

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Juan Carlos Argüello and Ernesto Argüello

v.

Republic of Panama

(ICSID Case No. ARB/25/39)

PROCEDURAL ORDER NO. 4
Decision on the Claimants' Application to Exclude Jana & Gil Dispute Resolution as
Counsel for the Respondent

Members of the Tribunal:

Prof. Alfredo Bullard González, President
Prof. Dr. Stephan Schill, Arbitrator
Prof. Dr. Chiara Giorgetti, Arbitrator

Secretary of the Tribunal

Ms. Laura Arboleda Gutiérrez

2 September 2026

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1. This Procedural Order No. 4 is issued by the Tribunal in relation to the application filed on 31 July 2026 by Mr. Juan Carlos Argüello and Mr. Ernesto Argüello (the “**Claimants**”) requesting the Tribunal to exclude Jana & Gil Dispute Resolution (“**Jana & Gil**”), or, at minimum Mr. Andrés Jana, as counsel for the Republic of Panama (the “**Respondent**”) in the present proceedings.

I. PROCEDURAL HISTORY

2. On 31 July 2025, the Claimants filed their Request for Arbitration (“**RfA**”) under Article 10.16.4 of the United States – Panama Trade Promotion Agreement dated 28 June 2007, which has been in force since 31 October 2012 (“**TPA**”).
3. On 11 August 2025, the ICSID Acting Secretary-General registered the RfA under Article 36(3) of the ICSID Convention.
4. By communication dated 12 December 2025, ICSID informed the Parties that the Tribunal was deemed to have been duly constituted, with Prof. Alfredo Bullard González as President, Prof. Dr. Stephan Schill as arbitrator appointed by the Claimants, and Prof. Dr. Chiara Giorgetti as arbitrator appointed by the Respondent.
5. On 13 March 2026, the Tribunal issued Procedural Orders Nos. 1 and 2, setting out the procedural rules governing this arbitration and the applicable transparency regime, respectively.
6. On 30 March 2026, the Tribunal issued Procedural Order No. 3, in which it decided on the Respondent’s application to exclude Ms. Cristina Ferraro as counsel for the Claimants.
7. On 24 July 2026, the Respondent instructed Jana & Gil as co-counsel in the present proceedings, submitting a power of attorney dated that same date, signed on behalf of the Republic of Panama by the Minister of Economy and Finance, Mr. Felipe E. Chapman A. The power of attorney was signed by Mr. Rodrigo Gil Ljubetic and Mr. Francisco José Grob Duhalde on behalf of Jana & Gil. Respondent additionally requested that Mr. Andrés Jana Linetzky, Mr. Rodrigo Gil Ljubetic, and Mr. Francisco Grob Duhalde be added to the list of party representatives and granted access to the case’s Box repository.
8. On the same day, the Respondent filed its Request for Bifurcation, co-signed by Jana & Gil.
9. On 26 July 2026, the Claimants requested that the “Tribunal temporarily refrain from reading Respondent’s Request for Bifurcation” so that they could “have a reasonable opportunity to assess the situation and consider any disclosures that the Members of the Tribunal may make” regarding the designation of Jana & Gil as counsel, noting that the Respondent appeared to have violated its duty to promptly notify the designation of counsel

pursuant to paragraph 8.1 of Procedural Order No. 1.

10. On 27 July 2026, ICSID transmitted additional disclosures from the members of the Tribunal in connection with the Respondent's instruction of Jana & Gil:
 - (i) Prof. Bullard disclosed that: (a) Mr. Jana was appointed as arbitrator by the claimant in a commercial arbitration in which a team from Bullard Falla Ezcurra+ ("BFE+") led by Prof. Bullard represents the claimant, where proceedings are closed and the award is expected in the last quarter of 2026; (b) Mr. Jana was appointed as arbitrator by the respondent in a commercial arbitration where the tribunal issued its award in June 2026 and is *functus officio*, and where BFE+ acts as counsel for the respondent, with no involvement of Prof. Bullard; and (c) Prof. Bullard was recently included in the strike-and-rank list for presiding arbitrator of an ICSID case, in which a Jana & Gil team (not including Mr. Jana) represents the respondent, with the selection process still ongoing.
 - (ii) Prof. Schill disclosed that: (a) Jana & Gil appears before him as counsel in an ongoing ICSID arbitration; (b) Jana & Gil appeared before him in an ICSID arbitration that concluded earlier in 2026; and (c) Mr. Jana and Prof. Schill served together on a tribunal in an investment treaty arbitration that had concluded in 2022.
 - (iii) Prof. Giorgetti did not identify any circumstances requiring disclosure in relation to the instruction of Jana & Gil by the Respondent.
11. On 27 July 2026, the Respondent denied any breach of paragraph 8.1 of Procedural Order No. 1, stating that it had promptly notified the designation of Jana & Gil, and reiterated its request to include them in the list of party representatives and grant them access to the case's Box repository.
12. Also on 27 July 2026, the Claimants objected to the inclusion of Jana & Gil in the aforementioned list and repository until they "have had the opportunity to assess all aspects of this designation and the disclosures conveyed" by the Tribunal.
13. On 28 July 2026, the Tribunal invited the Respondent to submit any further observations on the Claimants' communications of 26 July 2026.
14. On 30 July 2026, the Respondent submitted observations and ratified its request to include Jana & Gil in the list of party representatives and the case's Box repository.
15. On 31 July 2026, the Claimants filed their observations requesting that the Tribunal refuse the designation of Jana & Gil (or at minimum Mr. Jana) (the "**Application**") based on the grounds set out in the following Section.
16. On 3 August 2026, the Respondent requested leave from the Tribunal to file its response to the Application by 6 August 2026.

17. On 3 August 2026, the Tribunal granted the Respondent leave to file its response by 6 August 2026; acknowledged receipt of the Respondent's Request for Bifurcation, noting that such request and the "Claimants' request concerning Jana & Gil concern separate matters"; and, pending the determination of the Application, decided not to take any decision regarding Jana & Gil's access to the case record, including access to the case's Box repository.
18. On 6 August 2026, the Respondent filed its response opposing the Application in its entirety.
19. On 10 August 2026, the Claimants informed the Tribunal that they would not be seeking leave to reply to the Respondent's response to the Application.
20. On the same day, the Parties were informed that Prof. Bullard was no longer under consideration on the strike-and-rank list process in the ICSID case referenced in his third disclosure and were directed to comment on this development by 11 August 2026.
21. The Respondent submitted its observations to Prof. Bullard's updated disclosure on 10 August 2026, while the Claimants submitted theirs on 11 August 2026.

II. THE PARTIES' POSITIONS

22. The following section summarizes the Parties' positions regarding the Application. The Tribunal has duly considered all arguments, observations, and communications submitted by the Parties. The following summary does not constitute an exhaustive description of all allegations made but rather aims to faithfully reflect the main points raised by the Parties.

A. The Claimants' Position

23. The Claimants submit that the Tribunal's power under paragraph 8.2 of Procedural Order No. 1 is not confined to conflicts of interest *stricto sensu* but extends to any circumstances giving rise to an appearance of impropriety.¹
24. The Claimants request the exclusion of Jana & Gil (or at minimum Mr. Jana) on three grounds: (i) Prof. Bullard's 27 July 2026 disclosures; (ii) the timing and alleged concealment of Jana & Gil's instruction as counsel; and (iii) the instruction of Jana & Gil as counsel for Honduras in a separate ICSID arbitration brought by the Claimants (the "**Honduras Arbitration**").²
25. *On the first ground*, the Claimants submit that the disclosed relationships between Prof. Bullard and Mr. Jana "potentially creat[e] perverse incentives and moral hazard that would

¹ Claimants' Application dated 31 July 2026, p. 1.

² Claimants' Application dated 31 July 2026, pp. 2–4.

not otherwise exist”.³ Specifically, the Claimants argue that Prof. Bullard and Mr. Jana would concurrently be deciding a matter in which the other has an interest as counsel, creating an appearance of impropriety under the standard established in Procedural Order No. 3.⁴ The Claimants state, for the avoidance of doubt, that they do not argue that these circumstances by themselves constitute a conflict of interest within the meaning of Articles 57 and 14(1) of the ICSID Convention, Article 4 of the UNCITRAL Code of Conduct, or the IBA Guidelines on Conflicts of Interest, nor do they question the President’s capacity to serve as an independent and impartial arbitrator.⁵

26. The Claimants contend that this situation is “far more problematic” than Ms. Ferraro’s case addressed in Procedural Order No. 3, because, unlike the expert engagement at issue there, Prof. Bullard and Mr. Jana concurrently serve as arbitrator and counsel in cases involving the respective other.⁶
27. The Claimants acknowledge that this situation is not captured by the IBA Guidelines on Conflicts of Interest but submit that it falls within the broader appearance-of-impropriety standard articulated in Procedural Order No. 3.⁷
28. In support of the moral hazard argument, the Claimants rely on academic commentary to the effect that arbitrators “may have incentives to decide in favour” of another lawyer, giving rise to an “apprehension of bias” grounded in the arbitrator’s “financial stake”, and on the warning against “instances of unscrupulous individuals offering, perhaps no more than implicitly, iniquitous bargains: ‘I will see it your way when I preside and you as co-arbitrator want a particular outcome; and I will then count on you when our roles are reversed’”, which “can lead to a series of unanimous awards without the slightest indication” of the trade-off.⁸
29. *On the second ground*, the Claimants argue that the Respondent deliberately concealed Jana & Gil’s involvement in a manner analogous to the aggravating circumstances identified in *HEP v. Slovenia*, namely “the belated disclosure of counsel’s involvement long after the appointment had been made, a party’s conscious decision not to inform the opposing party or the tribunal of the appointment at the time it was made, and the refusal to disclose the scope of counsel’s role”.⁹

³ Claimants’ Application dated 31 July 2026, p. 3.

⁴ Claimants’ Application dated 31 July 2026, pp. 2–4.

⁵ Claimants’ Application dated 31 July 2026, pp. 2–3.

⁶ Claimants’ Application dated 31 July 2026, p. 3.

⁷ Claimants’ Application dated 31 July 2026, p. 3; Procedural Order No. 3 dated 30 March 2026, ¶ 63.

⁸ W. Park, *Arbitrator Bias*, Boston Univ. Sch. of Law, Pub. L. & Legal Theory Research Paper No. 15-39 (2015), p. 25; J. Paulsson, *Moral Hazard in International Dispute Resolution*, Inaugural Lecture as Holder of the Michael R Klein Distinguished Scholar Chair, 2010, p. 12. Claimants’ Application dated 31 July 2026, p. 3, fn. 4.

⁹ Claimants’ Application dated 31 July 2026, p. 2, citing Procedural Order No. 3 reference to *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal’s Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶¶ 11, 31.

30. In particular, the Claimants point to the fact that Jana & Gil was designated on Friday, 24 July 2026, on the basis of a power of attorney dated that same date—more than eleven months after the registration of the arbitration, more than seven months after the constitution of the Tribunal, and more than four months after the issuance of Procedural Order No. 1—and that a few hours later that same day the Respondent filed its 33-page Request for Bifurcation, co-signed by Jana & Gil.¹⁰ Further, the Claimants represent that the Request for Bifurcation filed by the Respondent already included an objection substantively identical to one in the “yet-unpublished Counter-Memorial in the Honduras Arbitration”, which suggests that Jana & Gil was working on the Request for Bifurcation long before the execution of the power of attorney.¹¹
31. Thus, the Claimants submit that Jana & Gil must have been working on the case well before the power of attorney was signed, in violation of paragraph 8.1 of Procedural Order No. 1, which requires prompt notification of changes in party representation.¹² They add that the Respondent has refused to disclose the scope of Jana & Gil’s involvement, including in its letter of 30 July 2026.¹³
32. The Claimants further note that they had repeatedly asked the Respondent about the designation of external counsel throughout the proceedings, but that the Respondent had not promptly notified the designation of Jana & Gil.¹⁴ The Claimants identify those occasions as 7 November 2025, in the context of the process to appoint the presiding arbitrator; January 2026, in the context of the discussions relating to Procedural Order No. 1 and the First Session; and 14 July 2026, in response to which the Respondent stated that it had “started the selection process for appointing external Counsel”, that “no power of attorney has been signed yet”, and that it would inform the Claimants and the Tribunal promptly upon completion of its internal process. The Claimants state that the Respondent has been evasive and disingenuous in not providing a clear response.¹⁵
33. The Claimants argue that, while the Respondent seeks coverage behind the formal signature of a power of attorney, at no point does it acknowledge when Jana & Gil was instructed and began work on the matter; that paragraph 8.1 of Procedural Order No. 1 does not make the designation of counsel contingent on a signed power of attorney; and that the spirit of the provision is that a designation be notified “promptly” upon becoming effective.¹⁶
34. *On the third ground*, the Claimants submit that Jana & Gil represents Honduras in the Honduras Arbitration, brought by the same Claimants.¹⁷

¹⁰ Claimants’ Application dated 31 July 2026, p. 3.

¹¹ Claimants’ Application dated 31 July 2026, p. 3.

¹² Claimants’ Application dated 31 July 2026, pp. 3–4; Procedural Order No. 1 dated 13 March 2026, ¶ 8.1.

¹³ Claimants’ Application dated 31 July 2026, pp. 3–4.

¹⁴ Claimants’ Application dated 31 July 2026, p. 4.

¹⁵ Claimants’ Application dated 31 July 2026, pp. 3–4.

¹⁶ Claimants’ Application dated 31 July 2026, p. 4.

¹⁷ Claimants’ Application dated 31 July 2026, p. 4.

35. The Claimants invoke *Einarsson v. Canada* (“*Einarsson*”), arguing that there is a material risk of misuse of confidential information because Jana & Gil is opposing counsel to the same Claimants in two proceedings simultaneously.¹⁸ According to the Claimants, this dual representation could chill their rights to present arguments and information freely in the present proceedings.¹⁹ They submit that the *Einarsson* test does not require proof that confidential information has in fact been passed, but only “a real risk to this effect”, and that the present situation is far more serious than in *Einarsson*: whereas in that case the challenged attorney had initially been aligned with the party seeking her exclusion, here Jana & Gil is adverse to the Claimants at all relevant times and therefore has a consistent incentive to act against them.²⁰
36. The Claimants add that, to their knowledge, this would be the first ICSID case in which a law firm simultaneously represents two different State respondents against claims brought by the same investor claimants, and that an objective observer could reasonably conclude either that Jana & Gil would be tempted to make improper use of confidential information across the two cases, or that the Claimants would be improperly inhibited in developing their case because of such concerns.²¹
37. The Claimants submit that the appropriate remedy consistent with Procedural Order No. 3 is the exclusion of Jana & Gil from the case or, at minimum, the exclusion of Mr. Jana until he is no longer serving as arbitrator in the case disclosed by Prof. Bullard, where the award is scheduled for the last quarter of 2026.²²

B. The Respondent’s Position

38. The Respondent opposes the Application in its entirety.
39. The Respondent recalls that paragraph 8.1 of Procedural Order No. 1 provides that each Party “shall be represented by its counsel and may designate additional agents, counsel or advocates by notifying the Tribunal Secretary promptly of such designation”, while paragraph 8.2 empowers the Tribunal to refuse the designation of new counsel should it “create a conflict of interest with one or more Members of the Tribunal”.²³ In applying that provision, the Respondent notes that the Tribunal held in paragraph 63 of Procedural Order No. 3 that “the relevant standard is whether the circumstances give rise to an appearance of impropriety that could compromise the integrity of the proceedings, assessed from the

¹⁸ Claimants’ Application dated 31 July 2026, pp. 4–5, citing *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants’ Motion to Disqualify Counsel, 24 February 2022, ¶¶ 143, 167.

¹⁹ Claimants’ Application dated 31 July 2026, p. 5.

²⁰ *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants’ Motion to Disqualify Counsel, 24 February 2022, ¶¶ 143, 167.

²¹ Claimants’ Application dated 31 July 2026, p. 5.

²² Claimants’ Application dated 31 July 2026, p. 5.

²³ Respondent’s Communication dated 6 August 2026, pp. 1-2.

perspective of a reasonable and informed third-party observer”.²⁴

40. On that basis, the Respondent submits that the power to refuse the designation of counsel under paragraph 8.2 of Procedural Order No. 1 is exceptional in nature. Relying on *Rompetrol v. Romania*, the Respondent argues that such a power is “by definition a weighty instrument”, whose exercise is justified only by “an overriding and undeniable need to safeguard the essential integrity of the entire arbitral process”, and which may be exercised only “in extraordinary circumstances, these being circumstances which genuinely touch on the integrity of the arbitral process as assessed by the Tribunal itself”; and that the “mere subjective claim by one Party [...] can clearly not suffice”.²⁵
41. *On the first ground*, the Respondent points to paragraph 67 of Procedural Order No. 3, which itself classified multiple appointments as arbitrator by the same law firm as “qualitatively different because an arbitrator is independent and has no task-specific obligations *vis-à-vis* counsel”.²⁶
42. The Respondent also notes that the two commercial cases disclosed by Prof. Bullard are either concluded (*functus officio*) or closed with the award pending, from which the Respondent infers that there is no immediate or concurrent interaction between the President and Mr. Jana in either case that could create any appearance of impropriety.²⁷
43. Additionally, in its communication of 10 August 2026, the Respondent noted that, in its view, Prof. Bullard’s removal from the strike-and-rank list eliminates the third disclosed circumstance entirely.²⁸
44. Finally, the Respondent states that the disclosed relationships between Prof. Bullard and Mr. Jana are qualitatively different from those between Prof. Bullard and Ms. Ferraro, addressed in Procedural Order No. 3. In the Respondent’s view, unlike the President’s instruction as expert by Ms. Ferraro, there is no concurrent, contractual, remunerated relationship with instructions flowing between the President and Mr. Jana.²⁹
45. *On the second ground*, the Respondent states that, pursuant to paragraphs 95 and 96 of Procedural Order No. 3, it had no obligation to consult with the Claimants before designating its external counsel,³⁰ and that it notified the designation as soon as practicable.
46. On the exchanges with the Claimants regarding the designation of its external counsel, the

²⁴ Respondent’s Communication dated 6 August 2026, p. 2.

²⁵ Respondent’s Communication dated 6 August 2026, pp. 1-3; *The Rompetrol Group N.V. v. Romania* (ICSID Case No. ARB/06/3), Decision of the Tribunal on the Participation of a Counsel, 14 January 2010, ¶¶ 15–16.

²⁶ Respondent’s Communication dated 6 August 2026, p. 3.

²⁷ Respondent’s Communication dated 6 August 2026, pp. 4-5.

²⁸ Respondent’s Communication dated 10 August 2026.

²⁹ Respondent’s Communication dated 6 August 2026, p. 6.

³⁰ Respondent’s Communication dated 6 August 2026, pp. 7-8; Procedural Order No. 3 dated 30 March 2026, ¶¶ 95–96.

Respondent states that, at the time of the Claimants' inquiries of 7 November 2025 and January 2026, which the Claimants invoke as evidence of concealment, it had not yet initiated a selection process and had so informed the Claimants. Upon being asked again on 14 July 2026, the Respondent states it replied that same day that the selection process was under way, that the power of attorney had not been signed, and that it would inform the Tribunal and the Claimants as soon as that internal procedure were to conclude. The Respondent notes that the Claimants did not revert or seek clarification in relation to that communication. Finally, on 24 July 2026, after the execution of the corresponding power of attorney, the Respondent notified the Centre of the designation of Jana & Gil. According to the Respondent, the designation was notified without undue delay and in the terms of paragraph 8.1 of Procedural Order No. 1.³¹

47. The Respondent adds that it is standard practice for the Investment Arbitration Office of the Republic of Panama to act without external counsel during the initial stages of an arbitration, including the constitution of the tribunal, the negotiation of procedural orders, and the filing of submissions such as objections for manifest lack of legal merit, requests for security for costs, and requests for bifurcation. In its submission, the fact that Panama's internal administrative and budgetary processes coincided with the deadline for the Request for Bifurcation reflects its intention to complete the designation of its external counsel before that deadline expired, rather than the policy of concealment alleged by the Claimants.³²
48. The Respondent distinguishes *HEP v. Slovenia* from the present situation, arguing that, while the instant proceedings are in an early stage, in *HEP v. Slovenia* the incorporation of Mr. David Mildon QC—a member of the same chambers as the President of the tribunal—became known only through the list of attendees to the hearing, some ten days before it was due to begin, and that it was that belated incorporation, the conscious decision not to communicate it at the time, the refusal to disclose the scope of his intervention, and the difficulty all of this created in the face of an imminent hearing that led that tribunal to bar Mr. Mildon's continued participation.³³
49. The Respondent further submits that even if there had been a late notification, which it denies, Procedural Order No. 3 held that aggravating circumstances bear on "the calibration of the appropriate remedy, not on the existence of an appearance concern".³⁴
50. The Respondent adds that this is consistent with *Pildegovics v. Norway*, where the tribunal expressed concern that the involvement of a law firm had been revealed only in the costs

³¹ Respondent's Communication dated 6 August 2026, pp. 6–7.

³² Respondent's Communication dated 6 August 2026, pp. 6–7; *Petaquilla Minerals Ltd. v. Republic of Panama* (ICSID Case No. ARB/24/12).

³³ Respondent's Communication dated 6 August 2026, pp. 6–7, citing *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal's Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶¶ 3, 11, 31.

³⁴ Respondent's Communication dated 6 August 2026, p. 8; Procedural Order No. 3 dated 30 March 2026, ¶ 86.

submission filed after the hearing, declaring itself “disturbed” by the late disclosure and by the breach of provisions of Procedural Order No. 1 in that arbitration, and yet declined to exclude the firm, holding that in order to take “the drastic step of excluding” an adviser, “something more is required to show that there is a real risk to the integrity of the proceedings”.³⁵

51. *On the third ground*, the Respondent submits that *Einarsson* is distinguishable representing that, in that case, the claimants had transmitted confidential information concerning the arbitration itself to the litigation funder at which the person subsequently incorporated into Canada’s legal team worked, and the tribunal considered that her participation in meetings and internal confidential information circuits gave rise to a real risk that she had received or might recall information of significance for the arbitration. Here, according to the Respondent, Jana & Gil has never had any professional or fiduciary relationship with the Claimants, and represents two States whose interests *vis-à-vis* the same investor are in its view parallel rather than adverse to one another, so that there is no divided loyalty to preserve beyond the obligations applicable in each proceeding.³⁶
52. The Respondent further submits that the *Einarsson* test is not satisfied by the invocation of a mere risk: it requires “clear evidence of a material risk that [counsel] have received confidential information from Claimants about the dispute that could be of significance in the present proceedings”, and that decision adds that “clear evidence is required to disqualify counsel, as a party cannot be prevented from access to its chosen counsel on the basis of mere appearances”.³⁷ In the Respondent’s submission, the Claimants have not identified a single document, communication, or non-public fact of their own that Jana & Gil is said to have received irregularly, nor from whom, when, or in breach of which duty of confidence.³⁸
53. The Respondent further contends that the Honduras Arbitration is subject to the Dominican Republic – Central America – United States Free Trade Agreement (“**DR-CAFTA**”) transparency obligations, which require, similarly to Article 10.21 of the TPA, pleadings, memorials and briefs, minutes or transcripts, and orders, awards, and decisions to be made public, subject only to information expressly designated as protected.³⁹ It states that the Claimants themselves confirm these transparency obligations by describing Honduras’

³⁵ Respondent’s Communication dated 6 August 2026, p. 8; *Peteris Pildegovics and SIA North Star v. Kingdom of Norway* (ICSID Case No. ARB/20/11), Procedural Order No. 9 dated 23 February 2023, ¶¶ 22-27.

³⁶ Respondent’s Communication dated 6 August 2026, pp. 8–9, distinguishing *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants’ Motion to Disqualify Counsel, 24 February 2022, ¶ 170.

³⁷ *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants’ Motion to Disqualify Counsel, 24 February 2022, ¶¶ 143, 170.

³⁸ Respondent’s Communication dated 6 August 2026, p. 9.

³⁹ Respondent’s Communication dated 6 August 2026, p. 9 and fn. 32 citing DR-CAFTA, Article 10.21 and the Honduras Arbitration Procedural Order No. 01 (public on ICSID website).

submissions as “as-yet-unpublished.”⁴⁰ The Respondent further submits that the preliminary objection raised in its Request for Bifurcation that the Claimants cite as “identical” to one raised in the Honduras Arbitration is based on publicly available information, including official records, regarding the Claimants’ nationality.⁴¹

54. The Respondent submits that Jana & Gil’s designation in the Honduras Arbitration bears no relevance to this case, and that no risk of a confidentiality breach arises notwithstanding that the claimants are the same in both proceedings. The Respondent notes that, as with Jana & Gil in this situation, White & Case LLP, the firm representing the Claimants, has acted on numerous occasions for different investors in arbitrations against the same State, including at least five pending arbitrations against the Republic of Honduras, and that it currently acts in two pending proceedings against the Republic of Panama, with at least one of the two counsel signing the Application forming part of that team. In the Respondent’s submission, no confidentiality risk arises from counsel acting in multiple cases against the same party.⁴²
55. Finally, the Respondent submits that the remedy sought is in any event manifestly inappropriate. It recalls that the Tribunal considered the exclusion of Ms. Ferraro not to be disproportionate because it concerned a single lawyer, did not affect the remaining counsel of Miranda Amado, and left the Claimants with “the full support of White & Case LLP as lead counsel” at an early stage of the proceedings. Here, by contrast, Jana & Gil is the Respondent’s only external counsel, so that its exclusion would leave Panama without any external representation in a phase with a pending bifurcation request whose calendar is running, which the Respondent contends would breach its right to due process.⁴³

III. THE TRIBUNAL’S ANALYSIS

56. The Tribunal has carefully considered the Parties’ submissions and the record before it. The question before the Tribunal is whether Jana & Gil (or Mr. Jana individually) should be excluded from participating as counsel for the Respondent in the present proceedings.

A. The Applicable Standard

57. As the Tribunal explained in Procedural Order No. 3, its authority to rule on the participation of counsel in proceedings before it derives from paragraph 8.2 of Procedural Order No. 1, read together with Article 44 of the ICSID Convention.
58. That authority, as the Tribunal further explained, is not confined to conflicts of interest. While paragraph 8.2 of Procedural Order No. 1 refers to a conflict of interest, the instruments to which that provision refers recognize a broader duty to safeguard the

⁴⁰ Respondent’s Communication dated 6 August 2026, p. 9.

⁴¹ Respondent’s Communication dated 6 August 2026, pp. 9–10.

⁴² Respondent’s Communication dated 6 August 2026, p. 10, and fn. 35.

⁴³ Respondent’s Communication dated 6 August 2026, p. 11.

integrity of the proceedings and to avoid not only actual conflicts of interest, but also an appearance of impropriety. The Tribunal accordingly recalls that, pursuant to paragraph 63 of Procedural Order No. 3, the relevant standard to decide on an application to exclude counsel is not limited to actual conflicts of interests of members of the Tribunal resulting from the appointment of counsel and it includes “whether the circumstances give rise to an appearance of impropriety that could compromise the integrity of the proceedings, assessed from the perspective of a reasonable and informed third-party observer”.⁴⁴ A party’s subjective concern does not by itself suffice.

59. In that context, the Tribunal notes that, while the standard is not confined to conflicts of interest *stricto sensu* but extends to any circumstances giving rise to an appearance of impropriety, the refusal of a party’s designation of counsel is an exceptional measure. As the tribunal in *Rompetrol v. Romania* observed, the power “to exercise a control over the representation of the parties in proceedings before it is by definition a weighty instrument”, whose exercise is justified only by “an overriding and undeniable need to safeguard the essential integrity of the entire arbitral process”, and which “would fall to be exercised rarely, and then only in compelling circumstances”.⁴⁵

B. Analysis of the grounds in the Application

1. First Ground: Prof. Bullard’s disclosures

60. The Tribunal turns first to the Claimants’ submission that the disclosed relationships between Prof. Bullard and Mr. Jana could potentially create perverse incentives and moral hazard that give rise to an appearance of impropriety.

61. The question before the Tribunal is not principally whether the present circumstances resemble or differ from those of the facts that gave rise to Procedural Order No. 3. Such an analysis may be illustrative of the scope of the applicable standard, particularly in light of the references made by the Parties in their submissions regarding the scope of Procedural Order No. 3. However, what is truly relevant is the application of the standard as explained in the preceding Section of this Procedural Order.

62. The question is, therefore, if in the eyes of a reasonable and informed third-party observer, there is a justified reason capable of reasonably giving rise to an appearance of impropriety arising from Prof. Bullard’s disclosures relating to Mr. Jana. For the reasons set out below, the Tribunal is not persuaded that the circumstances disclosed by Prof. Bullard give rise to such an appearance, whether in respect of Jana & Gil or of Mr. Jana individually.

63. *First*, on the specific circumstances of the case at hand, the Tribunal notes that the

⁴⁴ Procedural Order No. 3 dated 30 March 2026, ¶ 63.

⁴⁵ *The Rompetrol Group N.V. v. Romania* (ICSID Case No. ARB/06/3), Decision of the Tribunal on the Participation of a Counsel, 14 January 2010, ¶ 16.

proceedings in the only ongoing commercial arbitration in which Prof. Bullard serves as counsel and Mr. Jana serves as arbitrator have closed and the dispute is awaiting the rendering of the award. In the second disclosed commercial arbitration, in turn, the award has already been issued, with the tribunal in that case having become *functus officio*.

64. Hence, there is no foreseeable concurrency between the President's and Mr. Jana's roles as arbitrator and counsel, which eliminates the concurrency concern raised by the Claimants. In this sense, the present Application differs from the Tribunal's analysis in Procedural Order No. 3, where it stated that, without more, no appearance of conflict or impropriety arises from a relationship between an arbitrator and a law firm appearing before that arbitrator that subsists after an arbitration has concluded. No live interaction remains that could create the appearance of improper behavior in the interactions between Prof. Bullard and Mr. Jana.⁴⁶
65. The timing of the proceedings supports this conclusion. The ongoing commercial proceedings are at a stage where no expected *quid pro quo* or reciprocal incentive can arise. The award in that case is imminent (expected in the last quarter of 2026), while the present arbitration will continue for a considerably longer period. There is thus no temporal overlap that could give rise to an expectation of mutual accommodation.
66. In this connection, the Tribunal considers the reasoning in *SGS v. Pakistan* illustrative of the threshold required to establish a *quid pro quo* concern. Mere overlap between the roles of arbitrator and counsel does not suffice; at least indicia of such a concern must be shown. As that tribunal in *SGS* held, an understanding, express or implicit, that each would vote in favour of the other's client in the sense of "reciprocal partisanship" is precisely what the Claimant needs to show if its challenge is to prosper", and it is not enough that a party "merely supposes the existence of what it must prove".⁴⁷
67. The Tribunal is mindful that *SGS* concerned a proposal to disqualify an arbitrator, whereas the present Application concerns an alleged appearance of impropriety arising from a possible *quid pro quo* between Prof. Bullard and Mr. Jana in connection with the ongoing commercial arbitration. The Tribunal nonetheless considers the reasoning in *SGS* applicable by analogy. Transposed to the present standard, what must be shown is not proof of an actual understanding between Prof. Bullard and Mr. Jana, but at least indicia from which a reasonable and informed third-party observer could conclude that there is a real possibility that such an understanding exists. No such indicia are present on the record before the Tribunal.
68. *Second*, the Tribunal must address the nature of the relationship between the sitting

⁴⁶ Procedural Order No. 3 dated 30 March 2026, ¶¶ 72, 87–89 (where the concurrent, contractual, remunerated nature of the expert engagement and the intensity of counsel-expert interaction were central to the finding of an appearance concern).

⁴⁷ *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/01/13), Decision on Claimant's Proposal to Disqualify Arbitrator, 19 December 2002, ¶¶ 25–26.

arbitrator and the counsel whose exclusion is requested. Fundamentally, the Tribunal observes that where two practitioners simultaneously serve as arbitrator in one proceeding and as counsel in another unrelated proceeding before the other, the mere fact of that overlap does not, by its nature, create a channel through which one could influence the other's decision-making as arbitrator in a manner that may give rise to an appearance of impropriety.

69. The Tribunal recalls that arbitrators are bound by duties of independence and impartiality. They shall not engage in any direct interaction with counsel or the parties outside the procedural framework established, no instructions flow in either direction, nor do they owe, or may they assume, any obligation of loyalty or deference towards them. Indeed, unlike the relationships between an instructing counsel and an expert, in this case the arbitrator-counsel dynamic involves no direct line of communication, no instructions flowing in either direction and no joining preparation leading up to a hearing.
70. For the avoidance of doubt and considering that the Parties have referred to this issue in their positions, the Tribunal clarifies that the relationship between an arbitrator and counsel appearing before another tribunal in which that arbitrator serves is qualitatively different from the expert-counsel relationship that gave rise to the appearance concern in Procedural Order No. 3. In that decision, the Tribunal specifically noted that “multiple appointments as arbitrator by the same law firm” are “qualitatively different because an arbitrator is independent and has no task-specific obligations vis-à-vis counsel”.⁴⁸ The expert-counsel dynamic that gave rise to the appearance concern in Procedural Order No. 3 involved “a concurrent, contractual, remunerated, and professional relationship carried out under the instructions of one party’s counsel”,⁴⁹ which does not exist in the counsel-arbitrator dynamic.
71. Unlike the expert-counsel relationship that the Tribunal analyzed in Procedural Order No. 3, where counsel and expert interact directly and substantively in the preparation of evidence, the arbitrator-counsel dynamic does not involve such interactions, and there is accordingly no channel through which Mr. Jana could engage in *ex parte* communications with the President regarding the present case by reason of his service as arbitrator in the commercial matter. Hence, no appearance of impropriety can derive merely from the fact that counsel in one case serves as arbitrator in another case in which one of the arbitrators of the first case appears as counsel. The Tribunal finds that the overlap, without more, does not create an appearance of impropriety. The analysis must turn on the specific circumstances of each case, which the Tribunal has determined do not give rise to an appearance of impropriety in the present case.
72. *Third*, the Tribunal notes that, in the ongoing commercial arbitration, Mr. Jana serves as one member of a three-member tribunal, not as a sole decision-maker. His decision-making

⁴⁸ Procedural Order No. 3, ¶ 67.

⁴⁹ Procedural Order No. 3, ¶ 72.

authority is collective, and any decision is the product of deliberation among three independent arbitrators. This further speaks against any appearance that Mr. Jana's appointment as counsel in the present proceedings may have an impact on the decision-making of the President in the present proceedings.

73. In these circumstances, the Tribunal finds that a reasonable and informed third-party observer would not conclude that there is a realistic possibility of “iniquitous bargains” between Prof. Bullard and Mr. Jana, or of an appearance thereof.
74. This conclusion would not be altered if any residual arbitrator-counsel interaction were still to take place in the ongoing commercial arbitration, such as a communication addressed to that tribunal, since interaction of that kind falls squarely within what is ordinarily expected between counsel and arbitrators in any proceeding. In any event, out of an abundance of caution, the President undertakes to refrain from getting involved in any such further interaction. Thus, should any residual interaction be required in that arbitration, it will be solely handled and signed by his partner, Mr. Huascar Ezcurra, with whom the President co-leads the BFE+ team in that matter.
75. On its own motion, the Tribunal also considers whether the reasoning at paragraphs 78–79 of Procedural Order No. 3 would lead to a different result in the present analysis, on the basis that the Claimants might not have agreed to Prof. Bullard serving as presiding arbitrator had the disclosed circumstances been known during the appointment process. The Tribunal notes that the circumstances here are distinguishable. In Procedural Order No. 3, the concern was the designation of counsel after the Tribunal's constitution, which deprived a party of the opportunity to take a concurrent expert engagement into account when exercising its right to strike candidates. In the present case, even if the Respondent's instruction of Jana & Gil had been known before the constitution of the Tribunal, the position would be different, precisely because the interaction between counsel and an arbitrator is not of the same nature as that between counsel and an expert and does not, without more, give rise to an appearance of impropriety.⁵⁰
76. Hence, the Tribunal finds that, whereas the expert-counsel relationship addressed in Procedural Order No. 3 was a circumstance that a Party could reasonably have wished to weigh when exercising its right to strike candidates for presiding arbitrator, the same cannot be said of the circumstances disclosed here. Given the nature of the counsel-arbitrator relationship, the fact that acting in more than one capacity in unrelated disputes is not prohibited, and the specific circumstances of this case, including the stage of the ongoing commercial arbitration, the Tribunal considers that a reasonable and informed third-party observer would not conclude that knowledge of these circumstances at the time of the appointment process would have deprived either Party of a consideration material to the

⁵⁰ Compare Procedural Order No. 3 dated 30 March 2026, ¶¶ 78–79 (concerning the expert-counsel dynamic) with the qualitative distinction drawn at ¶ 67 of the same decision.

exercise of that right.

77. The Tribunal has further considered the Claimants' subsidiary request that Mr. Jana be excluded until he ceases to serve as arbitrator in the ongoing commercial arbitration disclosed by Prof. Bullard. That request presupposes the existence of an appearance of impropriety for so long as that arbitration remains pending. Since the Tribunal has concluded that no such appearance arises, including in the event of any residual interaction in that arbitration, there is no basis on which to exclude Mr. Jana for that or any other period, and the subsidiary request is accordingly also dismissed.
78. Accordingly, the Tribunal finds that the First Ground does not establish an appearance of impropriety warranting the exclusion of Jana & Gil or Mr. Jana as counsel for the Respondent.

2. Second Ground: Timing and alleged concealment

79. The Tribunal turns to the Claimants' submission that the Respondent deliberately concealed Jana & Gil's involvement in the case, analogous to the aggravating circumstances identified in *HEP v. Slovenia*.
80. The Tribunal has determined, in Section III.B.1 above, that no appearance of impropriety arises from the First Ground. Since no appearance concern exists on the merits, aggravating circumstances relating to timing and notification have nothing to calibrate. As the Tribunal held in Procedural Order No. 3, "the absence of those aggravating circumstances bears on the calibration of the appropriate remedy, not on the existence of an appearance concern".⁵¹
81. The allegation of deliberate concealment therefore does not, on its own, establish an appearance of impropriety.
82. Moreover, the Tribunal recalls that Procedural Order No. 3, at paragraphs 95–96, expressly rejected any obligation to consult the opposing party or the Tribunal before designating counsel. The Respondent was entitled to designate Jana & Gil without prior consultation.⁵²
83. Furthermore, *HEP v. Slovenia* is distinguishable. In that case, counsel's involvement had been concealed from the outset and disclosed only on the eve of the hearing, after the respondent had repeatedly refused to answer questions about the extent of counsel's involvement. Here, by contrast, the proceedings are at an early stage, and the Respondent notified the Tribunal and the Claimants of Jana & Gil's designation on the same day on which the power of attorney was signed, without prejudice to the question addressed below

⁵¹ Procedural Order No. 3 dated 30 March 2026, ¶ 86.

⁵² Procedural Order No. 3 dated 30 March 2026, ¶¶ 95–96.

of when Jana & Gil was in fact instructed.⁵³

84. This notwithstanding, the Tribunal notes the Claimants’ concerns regarding the timing of Jana & Gil’s actual involvement in the preparation of the Request for Bifurcation. The submission of a 33-page Request for Bifurcation within hours of the formal designation does raise a question as to whether Jana & Gil was working on the case before the date of the power of attorney and, if so, whether this constitutes a violation of paragraph 8.1 of Procedural Order No. 1, which requires each party to “promptly notify the Centre” of any change in party representation.⁵⁴
85. The Tribunal considers it appropriate to direct the Respondent to provide specific information regarding when Jana & Gil was first instructed and what their involvement was, if any, in the drafting of the Request for Bifurcation prior to the announcement. This direction is included in the operative Section of this Order.
86. The Tribunal does not consider, however, that exclusion of counsel would be the appropriate remedy for a possible violation of the Respondent’s duty to promptly notify Jana & Gil’s designation. Instead, should the Tribunal determine that a violation of paragraph 8.1 of Procedural Order No. 1 occurred, such a violation could be taken into account in the allocation of costs as the appropriate consequence, including through an order of costs that arose in connection with the Application.
87. Accordingly, the Second Ground does not warrant the exclusion of Jana & Gil or Mr. Jana as counsel for the Respondent.

3. Third Ground: The Honduras Arbitration

88. The Tribunal turns to the Claimants’ submission that Jana & Gil’s parallel representation of Honduras in the Honduras Arbitration creates a material risk of misuse of confidential information.
89. The Tribunal is not persuaded that this ground warrants the exclusion of Jana & Gil.
90. *First*, the Respondent is free to choose its counsel, including counsel that represents another State in a case brought by the same Claimants. The right to counsel of one’s choosing is fundamental and cannot be curtailed merely because counsel acts for another respondent State brought by the same claimants.
91. *Second*, the test articulated in *Einarsson* requires “clear evidence of a material risk that [counsel] have received confidential information” from the party seeking exclusion “about the dispute that could be of significance in the present proceedings such that there would

⁵³ *Hrvatska Elektroprivreda, d.d. v. Republic of Slovenia* (ICSID Case No. ARB/05/24), Tribunal’s Ruling regarding the participation of David Mildon QC in further stages of the proceedings, 6 May 2008, ¶¶ 11, 31.

⁵⁴ Procedural Order No. 1 dated 13 March 2026, ¶ 8.1.

be prejudice to the fair disposition of the dispute in this arbitration”.⁵⁵ The Claimants have not produced such evidence. There is nothing before the Tribunal to indicate that Jana & Gil has received confidential information in the context of the Honduras Arbitration that could prejudice the fair disposition of this arbitration. The Tribunal further notes that the Parties advance differing readings of the decision in *Einarsson*, with the Claimants contending that “the *Einarsson* test does not require proof that confidential information has in fact been passed, only ‘a real risk to this effect’”⁵⁶ and the Respondent submitting that “clear evidence of a material risk” is required.⁵⁷ On either reading, the ground fails, since the Claimants have not identified any document, communication, or non-public fact that Jana & Gil is said to have received in connection with the Honduras Arbitration that could be of significance in the present proceedings. Even under the Claimants’ reading, a “real risk” cannot be established in the abstract, the party seeking exclusion must at a minimum identify what confidential information is at risk of misuse and how counsel’s parallel representation could give rise to that risk. The Claimants have done neither. The mere fact that Jana & Gil is adverse to the same Claimants in another proceeding does not, without more, establish that it possesses confidential information belonging to the Claimants.⁵⁸

92. *Third*, both the present arbitration and the Honduras Arbitration are subject to significant transparency obligations. Article 10.21 of the TPA and Article 10.21 of DR-CAFTA impose extensive requirements regarding the public availability of documents, hearings, and submissions.⁵⁹ The objection raised by the Respondent that the Claimants cite as “identical” to one raised in the Honduras Arbitration is, as the Respondent notes, based on publicly available information regarding the Claimants’ nationality, not on any confidential information that may have been disclosed in the Honduras Arbitration.⁶⁰

93. *Fourth*, the Tribunal notes that the Parties and their respective counsel remain bound by the confidentiality commitments applicable in each case and in any other proceedings in which they participate. To the extent that any confidentiality concerns might arise in later stages of both proceedings—for example, during document production—those concerns can be addressed at the appropriate time through the procedural mechanisms already in place.

94. Accordingly, the Third Ground does not warrant the exclusion of Jana & Gil or Mr. Jana as counsel for the Respondent.

⁵⁵ *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants’ Motion to Disqualify Counsel, 24 February 2022, ¶ 143.

⁵⁶ Claimants’ Application dated 31 July 2026, p. 5.

⁵⁷ Respondent’s Communication dated 6 August 2026, p. 9.

⁵⁸ *Theodore David Einarsson et al. v. Canada* (ICSID Case No. UNCT/20/6), Decision on Claimants’ Motion to Disqualify Counsel, 24 February 2022, ¶ 170.

⁵⁹ Respondent’s Communication dated 6 August 2026, p. 9, fn 32. The Tribunal notes that the Claimants did not contest this point.

⁶⁰ TPA, Article 10.21; DR-CAFTA, Article 10.21.

IV. DECISION

95. For the reasons set forth above, the Tribunal decides as follows:

- (a) The Claimants' Application to exclude Jana & Gil Dispute Resolution (or Mr. Andrés Jana) as counsel for the Respondent is dismissed.
- (b) The Centre may proceed with the registration of Jana & Gil Dispute Resolution as Respondent's counsel in the record, and grant them access to the case's Box repository.
- (c) The Respondent shall, within 10 days, provide the Tribunal and the Claimants with a detailed account of: (i) the date on which Jana & Gil Dispute Resolution was instructed in connection with this arbitration; (ii) the nature and extent of Jana & Gil's involvement in the preparation of the Request for Bifurcation filed on 24 July 2026; (iii) whether Jana & Gil had access to the case record, and, if so, on what date; (iv) any other information or explanations relevant to determine whether a violation of paragraph 8.1 of Procedural Order No. 1 occurred. The Claimants may within 10 days thereafter, file any observations.
- (d) The costs of this application are reserved for determination at a later stage of the proceedings. The Tribunal instructs the Parties to record separately any costs incurred in connection with the Application and the Tribunal's request in paragraph (c) above.

96. Additionally, the Tribunal notes the President's undertaking to refrain from getting involved in any further interaction, should it arise, in the commercial arbitration described in paragraph 10(i)(a) above, and that any such interaction will be solely handled and signed by Mr. Huascar Ezcurra, partner at Bullard Falla Ezcurra+.

[Signed]

Prof. Alfredo Bullard
González
President of the Tribunal

[Signed]

Prof. Dr. Chiara Giorgetti
Arbitrator

[Signed]

Prof. Dr. Stephan Schill
Arbitrator