

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**ESPIRITU SANTO HOLDINGS, LP AND LIBRE HOLDING, LLC**  
**Claimants**

**v.**

**UNITED MEXICAN STATES**  
**Respondent**

**(ICSID Case No. ARB/20/13)**

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**PROCEDURAL ORDER NO. 7**

***Members of the Tribunal***

Mr. Eduardo Zuleta, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

***Secretary of the Tribunal***

Ms. Elisa Méndez Bräutigam

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September 29, 2022

## I. INTRODUCTION

1. On March 17, 2022, the Claimants submitted an application for provisional measures in which they sought urgent protection from criminal actions brought by Mexico in relation to this Arbitration and involving the Claimants' representatives and fact witnesses in this proceeding, Mr. Eduardo Zayas Dueñas and Mr. Santiago León Averleyra (the "**Application**").
2. On April 25, 2022, the Respondent submitted its response on the Application in which it objected to the provisional measures sought by the Claimants.
3. On May 5, 2022, the Claimants submitted their reply on the Application, and on 16 May 2022 the Respondent submitted its rejoinder on the Application.
4. On June 3, 2022, the Tribunal issued Procedural Order No. 3 concerning the Claimants' Application. In its Order, the Tribunal rejected the Claimants' Application subject to the following:

*In the interest of maintaining the integrity of the Arbitration, the Tribunal (i) formally invites the Respondent to consider in good faith deferring any further proceedings to seek Mr. Santiago León Aveleyra's extradition until the award has been issued; and (b) expects the Respondent to take all appropriate steps to ensure that Mr. Eduardo Zayas Dueñas' freedom of movement is not unduly restrained and that he will be able to meet with counsel and render testimony not only in conditions similar to the ones he would have normally experienced, but without any fear that may affect his free testimony.<sup>1</sup>*

5. On September 9, 2022, the Claimants submitted an emergency motion for access to Mr. Zayas together with Exhibits A through G (the "**Emergency Motion**"). On the same day, the Tribunal invited the Respondent to comment on the Emergency Motion by September 13, 2022.
6. On September 13, 2022, the Respondent requested a one-day extension to respond to the Emergency Motion, which the Tribunal granted on the same day.

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<sup>1</sup> Procedural Order No. 3, para. 156(b).

7. On September 14, 2022, the Respondent filed its Response on the Emergency Motion together with Exhibits 1 through 11.
8. On September 15, 2022, the Claimants sought leave to reply to the Response by September 19, 2022. On the same day, the Respondent sought permission to file a Rejoinder on the Emergency Motion in the event the Claimants' request was granted. On the same day, the Tribunal granted the Parties' respective requests and instructed the Respondent to file its Rejoinder by Friday, September 23, 2022.
9. On September 19, 2022, the Claimants filed their Reply on the Emergency Motion together with Exhibits A through E.
10. On September 23, 2022, the Respondent filed its Rejoinder on the Emergency Motion together with Exhibits 12 and 13.

## **II. THE PARTIES' POSITIONS**

### **A. THE CLAIMANTS' POSITION**

11. The Claimants request that the Tribunal order Mexico to transfer Mr. Zayas from the "*Reclusorio Preventivo Varonil Sur*" prison facility (the "**Reclusorio Sur**") to house arrest in Mexico City until the filing of the Claimants' Reply.<sup>2</sup> According to the Claimants, this measure is the only remedy available that will guarantee the type of access to Mr. Zayas ordered by the Tribunal in Procedural Order No. 3 and protect the Claimants' due process rights.<sup>3</sup> In their Reply, the Claimants further request that "pending Mr. Zayas' transfer to house arrest [...] [he] be transferred to Hogan Lovells' Mexico City office periodically on those dates Claimants require (within 24 hours notice), under the requisite safeguards reasonably required by prison personnel so that Mr. Zayas may meet with Claimants' representatives and their counsel."<sup>4</sup>

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<sup>2</sup> Emergency Motion, September 9, 2022, p. 1.

<sup>3</sup> Emergency Motion, September 9, 2022, p. 1; Reply on the Emergency Motion, September 19, 2022, p. 3.

<sup>4</sup> Reply on the Emergency Motion, September 19, 2022, p. 3.

12. The Claimants rely on the decisions on provisional measures in *Ipek Investment Limited v. Republic of Turkey, Hydro Srl. & Ors. v. Republic of Albania and Quiborax SA, Non Metallic Minerals SA and Allan Fosk Kaplún v. Plurinational State of Bolivia* to argue that the Tribunal has authority to grant the remedy they seek in their Emergency Motion.<sup>5</sup> Further, they state that the remedy of transferring Mr. Zayas to house arrest would not be “uncommon or extraordinary.”<sup>6</sup>
13. According to the Claimants, they have been unable to meet with Mr. Zayas under conditions similar to the ones Mr. Zayas would have normally experienced if he were not in pre-trial detention.<sup>7</sup> They state that since the issuance of Procedural Order No. 3 they have made several good-faith attempts to obtain access to Mr. Zayas. However, Mexico has frustrated their efforts by providing “vague, contradictory responses, and repeatedly changing its position regarding who, and how, Claimants could have potentially have access to Mr. Zayas”, leaving the Claimants no choice but to seek relief from the Tribunal.<sup>8</sup>
14. Mexico’s failure to comply with the Tribunal’s orders, they say, has “significantly prejudiced Claimants’ ability to prosecute their claims and respond to Mexico’s Response Memorial.”<sup>9</sup> In this regard, they note that Mr. Zayas plays a critical role in the dispute and that the Claimants and their representatives need confidential, uninterrupted access to Mr. Zayas in order to obtain further testimony and evidence from him to rebut Mexico’s allegations.<sup>10</sup>

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<sup>5</sup> Reply on the Emergency Motion, September 19, 2022, p. 3 citing to *Ipek Investment Limited v. Republic of Turkey*, ICSID Case No. ARB/18/18, Procedural Order No. 5, September 19, 2019; *Hydro Srl. & Ors. v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, March 3, 2016; *Quiborax SA, Non Metallic Minerals SA and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, February 26, 2010.

<sup>6</sup> Reply on the Emergency Motion, September 19, 2022, p. 3.

<sup>7</sup> Emergency Motion, September 9, 2022, p. 1.

<sup>8</sup> Reply on the Emergency Motion, September 19, 2022, pp. 1-2.

<sup>9</sup> Emergency Motion, September 9, 2022, p. 1.

<sup>10</sup> Emergency Motion, September 9, 2022, pp. 1-2.

15. According to the Claimants, when they first requested access to Mr. Zayas Mexico responded that it would facilitate access but that the Claimants had failed to undertake the required steps to request it.<sup>11</sup> In light of this response, the Claimants, through Mr. Zayas' Mexican criminal counsel, Mr. César Cantoral, petitioned the Director of the Reclusorio Sur that the Claimants' counsel be allowed to meet with Mr. Zayas under the conditions that: (i) any of the Claimants' attorneys, paralegals, and experts be allowed to visit Mr. Zayas during multiple days and weeks; (ii) the Reclusorio Sur provide a private working area without any cameras or other electronic devices that may compromise the confidentiality of the meetings; (iii) the Claimants be allowed to bring electronic devices, including computers, cameras and audio recording equipment; and (iv) Mexico ensure that it will not tamper with any electronic devices and that it guarantee the confidentiality of all information discussed with Mr. Zayas.<sup>12</sup>
16. However, the Reclusorio Sur rejected the Claimants' request and informed them that only Mr. César Cantoral was allowed to meet with Mr. Zayas under continuous supervision of prison personnel. Furthermore, Mr. Cantoral would be prohibited from bringing any communication equipment or device that could be used to store information.<sup>13</sup> According to the Claimants, these conditions fall short of the conditions that Mr. Zayas would have normally experienced given that in normal circumstances the Claimants' legal representatives would have unfettered, confidential access to their witness with no prison personnel observing every move and no restrictions on the number of people who can visit or the devices that can be brought.<sup>14</sup>
17. In their Reply, the Claimants note that in its Response to the Emergency Motion Mexico now appears to be stating that the Claimants' counsel, not just Mr. Cantoral, may have access to Mr. Zayas.<sup>15</sup> They posit that this access, which has not been

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<sup>11</sup> Reply on the Emergency Motion, September 19, 2022, p. 2.

<sup>12</sup> Emergency Motion, September 9, 2022, p. 3; Reply on the Emergency Motion, September 19, 2022, p. 2.

<sup>13</sup> Emergency Motion, September 9, 2022, p. 3; Reply on the Emergency Motion, September 19, 2022, p. 2.

<sup>14</sup> Emergency Motion, September 9, 2022, p. 4.

<sup>15</sup> Reply on the Emergency Motion, September 19, 2022, p. 2.

confirmed by the Reclusorio Sur, is still subject to unreasonable restrictions, such as the prohibition to use internet and any other electronic or communications devices besides a laptop.<sup>16</sup> According to the Claimants, these limitation are still prejudicial to them and inconsistent with the Tribunal's orders.<sup>17</sup>

**B. THE RESPONDENT'S POSITION**

18. The Respondent requests that the Tribunal dismiss the Emergency Motion and invite the Claimants to comply with the conditions provided for under the relevant laws and regulations to access Mr. Zayas.<sup>18</sup>
19. The Respondent argues that the Tribunal is not competent to grant the Emergency Motion because the Tribunal is not a national criminal court or authority. In particular, “[e]l Tribunal no es la instancia competente para que las Demandantes soliciten la suspensión o modificación de una medida [de] seguridad que fue impuesta al Sr. Zayas por un juez local en un procedimiento nacional ajeno a este arbitraje.”<sup>19</sup>
20. As to the case law cited by the Claimants in support of their position that the Tribunal has authority to grant the Emergency Motion, the Respondent argues that these cases only confirm the Tribunal's lack of competence.<sup>20</sup> Further, relying on the decision in *Pugachev. v. Russia*, the Respondent posits that the standard for the Tribunal to adopt a measure affecting a national criminal proceeding is a high one as it impinges on the Respondent's sovereign right and duty to investigate and prosecute crime.<sup>21</sup>

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<sup>16</sup> Reply on the Emergency Motion, September 19, 2022, p. 2.

<sup>17</sup> Reply on the Emergency Motion, September 19, 2022, pp. 2-3.

<sup>18</sup> Response on the Emergency Motion, September 14, 2022, p. 11. In its Response, the Respondent also requests that the Tribunal order the Claimants to abstain from sharing inter-partes communications with the Tribunal (*see* Response to the Emergency Motion, September 14, 2022, pp. 10-11); Rejoinder on the Emergency Motion, September 23, 2022, p. 7.

<sup>19</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 3.

<sup>20</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 5.

<sup>21</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 5 citing to *Hydro Srl. & Ors. v. Republic of Albania*, ICSID Case No. ARB/15/28, Order on Provisional Measures, March 3, 2016.

21. Moreover, the Respondent argues that the Emergency Motion seeks to improperly broaden the scope of Procedural Order No. 3, and that such an attempt ought to be accompanied by a request by the Claimants that meets the requirements for the Tribunal to grant provisional measures and by sufficient evidence on the existence of a threat attributable to the Respondent.<sup>22</sup> The Respondent argues that the Claimants have failed to show that Mexico has prevented Mr. Zayas from meeting with his legal representatives or giving testimony in this proceeding, or that the conditions imposed to access Mr. Zayas are unreasonable.<sup>23</sup>
22. The Respondent states that it has undertaken the required steps to comply with Procedural Order No. 3. According to the Respondent, once the Order was issued its legal representatives in this proceeding liaised with the relevant authorities in order to grant access to Mr. Zayas and suspend the arrest warrant issued against Mr. León.<sup>24</sup>
23. On the other hand, the Claimants waited over two months since the issuance of Procedural Order No. 3 to contact the Respondent and ask for access to Mr. Zayas.<sup>25</sup> According to the Respondent, instead of following the required procedures the Claimants sought to access Mr. Zayas under certain conditions, which are “*poco convencionales que rebasan cualquier medida razonable que una autoridad penitenciaria – ya sea en México o en cualquier otro Estado – podría realizar.*”<sup>26</sup>
24. The Respondent notes that Procedural Order No. 3 did not imply that Mr. Zayas ought to receive a preferential treatment or that the prison’s security protocols should be disregarded.<sup>27</sup>

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<sup>22</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 6.

<sup>23</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 7.

<sup>24</sup> Response on the Emergency Motion, September 14, 2022, pp. 1-2; Rejoinder on the Emergency Motion, September 23, 2022, pp. 3-4.

<sup>25</sup> Response on the Emergency Motion, September 14, 2022, p. 2.

<sup>26</sup> Response on the Emergency Motion, September 14, 2022, p. 4.

<sup>27</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 7.

25. Thus, the Respondent submits that the Claimants' counsel may meet with Mr. Zayas in accordance with the applicable rules on visitation and security protocols provided for under Mexican law. In this regard, the Respondent notes that the applicable rules provide for specific visitation hours and provisions on the place where the meetings ought to take place as well as the type of devices that can be brought to the visits.<sup>28</sup> According to the Respondent, these conditions are reasonable. For instance, the fact that the visits ought to occur at specific times is a measure that ensures the safety of visitors and prison personnel.<sup>29</sup> Further, the rules provide that laptops are allowed although with no internet access, and that prison personnel be informed of the devices that will be used as well as their purpose so that the pertinent security protocols may be conducted.<sup>30</sup> The applicable rules also preserve the privacy of the meetings between detainees and their legal representatives, and the confidentiality of these meetings as well as of the documents brought in and out of prison.<sup>31</sup>
26. According to the Respondent, these requirements are no different than the ones applicable to prisons in the United States, which, in some instances, are even more onerous than the ones imposed by the Reclusorio Sur.<sup>32</sup>
27. The Respondent invites the Claimants' counsel to send a communication to the *Secretaría de Seguridad Ciudadana* ("SCC")<sup>33</sup> in which they (i) specify the individuals who seek authorization to meet with Mr. Zayas, accredit their position as legal representatives of Mr. Zayas in the criminal proceedings and/or the arbitral proceeding, and describe their involvement in his defense; (ii) indicate the days and

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<sup>28</sup> Response on the Emergency Motion, September 14, 2022, pp. 5-6.

<sup>29</sup> Response on the Emergency Motion, September 14, 2022, p. 5.

<sup>30</sup> Response on the Emergency Motion, September 14, 2022, p. 8.

<sup>31</sup> Response on the Emergency Motion, September 14, 2022, pp. 4-5; Rejoinder on the Emergency Motion, September 23, 2022, pp. 2-3, 7-8.

<sup>32</sup> Response on the Emergency Motion, September 14, 2022, pp. 6-7.

<sup>33</sup> In its Rejoinder, the Respondent specifies that the persons of contact are: Lic. Enrique Serrano Flores, *Subsecretario de Sistema Penitenciario, Subsecretaria de Sistema Penitenciario, Secretaria de Seguridad Ciudadana*; and Dr. Óscar León Catillo, *Director Ejecutivo de Asuntos Penitenciarios, Subsecretaria de Asuntos Penitenciarios, Secretaria de Seguridad Ciudadana* (Rejoinder on the Emergency Motion, September 23, 2022, note 6).



times they intend to meet with Mr. Zayas within the established visiting hours, which are every day from 9 am to 5 pm; and (iv) indicate the number of devices (without internet) they intend to bring to the meeting and their technical characteristics (e.g., brand, model, serial number).<sup>34</sup> In its Rejoinder, the Respondent further notes that certain arrangements can be made to ensure that the transit of people in the visiting area does not affect the meetings between Mr. Zayas and the Claimants' counsel. This measure, the Respondent says, "*son una muestra de buena fe de la Demandada y de sus autoridades penitenciarias para dar cumplimiento a la RP3 sin afectar la gobernabilidad del sistema penitenciario.*"<sup>35</sup>

### III. CONSIDERATIONS

28. The Tribunal begins by recalling, as it did in Procedural Order No. 3, its power to order or recommend provisional measures under Article 1134 NAFTA, Article 47 of the ICSID Convention, and Rule 39(1) of the ICSID Rules of Arbitration.
29. The Claimants have requested the Tribunal to order the Respondent to transfer Mr. Zayas to house arrest in Mexico City, arguing that this is the "only" alternative to ensure that the Claimants' counsel have access to Mr. Zayas for the purposes of his witness statement.<sup>36</sup> According to the Claimants, the conditions offered by the Reclusorio Sur do not satisfy the standard set under Procedural Order No. 3.<sup>37</sup> Pending transfer to house arrest, they further request the Tribunal to order the Respondent to transfer Mr. Zayas to the offices of Hogan Lovells in Mexico City on the dates the Claimants require.<sup>38</sup>

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<sup>34</sup> Response on the Emergency Motion, September 14, 2022, p. 11; Rejoinder on the Emergency Motion, September 23, 2022, pp. 4-5.

<sup>35</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 4.

<sup>36</sup> Emergency Motion, September 9, 2022, p. 1; Reply on the Emergency Motion, September 19, 2022, p. 3.

<sup>37</sup> Emergency Motion, September 9, 2022, pp. 3-4.

<sup>38</sup> Reply on the Emergency Motion, September 19, 2022, p. 3.

30. The Respondent submits that it has made all the necessary efforts to comply with Procedural Order No. 3, while the Claimants have not carried out the necessary steps to meet with Mr. Zayas for the taking of his witness statement and have moreover waited considerable time to seek access to Mr. Zayas.<sup>39</sup> According to the Respondent, both the Claimants' counsel in this arbitration and Mr. Cantoral (Mr. Zayas' Mexican criminal counsel) are allowed to access Mr. Zayas at the Reclusorio Sur facilities, from 9:00 a.m. to 5:00 p.m., 365 days a year.<sup>40</sup> The Respondent further asserts that the conditions at the Reclusorio Sur facilities guarantee the confidentiality of the interactions between Mr. Zayas and his counsel, as well as of the documents and electronic devices used by counsel.<sup>41</sup> According to Mexico, the facilities have similar standards as those of other jurisdictions.<sup>42</sup>
31. In Procedural Order No. 3, the Tribunal recalled that the Mexican authorities have the duty to investigate crimes committed in areas under their jurisdiction.<sup>43</sup> However the Tribunal must exercise restraint when it comes to provisional measures affecting third parties.<sup>44</sup> It does not behove the Arbitral Tribunal to opine as to the Mexican authorities' decision to hold Mr. Zayas in custody pending criminal proceedings. This Tribunal is however concerned with the situation of Mr. Zayas, as far as it may affect his ability to render testimony in the arbitral proceedings.
32. The measure sought by the Claimants would clearly entail a significant interference with the Mexican criminal justice system in a criminal investigation involving third parties and with a complaint already active before the arbitration was initiated.<sup>45</sup> The

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<sup>39</sup> Response on the Emergency Motion, September 14, 2022, pp. 2-4; Rejoinder on the Emergency Motion, September 23, 2022, pp. 1ff.

<sup>40</sup> Response on the Emergency Motion, September 14, 2022, p. 5; Rejoinder on the Emergency Motion, September 23, 2022, p. 5.

<sup>41</sup> Response on the Emergency Motion, September 14, 2022, pp. 4 ff.

<sup>42</sup> Response on the Emergency Motion, September 14, 2022, pp. 7-8.

<sup>43</sup> Procedural Order No. 3, para. 128.

<sup>44</sup> Procedural Order No. 3, para. 128.

<sup>45</sup> Procedural Order No. 3, paras. 127, 130.

Claimants must therefore meet a high threshold to satisfy this Tribunal that the measure requested is both necessary and reasonable.

33. While undoubtedly reasonable, transferring Mr. Zayas to house arrest may not be necessarily the “only” option to take his witness statement under fair conditions. The same applies to the need to transfer Mr. Zayas to the offices of Hogan Lovells in Mexico City for the purposes of his testimony. On balance, and not without some hesitation, the Tribunal reaches the conclusion – as it is bound to in view of the comity to which the Respondent is entitled as a state – that the assurances given by the Respondent in its submissions suggest that it is willing to provide the Claimants with reasonable opportunities to meet with Mr. Zayas.<sup>46</sup> The Tribunal has no reason to question Mexico’s willingness to abide by its assurances.
34. The Tribunal underlines that Procedural Order No. 3 indicates that Mr. Zayas shall “*be able to meet with counsel and render testimony not only in **conditions similar to the ones he would have normally experienced**, but without any fear that may affect his free testimony.*”<sup>47</sup> The Tribunal was mindful then and is mindful now that the conditions of a detainee cannot be “identical” to those of a free person. Procedural Order No. 3 referred, therefore, to “similar” rather than “identical” conditions. Mexico is, however, under a strict obligation to ensure that Mr. Zayas is in a position to render entirely free testimony, without any fear that his witness statement may have consequences for him.
35. Considering the assurances offered by the Respondent in its latest submissions,<sup>48</sup> the Tribunal trusts that the Respondent will guarantee that the Claimants’ counsel team has the necessary clearance to access Mr. Zayas freely, with the equipment necessary

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<sup>46</sup> Response on the Emergency Motion, September 14, 2022, pp. 4-8; Rejoinder on the Emergency Motion, September 23, 2022, pp. 4-5.

<sup>47</sup> Procedural Order No. 3, para. 165(b) (emphasis added).

<sup>48</sup> Response on the Emergency Motion, September 14, 2022, pp. 4-8; Rejoinder on the Emergency Motion, September 23, 2022, pp. 4-5.

to receive testimony, for him to freely and safely deliver his witness statement under strict confidentiality despite him being in detention.

36. Accordingly, the Tribunal invites Mexico to guarantee that the taking of Mr. Zayas' witness statement meets at least all the following minimum requirements:

(a) A reasonable number of members of the Claimants' team of counsel (including experts) must be granted reasonably swift access to Mr. Zayas at the Reclusorio Sur facilities. Based on the Respondent's assurances, the Tribunal understands that access will be available 365 days a year from 9:00 a.m. to 5:00 p.m. (Mexico City Time). The Claimants must meet reasonable requirements for accessing the facilities. Such reasonable requirements include: (i) the identification of each member of its counsel team whose presence will be required at the meetings with Mr. Zayas; and (ii) the need to inform the Respondent prior to each meeting with sufficient anticipation, which shall not exceed 24 hours.

(b) The Claimants' counsel team must be able to enter the Reclusorio Sur facilities with the electronic devices for the recording and storage of information that are necessary to take Mr. Zayas' witness statement. The Claimants must comply with reasonable formal requirements for introducing such devices into the facility. The Tribunal understands that the Claimants will be required to provide a list identifying the electronic devices with sufficient anticipation, which shall not exceed 24 hours.

(c) The Respondent must guarantee that the electronic devices and the hard copy documents used by the Claimants' counsel at the Reclusorio Sur, as well as any information or storage contained therein, remain confidential and are not subject to any tampering, bugging, reproduction or inspection from prison personnel at the Reclusorio Sur nor by any member or representative of the Respondent.

(d) The Respondent must guarantee the confidentiality of all the meetings held between Mr. Zayas and the Claimants' counsel. No visual or audio recordings of the meetings shall be taken by personnel of the Reclusorio Sur or the Respondent.

This means that only visual surveillance (without recording) of the meetings, through a video-camera without audio recording, is allowed. The video-camera must be set in a position that avoids any observation by any means of the conversations and/or the information recorded and/or exchanged between the Claimants' counsel and Mr. Zayas. The Respondent must ensure that the conditions of the surveillance do not violate the confidentiality of the meetings and give the Claimants' counsel access to the surveillance room if asked to do so.

37. The Tribunal notes that, in its Rejoinder of September 23, 2022, the Respondent complained that the Claimants are sharing communications between the Parties with the Tribunal.<sup>49</sup> For the Respondent, this practice is contrary to para. 12.3 of Procedural Order No. 1.<sup>50</sup> The Respondent requests the Tribunal “*que ordene a las Demandantes cumplir con el ¶ 12.3 de la RPI y se abstengan de compartir con el Tribunal comunicaciones intercambiadas por las partes, lo cual es necesario para contar con un procedimiento arbitral ordenado, eficiente y evitar disrupciones procesales.*”<sup>51</sup> The Tribunal reiterates that, as established in Procedural Order No. 1, the Secretary of the Tribunal should not be copied in communications between the Parties when such communications are not intended to be transmitted to the Tribunal.<sup>52</sup>

#### IV. DECISION

38. For the above reasons, the Tribunal:
1. **Dismisses** the Claimants' **Emergency Motion** of September 9, 2022.
  2. **Orders** the Respondent to ensure that Mr. Zayas be able to meet with the Claimants' team of counsel and render testimony not only in conditions similar to

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<sup>49</sup> Rejoinder on the Emergency Motion, September 23, 2022, p. 10.

<sup>50</sup> Rejoinder on the Emergency Motion, September 23, 2022, pp. 10-11.

<sup>51</sup> Response on the Emergency Motion, September 14, 2022, pp. 10-11.

<sup>52</sup> Procedural Order No. 1, para. 12.3.

the ones he would have normally experienced, but without any fear that may affect his free testimony, in the terms specified in para. 36 above.

[Signed]

Eduardo Zuleta Jaramillo  
President of the Tribunal  
Date: September 29, 2022