

Annex I

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To the Honourable Judges of the Appeals Chamber of the International Criminal Court

Request for Leave to Reply to the Prosecutor's Response in the Matter of Recusal Proceedings in the Venezuela I Situation

Washington, DC December 2, 2024

Submitted by: Robert Carmona-Borjas and Arcadia Foundation

Honourable Judges,

On behalf of the **Arcadia Foundation**, Reference Number **VPRS-A-2023-092**, and in my capacity as a Recognized Victim under Reference Number **r/21840/23** within the *Venezuela I Situation*, I respectfully request Leave to File a Reply to the Prosecutor's Response to our Request for Recusal, submitted on November 29, 2024. This Request is made pursuant to Regulation 24(5) and Regulation 34(c) of the Regulations of the Court, underscoring the necessity of addressing the substantive issues raised in the Prosecutor's Response to ensure adherence to the Principles of Impartiality and Fairness fundamental to these Proceedings.

For purposes of procedural clarity and consistency, I inform the Appeals Chamber that "**Robert Carmona-Borjas**" as referenced in prior filings and submissions is the same individual as "**Robert Henry de Jesús Carmona-Borjas**", as recognized in the attached certified name change order issued by the **U.S. District Court for the District of Columbia** on February 26, 2019. A certified copy of this order is appended as **Annex A**.

Basis for Request

The Prosecutor's Response introduces substantive new arguments and interpretations of the Rome Statute that could not reasonably have been anticipated at the time of the initial filing. These arguments directly impact the impartiality and procedural integrity of the proceedings, and addressing them is essential to preserving the principles of justice.

Specifically, the following points necessitate a reply:

1. Misinterpretation of Article 42(8):

- The Prosecutor argues that only the person being *investigated* or *prosecuted* may request disqualification. This restrictive interpretation fails to account for the absence of explicit language precluding other parties, such as victims or civil society organizations, from raising valid concerns under Article 42.
- Our reply will demonstrate that the Rome Statute provides a broader framework, supported by Article 68's emphasis on victims' participation and the overarching principles of transparency and fairness.

2. Narrow Interpretation of “Case” in Article 42(7):

- The Prosecutor contends that Article 42(7) limits disqualification to formal “*cases*,” excluding broader situations like *Venezuela I*. This interpretation disregards the French and Spanish versions of the Rome Statute, which use “*affaire*” and “*asunto*”, terms that encompass broader “*situations*.”
- Our reply will argue that the multilingual framework and foundational principles of impartiality necessitate a broader interpretation, applicable to situations and not restricted to procedural cases.

3. Erroneous Assertion of Timeliness (Rule 34(2)):

The Prosecutor argues that the Request for Recusal was untimely. However, this argument is unfounded for the following reasons:

3.1. Prompt Submission by Arcadia Foundation:

- The Arcadia Foundation submitted the recusal request on September 8, 2024, within two days of *The Washington Post*’s public disclosure of the conflict of interest on September 6, 2024. Link to article: <https://www.washingtonpost.com/world/2024/09/06/maduro-survives-election-opposition-options/>
- This prompt action demonstrates that Arcadia acted diligently and in full compliance with Rule 34(2), which requires requests to be submitted as soon as the grounds are known.

3.2. Procedural Delays by the Prosecutor’s Office:

- Despite receiving the recusal request on September 8, 2024, the Prosecutor’s office failed to refer it to the competent judicial body.
- This delay forced Arcadia Foundation to pursue alternative channels to ensure the request’s consideration, thereby prejudicing the victims and undermining procedural fairness. Thanks to Arcadia’s efforts, we managed to have it officially admitted on November 12, 2024.

3.3. Failure to Disclose the Conflict of Interest:

- Under Article 42(5) of the Rome Statute, the Prosecutor is ethically obligated to disclose any potential conflict of interest. Despite the familial relationship between the Prosecutor and Ms. Venkateswari Alagendra, counsel for the Venezuelan regime, this conflict was not proactively disclosed.
- The Prosecutor’s opposition to the recusal request does not absolve his ethical obligation to inform all recognized victims, including Arcadia Foundation, of the conflict. This omission further hindered the ability of victims to address the issue in a timely manner.

The Prosecutor’s arguments regarding timeliness fail to account for these key facts. Arcadia Foundation submitted its request promptly upon learning of the conflict, and any subsequent delays are attributable to the Prosecutor’s failure to fulfill his ethical and procedural responsibilities.

4. Familial Connection and Perception of Bias

The Prosecutor’s assertion that the familial relationship with Ms. Venkateswari Alagendra, his sister-in-law and legal counsel for the Venezuelan regime, does not constitute a “close family relationship” under Rule 34(1)(a) is fundamentally flawed. This argument not only misinterprets the language and intent of Rule 34(1)(a) but also fails to address the ethical and procedural standards required to safeguard the impartiality and credibility of the Court.

4.1. Interpretative Consistency Across Languages

- The Rome Statute and ICC texts recognize "close family relationships" as grounds for disqualification where impartiality might reasonably be questioned. In the English version, the term "sister-in-law" directly signifies a legally and socially recognized familial connection that is often included in the category of "close family" relationships for conflict of interest purposes.
- In the French version, "*belle-sœur*," and in the Spanish version, "*cuñada*," universally confirm that such relationships are acknowledged across languages and cultures as constituting close family ties. These terms reflect the Statute's multilingual framework and the shared understanding of familial relationships that could give rise to perceptions of bias.

4.2. Ethical and Procedural Obligations

- International ethical guidelines, such as those set forth by the *International Bar Association*, recognize in-laws, including sisters-in-law, as close family members for purposes of assessing potential conflicts of interest.
- The Prosecutor's failure to disclose this familial connection, as required by Article 42(5) of the Rome Statute, constitutes a breach of ethical obligations. Transparency in identifying potential conflicts is a fundamental requirement for maintaining the integrity of ICC proceedings.
- The omission also contravenes the ICC's Code of Professional Conduct, which emphasizes the importance of avoiding not only actual bias but also any appearance of bias, particularly in cases with significant political implications like **Venezuela I**.

4.3. Reasonable Perception of Bias

- The relationship between the Prosecutor and Ms. Alagendra gives rise to a reasonable perception of bias. Ms. Alagendra's role as legal counsel for the Venezuelan regime, a central party to the *Venezuela I Situation*, exacerbates these concerns.
- Article 42(7) explicitly mandates recusal where impartiality "*might reasonably be doubted on any ground*." This is not a speculative concern but a substantive issue grounded in the familial connection and its implications for fairness and justice.
- A fair-minded and informed observer, considering the Prosecutor's familial relationship to a key representative of the Venezuelan regime, would undoubtedly conclude that there is a real possibility of bias. This perception is especially critical in politically sensitive cases, where even the appearance of partiality can damage public confidence in the Court.

4.4. Broader Impact on Judicial Integrity

- Failing to address this conflict undermines not only the impartiality of the Prosecutor but also the credibility and legitimacy of the entire judicial process. Victims, including those represented by Arcadia Foundation, have a right to expect that the Court will take all necessary steps to ensure that justice is not only done but is seen to be done.
- The **Principal Counsel of the Office of Public Counsel for Victims (OPCV)** has underscored that delays in investigations and conflicts of interest significantly harm victims' rights. Allowing the Prosecutor to remain involved despite these legitimate concerns compounds the delay in achieving justice for victims of the Venezuelan regime.
- The prolonged inaction since the referral of the *Venezuela I Situation* in 2018 amplifies these concerns. Victims' rights to truth, justice, and reparations demand urgent and decisive action, free from any perception of bias or procedural impropriety.

4.5. Relevance of Familial Ties in Judicial Settings

- Comparative international jurisprudence, including decisions from the European Court of Human Rights (*Piersack v. Belgium*, 1982) and national legal systems such as the United States, consistently include in-laws as part of the familial scope for evaluating conflicts of interest.
- This comparative perspective underscores that the familial tie between the Prosecutor and Ms. Alagendra fits within the ambit of "close family" relationships requiring scrutiny under Rule 34(1)(a). **Ignoring this precedent undermines the Court's commitment to fairness and impartiality.**

4.6. Comparative Standards and International Precedents on Familial Conflicts of Interest

While the Rome Statute provides clear guidance on impartiality and disqualification, incorporating comparative standards from international tribunals and national jurisdictions strengthens the position that the Prosecutor's familial connection to Ms. Venkateswari Alagendra constitutes grounds for recusal.

International Tribunal Standards:

- The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have recognized familial relationships as grounds for disqualification where such connections create a perception of bias. Rule 15 of the ICTY Rules of Procedure and Evidence emphasizes that any "personal interest" or "relationship" impacting impartiality necessitates disqualification.
- In *The Prosecutor v. Furundžija* (ICTY, 1995), the tribunal underscored the importance of addressing any appearance of bias to maintain public confidence in judicial processes, even in the absence of clear misconduct.
- The European Court of Human Rights (ECHR) in *Piersack v. Belgium* (1982) established that any familial ties creating a reasonable perception of partiality violate Article 6(1) of the European Convention on Human Rights, which guarantees the right to a fair trial.

National Judicial Precedents:

- In the United States, judicial disqualification extends to cases involving in-laws. Canon 3C(1) of the U.S. Code of Judicial Conduct mandates recusal where a judge's impartiality might "*reasonably be questioned*," explicitly including relationships such as "*in-laws*" within its scope.
- Similarly, the United Kingdom's common law principle of *nemo iudex in causa sua* (no one should be a judge in their own case) has been applied broadly to ensure impartiality. In *Porter v. Magill* (2002), the House of Lords held that even a reasonable perception of bias warrants recusal to uphold the integrity of proceedings.

Ethical Guidelines:

- The International Bar Association's (IBA) Guidelines on Conflicts of Interest explicitly identify in-laws as "close family," necessitating transparency and disclosure to avoid perceptions of impropriety.

Relevance to the Current Proceedings:

- The Prosecutor's claim that the familial relationship with Ms. Alagendra does not fall under "close family" is inconsistent with these comparative standards. The universally recognized significance of such relationships in judicial ethics supports the argument that the Prosecutor's involvement in Venezuela I undermines the impartiality required under Article 42(7) of the Rome Statute.

The Prosecutor's involvement in the *Venezuela I Situation*, given his familial connection to

Ms. Alagendra, contravenes the principles of impartiality enshrined in the Rome Statute. The Appeals Chamber must consider the linguistic, ethical, and procedural dimensions of this conflict to preserve the integrity of the proceedings and the trust of victims. This issue forms a critical basis for the Arcadia Foundation's request for leave to reply and underscores the necessity of recusal to ensure the fairness and transparency of the judicial process.

5. Impact on Victims' Rights and Judicial Integrity:

- As a recognized victim in the *Venezuela I Situation*, I am directly affected by the Prosecutor's involvement due to the reasonable perception of bias stemming from his familial connection to Ms. Venkateswari Alagendra, counsel for the Venezuelan regime. This relationship is contrary to the standards of impartiality required under Article 42(7) of the Rome Statute, which mandates recusal in instances where impartiality might reasonably be questioned.
- The concerns regarding impartiality are further substantiated by the views expressed by the **Principal Counsel of the Office of Public Counsel for Victims (OPCV)**, who noted in her submission dated November 22, 2024, that **the delays and lack of tangible progress in the investigation have compounded victims' sense of abandonment.**(sic) The Principal Counsel highlighted that the Prosecutor's continued emphasis on pursuing "positive complementarity"—**despite the Appeals Chamber's clear determination that Venezuela is unwilling to undertake genuine investigations or prosecutions—undermines the victims' rights to justice and reparations.**
- Moreover, the **Principal Counsel has underscored that victims' interests are profoundly impacted by delays in investigations, and that measures to address conflicts of interest, including a recusal, must not result in halting or further delaying the investigative process.** This concern is particularly acute given the protracted lack of substantive action in the *Venezuela I Situation* since its referral to the Court in 2018. Victims' fundamental rights to truth, justice, and reparations demand urgent and decisive action.
In this context, the familial relationship between the Prosecutor and Ms. Venkateswari Alagendra—counsel for the regime implicated in these proceedings—**raises legitimate and troubling questions.** This connection reasonably fuels concerns among victims that **such a relationship could contribute to procedural delays and afford undue latitude to the regime,** thereby undermining the Court's mandate to act independently and impartially. While we do not impute improper motives without clear evidence, **the APPEARANCE of such a conflict must be addressed decisively to preserve the integrity and credibility of these proceedings.**
- The Prosecutor's failure to address the reasonable perception of bias in a timely and transparent manner exacerbates the erosion of trust in the Court's processes. By not taking proactive measures to disclose and address his familial connection, the Prosecutor has undermined the very principle of impartiality that underpins the legitimacy of the ICC. This inaction, combined with the delays in the investigation, represents a failure to uphold the ethical and procedural obligations enshrined in Article 42(5) of the Rome Statute.
- In light of the above, the Appeals Chamber must ensure that any resolution of the recusal request is accompanied by measures to safeguard the victims' interests and maintain the momentum of the investigative process. This includes expediting the investigation and ensuring that any appointed deputy prosecutor is equipped and mandated to proceed without undue delay.

Legal and Procedural Relevance

The issues raised in the Prosecutor's Response transcend mere procedural technicalities and strike at the core of the principles of impartiality, transparency, and fairness that underpin the operations of the Court. A reply is essential to ensure the integrity of these proceedings and to address the following critical objectives:

1. Upholding Victims' Rights:

Victims' rights, as enshrined in Article 68 of the Rome Statute, obligate the Court to ensure that their voices are heard and their concerns are addressed. The arguments presented by the Prosecutor risk marginalizing the role of victims, undermining their ability to seek justice, truth, and reparations. A reply is necessary to reaffirm the centrality of victims in these proceedings and to safeguard their procedural and substantive rights.

2. Rectifying Misinterpretations of the Rome Statute:

The Prosecutor's Response introduces interpretations of Articles 42(7), 42(8), and Rule 34(1)(a) that are inconsistent with the intent and spirit of the Rome Statute. These misinterpretations could set a dangerous precedent, eroding the Statute's foundational principles of impartiality and accountability. Addressing these errors is imperative to protect the Court's mandate and its credibility in administering justice for crimes of the gravest concern.

3. Ensuring Procedural Integrity and Judicial Legitimacy:

The Appeals Chamber must have a comprehensive understanding of the factual and legal issues at stake, especially when they pertain to potential conflicts of interest involving the Prosecutor. The integrity of the Court's processes and the trust of the international community hinge on its ability to address concerns of impartiality transparently and decisively. Failure to engage with these critical matters risks diminishing public confidence in the Court's role as an impartial arbiter of justice.

4. Advancing the Court's Commitment to Fairness:

By granting leave to reply, the Appeals Chamber would affirm its commitment to fairness, ensuring that all parties, including victims, have a meaningful opportunity to address substantive issues raised in the proceedings. This aligns with the Court's duty to ensure that **justice is not only done but also seen to be done**.

Proposed Scope of Reply

The reply will address exclusively the new and substantive issues raised in the Prosecutor's Response, ensuring that it remains concise, directly relevant, and procedurally focused. By adhering strictly to the points outlined above, this reply will respect the Court's requirement to limit submissions to unforeseen arguments and issues, thereby avoiding unnecessary repetition of matters previously addressed.

This approach underscores our commitment to procedural efficiency and ensures that the Appeals Chamber is presented with a clear and precise analysis of the critical issues affecting the fairness and impartiality of these proceedings.

Request

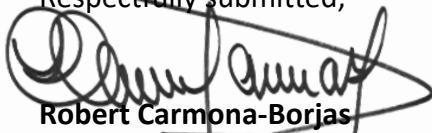
In light of the foregoing arguments and the fundamental importance of addressing the new

and substantive issues raised in the Prosecutor's Response, I respectfully request the Honourable Appeals Chamber to grant leave for the submission of a reply.

This reply will be filed within the timeframe specified by the Chamber and will focus exclusively on the points outlined, ensuring procedural efficiency and adherence to the Court's requirements.

Thank you for your consideration of this matter. I remain at the disposal of the Court should further clarification or information be required.

Respectfully submitted,



Robert Carmona-Borjas

On behalf of **Arcadia Foundation**

and in my capacity as a recognized victim

(Victim Reference: **r/21840/23, VPRS-A-2023-092**)

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Attachments:

Annex A: Certified Name Change Order (U.S. District Court for the District of Columbia).

Annex B: VPRS acknowledgment of victim status under reference r/21840/23.