

CLAIMANTS' VARELALEAKS ANNEX TO THEIR POST-HEARING SUBMISSION

1. As discussed in Claimants' Rejoinder, on 31 October 2019 a website published a series of WhatsApp messages from 2017 and 2018 that were downloaded from a phone purportedly belonging to President Varela,¹ which became known as the VarelaLeaks. Even without the benefit of President Varela's cross-examination, the evidence in the record shows that these documents are authentic, as confirmed by Respondent and President Varela himself (*see infra* § I). Further, the VarelaLeaks documents corroborate Mr. Rivera's testimony and support Claimants' case (*see infra* § II).

I. THE VARELALEAKS DOCUMENTS ARE AUTHENTIC, AND THE EVIDENCE ON THE RECORD CONFIRMS IT

2. As the Tribunal has noted, Respondent has admitted that at least some of the VarelaLeaks documents are authentic.² And President Varela himself has partially authenticated these documents, too. In a press release issued and signed by President Varela in early November 2019, he stated that the chats "have been distorted, altered, and manipulated," *while at the same time asserting that the messages show that he never crossed any legal boundaries.*³ President Varela thus authenticated the chats that show him in a favorable light—and in doing so provided good cause to reject his attempts to cast doubts on the others. Respondent cannot have it both ways. It cannot authenticate those VarelaLeaks messages that it finds beneficial to its case, while at the same time casting doubt on the authenticity of those that are not.

¹ Cls' Rej. ¶ 279.

² Letter from the Tribunal to the Parties dated 14 Feb. 2020, at 5.

³ Catherine E. Perea, *Varela responde a filtración de conversaciones y señala que fue pinchado con "Pegasus" de Martinelli*, TELEMETRO dated 7 Nov. 2019 (C-0938), at 2, 6 (including a signed copy of President Varela's press release). *See also* Cls' Rej. ¶¶ 280-81.

3. Moreover, there is *no evidence* of manipulation or distortion of the VarelaLeaks documents that were entered into the record of this case. Respondent has never offered any such evidence (or even argument to that effect). Nor has President Varela, though he easily could have offered a supplemental witness statement or appeared at the hearing to do so. In any event, other evidence in the record confirms the veracity of the VarelaLeaks messages, as shown below.

4. The materiality of these documents cannot be understated. In addition to providing corroboration for Mr. Rivera’s testimony and other evidence in the record (as shown below), the VarelaLeaks documents provide a window into President Varela’s inappropriate undue influence and control over all branches of his government, the favor he bestowed upon his political friends, and the vendettas he waged against those he considered his political enemies. The VarelaLeaks documents therefore demonstrate that Claimants’ allegations regarding President Varela are anything but “outrageous,”⁴ as Respondent would have this Tribunal believe. Even Respondent’s own legal expert, Justice Arjona, has confirmed that the VarelaLeaks messages contain “relevant facts, very serious, very compromising for the protagonists of those conversations.”⁵

II. THE VARELALEAKS DOCUMENTS CORROBORATE CLAIMANTS’ CASE

5. Claimants do not need to show the reason behind Respondent’s unlawful conduct in order to establish a breach. That said, the VarelaLeaks documents support the evidence in the record showing that President Varela’s political retaliation against Mr. Rivera and his companies underlies Respondent’s unlawful actions against Claimants’ investment in Panama. This evidence remains largely unrebutted. Mr. Rivera has testified that then Vice-President Varela solicited from him a US\$ 600,000 campaign contribution, which Mr. Rivera refused. This was followed by a

⁴ Resp.’s Rej. ¶ 196.

⁵ Interview by Flor Mizrachi with Adán Arnulfo Arjona, in Panama dated 17 Nov. 2019 (C-0916), at 5:02.

series of illegal measures committed by Respondent against Claimants’ investment in Panama. Respondent’s denial of this allegation stands entirely on President Varela’s one-page uncorroborated witness statement, which the former President refused to defend before this Tribunal.⁶ The VarelaLeaks documents—which contain WhatsApp messages from President Varela to myriad Government officials, family, and friends—*confirm* Mr. Rivera’s testimony regarding the meeting at La Trona (*see infra* § II.A), and show that President Varela controlled virtually every branch of the Government while he was in power, including the Comptroller General’s Office (*see infra* § II.B) and the Attorney General’s Office (*see infra* § II.C). President Varela used undue pressure and control over Panama’s government agencies to benefit those he saw as friends, and harm those he saw as political enemies (*see infra* § II.D).

A. Mr. Rivera’s Testimony Regarding The Events At La Trona Is Both Unrebutted And Corroborated By The VarelaLeaks Documents

6. Mr. Rivera has consistently testified that he met then Vice-President Varela through his local counsel and friend, Ana Graciela Medina from the IGRA Law Firm, who ran in the same social circles as President Varela.⁷ It was through this connection that Mr. Rivera met then Vice-President Varela, as well as his private assistants, Rafael Flores and Raul Sandoval.⁸ During their first in-person meeting, Mr. Varela inquired about the progress of the Omega Consortium Contracts and stated that he was “putting in a good word for [Mr. Rivera] out there.”⁹ At a later event in July 2012, Mr. Rivera recalls feeling uncomfortable in his conversation with Mr. Varela,

⁶ Given that President Varela refused to appear for cross-examination without compelling reasons, *see* Letter from Claimants to the Tribunal dated 7 Oct. 2020, at 4, his credibility and the veracity of his written evidence remain questionable at best, and the Tribunal should give it no weight whatsoever, *see* Procedural Order No. 1 dated 21 June 2017, ¶ 18.9 (“The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a compelling reason.”).

⁷ Rivera 1 ¶ 62.

⁸ *Id.*

⁹ *Id.* at ¶ 63.

sensing that “Mr. Varela was going to ask [him] for some kind of political contribution.”¹⁰ Shortly after that meeting, Ms. Medina informed Mr. Rivera that Mr. Varela wanted to invite him to dinner.¹¹ Mr. Rivera tried to avoid responding,¹² fearing that the reason for the invitation was to request a campaign contribution.¹³ In November 2012, Mr. Rivera reluctantly agreed to a meeting with Mr. Varela at the La Trona restaurant in Panama.¹⁴

7. Some of President Varela’s inner circle and friends attended the La Trona meeting. Mr. Rivera recalls that in addition to Ms. Medina and her late-husband Jordi (Jorge Velazquez), Mr. Varela’s private assistants, Raul Sandoval and Rafael Flores, as well as a bodyguard, attended the meeting.¹⁵ At the start of the meeting, the bodyguard collected everyone’s phones, at which point Mr. Varela stated that he needed Mr. Rivera’s help to beat President Martinelli.¹⁶ Then, Mr. Varela asked everyone, except Mr. Rivera, to leave the room, and asked Mr. Rivera to make a US\$ 600,000 campaign contribution.¹⁷ Mr. Rivera refused. This apparently angered Mr. Varela and prompted him to threaten Mr. Rivera, stating “that [Mr. Rivera] knew very well that some of [his] projects would not be finished by the time the new Government assumed power and that, in Panama, it is often very hard to collect on contracts awarded by the previous Administration.”¹⁸ Mr. Varela also apparently decided that Mr. Rivera was a supporter of President Martinelli, making

¹⁰ *Id.* at ¶ 64.

¹¹ *Id.* at ¶ 66.

¹² WhatsApp messages from Ana Graciela Medina to Oscar Rivera dated 17 Sept. 2012 (C-0518); Rivera 1 ¶ 66.

¹³ Rivera 1 ¶ 66.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 67.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 68.

him a political enemy.¹⁹ Once he won the election, President Varela sought to retaliate against Mr. Rivera, destroying his investment in Panama and reputation elsewhere.²⁰ Mr. Rivera's testimony was tested on cross-examination (Tr 2/336:6-512:8), and President's Varela's refusal to testify—or even meaningfully address Mr. Rivera's testimony—leaves Mr. Rivera's testimony on this point unrebutted.

8. The VarelaLeaks documents, as well as other evidence in the record, corroborate Mr. Rivera's testimony. In his witness statement Mr. Varela acknowledged that he knew Mr. Rivera,²¹ which he also confirmed in a message to his private secretary, Raul Sandoval.²² Ms. Medina informed Mr. Rivera in writing that President Varela wanted to connect with him.²³ The VarelaLeaks chats confirm that President Varela not only recalled meeting with Mr. Rivera at La Trona, *but he also remembered other attendees*²⁴ mentioned in Mr. Rivera's testimony, including Ms. Medina,²⁵ Jordi Velazquez, and Raul Sandoval.²⁶ Moreover, in direct contradiction with his sworn written testimony, President Varela stated in one chat that “[he] never asked [Mr. Rivera] *again*” for a campaign contribution.²⁷ President Varela therefore *must* recall asking Mr. Rivera for a campaign contribution at some point in time (despite his other, self-serving denials). This

¹⁹ Rivera 3 ¶¶ 32, 37, 40. *See also* Cls' Reply §§ IV.B-C.

²⁰ Rivera 3 ¶¶ 32, 37, 40. *See also* Cls' Reply §§ IV.B-C.

²¹ Witness Statement of Juan Carlos Varela dated 7 Oct. 2019, ¶ 5.

²² Chat with Raul Sandoval, President Varela's Private Secretary dated 5 Oct. 2018 (C-0822), at 1 (“These are ana graciela's friends.”).

²³ *See* WhatsApp messages from Ana Graciela Medina to Oscar Rivera dated 17 Sept. 2012 (C-0518); Invitations from Mr. Varela to join WhatsApp chat dated 17 Sept. 2012 (C-0519).

²⁴ Chat with Raul Sandoval, President Varela's Private Secretary dated 5 Oct. 2018 (C-0822).

²⁵ President Varela also confirms that he knows Ms. Medina, and also knows that Mr. Rivera is one of Ms. Medina's friends. *Id.* at 1 (“[10/05/18 7:12:59 p.m.] Jj: These are ana graciela's friends”).

²⁶ *Id.* (“[10/05/18 7:23:34 p.m.] Raul Sandoval: I don't even remember well who was there [10/05/18 7:23:44 p.m.] Jj: Ana you I [10/05/18 7:30:08 p.m.] Raul Sandoval: I think Jordi, Cholito”).

²⁷ Chat with Kenia Porcell, then-Attorney General dated 5 Oct. 2018 (C-0821), at 11 (emphasis added).

should be unsurprising given that President Varela has been indicted on corruption charges related to campaign contributions received from Odebrecht.

9. The VarelaLeaks chats also prove President's Varela's vendetta against Mr. Rivera. In a chat with Ms. Medina, President Varela confirmed his dislike of Mr. Rivera, calling him an "imbecile" and an "idiot,"²⁸ and threatening (shockingly) that "[Mr. Rivera] is going to end up in jail"²⁹ for filing this arbitration. And his chat with Attorney General Kenya Porcell confirms that "[President Varela] did not like [Mr. Rivera]" as far back as the La Trona meeting.³⁰ Angered by this arbitration, President Varela asked the Attorney General for Mr. Rivera's criminal file, stating that "[he] need[ed] the criminal information . . . [t]o defend the state."³¹ President Varela even ordered the Attorney General to get "all the information [from the criminal file] back" to which the Attorney General replied, "[r]emember that Saenz [(a judge in the anti-money laundering case)] closed our case and we have an appeal."³² The President further stated that "[he] will follow [Mr. Rivera's] accounts now."³³ In an effort to mask President Varela's wrongful and vindictive conduct, the Attorney General then offered to review President Varela's responses to questions regarding this arbitration so that President Varela's answers "will be *adapted* for a criminal law perspective."³⁴ President Varela's silence in the face of this uncontroverted and appalling evidence speaks volumes.

²⁸ Chat with Ana Graciela Medina dated 5 Oct. 2018 (C-0820), at 1.

²⁹ *Id.*

³⁰ Chat with Kenia Porcell, then-Attorney General dated 5 Oct. 2018 (C-0821), at 11.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 12.

³⁴ *Id.* ("Kenia Porcell Privado: There needs to be evidence. Let me read the responses before sending it (just for your eyes) to incorporate criminal aspects regarding evidence and its admissibility . . . Jj: Okay . . . Jj: I will handle all with you . . . Kenia Porcell Privado: Have salvador answer to you, send me the copy and it will be adapted from a criminal law perspective Because it's a criminal matter . . . Jj: Okay").

10. Respondent has been startlingly silent on this topic. Notably missing from the record is *any* evidence from Respondent related to the La Trona meeting. Although Claimants were denied an opportunity to collect evidence from Respondent relating to this meeting or President Varela's attempts to collect a campaign donation from Mr. Rivera,³⁵ Respondent never sought to introduce any evidence to contradict Mr. Rivera's account. Therefore, the record establishes not only that Respondent had a motive to launch a campaign of political retaliation against Claimants, but that it in fact did so.

B. The VarelaLeaks Documents Confirm That President Varela Exerted Undue Influence Over the Comptroller General's Office To Claimants' Detriment

11. As discussed in Claimants' Rejoinder, the VarelaLeaks documents shed light on President's Varela's undue influence over the Comptroller General's Office, among others.³⁶ Some examples from the chats show President Varela instructing the Comptroller General to fast-track approval of the contract addendum of a public project,³⁷ while another chat shows Mr. Varela agreeing to intervene with the Comptroller General on behalf of a contractor, and then shows confirmation that he did so.³⁸ But President Varela was not only exerting influence and control over *his* appointed Comptroller General,³⁹ Mr. Federico Humbert, he was also exerting pressure on the previous Administration's Comptroller General, Ms. Gioconda de Bianchini.

12. Even prior to taking Office, and just *one day* after winning the election, President Varela publicly threatened several key Government officials from the previous administration with

³⁵ Tribunal's Decision on Claimants' Request for Production of Documents dated 19 Mar. 2019, Reqs. 1, 2.

³⁶ See Cls' Rej. ¶ 286.

³⁷ See, e.g., Chat with Fred, Panamanian Businessman dated 9 June 2018 (C-0849).

³⁸ See Chat with +507 6678-9609 dated 10 April 2018 (C-0848) (after promising to speak with the Comptroller General on 5 April 2018, President Varela writes back "Comptroller General ready").

³⁹ See Chat with Federico Humbert, then-Comptroller General dated 4 Sept. 2018 (C-0846) (President Varela directing Mr. Humbert to prioritize an audit into Panama's Agricultural Marketing Institute (IMA) because certain people "want[ed] to attack").

criminal prosecution,⁴⁰ including the Comptroller General, Ms. Bianchini.⁴¹ Then, immediately upon taking office, President Varela hired Rogerio Saltarin to help build criminal cases against Mr. Varela's perceived political enemies.⁴² Mr. Saltarin functioned as a powerful "private" attorney general operating in parallel with the official Attorney General's Office⁴³—which President Varela also controlled, as demonstrated by the VarelaLeaks.⁴⁴ Mr. Saltarin quickly began building a criminal case against Ms. Bianchini,⁴⁵ confirming that President Varela set out

⁴⁰ *Varela Calls for Resignation of Senior Officials*, LA PRENSA dated 7 May 2014 (C-0574), at 1.

⁴¹ *Id.*

⁴² *Adela Coriat explains in detail the investigation process of the Saltarin Case*, PANAMA TODAY dated 12 Nov. 2018 (C-0515), at 2. Mr. Saltarin had been then Vice-President Varela's personal criminal attorney. *Plan between Rolando López, Rogelio Saltarin and Kenia Porcell to create cases of political persecution revealed*, PANAMA AMERICA dated 5 Oct. 2018 (C-0514), at 2. Two high profile cases in which Mr. Saltarin represented President Varela include "a demand filed by former president Ricardo Martinelli for an alleged crime of honor," and "the case of former consul Jaime Lasso, over the donation of \$10 million for his political campaign given by the company Odebrecht." *Id.*

⁴³ *Saltarin, the Man who Put Together the Files of the Attorney General's Office*, LA ESTRELLA DE PANAMÁ dated 1 Oct. 2018 (C-0672), at 1; *Parallel Public Ministry: Rogelio Saltarin's contract*, PANAMÁ AMÉRICA dated 22 Oct. 2018 (C-0678). See also Saltarin 2014 Contract No. 063-14 with the Ministry of the Presidency dated 14 Nov. 2014 (C-0529), at 1; Saltarin 2015 Contract No. 16-2015 with the Ministry of the Presidency dated 7 Oct. 2015 (C-0613), at 1.

⁴⁴ See Chat with Kenia Porcell, then-Attorney General dated 5 Oct. 2018 (C-0821), at 11-12. See also *infra* § II.C. In fact, the VarelaLeaks documents demonstrate quite plainly that President Varela used his office to influence the constituent parts of the Panamanian Government to assist his friends and punish his enemies, and Mr. Saltarin was simply an additional tool for doing so. See Cls' Rej. §§ II.B.8.b-e. See also, e.g., Chat with Federico Humbert, then-Comptroller General dated 4 Sept. 2018 (C-0846); Chat with Jaime Lasso, former Panamanian Consul General in South Korea dated 31 Aug. 2017 (C-0862); Chat with Dulcidio de la Guardia, then-Minister of Finance & Economy dated 24 Apr. 2017 to 12 Oct. 2018 (C-0834); Chat with Kenia Porcell, then-Attorney General dated 16 Nov. 2017 (C-0821); Chat with Roman Torres dated 11 Apr. 2018 (C-0868); Chat with Irene Perurena, Red Cross Representative dated 22 July 2017 (C-0869); Chat with Carlos, Representative of MiBus dated 14 Sept. 2018 (C-0870); Chat with Yolanda Eleta de Varela, President Varela's Sister-in-Law dated 13 Aug. 2017 (C-0871); Chat with Federico Policani, Mayor of Colon dated 21 Aug. 2018 (C-0872); Chat with Gili Ovidia dated 5 Aug. 2017 (C-0873); Chat with Eyda Varela de Chinchilla, then-Panama's Minister of Economy & Finance dated 14 Sept. 2018 to 5 Oct. 2018 (C-0819); Chat with Tatiana de Janon, then-Coordinator of Panama's Sanitation Program dated 18 July 2017 (C-0857); Chat with Manuel dated 24 Apr. 2018 (C-0874); Chat with Delia Arosemena, former Director of Panama's Student Scholarship and Loan Agency dated 10 Oct. 2018 (C-0875); Chats with Eduardo Valle, then-Partner at Mendoza, Arias, Valle & Castillo dated 29 Aug. 2017, 30 Aug. 2017, 23 Nov. 2017, 16 Dec. 2017, 16 Aug. 2018, 11 Sept. 2018, 12 Sept. 2018, 14 Sept. 2018, 16 Sept. 2018 (C-0877); Chat with Jose Alberto Rosas, former Congressman dated 12 May 2018 (C-0832).

⁴⁵ In his August Activity Report, Mr. Saltarin recorded "[p]reparation and filing of complaint against the Comptroller General's Office of the Republic." Activity Report from Saltarin, Arias y Asociados to Ministry of the Presidency dated 25 June 2018 ("**Saltarin Activity Report**") (C-0617 resubmitted), at 5. From September to December 2014 he conducted "[f]ollow up of the complaint filed against the Republic's Comptroller General." *Id.* at 7-8, 13-14, 17-18, 19-20.

to strong-arm Ms. Bianchini who, as Respondent stated, had a terminal illness.⁴⁶ It is therefore unsurprising that Ms. Bianchini stopped approving the Omega Consortium's change orders and payment applications to appease President Varela.⁴⁷ The Omega Consortium was seen as [REDACTED] and the Comptroller General stopped processing the Omega Consortium's files as a result.⁴⁸

13. Other than President Varela's unsubstantiated, blanket denial of any attack against Claimants' Contracts, Respondent's only attempt to rebut the evidence that President Varela exerted undue influence over the Comptroller's General Office is the witness statement of Dr. Bernard Véliz. Dr. Bernard Véliz states that no one at the Comptroller General's Office was ever told to harm the Omega Consortium's Contracts. His evidence is of minimal (if any) weight, however, since Dr. Bernard Véliz began working at the Comptroller General's Office only *in 2017*, three years *after* these events would have taken place. This denial also rings hollow in light of the VarelaLeaks documents showing that President Varela sought to influence and control the

⁴⁶ Resp.'s Counter-Mem. ¶¶ 70, 72; Barsallo 1 ¶ 44. *See also* Cls' Reply ¶¶ 108-10; Cls' Rej. ¶¶ 185-87.

⁴⁷ Lopez 1 ¶ 78.

⁴⁸ WhatsApp messages between Ana Graciela Medina and Frankie Lopez dated 20 May 2015 (C-[REDACTED]). Indeed, the record shows that the Presidency also asked Mr. Saltarin to meet with representatives from INAC, MINSA, and the Secretary of Cold Chain as early as August 2014 in relation to Claimants' Contracts. *See* Saltarin Activity Report (C-0617 resubmitted), at 3, 5, 9, 11-12, 16 (showing that Mr. Saltarin met with Ms. Nunez, President Varela's INAC Director, on at least three different occasions starting in August 2014, with the Manager of the Secretary of Cold Chain and, at least five times, with different high level officials at MINSA). Although the reason for these meetings remains unknown given President Varela's refusal to appear for cross-examination, it is evident that Mr. Saltarin could not find any evidence of corruption related to the Omega Consortium's Contracts, since pursuant to his contract with the Presidency he would have certainly caused an official criminal investigation against Claimants. *See* Saltarin 2014 Contract No. 063-14 with the Ministry of the Presidency dated 14 Nov. 2014 (C-0529), at 1; Saltarin 2015 Contract No. 16-2015 with the Ministry of the Presidency dated 7 Oct. 2015 (C-0613), at 1. Notably, Mr. Saltarin's work as a "parallel attorney general" for the Presidency resulted in an investigation against him, as discussed in a VarelaLeaks chat between President Varela and Fernando Berguido, a Panamanian Businessman associated with La Prensa newspaper. Chat with Fernando Berguido, Panamanian Businessman associated with La Prensa newspaper, dated 11 Sept. 2018 (C-0861), at 2.

Comptroller General's office (like all other aspects of Respondent's Government),⁴⁹ and that President Varela admitted to disliking Mr. Rivera as early as Mr. Varela's Presidential campaign.⁵⁰

C. The VarelaLeaks Documents Also Demonstrate That President Varela Had Control Of The Attorney General's Office And The Attorney General Herself

14. That President Varela exerted undue influence and control over the Office of the Attorney General and Attorney General Kenia Porcell has become public knowledge. Ms. Porcell's resignation announcement in November 2019, days after the VarelaLeaks messages were published, reveals her fear that the messages would show her lack of "impartiality" and the influence that President Varela had on her Office.⁵¹ Indeed, Respondent's own legal expert, Justice Arjona, stated publicly that the VarelaLeaks messages confirm "the undoubted undue interference of the Executive in the processing and handling of judicial matters, the conclusion of the agreements with Odebrecht," among others.⁵² And Ms. Porcell's successor as Attorney-General, Eduardo Ulloa, who was tasked with restoring credibility to the Office and dealing with

⁴⁹ See, e.g., Chat with Federico Humbert, then-Comptroller General dated 4 Sept. 2018 (C-0846) (President Varela directing Mr. Humbert to prioritize an audit into Panama's Agricultural Marketing Institute (IMA) because certain people "want[ed] to attack"); Chat with Fred, Panamanian Businessman dated 9 June 2018 (C-0849); Chat with Yanibel Rodriguez, then-President of Panama's National Assembly dated 7 Aug. 2018 (C-0850) (President Varela assuring Mrs. Rodriguez that he would call the Comptroller General and stating "I just wrote to him about something else."); Chat with +507 6678-9609 dated 10 Apr. 2018 (C-0848) (after promising to speak with the Comptroller General on 5 April 2018, President Varela writes back "Comptroller General ready"). See also Cls' Ref. ¶¶ 286-87.

⁵⁰ See *supra* ¶ 9.

⁵¹ *Panama Attorney General Kenia Porcell says she is resigning*, ASSOCIATED PRESS NEWS dated 12 Nov. 2019 (C-0913).

⁵² See Interview by Flor Mizrachi with Adán Arnulfo Arjona, in Panama dated 17 Nov. 2019 (C-0916) from 3:02–4:10. Justice Arjona further confirmed in this interview that such was the importance of the VarelaLeaks information that the way in which it was obtained was outweighed by the importance to the State of its being published. See *id.* from 4:10–4:32, 5:02–5:39.

the “ghosts com[ing] out of the past administration,”⁵³ has undertaken to determine whether a number of judicial cases were properly actioned under the Varela Administration.⁵⁴

15. Examples of President Varela’s manipulation of the Attorney General’s Office, as shown by the VarelaLeaks chats, abound.⁵⁵ One of the most egregious relates to President Varela’s pressuring of Ms. Porcell to reach a plea bargain agreement with Odebrecht in relation to Odebrecht’s corrupt campaign contributions in exchange for public works contracts.⁵⁶ Although President Varela initially denied that he received such campaign contributions, he eventually admitted it.⁵⁷ Odebrecht was convicted of corruption partly in relation to campaign contributions,

⁵³ Adelita Coriat, ‘Lo malo es que haya sumisión del Ministerio Público hacia la Presidencia’ [*It is bad when there is submission by the Public Ministry to the Presidency*], LA ESTRELLA DE PANAMÁ dated 12 Jan. 2020 (C-0917), at 5.

⁵⁴ See *id.* President Varela’s tentacles also reached all levels of Panama’s judicial system, including Panama’s Supreme Court and its justices. See Cls’ Rej. ¶¶ 294-95. The VarelaLeaks documents show that President Varela sought to nominate justices that he thought his allies could control, which would enable him to demand favorable decisions from those justices. See Chats with Eduardo Valle, then-Partner at Mendoza, Arias, Valle & Castillo dated 29 Aug. 2017, 30 Aug. 2017, 23 Nov. 2017, 16 Dec. 2017, 16 Aug. 2018, 11 Sept. 2018, 12 Sept. 2018, 14 Sept. 2018, 16 Sept. 2018 (C-0877). The VarelaLeaks documents also show President Varela threatening to re-open a corruption cases against a political opponent. See Chat with Jose Alberto Rosas, former Congressman dated 12 May 2018 (C-0832). Given President Varela’s admitted dislike for Mr. Rivera, see *supra* ¶ 9, and his (unfounded) belief that Mr. Rivera was associated with ex-President Martinelli, see *supra* ¶¶ 7, 17, it is perhaps unsurprising that Panama’s Supreme Court inexplicably denied Mr. Rivera’s Habeas Corpus petition in relation to the unreasonable detention order issued against him. See Decision of Panama’s Supreme Court on Oscar Rivera’s Habeas Corpus Petition dated 10 Nov. 2015 (C-0222); Oscar Rivera’s Petition of Habeas Corpus to the Supreme Court dated 28 Aug. 2015 (C-0208); Revocation of the Arrest Warrant Request dated 29 Sept. 2015 (C-0223). See also Cls’ Mem. ¶ 102. Mr. Rivera received similarly unfavorable treatment by a lower court with respect to Mr. Rivera’s request to submit exculpatory evidence pertaining to the money laundering investigation against him. See Resolution Denying Evidence Request dated 4 Jan. 2016 (C-0217) (denying Mr. Rivera’s request to submit evidence “to verify that there were no kickbacks or bribes”).

⁵⁵ Cls’ Rej. ¶¶ 288-91.

⁵⁶ Adelita Coriat, *Triangulation between Varela, Popi and Porcell made the agreement with Odebrecht possible*, LA ESTRELLA DE PANAMÁ dated 12 Nov. 2019 (C-0932).

⁵⁷ *Varela Admits Receiving Funds from Odebrecht*, PANAMA TODAY dated 10 Nov. 2017 (C-0487); *Panama Raids Mossack Fonseca over Odebrecht Bribery Scandal*, REUTERS dated 9 Feb. 2017 (C-0488); *Panama’s President Accused of Accepting Odebrecht Money*, TELESUR dated 10 Feb. 2017 (C-0489) (President Varela acknowledged that his campaign for the country’s vice presidency in 2009 received contributions from Odebrecht totaling US \$700,000); List of Varela Campaign Contributions released by Partido Panameñista dated 9 Feb. 2017 (C-0709) (President Varela also received campaign contributions from Odebrecht for his 2014 presidential campaign).

and it entered into a plea agreement with the United States.⁵⁸ In its plea agreement, Odebrecht admitted to making “\$59 million in corrupt payments to government officials and intermediaries . . . in Panama . . . to secure, among other things, public works contracts” there between 2010 and 2014.⁵⁹ It is in this context that President Varela (and his brother, Popi) set out to push the Attorney General to sign a favorable deal for Odebrecht that would protect the Varela brothers.

16. The VarelaLeaks documents record extensive conversations between President Varela and his brother Popi Varela showing that Mr. Rabello, the high-level Odebrecht Executive negotiating the plea deal, was exerting pressure on the Varelas. In one VarelaLeaks chat, Popi Varela told President Varela that Mr. Rabello “*started saying that you and I did serious things.*”⁶⁰ This prompted President Varela to pressure the Attorney General into signing Odebrecht’s plea bargain agreement with the State; he reported to his brother that “[he] had a meeting with la señora [the Attorney General] yesterday, [and he felt] they are going to close [the deal].”⁶¹ When the Attorney General began to show doubts about whether the terms of the plea agreement were favorable to Panama, President Varela increased the pressure until Attorney General conceded to Mr. Rabello’s terms.⁶²

⁵⁸ Plea Agreement Between the United States Department of Justice and Odebrecht S.A. dated 21 Dec. 2016 (C-0748).

⁵⁹ *Id.* at ¶ 63 (emphasis added).

⁶⁰ Chat with Popi Varela, President Varela’s brother dated 5 May 2017 (C-0863), at 18. *See also* *Brazil’s Odebrecht ‘to give Panama \$59m’ it paid in bribes*, YAHOO! NEWS dated 12 Jan. 2017 (C-0931); Adelita Coriat, *Triangulation between Varela, Popi and Porcell made the agreement with Odebrecht possible*, LA ESTRELLA DE PANAMÁ dated 12 Nov. 2019 (C-0932).

⁶¹ Chat with Popi Varela, President Varela’s brother dated 9 May 2017 (C-0863), at 20.

⁶² *Id.*; Chat with Kenia Porcell, then-Attorney General dated 16 Apr. 2018 (C-0821), at 2-4. President Varela’s manipulation of the Attorney General goes well beyond Odebrecht. President Varela also sought to intervene on behalf of his friend Jaime Lasso, Panama’s Consul-General in South Korea, in relation to a potential criminal prosecution related to embezzlement of public funds. Chat with Jaime Lasso, former Panamanian Consul General in South Korea dated 31 Aug. 2017 (C-0862), at 1; Cls’ Rej. ¶ 289. President Varela stated that he had “worked hard for 2 years” to lessen the impact of the criminal prosecution on Mr. Lasso, and that he would “speak to the woman” (meaning the Attorney-General) about Mr. Lasso’s criminal case. *Id.* at 2, 11. In the end, President Varela confirmed to Mr. Lasso that the criminal prosecution would be closed. *Id.* at 7.

17. President Varela also used the Attorney General’s Office to prosecute those he considered his enemies. For example, President Varela coordinated with the Attorney General to prosecute “the RM kids,” meaning the children of Ricardo Martinelli.⁶³

D. The VarelaLeaks Documents Show President Varela Giving Preferential Treatment To Some Contractors While Disadvantaging Others

18. The VarelaLeaks chats also demonstrate that President Varela used Panama’s government agencies to ensure that his favored contractors received preferential treatment, and that those not favored by him were penalized. During his cross-examination, Mr. Zarak confirmed that President Varela would give “instructions or requests with respect to the use of the funds at the MEF” for different projects. (Tr 6/1288:12-1289:6). One such request, Mr. Zarak confirmed, was made in President Varela’s chat with Diego Vallarino, who at the time was on the Board of Directors of Panama’s National Bank.⁶⁴ In this chat, President Varela was seeking to intercede on behalf of one of his favored contractors, Odebrecht. President Varela told Mr. Vallarino that “we need to open an account for Odebrecht [because s]topping construction and hindering projects is not an option.”⁶⁵ Mr. Vallarino explained to President Varela that due to the international corruption scandal and the reluctance by banks to deal with Odebrecht, “the problem is that the Compliance Committee declined the request, and the proceedings do not allow us to open an account.”⁶⁶ President Varela insisted, saying that “[t]he account must be opened [because Odebrecht] will get a major fine.”⁶⁷ Following the President’s orders, Mr. Vallarino promised to

⁶³ See Cls’ Rej. ¶ 291; Chat with Kenia Porcell, then-Attorney General dated 30 Apr. 2018 (C-0821), at 7.

⁶⁴ See Tr. 6/1292:17-22, 6/1294:13-1298:4. See also Chat with Diego Vallarino, then-Board Member of Panama’s National Bank (C-0823).

⁶⁵ Chat with Diego Vallarino, then-Board Member of Panama’s National Bank dated 22 June 2017 (C-0823), at 1.

⁶⁶ *Id.*

⁶⁷ *Id.* at 2. Notably, President Varela sought to intercede on behalf of Odebrecht after Odebrecht had entered into its plea agreement with the United States, in which Odebrecht admitted to paying bribes in Panama. See Plea

“find a solution” and, a few days later, confirmed that the Bank had “found a solution . . . to open the account.”⁶⁸

19. This interference by President Varela with different government agencies to obtain favors for preferred contractors was not unusual. Indeed, Mr. Zarak confirmed during his testimony that these were the types of issues where the “President would involve himself and say this is something that we need to get done.”⁶⁹ The VarelaLeaks documents show a number of other instances where President Varela similarly interfered with agencies in his government to either favor or harm contractors, depending on his preference.⁷⁰

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20. In sum, Claimants are not required to show a motive to establish a breach of the Treaties by Respondent. But the record makes clear, even with President Varela refusing to submit

Agreement Between the United States Department of Justice and Odebrecht S.A. dated 21 Dec. 2016 (C-0748), ¶ 63 (“In or about and between 2010 and 2014; Odebrecht made and caused to be made more than \$59 million in corrupt payments to government officials and intermediaries working on their behalf in Panama in order to secure, among other things, public works contracts”); *id.* ¶¶ 20, 43.

⁶⁸ Chat with Diego Vallarino, then-Board Member of Panama’s National Bank dated 22 and 27 June 2017 (C-0823), at 2.

⁶⁹ Tr. 6/1297:16-1298:4. Even Respondent’s own legal expert, Justice Arjona, confirmed that there are VarelaLeaks “chats where former President Varela addresses his Secretary of Metas [Goals] asking him to collaborate on projects with people he is close to.” Interview by Flor Mizrachi with Adán Arnulfo Arjona, in Panama dated 17 Nov. 2019 (C-0916), at 2.

⁷⁰ *See also* Cls’ Rej. ¶ 285 (*citing* Chat with Roberto Meana, then-General Manager of Autoridad Nacional de los Servicios Públicos dated 31 July 2018 (C-0826); Chat with the phone number +507 6430-0110 dated 14 Oct. 2018 (C-0828); Chat with Carlos Duboy, then-Director of Tocumen Airport dated 3 Apr. 2017 (C-0830); Chat with Guillermo, Mexican Businessman dated 24 July 2017 (C-0831); Chat with Jorge Alberto Rosas, former Congressman dated 5 Mar. 2018 (C-0832); Chat with Rogelio Donald, Panamanian Businessman dated 11 Oct. 2017 (C-0833); Chat with Dulcidio de la Guardia, then-Minister of Finance & Economy dated 9 July 2017 (C-0834); Chat with Gian Castellero, Panamanian Businessman dated 5 Sept. 2017 (C-0835); Chat with Dulcidio de la Guardia, then-Minister of Finance & Economy dated 5 Oct. 2018 (C-0834); Chat with +507 6672-5015 dated 7 Apr. 2017 (C-0836); Chat with Yassir, Panamanian Businessman dated 12 Jan. 2018 (C-0837); Chat with Moises, Representative of BH Corp. dated 23 Dec. 2016 (C-0838); Chat with the phone number +507 6676-1873 dated 1 Apr. 2017 (C-0839); Chat with Costa, Panamanian Businessman dated 15 Aug. 2018 (C-0840); Chat with Pepo dated 30 Apr. 2018 (C-0841); Chat with Maria del Rosario, Representative of Jan de Nul dated 5 June 2017 (C-0842); Chat with Marco dated 10 Oct. 2017 (C-0843); Chat with Diego Vallarino, then-Board Member of Panama’s National Bank dated 14 Feb. 2018 (C-0823); Chat with Guillermo, Mexican Businessman dated 1 Sept. 2017 (C-0831); Chat with Rogelio Aleman, Representative of CUSA dated 6 June 2017 (C-0845); Chats with Stanley Motta, Owner of TVN dated 26 Sept. 2017, 27 Sept. 2017, 4 Oct. 2017, 19 Oct. 2017 (C-0827)).

to cross-examination, that the then-President engaged in an egregious campaign of political retaliation against Mr. Rivera and his companies, and he strong-armed and otherwise used members of his administration to effect it. This is established not only by the (now-unrebutted) testimony of Mr. Rivera, but it is corroborated by the VarelaLeaks documents, which leave no doubt that President Varela abused his office (and the entirety of the Panamanian Government) to benefit his allies and persecute his perceived enemies.