Barroz is subject to a final order of removal, and no lawful third-county removal is reasonably foreseeable

#### 1. Mr. Barroz's order of removal became final when issued by the Immigration Judge

On October 9, 2025, the Immigration Judge denied asylum but granted Mr. Barroz withholding of removal to Venezuela pursuant to INA § 241(b)(3). (ECF No. 11-1.) At the conclusion of the proceedings, Mr. Barroz expressly waived appeal. (Id. at 5.) Although DHS initially reserved its right to appeal, Respondents now confirm that DHS has "declined to pursue the appeal." (ECF No. 11 at 3.)

Under the governing regulations, an immigration judge's order of removal becomes administratively final "[u]pon waiver of appeal by the respondent." 8 C.F.R. § 1241.1(b). That is precisely what occurred here. Because Mr. Barroz waived appeal on October 9, 2025 (and DHS has confirmed it did not pursue its own appeal) the removal order became administratively final on that date, as did his grant of withholding of removal to Venezuela.

Once an order of removal is final, the statutory removal period is triggered. See 8 U.S.C. § 1231(a)(1)(A) (requiring removal within 90 days of a final order). The statute further provides that the removal period begins on "the date the order of removal becomes administratively final," absent circumstances not present here. 8 U.S.C. § 1231(a)(1)(B)(i).

Accordingly, Mr. Barroz's removal period commenced on October 9, 2025. His detention therefore is governed by the post-removal-order detention framework articulated in *Zadvydas,* 533 U.S. 678. The statutory removal period ended on January 7, 2026, 90 days after his removal order became final.

#### 2 Third-country removal is constitutionally constrained by due process

Although the government may, in limited circumstances, seek to remove a noncitizen to a third country, such removal is not exempt from constitutional constraints. Any attempt to remove a noncitizen to a third country must comply

1 with due process, including notice and a meaningful opportunity to raise fear-based
2 claims such as protection under the Convention Against Torture. As the Ninth
3 Circuit has explained, "[i]mmigration proceedings must provide the procedural due
4 process protections guaranteed by the Fifth Amendment." *Vilchez v. Holder*, 682
5 F.3d 1195, 1199 (9th Cir. 2012) (citing *Lacsina Pangilinan v. Holder*, 568 F.3d 708,
6 709 (9th Cir. 2009)).
7 Due process requires that individuals be informed of the matters that will
8 determine their rights. "[I]ndividuals whose rights are being determined are
9 entitled to notice of the issues to be adjudicated, so that they will have the
10 opportunity to prepare and present relevant arguments and evidence." *Andriasian*
11 *v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999).
12 Applying these principles in the removal context, courts have recognized that
13 surprise country designations can violate due process. "[I]n the context of country of
14 removal designations, last minute orders of removal to a country may violate due
15 process if an immigrant was not provided an opportunity to address his fear of
16 persecution in that country." *Najjar v. Lynch*, 630 Fed. App'x 724, 724 (9th Cir.
17 2016) (non-precedential memorandum disposition).
18 The Supreme Court has made clear that due process protections apply to all
19 persons within the United States, including noncitizens subject to final orders of
20 removal. As the Court explained in *Zadvydas*, freedom from physical restraint lies
21 at the core of the liberty protected by the Due Process Clause, and civil detention is
22 permissible only where it bears a reasonable relation to its purpose. *Id.* 533 U.S. at
23 690. When the government seeks to remove an individual to a third country, due
24 process requires procedures sufficient to ensure that removal will not result in
25 persecution or torture. *See Cavieres Gomez v. Mattos*, 2:25-cv-00975-GMN, *12 (D.
26 Nev. Nov. 6, 2025) ("[t]he Court finds that Petitioner has a due process right to
27 received meaningful notice and opportunity to present a fear-based claim to an
immigration judge before DHS deports him to a third country.")

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### 3. Because no lawful third-country removal process has begun, removal is not reasonably foreseeable under *Zadvydas*

Under *Zadvydas*, detention beyond the removal period is authorized only for so long as removal is reasonably foreseeable. *See Zadvydas*, 533 U.S. at 690 (where "detention's goal is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed.") (internal citations omitted). When removal depends on speculative future events or on legally required procedures that have not yet begun, continued detention violates due process.

Here, removal to Mexico is not reasonably foreseeable. Respondents have not presented any evidence that it initiated a third-country removal process that complies with constitutional requirements. Indeed, Respondents provided no evidence that a fear-based adjudication regarding Mexico has occurred, and there is no evidence that Mexico has agreed to accept Mr. Barroz or issued him travel documents. *See Perez v. Bondi*, No. 2:25-cv-02390-CDS at *4 (D. Nev.) (granting habeas relief and expressly relying on *Gomez v. Mattos*, 2025 U.S. Dist. LEXIS 220190, at *___ (D. Nev. Nov. 6, 2025), which recognized a due process right to meaningful notice and an opportunity to present fear-based claims before DHS may remove a noncitizen to a third country).

Until these constitutional prerequisites are satisfied, Respondents are barred from removing Mr. Barroz to Mexico. Detention that rests on the mere possibility that Respondents may someday initiate lawful procedures is precisely the type of speculative detention that *Zadvydas* forbids. *See Suarez-Ramirez v. Bondi*, 2:25-cv-02369-MMD, at *3 (D. Nev. Jan. 15, 2026) (granting habeas relief to a Cuban petitioner because the government's prior failed efforts to remove him to Mexico demonstrated that future removal was not reasonably foreseeable); *see also Alkarori v. NSDC*, 2:25-cv-02567-MMD *4-5 (D. Nev. Feb. 2, 2026) (granting habeas relief and finding petitioner rebutted the presumptive reasonableness of his five-and-a-half-month detention and that the government failed to show a significant likelihood of removal in the reasonably foreseeable future.)

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Because lawful removal (either to Venezuela or to a third country) is not presently available, and because Respondents have not shown that such removal will occur in the reasonably foreseeable future, continued detention violates due process. As in *Zadvydas*, Mr. Barroz's detention has ceased to bear a reasonable relation to its purported purpose of effectuating removal. *Zadvydas*, 533 U.S. at 690.

Detention premised on the mere possibility that Respondents may someday initiate lawful third-country removal procedures is precisely the type of speculative detention that *Zadvydas* forbids. The six-month presumption does not salvage detention where the government cannot identify a concrete, lawful pathway to removal. Because removal to Venezuela is prohibited by the grant of withholding, and lawful third-country removal is neither presently available nor reasonably foreseeable, Mr. Barroz's continued detention no longer bears a reasonable relation to the purpose of effectuating removal. As in *Zadvydas*, detention under these circumstances violates due process.

## III. In the alternative, if detention is governed by 8 U.S.C. § 1226(a), Mr. Barroz was entitled to a merits bond hearing, which he never received

If this Court determines that 8 U.S.C. § 1226(a) governs Mr. Barroz's detention because he filed a late appeal of the Immigration Judge's withholding decision based on his misunderstanding of the status of his removal, his detention is still unlawful. Section 1226(a) authorizes discretionary detention only after an individualized bond determination by an immigration judge assessing flight risk and danger to the community. That never occurred here.

At Mr. Barroz's custody hearing, the immigration judge denied bond for lack of jurisdiction under *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The immigration judge made no findings regarding flight risk, danger to the community, or discretionary factors relevant to release. A jurisdictional refusal to consider bond is not a bond hearing within the meaning of § 1226(a).

The Immigration Judge's conclusion that it lacked jurisdiction to grant Mr. Barroz a bond hearing presumably rests on ICE's now widely-rejected interpretation of the immigration detention authorities of §§ 1225 at 1226(a) as endorsed by the BIA in *Matter of Hurtado*. That interpretation, however, has been emphatically rejected by federal courts across the country.

Most recently, in *Gimenez Rivero v. Mina*, the court explained that "judges across the country—the vast majority who have considered this question—have told the Government many times in the past few months that its interpretation of the law is wrong," emphasizing that this conclusion spans judges "appointed by every President from Ronald Reagan through Donald Trump." 2026 WL 199319, at *5 (M.D. Fla. Jan. 26, 2026). The court further held that the BIA's decision in *Hurtado* is not entitled to deference and is plainly incorrect under ordinary principles of statutory interpretation. *Id.* at *4.

In short, the Immigration Judge's reliance on *Matter of Hurtado* reflects adherence to an interpretation of the detention authorities that has been repeatedly repudiated by the federal judiciary and cannot support the denial of bond jurisdiction here. The only authority under which ICE may lawfully detain Mr. Barroz is 8 U.S.C. §1226(a), pursuant to which he must receive a bond hearing.

Where an immigration judge concludes that she lacks authority to adjudicate bond at all, the noncitizen has received no meaningful opportunity to contest detention. Respondents' reliance on *Rodriguez Diaz* only underscores this point. *See e.g. Rodriguez Diaz* v. *Garland*, 53 F4th 1189 (9th Cir. 2022). There, the court addressed whether due process requires additional or repeated bond hearings for a § 1226(a) detainee who had already received a merits bond hearing before an immigration judge with jurisdiction to decide bond. *Id.* at 1193, 1209. The Ninth Circuit held that due process does not categorically require a *second* bond hearing with enhanced procedures where the detainee has already received the procedural protections that § 1226(a) and its implementing regulations provide. *Id.*

That premise is entirely absent here. Unlike the petitioner in *Rodriguez Diaz*, Mr. Barroz never received a merits bond hearing at all. There was no adjudication

of flight risk or dangerousness, no exercise of discretion, and no meaningful custody determination subject to administrative review. *Rodriguez Diaz* repeatedly emphasized that § 1226(a) provides extensive procedural safeguards, including an initial merits bond hearing before a neutral decisionmaker, and relied on the existence of those safeguards in rejecting the petitioner's due process claim. *Id*. at 1209. Where, as here, those baseline procedures were never provided, *Rodriguez Diaz* offers Respondents no support.

Simply put, *Rodriguez Diaz* does not authorize detention in the absence of a merits bond hearing. It forecloses only the argument that due process requires additional bond hearings once § 1226(a)'s procedures have already been afforded. Because Mr. Barroz never received the process that § 1226(a) presupposes, his continued detention violates both the statute and the Due Process Clause, and Respondents' reliance on *Rodriguez Diaz* should be rejected.

## IV. Continued detention without a merits bond hearing violates due process

Because Mr. Barroz has never received an individualized bond hearing, his continued detention lacks the procedural safeguards required by due process. The opportunity to request bond followed by a jurisdictional denial does not satisfy constitutional requirements, nor does the availability of administrative appeal cure the defect. Appellate review cannot substitute for a merits bond determination that never occurred.

At a minimum, due process requires that Mr. Barroz receive a prompt, individualized bond hearing before a neutral decisionmaker with authority to assess flight risk, danger to the community, and conditions of release. Absent such process, continued detention under § 1226(a) is unlawful.

## CONCLUSION

For the reasons set forth above, Respondents have failed to establish any lawful basis for Mr. Barroz's continued detention. His removal order has been administratively final since October 9, 2025; removal to Venezuela is barred by the grant of withholding; and Respondents have not demonstrated that lawful third-country removal is presently available or reasonably foreseeable. Continued detention under these circumstances violates due process under *Zadvydas*.

Alternatively, if this Court determines that Mr. Barroz's detention is governed by 8 U.S.C. § 1226(a), which Petitioner maintains it is not, his detention remains unlawful because he has never received the individualized merits bond hearing that the statute and the Constitution require. A jurisdictional refusal to consider bond is not a substitute for a meaningful custody determination.

Accordingly, this Court should grant the petition for writ of habeas corpus and order Mr. Barroz's immediate release from ICE custody, or, in the alternative, order a prompt individualized bond hearing before an immigration judge with authority to adjudicate bond on the merits.

Dated February 6, 2026

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

*/s/ Margaret Lambrose*
Margaret Lambrose
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on February 6, 2026. I personally served a true and correct copy of the foregoing First Amended § 2241 Petition by CM/ECF to the following individuals:

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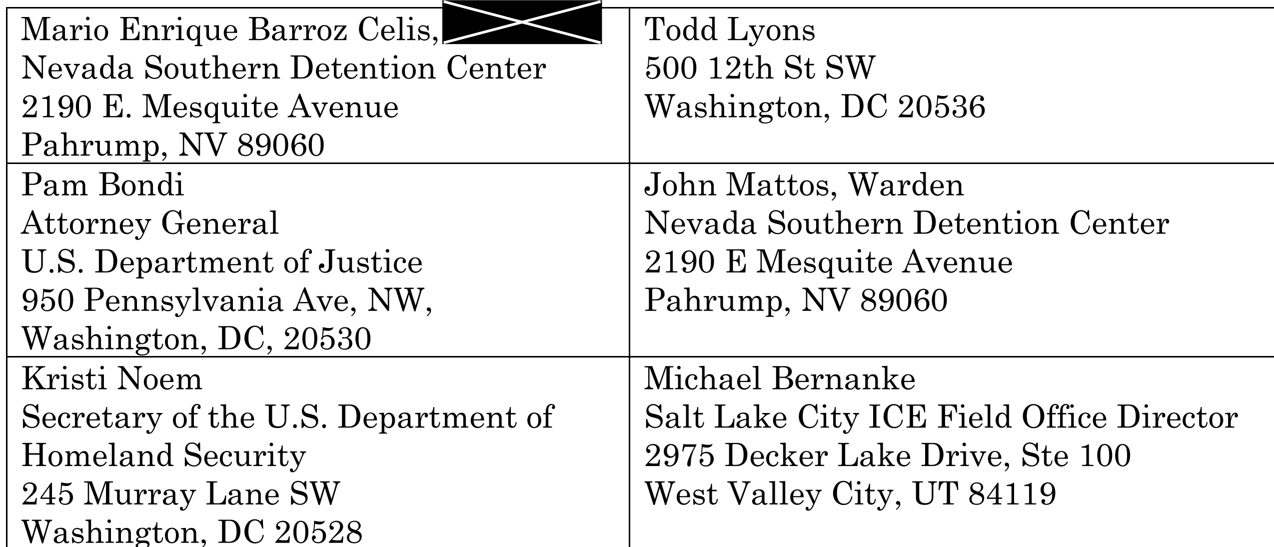
I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:



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