

Public Version

UNITED STATES – ATENTO SERVICIOS, S.A. DE C.V.

(MEX-USA-2024-31A-01)

REPLY SUBMISSION
OF THE UNITED STATES OF AMERICA

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TABLE OF ABBREVIATIONS

Abbreviation	Definition
Atento or Covered Facility	Atento Servicios, S.A. de C.V.
BPO	Business Process Outsourcing
CBA	Collective Bargaining Agreement
CRM	Customer Relationship Management
CROC	Confederación Revolucionaria de Obreros y Campesinos
Federal Center or CFCRL	Federal Center for Conciliation and Labor Registration
FLL	Federal Labor Law
FOSRM or Benito Juárez union	Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana, part of the Federación Obrera Sindical de la República Mexicana
Election Guidelines	General Guidelines for Trade Union Democracy Procedures
HR	Human Resources Department
Mexico	United Mexican States
Progreso y Trabajo union	Sindicato “Progreso y Trabajo” del Transporte y Servicios de la República Mexicana
RRM	Facility-Specific Rapid Response Labor Mechanism
SEC	United States Securities and Exchange Commission
STRM	Sindicato de Telefonistas de la República Mexicana
STPS	Secretaría de Trabajo y Previsión Social
U.S.	United States of America
USMCA or Agreement	United States – Mexico – Canada Agreement

USMCA Implementation Act or the Act	United States – Mexico – Canada Agreement Implementation Act
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TABLE OF EXHIBITS

Annex No.	Description
USA-1	Explain, Oxford English Dictionary (https://www.oed.com/dictionary/explain_v?tab=meaning_and_use&hide-all-quotations=true#5066424)
USA-2	Establish, Oxford English Dictionary (https://www.oed.com/dictionary/establish_v?tab=meaning_and_use&hide-all-quotations=true#5262668)
USA-3	Verify, Oxford English Dictionary (https://www.oed.com/dictionary/verify_v?tab=meaning_and_use&hide-all-quotations=true#15737705)
USA-4	Worker Questionnaires Provided to STPS in February and March 2024 (Confidential)
USA-5	August 9, 2024 - FOSRM Initial CBA Vote Results
USA-6	June 25, 2024, Atento and Benito Juárez Union CBA
USA-7	November 28, 2023, RRM Petition (Redacted)
USA-8	December 14, 2023, RRM Petition (Redacted)
USA-9	December 22, 2023, Notification E-mail to Mexico
USA-10	April 29, 2024, Preliminary Decision of the Panel
USA-11	Atento Around the World – (https://atento.com/es/atentonomundo/mexico/)
USA-12	BBVA Mexico (https://www.bbva.mx/)
USA-13	Banco Bilbao Vizcaya Argentaria Group – U.S. Securities and Exchange Commission (SEC) 6-K Filing (https://www.sec.gov/Archives/edgar/data/842180/000119312524025273/d767454d6k.htm)
USA-14	January 16, 2023, [REDACTED] Lawsuit (Confidential)
USA-15	December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)
USA-16	January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)

Annex No.	Description
USA-17	December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)
USA-18	December 11, 2023, STRM Complaint to Federal Center (Confidential)
USA-19	December 7, 2023 [REDACTED] Complaint to Federal Center (Confidential)
USA-20	January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)
USA-21	Sufficient, Oxford English Dictionary (https://www.oed.com/dictionary/sufficient_adj?tab=meaning_and_use#19865383)
USA-22	Atento S.A. – SEC 6-K Filing (https://www.sec.gov/Archives/edgar/data/1606457/000129281422002126/attopr4q21_6ka2.htm)
USA-23	Intentionally omitted
USA-24	Atento S.A., SEC 20-F Filing (https://s28.q4cdn.com/123389419/files/doc_financials/2022/ar/atento-form-20-f-2022.pdf)
USA-25	Atento, Who Are We, Our Mission (https://atento.com/es/quienes-somos/#elementor-action%3Aaction%3Dpopup%3Aopen%26settings%3DeyJpZCI6IjU0NjxliwidG9nZ2xlljpmYWxzZX0%3D)
USA-26	TDS Global Solutions, Call Center Services (https://www.tdsgs.com/call-center-services/back-office-services)
USA-27	TECMA, Call Centers (https://www.tecma.com/industries/call-centers/)
USA-28	The Guardian, “Mexico call centers await ‘huge pool of talent’ if Trump keeps deportation pledge” (https://www.theguardian.com/world/2017/feb/17/mexico-call-centers-trump-deportations)
USA-29	Ryan Strategic Advisory, “Nearshore Delivery Makes Sense for US Clients, A white paper for Atento” (https://ryanadvisory.com/wp-content/uploads/2017/05/Atento-in-the-American-Nearshore-4.pdf)
USA-30	Compete, Oxford English Dictionary (https://www.oed.com/dictionary/compete_v2)
USA-31	U.S. Bureau of Economic Analysis, U.S. International Economic Accounts: Concepts and Methods (https://www.bea.gov/system/files/2023-06/iea-concepts-methods-2023.pdf)

Annex No.	Description
USA-32	U.S. Bureau of Economic Analysis, International Services (https://www.bea.gov/data/intl-trade-investment/international-services-expanded and BEA Interactive Data Application)
USA-33	SAS, Call Center (https://www.sascallcenter.com/)
USA-34	Screenshot of August 9, 2024, Chat with Customer Service Representative from SAS
USA-35	AnswerNet, Locations (https://answernet.com/about/locations/ and Orlando Call Center - Florida Answering Service - AnswerNet and El Paso Call Center - Texas Answering Service - AnswerNet)
USA-36	Callbox, ABNM Lead Generation Appointment Setting for Financial Consulting Leader website and Leader Generation Services Mexico City (https://www.callboxinc.com/case-studies/abm-lead-generation-appointment-setting-for-financial-consulting-leader/#download and https://www.callboxinc.com/lead-generation-services-mexico-city/)
USA-37	Arise (https://www.ariseworkfromhome.com/customer-service-work-from-home/)
USA-38	Smith AI, Virtual Receptionist Application Work-from-home opportunities website and Cities We Serve with 24/7 Answering Service (https://smith.ai/careers/virtual-receptionist and https://smith.ai/coverage)
USA-39	Verizon Business Solutions, What is a Call Center and Will it Help My Business? (https://www.verizon.com/business/resources/learn-the-basics/what-is-call-center/)
USA-40	Five Star Call Centers, Work From Home Call Center Jobs (https://fivestarcallcenters.com/jobs/work-from-home/)
USA-41	Blue Valley Marketing Call Center Operations Outsourcing vs Insourcing (https://www.bluevalleymarketing.com/call-center-operations-outsourcing-vs-insourcing/) and Medium Call Center Outsourcing vs Insourcing Price Comparison (https://tinyurl.com/MediumOutsourcing)
USA-42	January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)
USA-43	January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)
USA-44	January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)

Annex No.	Description
USA-45	Denial, Oxford English Dictionary (https://www.oed.com/dictionary/denial_n?tab=meaning_and_use&hide-all-quotations=true#7116171)
USA-46	Remediate, Oxford English Dictionary (https://www.oed.com/dictionary/remediate_v2?tab=meaning_and_use&hide-all-quotations=true#26016703)
USA-47	Redress, Oxford English Dictionary (https://www.oed.com/dictionary/redress_v1?tab=meaning_and_use&hide-all-quotations=true#26398983)
USA-48	Counteract, Oxford English Dictionary (counteract, v. meanings, etymology and more Oxford English Dictionary (oed.com))
USA-49	August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)
USA-50	August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)
USA-51	August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)
USA-52	August 17, 2022, Lineamientos Generales para los Procedimientos de Democracia Sindical
USA-53	WTO Services - The GATS: objectives, coverage and disciplines https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm#4
USA-54	(AT&T, Call Center in Mexico City, https://www.att.jobs/att-agentes-servicio-al-cliente-Ciudad-de-Mexico)
USA-55	Concentrix, Customer Service Outsourcing, https://www.concentrix.com/services-solutions/customer-service/ and Concentrix, Locations, https://www.concentrix.com/locations/ and Concentrix, Careers at Concentrix, https://apply.concentrix.com/global/en/
USA-56	Alorica, Why Alorica?, https://www.alorica.com/why-alorica and Alorica, Contact Our Headquarters, https://www.alorica.com/contact and Alorica, Alorica’s Nearshore Advantage, https://www.alorica.com/docs/default-source/insights/latam-caribbean-cx-expertise-fact-sheet-alor-19-326.pdf?sfvrsn=adc6efa1_14

I. INTRODUCTION

1. The United States offers this reply submission to the Panel pursuant to Article 31-A.7.4 of the United States – Mexico – Canada Agreement (USMCA or the Agreement) in response to Mexico’s “Document explaining the actions it took against the Covered Facility” to remediate the denial of workers’ rights to freedom of association and collective bargaining at Atento Servicios (“Initial Written Submission”).¹

2. Recourse to a panel in the context of the USMCA Rapid Response Labor Mechanism (“RRM”) is not like dispute settlement in other USMCA contexts. By the time a complainant requests that a panel, as in this case, “verify the Covered Facility’s compliance with the law in question and determine whether there has been a Denial of Rights,”² both parties to the panel proceeding already have made – and have communicated to the other party – their own determinations regarding the existence of the Denial of Rights or whether that Denial of Rights has been remediated, as required under Annex 31-A. The complainant must have “a good faith basis to believe that a Denial of Rights is occurring at a Covered Facility,” and in response to a request by the complainant, the respondent must (if it accepts the request) “conduct its own review of whether a Denial of Rights exists.”³ “[I]f the respondent Party determines that there is a Denial of Rights, it [shall] attempt to remediate within 45 days of the request.”⁴

3. When the parties disagree as to whether a Denial of Rights has occurred or whether that Denial of Rights has been remediated, a panel is requested to settle the disagreement. That is, the panel is called on (if requested by the complainant and permitted by the respondent) to verify the Covered Facility’s compliance with the relevant laws through its own fact-gathering and investigatory process,⁵ and then to make a determination regarding the Denial of Rights, thereby resolving the parties’ disagreement.

4. The nature of that disagreement is important, however. Annex 31-A of the USMCA sets out what is required (or permitted) by each party during the verification process based on the determinations made by Mexico in its review of the situation, and on the stage of the process in which the disagreement arose. Importantly, in each circumstance, the first step is for the panel to request a written document from the *respondent* party. In fact, in no circumstance must the panel

¹ All references to the translated copy of Mexico’s written submission herein are designated as “Mexico’s Initial Written Submission,” with a corresponding page number in the format in which it was received. Any references to exhibits provided by Mexico are designated as “MEX” followed by their appropriate number. Attached to this submission are a series of “Annexes” which have been pre-marked as “USA” followed by an annex number.

² USMCA Annex 31-A.5.1(a).

³ USMCA Annex 31-A.4.2.

⁴ USMCA Annex 31-A.4.2.

⁵ See Article 31-A.7.8, which provides that a panel should be able to “conduct the verification in a manner that it believes is most appropriate to gather information relevant to the matter,” and Article 26.11 of the Rules of Procedure, which indicates that the actions taken by a panel in a verification might include “e.g. onsite verification, in person or virtual review of documentary evidence, or in person or virtual direct testimony from individuals, among others.”

request a submission from the complainant party at all; rather, in each circumstance, the USMCA provides that “[t]he complainant Party *may* respond to the respondent Party’s submission.”⁶

5. Specifically, Annex 31-A.7 regarding “Verification” provides, in relevant part:

2. In cases in which the respondent Party has concluded under Article 31-A.4.5 that there is no Denial of Rights by the Covered Facility but the complainant Party disagrees with the conclusions of the respondent Party, *the panel shall request the respondent Party to submit, within 10 business days of the request, a document establishing the results of the respondent Party’s investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation* under Article 31-A.4. The complainant Party *may* respond to the respondent Party’s submission.⁷

3. In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, *the panel shall request the respondent Party to submit, within 10 business days of the petition, a document establishing the results of the respondent Party’s investigation and conclusions and the actions and sanctions it took against the Covered Facility as a result of the Request for Review and Remediation* under Article 31-A.4. The complainant Party *may* respond to the respondent Party’s submission.⁸

4. In cases in which the respondent Party has determined under Article 31-A.4.6 that there is a Denial of Rights by the Covered Facility, and the respondent Party alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights, but the complainant Party disagrees with the conclusions and actions of the respondent Party, *the panel shall request the respondent Party to submit, within 10 business days of the request, a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation* under Article 31-A.4. The complainant Party *may* respond to the respondent Party’s submission.⁹

6. This process therefore reflects that, when a panel has been requested to verify the Covered Facility’s compliance with the relevant laws, the respondent’s establishment of its conclusions and the explanation of its actions are key, and in fact form the starting point for the panel’s review.

⁶ See, e.g., USMCA Annex 31-A.7.2.

⁷ Emphasis added.

⁸ Emphasis added.

⁹ Emphasis added.

7. This is consistent with Article 31-A.4 of the USMCA, which makes clear that the complainant may not simply make its own determination that a Denial of Rights exists and request a panel to verify that determination. As required by Article 31-A.4, the complainant must first request that the respondent party review, and only after receiving the written report of the respondent, and only *if it disagrees with the respondent's determination*, can the complainant request that a panel intervene. By requiring that the respondent first submit a document establishing the results of its investigation and conclusions or explaining the actions it took against the Covered Facility, the USMCA reflects that the panel's task is essentially to determine whether the complainant party is right to disagree with the respondent.

8. In this case, the United States referred to Article 31-A.7.4 in its panel request, which applies when the respondent party has determined that there is a Denial of Rights, and alleges that the Covered Facility has taken the necessary measures to remediate the Denial of Rights. When that is the case, the responding party must submit to the panel “a document explaining the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4.” In verifying the Covered Facility's compliance with the relevant laws, therefore, the Panel must determine whether the actions taken by the Mexican authorities as a result of the U.S. Request for Review and Remediation are sufficient to remediate the Denial of Rights.

9. If the Panel were to agree with Mexico's present contention that – contrary to the findings set out in Mexico's Report to the United States – Mexico in fact did not find that a Denial of Rights occurred at the Covered Facility, that would mean that Article 31-A.7.2 applies, in which case Mexico would have been required to submit “a document establishing the results of the respondent Party's investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-A.4.”

10. Given this context, it is not correct that the Panel may not review Mexico's compliance actions. Mexico suggests this when it says that the RRM is not the forum to determine “an alleged noncompliance arising from the actions or omissions of Mexican authorities,”¹⁰ that “[t]he Panel cannot hear the case because the alleged Denial of Rights has already been remediated,”¹¹ and that “[t]he jurisdiction of this Panel is limited to determining the existence of a Denial of Rights... Nothing more.”¹² Where, as here, a Panel is requested to verify the Covered Facility's compliance with the relevant laws in addition to determining whether a Denial of Rights has occurred, the plain language of the USMCA makes clear that an explanation of Mexico's actions taken in response to the U.S. Request for Review and Remediation not only falls within the jurisdiction of the Panel, but is precisely the information Mexico is required to provide to the Panel. If the Panel considers that Article 31-A.7.2 instead of Article 31-A.7.4 applies, then Mexico must submit “a document establishing the results of the respondent Party's

¹⁰ Mexico's Initial Written Submission, para. 116.

¹¹ Mexico's Initial Written Submission, Heading IV.B.1, preceding para. 126.

¹² Mexico's Initial Written Submission, para. 127.

investigation and conclusions” as well as “any efforts it took as a result of the Request for Review and Remediation under Article 31-A.4.”

11. It is also not correct that the burden lies exclusively on the United States to establish the Covered Facility’s non-compliance with the relevant laws or to show that the remediation alleged by the Mexico was insufficient to remediate the Denial of Rights, such that Mexico need not establish its own findings and conclusions regarding these issues.¹³ As Mexico itself acknowledges, the principle of *onus probandi incumbit actori* requires that “the party making a certain allegation must assume the responsibility of proving it.”¹⁴ And as can be seen above in the text of Article 31-A.7.4, it is for Mexico to “*explain*”¹⁵ the actions it took against the Covered Facility as a result of the Request for Review and Remediation under Article 31-A.4” or, if Article 31-A.7.2 applies, to “*establish*”¹⁶ the results of the respondent Party’s investigation and conclusions and any efforts it took as a result of the Request for Review and Remediation under Article 31-A.4.” Moreover, the Panel itself has been asked to *verify*¹⁷ the Covered Facility’s compliance with the relevant laws. Therefore, while Mexico makes much of the fact that Article 14.1 of the Rules of Procedure for Chapter 31 (Dispute Settlement) states that “[a] complaining Party asserting that...there has been a denial of rights under Article 31-A.2...has the burden of establishing that...denial of rights,” this general rule cannot be understood to render the roles and responsibilities of Mexico and of the Panel effectively meaningless.

12. As both Mexico and the United States found in their respective investigations, and as the United States will again demonstrate here, a Denial of Rights occurred at the Atento call center facility. The question before the Panel is whether that Denial of Rights was remediated by the actions taken by Mexico during its 45-day review period, or whether those actions were not sufficient, such that the Denial of Rights persists.

13. Mexico stated in its Initial Written Submission that the labor reform that occurred in Mexico in 2019 “is one of the most transcendental events in the history of Mexican labor matters.”¹⁸ The changes required under the new law ensure that workers are able to exercise their right to freedom of association and collective bargaining in a way they previously were not able to, with the aim of allowing them to negotiate for better wages and benefits, other working

¹³ See, e.g., Mexico’s Initial Written Submission, para. 82.

¹⁴ Mexico’s Initial Written Submission, para. 165.

¹⁵ See USA-1 (Explain, Oxford English Dictionary. To “explain” means “to offer or provide an explanation” and to “make plain or intelligible; to clear of obscurity or difficulty.”

https://www.oed.com/dictionary/explain_v?tab=meaning_and_use&hide-all-quotations=true#5066424.)

¹⁶ See USA-2 (Establish, Oxford English Dictionary. To “establish” means “to demonstrate or ascertain the truth of something.” https://www.oed.com/dictionary/establish_v?tab=meaning_and_use&hide-all-quotations=true#5262668.)

¹⁷ See USA-3 (Verify, Oxford English Dictionary. To “verify” means “to show to be true by demonstration or evidence; to confirm the truth or authenticity of; to substantiate.”)

https://www.oed.com/dictionary/verify_v?tab=meaning_and_use&hide-all-quotations=true#15737705

¹⁸ Mexico’s Initial Written Submission, para. 20.

conditions, and more. Not surprisingly, many employers do not want these changes to happen; and what occurred at Atento shows us how an employer might go about making sure they do not.

14. As early as May 2021, a worker reports having been fired for wanting to be represented by an independent union.¹⁹ But the first real test for Atento came as a result of the requirement in the 2019 Labor Reform to “legitimize” all existing CBAs. This process – which is described in section III.3 of Mexico’s submission – requires that all existing CBAs are put to a vote by the workers “to prove the workers know and support the content of the CBA” and “to avoid inactive agreements, as well as simulation in collective bargaining.”²⁰ In their first opportunity to determine how and by whom they wanted to be represented, in November 2022, workers rejected the existing CBA and the incumbent “protection” union left the facility.

15. Atento’s response came quickly and decisively, firing numerous workers who had participated in organizing against the CBA. Twenty-two (22) dismissed workers are reflected in Mexico’s exhibit MEX-50 as having been dismissed either immediately after or in the following two months, with 15 of those having received some sort of remediation and one (1) still pursuing her case in the labor courts.²¹ Atento also invited into the facility unions friendly to its interests, and created its own “worker committee” in an apparent attempt to make its anti-union efforts appear to be the will of the workers.

16. The next test for Atento came in the form of a vote between STRM and FOSRM for the right to represent workers for the purpose of collective bargaining in the facility. As both Mexico and the United States found, during the lead up to the vote, STRM was not permitted to organize at the facility, workers were repeatedly threatened with the loss of their jobs and the closure of the facility if they voted for STRM, and many more STRM supporters were illegally dismissed – more than 30 altogether (and counting). By contrast, Atento’s chosen union freely accessed the facility and even offered workers movie tickets in exchange for their support. The result was that Atento succeeded in its objective of keeping the independent union out of the facility. The majority of workers chose not to support STRM.

17. In response, the Mexican authorities found that the illegal actions taken by Atento did not materially affect the outcome of the vote, and appear not to have investigated many of the complaints made by workers about the firing and threatening of workers and the denial of access to the facility by STRM. Left to their own devices, many of the fired workers accepted conciliation packages in which they received some remuneration in exchange for extinguishing their legal rights against Atento. None of these workers was voluntarily reinstated by Atento in the context of a conciliation, and all of them received less than they might have received if their firing were determined by the courts to be illegal.

¹⁹ USA-4 (Worker Questionnaires Provided to STPS in February and March 2024) at 1-3; *see also* MEX-50 (List of Dismissals, Agreements, Challenges) (Confidential)) at 2.

²⁰ Mexico’s Initial Written Submission, para. 31.

²¹ MEX-50 (List of Dismissals, Agreements, Challenges) (Confidential)).

18. In the context of the RRM, Mexico took certain additional actions that went further than the legal resolutions achieved through the actions of the workers alone, including reinstating illegally dismissed workers and providing them with additional backpay. These actions are important and meaningful, and certainly go a long way in putting the workers closer to the position they would have been in had the illegal activity not occurred, and we commend the Government of Mexico for taking them. Considering the severe nature of the Denials of Rights at Atento, however, these actions are not sufficient. In this case, the employer intimidated, coerced, and fired numerous workers to keep them from selecting the union of their choice, and the employer was successful in influencing the election it sought to influence. The remedy for that must include measures to give workers back what they lost – the opportunity to organize freely and fairly and without employer interference, and to vote for the union of their choice without fear of retaliation. The remedy for that also must include some form of sanction or penalty for the offending company, so that this company and others understand that they cannot interfere in union activity with impunity.

19. The evidence shows that Atento has not gotten that message. On August 9, 2024, yet another election took place at Atento – a vote to approve the new CBA negotiated by FOSRM and the company. Workers were threatened and coerced into again supporting the company’s chosen union and approving the CBA, and – unsurprisingly at this point – the CBA was in fact approved.²²

20. Therefore, the evidence in this case demonstrates that, without more fulsome remediation measures, the message to both workers and to the company will necessarily be that an employer *can* interfere in union activity with impunity, and that workers *cannot* expect to freely exercise their right to freedom of association and collective bargaining. Such an outcome flies in the face of everything the 2019 Labor Reform sought to achieve. Mexico should not tolerate this outcome, and the Panel should not bless this outcome by finding that the Denials of Rights at the facility have been remediated.

II. PROCEDURAL HISTORY

21. On November 28, 2023, the *Sindicato de Telefonistas de la República Mexicana* (STRM) filed a petition with the United States under domestic procedures related to the RRM alleging denials of rights at Atento Servicios, S.A. de C.V., a call center business in Pachuca, Hidalgo, Mexico (“Covered Facility” or “Atento”).²³ STRM filed a subsequent petition on December 14, 2023.²⁴ This petition alleged that Atento dismissed several workers for engaging in activities supporting STRM. The petition alleged that Atento committed several other acts of interference in the exercise of workers’ right to freely choose their union in connection with a representation election between STRM and the *Sindicato Nacional Presidente Benito Juárez de la Industria de*

²² USA-5 (August 9, 2024 - FOSRM Initial CBA Vote Results); USA-6 (June 25, 2024, Atento and Benito Juárez Union CBA).

²³ USA-7 (November 28, 2023, RRM Petition (Redacted)).

²⁴ USA-8 (December 14, 2023, RRM Petition (Redacted)).

la Comunicación de la República Mexicana, part of the Federación Obrera Sindical de la República Mexicana (“FOSRM” or “Benito Juárez union”), that took place at the facility on December 6, 2023.²⁵

22. On December 22, 2023, the United States notified Mexico that it received and was reviewing the petition.²⁶

23. After investigating these allegations and reaching the conclusion that there was sufficient credible evidence of a denial of rights, on January 19, 2024, the United States requested, pursuant to Article 31-A.4.2 of the USMCA, that Mexico conduct its own review of the situation.²⁷ Mexico agreed to conduct the requested review on January 29, 2024.²⁸ Workers provided Mexico, between February 15 and March 3, 2024, questionnaire responses outlining Atento’s misconduct, among other information they provided Mexico.²⁹ Forty-five days after Mexico received the request for review, on March 4, 2024, Mexico sent a report to the United States determining that a denial of rights occurred at the Covered Facility, but in which it also determined that the Covered Facility had taken the necessary measures to remediate the denial of rights.³⁰

24. On April 16, 2024, the United States communicated its reasons for disagreement with Mexico’s determination in writing in accordance with Article 31-A.4.5 of the Agreement.³¹ The same day, the United States filed the panel request in this case seeking an independent review of the situation.³² On April 29, the Panel found that the request complied with the requirements of Article 31-A.6.³³

25. For the reasons set forth in greater detail below, the United States disagrees with both the procedural and substantive arguments made by Mexico in its Initial Written Submission and continues to have a good faith basis to believe that Atento denied its workers’ rights and that the denial of rights has not been remediated. In support of our request and position, we submit: (1) a review of the factual record, with references to supporting documentation attached hereto as

²⁵ USA-8 (December 14, 2023, RRM Petition (Redacted)). For the sake of efficiency, we refer to FOSRM and the Benito Juárez union interchangeably even though the latter entity is part of the former’s federation.

²⁶ USA-9 (December 22, 2023, Notification E-mail to Mexico) at 1.

²⁷ MEX-01 (United States’ Request for Review) at 1.

²⁸ MEX-02 (Mexico Letter Accepting Review) at 1.

²⁹ Copies of a few of the questionnaire responses are attached to this reply submission and marked as USA-4, but we understand many more were provided to STPS. The questionnaire responses are discussed in more depth below.

³⁰ MEX-03 (Internal Investigation Results) at 45-46. Mexico considered the allegations in both petitions in its report reviewing the labor situation. See MEX-03 (Internal Investigation Results) at 7-10.

³¹ MEX-04 (U.S. Communication to Mexico Providing Its Reasons for Disagreement with Mexico’s Determination That the Denial of Rights Has Been Remediated).

³² MEX-05 (Request for the Establishment of a Panel).

³³ USA-10 (Preliminary Decision of the Panel) at 1.

“Annex” exhibits; and (2) an overview of the legal basis for the United States’ position in this matter.

III. FACTUAL BACKGROUND

26. The Covered Facility at issue, Atento, is a call center located in Pachuca de Soto, Hidalgo. Atento’s primary customer appears to be BBVA Mexico, a subsidiary of the Spanish bank, Banco Bilbao Vizcaya Argentaria Group.³⁴

27. On November 22, 2022, a vote was held at Atento to legitimize the Collective Bargaining Agreement of the incumbent union, the *Sindicato “Progreso y Trabajo” del Transporte y Servicios de la República Mexicana* (“Progreso y Trabajo union”), which was supported by Atento.³⁵ Efforts to defeat the legitimization of the CBA were led by a group of workers who called themselves the *Coalición de Asesores Unidos*. The CBA was rejected in a vote of 355 to 564.³⁶

28. After the vote, between December 2022 and February 2023, Atento dismissed several of the workers who had campaigned against the CBA.³⁷

29. Having lost the legitimization vote, the Progreso y Trabajo union left the facility, and in early 2023 multiple groups began competing to represent the workers. All of these groups were either created by, or invited into the facility by, the company, except the independent union, STRM. First, workers indicate that Atento invited a group affiliated with the *Confederación Revolucionaria de Obreros y Campesinos* (CROC) to the facility, a group known to be a “white” or “protection” union, and who offered workers life insurance in exchange for their support of

³⁴ See USA-11, (Atento Around the World, <https://atento.com/es/atentonomundo/mexico/>); USA-7 (November 28, 2023, RRM Petition) at 1; USA-8 (December 14, 2023, RRM Petition) at 1. See also USA-12 (BBVA Mexico, <https://www.bbva.mx/>); USA-13 (Banco Bilbao Vizcaya Argentaria Group – U.S. Securities and Exchange Commission (SEC) 6-K Filing, <https://www.sec.gov/Archives/edgar/data/842180/000119312524025273/d767454d6k.htm>). According to worker [REDACTED], Atento and BBVA are located in the same building in Pachuca. See USA-14 (January 16, 2023, [REDACTED] Lawsuit (Confidential)) at 2, 5.

³⁵ USA-14 (January 16, 2023, [REDACTED] Lawsuit (Confidential)) at 6; MEX-03 (Internal Investigation Results) at 7; USA-7 (November 28, 2023, RRM Petition (Redacted)) at 1; MEX-21 (Nonconformity from [REDACTED] (Confidential)) at 3.

³⁶ MEX-21 (Nonconformity from [REDACTED] (Confidential)) at 5.

³⁷ Mexico’s Initial Written Submission, at paras. 43, 47; MEX-03 (Internal Investigation Results) at 8; USA-7 (November 28, 2023, RRM Petition (Redacted)) at 1, 2; MEX-23 (Written submission of the Telefonistas Union, Nonconformity 1806/2023 (Confidential)) at 1-2; MEX-50 (List of Dismissals, Agreements, Challenges) (Confidential), containing descriptive table on the situation of Atento’s former employees and identifying 16 workers fired during this period, first section: rows 1-9, 18, 19, and second section, rows 1-8, 10-12; MEX-21 (Nonconformity from [REDACTED] (Confidential)) at 6; USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)); USA-16 (January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)); USA-4 (Worker Questionnaires Provided to STPS in February and March 2024 (Confidential)) at 5, 10.

CROC.³⁸ Second, Atento established a “worker committee” that the company would engage with to resolve any worker grievances.³⁹ The company chose the candidates who would participate in the committee and organized an election for the committee’s representatives on Atento’s intranet in April 2023.⁴⁰ It was through this committee that the company eventually sought out and promoted the *Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana*, part of the *Federación Obrera Sindical de la República Mexicana* (“FOSRM” or “Benito Juárez union”), among Atento’s workers.⁴¹ Finally, STRM began attempting to organize at the facility. STRM was sought out by workers who had previously organized as the *Coalición de Asesores Unidos*, after that group’s unsuccessful efforts to enter and organize at the facility.⁴²

30. As Mexico describes in its Initial Written Submission, both STRM and FOSRM submitted applications for the Representation Certificate at Atento,⁴³ and a vote was scheduled for December 6, 2023.⁴⁴

31. Prior to the vote, in June 2023, STRM submitted a notice to Atento requesting access to the facility to organize and affiliate workers, similar to the access Atento was providing to FOSRM. Atento denied STRM’s request.⁴⁵

32. On about July 26, 2023, STRM filed a Nonconformity with the Federal Center, in which it described the illegal dismissals which had occurred since the Legitimization Vote, as well as threats by the company and the preferential access to the facility the company had granted to

³⁸ MEX-03 (Internal Investigation Results) at 8; MEX-23 (Written submission of the Telefonistas Union, Nonconformity 1806/2023 (Confidential)) at 2-3; USA-16 (January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)) at 1; USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 4.

³⁹ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 8-9.

⁴⁰ MEX-03 (Internal Investigation Results) at 27-29, 45; USA-7 (November 28, 2023, RRM Petition (Redacted)) at 3; MEX-21 (Nonconformity from [REDACTED] (Confidential)) at 8-9; MEX-23, Written submission of the Telefonistas Union, Nonconformity 1806/2023 (Confidential) at 2; USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 5.

⁴¹ MEX-03 (Internal Investigation Results) at 27-29, 45; USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 8-9.

⁴² USA-16 (January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)) at 1, 4; USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 3; MEX-21 (Nonconformity from [REDACTED] (Confidential)) at 8; MEX-23 (Written submission of the Telefonistas Union, Nonconformity 1806/2023 (Confidential)) at 2.

⁴³ Mexico’s Initial Written Submission, paras. 44-45; MEX-03 (Internal Investigation Results) at 33-34.

⁴⁴ USA-7 (November 28, 2023, RRM Petition (Redacted)) at 4; MEX-03 (Internal Investigation Results) at 9.

⁴⁵ USA-18, (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 2; MEX-03 (Internal Investigation Results) at 37-38, and 45; USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 9; USA-7 (November 28, 2023, RRM Petition (Redacted)) at 2-3; MEX-23, Written submission of the Telefonistas Union, Nonconformity 1806/2023 (Confidential) at 3.

FOSRM.⁴⁶ According to Mexico, the Verification Division of the Federal Center found that it lacked jurisdiction to review these issues⁴⁷ (as it had with an earlier Nonconformity filed after the Legitimization Vote⁴⁸), and it is not clear whether any further investigation occurred or what the Federal Center ultimately concluded. Mexico reports that on-site visits were made to the call center. Those visits appear to confirm that FOSRM had access to the facility while STRM did not, and do not address either illegal firings or threats by the company. During one visit the authorities apparently “recommended the company to remain impartial.”⁴⁹ It is not clear from the verification minutes what prompted this recommendation.

33. In the immediate run-up to the vote, between October and December 2023, in addition to denying STRM access to the premises, Atento dismissed several more workers who supported STRM, including three workers on December 1 and two on December 5, the day before the election.⁵⁰ Atento also threatened workers, warning workers that if STRM prevailed in the election, the call center would close.⁵¹ For its part, FOSRM had access to the facility premises and offered workers movie tickets in exchange for their vote.⁵²

34. On the day of the election, in addition to two union representatives from FOSRM and two from STRM that the Federal Center had registered as observers, several unregistered individuals were present in the voting areas, including other representatives from FOSRM and Atento’s Human Resources (HR) department and from BBVA.⁵³ Atento security personnel escorted voters from their arrival to the voting booth, until they voted and departed the worksite.⁵⁴ There is evidence that surveillance cameras were pointed toward the voting area, recording workers as

⁴⁶ Mexico’s Initial Written Submission, paras. 47-48 (citing to MEX-23 (Written submission of the Telefonistas Union, Nonconformity 1806/2023 (Confidential))).

⁴⁷ Mexico’s Initial Written Submission, para. 49.

⁴⁸ Mexico’s Initial Written Submission, para. 43.

⁴⁹ Mexico’s Initial Written Submission, para. 50.

⁵⁰ USA-8 (December 14, 2023, RRM Petition (Redacted)) at 2; MEX-50 (Descriptive table on the situation of Atento’s former employees (Confidential)) at 1-2, which identifies 8 workers fired during this period; MEX-60 (Evidence of Settlements, Reinstatements and a Letter of Commitment Atento-STPS (Confidential)) at 2, 6, 10, 14; Mexico’s Initial Written Submission, at paras. 76, 78; USA-19 (December 7, 2023, [REDACTED] Complaint to Federal Center (Confidential)) at 1, 3; USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 2.

⁵¹ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 3; USA-20 (January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)) at 1, 2, 5, 8; USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 2.

⁵² USA-20 (January 5, 2024, Notes from United States Investigatory Interview with [REDACTED] (Confidential)) at 2, 6, 10; USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4; USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 2.

⁵³ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4; USA-19 (December 7, 2023, [REDACTED] Complaint to Federal Center (Confidential)) at 2; USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 4-5.

⁵⁴ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 9; USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 4.

they voted.⁵⁵ In addition, Atento HR personnel videotaped and photographed workers who left the facility after voting.⁵⁶

35. FOSRM prevailed against STRM in the election by a vote of 770 to 198. The next day, Atento dismissed another worker who supported STRM.⁵⁷

36. In early December, following the election, STRM and worker [REDACTED] filed complaints with supporting evidence with the Federal Center.⁵⁸ The complaints alleged misconduct by Atento in the lead up to and on the day of the election. On January 24, 2024, the Federal Center issued an opinion determining that the allegations lacked a “direct influence on the casting of votes by the workers.”⁵⁹ Despite Mexico’s findings in its March 4 RRM report that Atento denied its workers’ rights,⁶⁰ on March 27 the Federal Center issued a resolution granting the Certificate of Representation to FOSRM.⁶¹

IV. THE UNITED STATES COMPLIED WITH THE PROCEDURES IN ANNEX 31-A AND PROVIDED MEXICO WITH SUFFICIENT INFORMATION TO INVESTIGATE WHETHER THERE ARE DENIALS OF RIGHTS.

37. Mexico’s contention that the United States did not provide sufficient information for Mexico to conduct its review is inconsistent with the facts and procedures established in Annex 31-A. Article 31-A.4.2 of the Agreement states that when “requesting review” a Party will provide the other with “sufficient information for the respondent Party to conduct its review.”⁶² “Sufficient” means “of a quantity, extent, or scope adequate to a certain purpose or object[.]”⁶³ As the USMCA indicates, the purpose is “for the respondent Party to conduct its review.” Sufficiency will vary depending on the facts of each case, but would generally require information that is “adequate” for the purpose of allowing the respondent Party to investigate the matter and respond to the request for review.

⁵⁵ USA-19 (December 7, 2023, [REDACTED] Complaint to Federal Center (Confidential) at 2; USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 4.

⁵⁶ USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 5.

⁵⁷ USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 5; USA-8 (December 14, 2023, RRM Petition (Redacted)) at 5; MEX-03 (Internal Investigation Results) at 10.

⁵⁸ USA-19 (December 7, 2023, [REDACTED] Complaint to Federal Center (Confidential)); USA-18 (December 11, 2023, STRM Complaint to Federal Center (Confidential)); MEX-29 (Opinion Assessing Election Complaints) at 1, 5 (Federal Center acknowledges complaints filed by [REDACTED] and STRM).

⁵⁹ MEX-29 (Opinion Assessing Election Complaints) at 9.

⁶⁰ MEX-03 (Internal Investigation Results) at 1.

⁶¹ MEX-27 (Resolution Granting Certificate of Representation, March 27, 2024); MEX-61 (Representation Certificate in favor of Benito Juárez Union, issued on March 27, 2024, by the Federal Center’s Division of Certificates).

⁶² USMCA Article 31-A.4.2.

⁶³ USA-21 “Sufficient.” Oxford English Dictionary. Oxford University Press, 2024 (available at https://www.oed.com/dictionary/sufficient_adj?tab=meaning_and_use#19865383).

38. In this case, the United States sent Mexico a request to review the situation at Atento on January 19, 2024. In this document, the United States provided the following information:

The United States requests, pursuant to Article 31-A.4.2 of the United States-Mexico-Canada Agreement (USMCA), that Mexico conduct a review of whether a Denial of Rights is occurring at Atento Servicios, S.A. de C.V. (the company), in the city of Pachuca in the state of Hidalgo (the Facility).

[...]

The United States is concerned that workers at the Facility are being denied the right of free association and collective bargaining as a result of interference in workers' union activities. This request for review encompasses all actions taken by the company to intervene in organizing efforts by, or to prevent workers from organizing for, *Sindicato de Telefonistas de la República Mexicana* (STRM), including dismissing STRM organizers because of their union activity, threatening workers with reprisals, and otherwise coercing workers to withdraw their support for STRM.

This request for review also encompasses all actions taken by the company to coerce workers to join the *Sindicato Nacional Presidente Benito Juárez de la Industria de la Comunicación de la República Mexicana* (Benito Juarez union), including encouraging workers to affiliate with the Benito Juarez union through reprisals and threats of reprisals, providing the Benito Juarez union access to the facility, and offering benefits to workers if they support the Benito Juarez union.⁶⁴

39. That is, the United States provided Mexico with the specific name and location of the facility, the name of the unions at issue (STRM and the Benito Juarez union, a/k/a FOSRM), and the nature of the denials of rights at issue (i.e., intervening in organizing efforts, preventing workers from organizing for STRM, dismissing STRM organizers, threatening and otherwise coercing workers, encouraging workers to affiliate with FOSRM, providing FOSRM facility access, and offering benefits to workers).⁶⁵ This information was “sufficient” for its purpose under the RRM, because it told Mexico: (1) which facility was at issue and where it was located; (2) what the issues were that needed to be investigated; and (3) which entities were involved in

⁶⁴ MEX-1 (United States' Request for Review) at 1.

⁶⁵ In addition to the text of the USMCA, the domestic protocols adhered to by the United States are set forth in the USMCA Implementation Act. The Act requires that the Interagency Labor Committee or “ILC” review information submitted to the United States “within 30 days of submission and shall determine whether there is sufficient credible evidence of a denial of rights (as so defined) enabling the good-faith invocation of enforcement mechanisms.” USMCA Implementation Act, 19 U.S.C. § 4646(b)(1).

the identified denial of rights. Such information was sufficient to allow the Mexican government to identify and contact the relevant facility and entities, and to make inquiries or otherwise investigate the denial of rights. The information allowed Mexico to evaluate the situation and issue a detailed report.

40. As evidenced in Mexico’s report, Mexico assessed the United States’ request for review and undertook a thorough investigation of the allegations contained therein. This included Mexico’s review of the two RRM petitions STRM filed and dozens of photo, video, and other files and its interviews with several workers and company and union officials. On the basis of its investigation, Mexico concluded that the alleged violations of Mexican labor law set forth in the request for review denied workers’ right to freedom of association and collective bargaining.⁶⁶

41. Mexico’s claim that the United States failed to provide Mexico with sufficient information to allow it to investigate the denials of rights identified is simply inaccurate. Consequently, we ask that the Panel find that the United States provided Mexico with sufficient information to proceed under the mechanism, consistent with Article 31-A.4.2 of the USMCA.

V. THE ATENTO CALL CENTER IN PACHUCA IS A COVERED FACILITY

42. Atento is a call center located in Pachuca de Soto, Hidalgo. As noted previously, Atento’s primary customer appears to be BBVA Mexico, a subsidiary of the Spanish bank, Banco Bilbao Vizcaya Argentaria Group. Its parent company, Atento S.A., has its principal executive offices in Luxembourg and considers itself one of the world’s largest providers of customer relationship management (CRM) and business process outsourcing (BPO) services.⁶⁷

43. Atento provides a variety of services that fall within the CRM market category.⁶⁸ As Mexico’s Federal Center for Conciliation and Labor Registration (Federal Center or CFCRL) has stated, these services include “call center services, including technical support, customer service, sales and telemarketing.”⁶⁹ Atento’s services encompass working with customers to manage sales, customer care, technical support, collections, and back office, and include voice and non-voice (e.g., chat, email, AI).⁷⁰

⁶⁶ MEX-3 (Internal Investigation Results) at 12-36, 45.

⁶⁷ USA-22, (Atento S.A. - SEC 6-K Filing, [sec.gov/Archives/edgar/data/1606457/000129281422002126/attopr4q21_6ka2.htm](https://www.sec.gov/Archives/edgar/data/1606457/000129281422002126/attopr4q21_6ka2.htm)).

⁶⁸ See USA-11 (Atento Around the World, <https://atento.com/es/atentonomundo/mexico/>).

⁶⁹ See MEX-61 (Representation Certificate in favor of Benito Juárez Union, issued on March 27, 2024, by the Federal Center’s Division of Certificates) at 2.

⁷⁰ See USA-24 (December 31, 2022, Atento Securities and Exchange Commission 20-F Filing, pp. 30, 33 https://s28.q4cdn.com/123389419/files/doc_financials/2022/ar/atento-form-20-f-2022.pdf). According to worker [REDACTED], his job responsibilities at Atento included managing the collection of payments from BBVA’s credit card clients, among other things. See USA-14 (January 16, 2023, [REDACTED] Lawsuit (Confidential)) at 5.

A. The evidence establishes that Atento is a “Covered Facility” within the meaning of the USMCA.

44. Atento meets the definition of “Covered Facility” established in Annex 31-A of the Agreement as a result of its ongoing business activity. Under Article 31-A.15 of the Agreement:

“Covered Facility” means a facility in the territory of a Party that: (i) produces a good or supplies a service traded between the Parties; or (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party[.]”

45. The “Covered Facility” definition in the Agreement also requires the facility at issue to be in a “Priority Sector,” which is defined as “a sector that produces manufactured goods, supplies services, or involves mining.”⁷¹ Atento is in a Priority Sector because it supplies a service.⁷²

46. Under a proper interpretation of the USMCA, Atento is a “Covered Facility” within the meaning of both element (i) and (ii).

i. Element (i) of the “Covered Facility” definition

47. As applied in this particular case, Atento qualifies as a Covered Facility because the evidence shows that it supplies “services” that are “traded” between the Parties. Here, element (i) of the “Covered Facility” definition is satisfied because Atento supplies services, including call center services, that are of a kind “traded” between the Parties, i.e., supplied into the United States. Numerous facilities in Mexico supply call center services to customers located in the United States.⁷³ In fact, Atento, in its Mexico City location, employs 10,000 workers that provide U.S. clients call center services, including customer service, technical support, revenue generation, and back-office functions; the U.S. clients include Walmart, American Express, HSBC, and GE.⁷⁴

⁷¹ USMCA Article 31-A.15.

⁷² See USA-25 (Atento Who Are We, Our Mission, <https://atento.com/es/quienes-somos/#elementor-action%3Aaction%3Dpopup%3Aopen%26settings%3DeyJpZCI6IjU0NjlkxIiwidG9nZ2x1IjpmYWxzZX0%3D>)

⁷³ See, e.g., USA-26 (TDS Global Solutions, <https://www.tdsgs.com/call-center-services/back-office-services>) (advertising back office business process outsourcing (BPO) services to customers in the United States); USA-27 (TECMA, <https://www.tecma.com/industries/call-centers/>) (advertising phone-based services for customers in the United States, including “shelter call center” services in Mexico that allow businesses to operate call centers as a division, while TECMA handles the tax compliance, accounting, and human resources functions). See also USA-28 (*The Guardian*, “Mexico call centers await ‘huge pool of talent’ if Trump keeps deportation pledge,” Feb. 17, 2017, available at: <https://www.theguardian.com/world/2017/feb/17/mexico-call-centers-trump-deportations>) (documenting the “booming” call center industry in Mexico that requires English speakers to service U.S. customers).

⁷⁴ See USA-29 (Ryan Strategic Advisory, “Nearshore Delivery Makes Sense for US Clients, A white paper for Atento” (May 2017), available at: <https://ryanadvisory.com/wp-content/uploads/2017/05/Atento-in-the-American-Nearshore-4.pdf>).

48. In its Initial Written Submission, Mexico cites to the Covered Facility analysis set out by the panel in the San Martín Mine dispute to argue that the good or service in question must originate with the specific facility in question. However, this interpretation is not consistent with the text or context of the definition set out in Annex 31-A. The plain language of Article 31-A.15(i) states that the service must be “traded between the Parties” only. It does not contain any language that would limit the service to that which is specifically supplied cross-border to the other Party by the Covered Facility.

49. This makes sense because regardless of whether a particular facility’s services are exported, its supply of services, and the costs of rendering those services, including the costs of complying with local labor laws, will affect the market for that service, in terms of the volume of services provided and the prices for those services, among other things. As Atento acknowledges in its filings with the SEC, its clients contract with providers like Atento “largely to take advantage of lower labor costs, specialist knowledge and cost efficiencies.”⁷⁵ Labor costs that are suppressed because of illegal labor conditions at Atento, which competes with other CRM service providers in Mexico, can drive down wages and other working conditions in the North American call center sector generally.

50. For the foregoing reasons, the evidence demonstrating that call centers located in Mexico provide services to customers in the United States satisfies the test under element (i) of the definition because these call center services are services that are “traded between the Parties,” under the definition in Annex 31-A.

*ii. Element (ii) of the “Covered Facility” definition*⁷⁶

51. Element (ii) of the “Covered Facility” definition is satisfied because Atento supplies call center services that “compete in the territory of [Mexico] with a service of the [United States]”. The ordinary meaning of the term “compete” is “esp. in commercial relations: To strive with others in the production and sale of commodities, or command of the market.”⁷⁷ Therefore, a service “competes” with a service of another Party if they both strive in the production and sale of commodities or command of the market. A service “of the [United States]” can be supplied in multiple ways, or “modes”, including through the cross-border supply of the service (i.e., the

⁷⁵ See USA-24 (Atento S.A. – SEC 20-F Filing, p. 55

https://s28.q4cdn.com/123389419/files/doc_financials/2022/ar/atento-form-20-f-2022.pdf). Atento also acknowledges in this SEC filing that labor disputes could impact its business. See USA-24 (Atento S.A. – SEC 20-F Filing, pp. 6, 9, 19, 71 https://s28.q4cdn.com/123389419/files/doc_financials/2022/ar/atento-form-20-f-2022.pdf).

⁷⁶ The United States’ argument that element (ii) of the Covered Facility definition is satisfied is properly before the Panel for decision. The United States, in our written disagreement with Mexico’s determination finding that the denial of rights was remediated, noted that Atento is a Covered Facility under element (i). However, nothing in the USMCA requires the complaining Party to make Covered Facility arguments at the time it requests the establishment of the panel, and the United States raised the element (ii) argument at the earliest reasonable opportunity in this proceeding, i.e., in this submission.

⁷⁷ See USA-30 (Compete, Oxford English Dictionary, definition 2b https://www.oed.com/dictionary/compete_v2?tl=true).

export of the service), or through the physical presence of the service provider in the territory of the other party.⁷⁸

52. The U.S. Bureau of Economic Analysis (“the BEA”) has published data on international services, including services similar to those Atento provides, which fall under “Other business services,” including “Professional and management consulting services” and “Technical, trade-related, and other business services.”⁷⁹ The BEA’s data reveals millions of dollars in United States exports of these services to Mexico – and also in Mexican exports to the United States.⁸⁰ Atento’s own SEC filings state that “[o]ur industry is very competitive” and that its services are in “competition” with “foreign and domestic competitors.”⁸¹ The services of the United States are like the services that Atento supplies and therefore would compete in the territory of Mexico with those services.

53. In fact, U.S. companies supply customer relationship management (CRM) services in several ways that compete in Mexico.

54. First, U.S. firms own affiliates in Mexico that provide CRM services and compete with other CRM providers in Mexico. For example, U.S. firm AT&T has a call center in Mexico.⁸² CRM-providers Concentrix⁸³ and Alorica⁸⁴ are also headquartered in the United States but have locations in Mexico. CRM services supplied through Mexican affiliates of U.S. companies, like these firms, constitute services of the United States that compete with the CRM services provided by Atento.

⁷⁸ See USA-53 WTO | Services - The GATS: objectives, coverage and disciplines, Question 4, available at: https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm#4, and USA-31 (U.S. Bureau of Economic Analysis, U.S. International Economic Accounts: Concepts and Methods <https://www.bea.gov/system/files/2023-06/iea-concepts-methods-2023.pdf> at 263-267).

⁷⁹ See USA-31 (U.S. Bureau of Economic Analysis, U.S. International Economic Accounts: Concepts and Methods <https://www.bea.gov/system/files/2023-06/iea-concepts-methods-2023.pdf> at 114-115, 248-251).

⁸⁰ See USA-32 (U.S. Bureau of Economic Analysis, International Services <https://www.bea.gov/data/intl-trade-investment/international-services-expanded> and https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4&_gl=1*_1txanfb*_ga*ODM4Mzk5NzIyLjE3MjMlOTI3MjI.*_ga_J4698JNNFT*MTcyMzU5NzEyNy4yLjAuMTcyMzU5NzEyNy42MC4wLjA.#cyJhcHBpZCI6NjIsInN0ZXBzIjpbMSw5LDEwLDddLCJkYXRhIjpbWyJwcm9kdWN0IiwNCjJdLFsiVGFiIGVMaXN0IiwuMzA1NjgiXSxbllRhYmxlTGZldFNlY29uZGFyeSIsIjMwNTc5IiIldfQ==).

⁸¹ See USA-24 (Atento S.A. - SEC 20-F Filing, p. 10 https://s28.q4cdn.com/123389419/files/doc_financials/2022/ar/atento-form-20-f-2022.pdf).

⁸² See USA-54 (AT&T, Call Center in Mexico City, <https://www.att.jobs/att-agentes-servicio-al-cliente-Ciudad-de-Mexico>).

⁸³ See USA-55 (Concentrix, Customer Service Outsourcing, <https://www.concentrix.com/services-solutions/customer-service/> and Concentrix, Locations, <https://www.concentrix.com/locations/> and Concentrix, Careers at Concentrix, <https://apply.concentrix.com/global/en/>, listing Concentrix’s address at 39899 Balentine Dr, Ste 235, Newark, California 94560).

⁸⁴ See USA-56 (Alorica, Why Alorica?, <https://www.alorica.com/why-alorica> and Alorica, Contact Our Headquarters, <https://www.alorica.com/contact> and Alorica, Alorica’s Nearshore Advantage, https://www.alorica.com/docs/default-source/insights/latam-caribbean-cx-expertise-fact-sheet-alor-19-326.pdf?sfvrsn=adc6efal_14).

55. Second, U.S. firms provide CRM services similar to those provided by Atento to customers in Mexico from facilities located in the United States. SAS is a company that provides outsourced customer service and inbound and outbound sales.⁸⁵ It is a U.S.-based service-provider that provides services by phone to companies located in Mexico. A customer service representative from SAS confirmed that it provides services to Mexican companies, and explained that if an English-speaking individual located in Mexico calls SAS, then one of its U.S.-based facilities would answer.⁸⁶ Other companies compete in Mexico in a similar way. AnswerNet’s El Paso, Texas and Orlando, Florida facilities provide telephone answering and other CRM and BPO services to facilities “throughout North America,”⁸⁷ and Callbox’s Minnesota facility provides lead generation call services to financial consulting providers located in Mexico.⁸⁸ In addition, companies enable individuals to work from home in the United States, where they can set up their own virtual receptionist and customer service businesses for consumers located anywhere in the world.⁸⁹ All of these U.S. services “compete” in Mexico with the services supplied by Atento within the meaning of element (ii) of the Covered Facility definition.

56. Third, U.S. service providers sometimes utilize, in the course of supplying a service to a Mexican customer, facilities the U.S. provider operates in Mexico, or facilities with whom the provider contracts directly, to provide CRM services to customers in Mexico.⁹⁰ For example, SAS – identified above – also operates a call center facility in Mexico that answers calls from individuals in Mexico who speak Spanish.⁹¹ Five Star Call Center, a U.S.-based company that provides customer service and product support services to multiple industries, including the finance industry, provides its services through nearshoring centers and agents located in Mexico

⁸⁵ USA-33 (SAS, Call Center <https://www.sascalcenter.com/>).

⁸⁶ USA-34 (Screenshot of August 9, 2024, Chat with Customer Service Representative from SAS).

⁸⁷ USA-35 (AnswerNet, <https://answernet.com/about/locations/> and <https://answernet.com/about/locations/orlando-call-center/> and <https://answernet.com/about/locations/el-paso-call-center/>).

⁸⁸ USA-36 (Callbox, <https://www.callboxinc.com/case-studies/abm-lead-generation-appointment-setting-for-financial-consulting-leader/#download> and <https://www.callboxinc.com/lead-generation-services-mexico-city/>).

⁸⁹ See, e.g., USA-37 (Arise, available at: <https://www.ariseworkfromhome.com/customer-service-work-from-home/>); USA-38, Smith AI, available at: <https://smith.ai/careers/virtual-receptionist> and <https://smith.ai/coverage>).

See also USA-39, Verizon, What is a Call Center and Will it Help My Business?, available at: <https://www.verizon.com/business/resources/learn-the-basics/what-is-call-center/> (“As cloud-based call center solutions emerged, companies could employ virtually located or home-based agents instead of requiring them to sit together in a physical office [...] Many call centers, which only used telephony, have evolved into digital connect channel contact centers. Contact centers allow enterprises and their customers to engage with each other through the available and most convenient communications channel—email, text messaging, social media, mobile app, virtual assistant, chatbot, video and web chat—instead of establishing a linear customer journey reliant on phone-only conversations.”).

⁹⁰ For clarity, this would not include Mexican subsidiaries of U.S. companies or other situations where the service provider itself would be a Mexican entity. Rather, we refer to U.S.-based companies with whom Mexican customers contract directly for the provision of the service.

⁹¹ USA-34, Screenshot of August 9, 2024, Chat with Customer Service Representative from SAS.

in addition to U.S.-based agents.⁹² Five Star and SAS’s services are similar to, and compete with, the services that Atento provides for the Mexican market, thus satisfying element (ii) of the Covered Facility definition.

57. Fourth, U.S. companies compete in Mexico with companies like Atento in any circumstance in which a U.S. company has chosen not to outsource its CRM or other business services in order to service calls coming from Mexican customers – a phenomenon sometimes referred to as “insourcing.” In essence, the U.S. company is providing the CRM service to itself instead of contracting on the market for this service.⁹³ But it is the same service – CRM, serving the same customers – in this case, including customers in Mexico. Atento, in its own SEC filings, acknowledges that it also competes with companies that provide their own call center services in-house; Atento also notes that new laws that limit Atento’s clients from outsourcing their business activities “could adversely affect our business, financial conditions, results of operations and prospects.”⁹⁴ Accordingly, the integrated nature of the consumption of call center services by U.S. companies does not preclude competition with the similar services that Atento provides, and which satisfies element (ii) of the Covered Facility definition.

58. Consequently, Atento is a “Covered Facility” under the Agreement. The facility supplies services and the evidence supports finding that the facility supplies services that are traded between the Parties. Through its supply of call center services, the facility’s products also compete in Mexico with U.S. exports of call center services. Satisfying either of these standards under element (i) or (ii) of the Covered Facility definition is sufficient to render Atento a “Covered Facility;” Atento meets both of the standards.

VI. ATENTO DENIED ITS WORKERS’ RIGHT TO FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

59. As defined in Article 31-A.2 of the Agreement, a “Denial of Rights” occurs when “workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations” of Mexico. Footnote 2 of that article provides that, with respect to Mexico, “a claim can be brought only with respect to an alleged Denial of Rights under legislation that complies with Annex 23-A (Worker Representation in Collective Bargaining in Mexico).”

60. Article 23-A.2(a) of the Agreement requires Mexico to provide in its labor laws:

⁹² USA-40, Five Star Call Centers, <https://fivestarcallcenters.com/jobs/work-from-home/>.

⁹³ Despite the increased cost, there may be a variety of reasons a company would choose to “insource” CRM services rather than contracting with a BPO company. See USA-41 (articles at <https://www.bluevalleymarketing.com/call-center-operations-outsourcing-vs-insourcing/>; and <https://medium.com/@okaycallcentre/call-center-outsourcing-vs-insourcing-price-comparison-fd631edaf0a8#:~:text=Call%20center%20insourcing%20entails%20managing%20customer%20service%20in-house%2C,demands%20significant%20investment%20in%20hiring%2C%20training%2C%20and%20technology>).

⁹⁴ See USA-24 (Atento S.A., SEC 20-F Filing, p. 22 https://s28.q4cdn.com/123389419/files/doc_financials/2022/ar/atento-form-20-f-2022.pdf).

to engage in concerted activities for collective bargaining or protection and to organize, form, and join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognized union.

61. This provision (and the others in Annex 23-A) set forth the scope of relevant obligations that must be provided for in Mexico’s laws for it to be in compliance with Mexico’s obligations under Article 23.3(1) of the Agreement. Violations of Mexican laws that “comply with” this Annex 23-A therefore give rise to a denial of rights within the scope of the RRM.

62. Atento denied its workers’ right to freedom of association and collective bargaining under laws that comply with Annex 23-A of the USMCA by dismissing them for supporting STRM, and by engaging in threats, promises of benefits, and other acts – including the unlawful dismissals – to coerce workers into selecting the company’s favored union to be the workers’ collective bargaining representative.

63. Both Mexico, in its Report to the United States on the results of its investigation, and the United States in its own review of the situation at Atento, concluded that a Denial of Rights had occurred. Below we review the findings of both governments, and demonstrate why the evidence supports that conclusion.

B. Mexico found that Atento denied its workers’ right to freedom of association and collective bargaining.

i. Mexico’s findings regarding interference

64. In its report reviewing the labor situation, Mexico found the “alleged existence of actions that constitute transgressions of Mexican labor law and a denial of the rights of freedom of association and collective bargaining by ATENTO” based on acts of employer interference.⁹⁵ Specifically, Mexico “determine[d] that ATENTO carried out actions aimed at discouraging the affiliation of workers to STRM,”⁹⁶ through the following four actions:

- a. Encouraging and organizing a union committee for FOSRM;
- b. Organizing elections of union representatives on its intranet;
- c. Denying access to STRM to carry out union activities within the facility; and

⁹⁵ MEX-03 (Internal Investigation Results) at 45.

⁹⁶ MEX-03 (Internal Investigation Results) at 45.

- d. “Allegedly” offering a bonus to the workers, prior to the voting for the Certificate of Representation, in case FOSRM won the election.⁹⁷

ii. Mexico’s findings regarding illegal dismissals

65. In addition, as to the dismissal allegations, Mexico “determine[d] that there are elements that point to the existence of inferences that generate the reasonable suspicion of presumption that the dismissal of the workers was motivated by their union affiliation and preference to STRM in order to weaken the strength of the union.”⁹⁸ For example, based on Mexico’s interviews with 11 workers that Atento allegedly dismissed for their union activities, Mexico determined that “[t]heir testimonies show what the STRM expressed in the complaint submitted to the U.S. Government.”⁹⁹ While Mexico argues that it only “presumed” that the evidence supported a determination that the firings were tied to union activity and were therefore violative of Mexican law, that does not change the fact that they relied on these presumptions to find violations of Mexican law and denials of rights. In any event, Mexico does not deny that it presumed, based on the evidence, that denials of rights occurred.

iii. Mexico’s findings regarding the need for remediation

66. Finally, Mexico stated in the section setting out the remediation actions taken by Mexico, that “The Government of Mexico, through the STPS, on the one hand, and ATENTO, on the other, agreed on the following measures *in order to remediate the denial of rights in* [sic] *ATENTO*, in accordance with the provisions of Annex 31-A of the USMCA.”¹⁰⁰

67. Therefore, while Mexico went on in its Report to find that the Denial of Rights at Atento had been remediated by the actions taken by the government and by Atento, that does not negate the fact that those actions were taken, by explicit acknowledgement of the Mexican government, “in order to remediate the denial of rights in [sic] ATENTO.”¹⁰¹

C. The evidence gathered by the United States also shows that Atento denied its workers’ right to freedom of association and collective bargaining by dismissing workers for supporting STRM.

68. Atento’s dismissal of workers for supporting STRM constitutes a denial of rights because Atento dismissed them for engaging in union activities in violation of Mexican law. Specifically, Atento denied its workers’ rights by violating the following provisions of the FLL:

⁹⁷ MEX-03 (Internal Investigation Results) at 45.

⁹⁸ MEX-03 (Internal Investigation Results) at 46.

⁹⁹ MEX-03 (Internal Investigation Results) at 19.

¹⁰⁰ MEX-03 (Internal Investigation Results) at 41-42 (emphasis added).

¹⁰¹ MEX-03 (Internal Investigation Results) at 41-42.

- i. Article 133.V, which prohibits actions by employers or their representatives that “intervene in any way in the internal regime of the union, to prevent its formation or the development of union activity, by means of implicit or explicit reprisals against workers.”
- ii. Article 133.VII, which prohibits employers or their representatives from “taking any action that restricts the rights of the workers granted to them by the laws.”
- iii. Article 357, which provides that “workers . . . without distinction and without prior authorization, have the right to form and join organizations of their own choosing, on the sole condition that they observe their statutes.”
- iv. Article 357, which further provides that “the organizations of workers and employers must enjoy adequate protection against any act of interference by some with respect to the others, either directly or through their representatives in their constitution, operation or administration.”

69. These articles of the FLL comply with Article 23-A.2(a) of the Agreement, which states that Mexico shall provide in its labor laws the right of workers “to organize, form, and join the union of their choice,” and prohibit “employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support.”

70. Atento acted inconsistently with these articles by dismissing workers because they supported STRM. Workers who were dismissed provided consistent statements to the United States, during its investigation in December 2023 and January 2024, with respect to Atento’s conduct leading up to their dismissal. These workers stated that Atento representatives explicitly told them that they were being dismissed because they support STRM. This evidence includes:

- i. Worker ██████████ stated that on December 2, 2022, Atento Human Resources (HR) Supervisor Édgar Evaristo Escorcía¹⁰² told her to stop working and escorted her to the HR office. Once there, an individual (name unknown) told ██████████ she was an exemplary worker and questioned her support for STRM. This person gave ██████████ the option to withdraw her support of STRM and informed her that her employment would be terminated if she did not. In response, ██████████ stated that the law provided her the right to freedom of association and refused to withdraw her support of STRM. Atento dismissed her immediately.¹⁰³

¹⁰² USMCA Article 31-A.8.4 states that the panel must, “to the extent possible, identify the person or persons responsible for the Denial of Rights.”

¹⁰³ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 5-6.

- ii. Worker ██████████ stated that on January 27, 2023, Atento HR Supervisor Escorcía asked her to go to the HR office where Atento HR Representative Felipe de Jesús Tapia told her Atento had to end the employment relationship due to her connection to a STRM leader, ██████████, and her posts in favor of STRM made on her social media account.¹⁰⁴
- iii. Worker ██████████ stated that on January 21, 2023, HR Supervisor Escorcía escorted her to the HR office where Atento Labor Relations Coordinator Usiel Viurquis Rosas told her she was dismissed for engaging in activities that were against the interest of the company, such as bringing outside unions into the facility.¹⁰⁵ Although, according to Mexico’s report, Atento alleged that ██████████ had performance issues such as using her cell phone in the work area,¹⁰⁶ there is no evidence that Atento relied on these reasons for dismissing her. In fact, these reasons appear to be pretextual given that Rosas told her she was dismissed because she engaged in union activities.¹⁰⁷
- iv. Worker ██████████ stated that on November 21, 2023, Atento HR Supervisor Escorcía escorted her to an HR office where Atento Head of HR José Arturo Monroy Ortega and Atento HR Supervisor Yesenia Cruz were present. Escorcía told ██████████ Atento was terminating her contract because her support for a new union went against the interest of the company.¹⁰⁸
- v. Worker ██████████ stated that on December 1, 2023, HR Supervisor Escorcía escorted her to the HR office. Once there, an individual (name unknown) told her that her name appeared on the “STRM list” and they had photos of her with the *telefonistas*. The HR representative said they had to dismiss ██████████ for that reason and they “felt a stab in their back.”¹⁰⁹
- vi. Worker ██████████ stated that on December 1, 2023, HR Supervisor Escorcía escorted him to the HR office where an individual introduced himself as an HR official (name unknown). The HR official told ██████████ that Atento was terminating his contract because his support for a new union went against the

¹⁰⁴ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 7.

¹⁰⁵ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 6.

¹⁰⁶ MEX-03 (Internal Investigation Results) at 22.

¹⁰⁷ In its report, Mexico noted alleged performance issues concerning one additional worker, ██████████. See MEX-03 (Internal Investigation Results) at 25. However, as with ██████████, there is no evidence that Atento actually relied on those issues in dismissing ██████████.

¹⁰⁸ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 8.

¹⁰⁹ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 7-8.

interest of the company. It is irrelevant to the unlawful dismissal analysis that [REDACTED] stated that he did not carry on activities on behalf of STRM during his employment. Atento believed, correctly, that [REDACTED] supported STRM, and acted on that belief by firing him for holding those sympathies.¹¹⁰

- vii. Worker [REDACTED] stated that on December 5, 2023 (the day before the representation vote), HR Supervisor Escorcía escorted him to the HR office where an individual introduced himself as an HR official (name unknown). The HR official told [REDACTED] that Atento was terminating his contract because of his support for STRM.¹¹¹
- viii. Worker [REDACTED] stated that on December 5, 2023, Atento Labor Relations Coordinator Rosas told her she was fired because she supported STRM and Atento had video evidence of her leafletting for STRM.¹¹²
- ix. Worker [REDACTED] stated that on December 5, 2023, Atento Line Supervisor Monika Zara said she knew her husband was a member of STRM and supporting STRM’s organizing efforts at Atento. Soon thereafter, [REDACTED] saw Zara speaking with Atento HR Supervisor Escorcía. An hour later, HR Supervisor Escorcía called [REDACTED] into the HR office. An individual (name unknown) told [REDACTED] she was dismissed for taking actions that impacted the integrity of Atento, including conducting propaganda in favor of a union.¹¹³ Notably, in its report, Mexico acknowledged that Atento provided no “objective and suitable” evidence to refute the allegation that [REDACTED] dismissal was an act of anti-union discrimination.¹¹⁴

71. In addition, several workers provided responses to STPS questionnaires during its 45-day review period explaining that Atento dismissed them for supporting STRM. None of the questionnaire responses were provided to the United States in Mexico’s report, or to the Panel as part of Mexico’s Initial Written Submission. Copies of a few of the questionnaire responses are attached to this reply submission and marked as USA-4 (Worker Questionnaires Provided to

¹¹⁰ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 6-7.

¹¹¹ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 6.

¹¹² USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 7.

¹¹³ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 8.

¹¹⁴ MEX-03 (Internal Investigation Results) at 41.

STPS in February and March 2024 (Confidential)), but we understand many more were provided to STPS.¹¹⁵ The questionnaire responses include the following relevant information:

- i. On February 15, 2024, worker [REDACTED] provided STPS with a questionnaire related to his May 28, 2021, dismissal. In the questionnaire, [REDACTED] stated that Atento told workers that if STRM entered the company would close. [REDACTED] also argued Atento coerced him in signing his resignation and failed to provide a justification for his dismissal.¹¹⁶
- ii. On February 15, 2024, worker [REDACTED] provided STPS with a questionnaire related to his December 2, 2022, dismissal. In the questionnaire, [REDACTED] stated that Atento threatened him to “stop the movement” and dismissed him for this reason.¹¹⁷ Further, in complaints he filed with Mexican authorities against Atento and BBVA, [REDACTED] stated that Atento fired him after Atento representatives spied on STRM’s WhatsApp group,¹¹⁸ and that he understood comments by Atento HR Representatives Luis Becerra, accompanied by HR Representative Felipe de Jesus Tapia, to mean that he was being fired because the CBA was voted down, he was damaging the image of the company, and he was creating a new union.¹¹⁹
- iii. On February 15, 2024, worker [REDACTED] provided STPS with a questionnaire related to his December 5, 2022, dismissal. In the questionnaire, [REDACTED] stated that Atento held meetings with workers to inform them that if STRM won the Certificate of Representation, the company would close its offices in Pachuca. [REDACTED] further stated that Atento helped establish FOSRM. When [REDACTED] was dismissed, Atento Head of HR Monroy told him “it had to come to this” and it was no longer beneficial to the company for him to continue working.¹²⁰
- iv. On March 3, 2024, worker [REDACTED] provided STPS with a questionnaire related to her December 8, 2023, dismissal. In the questionnaire, [REDACTED] stated that Atento pressured workers not to vote for the “outside

¹¹⁵ We understand that the following workers provided questionnaires to STPS between February 15 and March 3, 2024: [REDACTED]

¹¹⁶ USA-4 Worker Questionnaires Provided to STPS in February and March 2024 (Confidential) at 2, 4.

¹¹⁷ USA-4 (Worker Questionnaires Provided to STPS in February and March 2024) at 6, 7.

¹¹⁸ MEX-21 (April 21, 2023, Nonconformity from [REDACTED] (Confidential)) at 5. [REDACTED] filed the complaint contained in MEX-21 with the Federal Center.

¹¹⁹ USA-14 (January 16, 2023, [REDACTED] Lawsuit (Confidential)) at 6. [REDACTED] filed the lawsuit contained in USA-14 with the Federal Labor Court for Individual Matters in the State of Hidalgo.

¹²⁰ USA-4 (Worker Questionnaires Provided to STPS in February and March 2024) at 11, 13.

union” and threatened them with dismissal if they were involved with that union. Atento threatened [REDACTED] that she would not receive her liquidation if she did not sign her resignation.¹²¹

72. Consequently, the facts demonstrate that Atento fired workers for supporting STRM. These actions violate the above-cited FLL provisions and Mexico’s obligations under the USMCA, and therefore constitute a denial of workers’ right to freedom of association and collective bargaining.

D. The evidence gathered by the United States also shows that Atento denied its workers’ right to freedom of association and collective bargaining by engaging in threats, promises of benefits, and other acts to coerce workers into selecting Atento’s favored union – FOSRM – as their collective bargaining representative.

73. By pressuring workers to support FOSRM and discouraging workers from supporting STRM in the lead-up to the December 6, 2023, representation vote, Atento denied its workers’ right to freely choose their union. Atento’s actions violated the following provisions of the FLL:

- i. Article 133.IV, which prohibits employers from “[o]bligating workers by coercion or by any other means, to join or withdraw from the union or group to which they belong[.]”
- ii. Article 133.V, which prohibits actions by employers or their representatives that “intervene in any way in the internal regime of the union, to prevent its formation or the development of union activity, by means of implicit or explicit reprisals against workers.”
- iii. Article 133.VII, which prohibits employers or their representatives from “taking any action that restricts the rights of the workers granted to them by the laws.”
- iv. Article 133.XVII, which prohibits employers from “[c]arrying out any act for the purpose of exercising control over the union to which their workers belong.”
- v. Article 357, which provides that “workers . . . without distinction and without prior authorization, have the right to form and join organizations of their own choosing, on the sole condition that they observe their statutes.”
- vi. Article 357, which further provides that “the organizations of workers and employers must enjoy adequate protection against any act of interference by some with respect

¹²¹ USA-4 (Worker Questionnaires Provided to STPS in February and March 2024) at 15, 17.

to the others, either directly or through their representatives in their constitution, operation or administration.”

- vii. Article 357, which further provides that “[a]cts of interference are considered acts or measures tending to encourage the constitution of organizations of workers dominated by an employer or an organization of employers, or to support in any way organizations of workers in order to place them under their control.”

74. These articles of the FLL comply with Article 23-A.2(a) of the Agreement, which states that Mexico shall provide in its labor laws the right of workers “to organize, form, and join the union of their choice,” and prohibit “employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support.”

75. The evidence shows that Atento acted inconsistently with these articles by actively supporting FOSRM in its organizing efforts; threatening workers with specific and unspecific reprisals if they supported STRM; promising benefits to workers for supporting FOSRM; and interrogating workers about their union sympathies in the year before the December 2023 representation vote. This evidence includes:

- i. Worker ██████████ stated that in November 2022, a few days after workers voted against the CBA, BBVA Manager Elsa Hernandez told her that Atento, not the workers, would select a union at the facility.¹²² (The evidence reveals that BBVA managers, such as Hernandez, supervised Atento workers at the facility.)¹²³
- ii. Worker ██████████ stated that soon after workers voted down the CBA in November 2022, Atento Head of HR Monroy held a meeting consisting of 20-30 workers and HR representatives. At the meeting, Atento HR Representative Tapia told workers he did not want to lose his job so they had to form a union or choose between three or four unions that were interested in organizing, but not STRM. Tapia said Atento would announce which union suited it but that it would not be the *telefonistas*.¹²⁴

¹²² USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 9.

¹²³ See, e.g., USA-20 (January 5, 2024, Notes from United States Investigatory Interview with ██████████ (Confidential)) at 1, 5, 6, 8, 10; USA-42 (January 5, 2024, Notes from United States Investigatory Interview with ██████████ (Confidential)) at 1, 5, 10, 11. For these and certain other worker interview exhibits, some internal notes exist that may refer to other workers. We have preserved the documents at the time of the worker interviews to ensure their contemporaneous nature. However, in every case the interview notes are limited to the worker listed in the name of the exhibit.

¹²⁴ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4; USA-43 (January 5, 2024, Notes from United States Investigatory Interview with ██████████ (Confidential)) at 2, 5.

- iii. Worker ██████████ stated that in about March 2023, Supervisor Cecilia (last name unknown) told him and other workers to attend a meeting led by Atento Head of HR Monroy and Atento HR Supervisor Escorcía. At the meeting, which included 15-25 workers, Monroy and Escorcía said Atento would like to get a union for workers that would have a good relationship with management. The officials stated that, should a “bad and confrontational” union arrive instead, it would be likely that Atento would lose their business with BBVA and shut down.¹²⁵
- iv. Worker ██████████ stated that in about February or March 2023, she attended a meeting convened by Atento Head of HR Monroy and Atento HR Representative Tapia to discuss how Atento would handle labor-management relations in the absence of a union or CBA. ██████████ asked why workers could not find their own union to represent them. The HR officials responded that although that process may start in a couple months, they wanted to ensure they had a union that had the interest of the company in mind. The officials stated that, in the meantime, Atento would form a worker committee and allow workers to elect those who would serve on the committee.¹²⁶
- v. Worker ██████████ stated that in March 2023, she attended a meeting in which Head of HR Monroy told workers that if STRM entered the facility, Atento would leave Pachuca or declare bankruptcy and everyone would lose their jobs.¹²⁷
- vi. Worker ██████████ stated that in March 2023, BBVA Manager Martha Yañez Trejo told her to apply to serve on the worker committee Atento was forming. Yañez explained that a union had to be formed otherwise, if STRM came in, Atento’s Pachuca location would close.¹²⁸
- vii. Workers ██████████ and ██████████ stated that in April 2023, they participated in an electronic vote to elect a worker committee that would serve as the conduit between Atento and its workers. Atento helped arrange the vote on its intranet and set the requirements to serve as a candidate on the committee; workers could not select the

¹²⁵ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 3.

¹²⁶ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 8-9.

¹²⁷ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 5.

¹²⁸ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4-5; USA-44 (January 5, 2024, Notes from United States Investigatory Interview with ██████████ (Confidential)) at 1, 7.

- candidates who ran. Atento posted the results on the intranet and told workers it would engage with the committee to resolve any worker grievances.¹²⁹
- viii. Worker ██████ stated that Atento reassigned workers who were selected to serve on Atento’s worker committee from their usual call center responsibilities to committee duties. The workers’ new duties included making the rounds to ask their colleagues how they could help and providing them with new employee identification cards, movie tickets, and gifts if it was an employee’s birthday.¹³⁰
- ix. Worker ██████ stated that in June 2023, BBVA Manager Yañez told her BBVA took some accounts away from Atento because they were upset with how Atento managed union issues. Yañez warned there may be firings of STRM supporters to ensure the union loses support.¹³¹
- x. Worker ██████ stated that in about September 2023, she observed that STRM did not have access to the facility to organize, whereas FOSRM met with workers and distributed their pamphlets.¹³²
- xi. Worker ██████ stated that on November 30, 2023, Atento Supervisor Lucas Gabriel told several workers they should “think carefully” about who they were going to vote for in the upcoming representation election, and that “they did not want” a “bad worker,” ██████, as their representative.¹³³
- xii. Worker ██████ stated that on December 2, 2023, four days before the representation election, Atento Line Supervisor Erika (last name unknown) told her she was arranging a meeting in the facility between FOSRM representatives and workers so the union could share its proposals. Erika told ██████ that Atento had agreed with FOSRM that if FOSRM prevailed in the election, Atento would provide additional payments to workers. In addition, Atento supervisors told ██████ that BBVA managers told them they would lose their jobs if STRM won.¹³⁴

¹²⁹ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 8-9.

¹³⁰ USA-20 (January 5, 2024, Notes from United States Investigatory Interview with ██████ (Confidential)) at 2, 6, 10.

¹³¹ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 5.

¹³² USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 9.

¹³³ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4.

¹³⁴ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 9-10.

- xiii. Worker ██████████ stated that on about December 4, 2023, two days before the election, he attended an informational session organized by Atento Head of HR Monroy and other HR officials. At the session, HR officials (names unknown) told workers they had the right to elect the union of their choice but should be “very careful” because one of the unions was belligerent and would aim to close the company with strikes and charge exorbitant dues.¹³⁵
- xiv. Worker ██████████ stated that on December 5, 2023, the day before the election, Atento Line Supervisor Erika interrogated her about which union she supported. Erika told ██████████ it would be best if FOSRM won because if STRM won, BBVA said it will end its contract with Atento.¹³⁶
- xv. Worker ██████████ stated that the day before the election, she attended an informational session organized by Atento Head of HR Monroy and other HR officials, which included about 60 workers. At the session, HR officials (names unknown) told workers they had the right to elect the union of their choice, but should be “very careful” because one union was belligerent, would aim to close the company with strikes, and charge exorbitant dues.¹³⁷
- xvi. Workers ██████████, ██████████, and ██████████ stated that the day before the election, FOSRM held a meeting in the facility attended by company officials (names unknown). At the meeting, FOSRM announced that there would be five more days of *aguinaldo* if it won the vote.¹³⁸ ██████████ stated that, after the meeting, Atento Supervisor Gabriel told her to bring her lunch the day of the vote to avoid going outside and being exposed to STRM’s violent actions.¹³⁹
- xvii. Workers ██████████ and ██████████ stated that on morning of the election, December 6, 2023, before voting began, Atento Manager Alma Nely Hernandez asked them to take care of their client BBVA. Hernandez told the workers to “think carefully” about which union to choose because BBVA could

¹³⁵ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 9.

¹³⁶ USA-15 (December 18, 2023, Notes from United States Investigatory Interviews with Fired Atento Workers (Confidential)) at 10.

¹³⁷ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 3.

¹³⁸ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 3; USA-44 (January 5, 2024, Notes from United States Investigatory Interview with ██████████ (Confidential)) at 1, 5.

¹³⁹ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 3.

distribute the Pachuca location’s work among Atento’s other call centers in Mexico.¹⁴⁰

- xviii. Worker ██████ stated that on the day of the election, Atento Supervisor Arely Camacho told her to “think carefully” about who they are going to vote for, and to bring breakfast to avoid going into the street, because the *telefonistas* were going to block access and workers would be in danger. Further, ██████ observed two STRM representatives in the facility, whereas about 10 FOSRM representatives walked around the facility freely.¹⁴¹
- xix. Workers ██████, ██████, and ██████ stated that the day after the election, December 7, 2023, Atento held its annual holiday event, in which refreshments were provided. Company officials (names unknown) told workers that if the *telefonistas* won there would have been no celebration.¹⁴²
- xx. Workers ██████ and ██████ stated that after the election, an Atento manager (name unknown) told workers they would receive a one-time payment of \$1,000 pesos because FOSRM won the vote. ██████ and ██████ in fact received the payment.¹⁴³
- xxi. Atento Supervisor ██████ provided STPS with a questionnaire on March 3, 2024. In the questionnaire, ██████ stated that HR Representative Tapia, HR Representative Paris Hamed, and BBVA managers (names unknown) told ██████ and other supervisors to report who was involved in organizing so they could “act on the matter” and tell them to leave the union.¹⁴⁴

76. These facts establish that Atento waged a year-long systematic campaign of dismissals, threats, and other acts to coerce worker support for FOSRM, Atento’s favored union. Taken cumulatively, Atento’s severe misconduct¹⁴⁵ pressured workers to vote against STRM and intimidate them from seeking to organize for any union other than FOSRM. Atento’s actions violate the above-cited FLL provisions and Mexico’s obligations under the USMCA, and thus constitute a denial of workers’ right to freedom of association and collective bargaining.

¹⁴⁰ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 3.

¹⁴¹ USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4.

¹⁴² USA-17 (December 18, 2023, Notes from United States Investigatory Interviews with Active Atento Workers (Confidential)) at 4.

¹⁴³ USA-44 (January 5, 2024, Notes from United States Investigatory Interviews with ██████ (Confidential)) at 5, 7, 8; USA-42 (January 5, 2024, Notes from United States ██████ (Confidential)) at 2, 5, 11.

¹⁴⁴ USA-4 (Worker Questionnaires Provided to STPS in February and March 2024) at 21-22.

¹⁴⁵ USMCA Article 31-A.8.4 states that the panel must “provide its views on the severity of any denial of rights.”

E. A finding of a “Denial of Rights” does not require the complete denial of a worker’s right to freedom of association and collective bargaining.

77. One of the most troubling assertions by Mexico in its Initial Written Submission is its contention that a “Denial of Rights” can only be found if “a very high threshold” is met that “condemns the system [...] of a State as such.”¹⁴⁶ In Mexico’s view, such a violation must be “egregious,” reflect “bad faith,” be “willful,” “clear and malicious,” and “total,” among other characteristics.¹⁴⁷ None of these terms is based on the text of the Agreement. Moreover, Mexico’s interpretation runs contrary to the entire conception of the facility-specific Rapid Response Mechanism, which came into existence as a method of holding specific facilities accountable for their illegal behavior. The United States considers all violations of workers’ right to the freedom of association and the basic right to engage in union activity and collective bargaining to be serious violations. If a law complying with Annex 23-A is not being complied with, then the right of free association and collective bargaining as supported by that law is not being protected. Mexico’s argument reflects an attempt to change and raise the standard for a Denial of Rights after-the-fact and in a way that would completely undermine the agreed-upon exchange of concessions that led to the successful conclusion of the USMCA.

78. Article 31.13.4 of the Agreement requires dispute settlement panels to “interpret this Agreement in accordance with customary rules of interpretation of public international law, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.” Article 31 of the Vienna Convention sets forth the “General rule of interpretation” that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” A “Denial of Rights” is defined in Article 31-A.2 of the Agreement, which states that the RRM “shall apply” whenever a party has a good faith basis belief that workers at a Covered Facility are being “denied” the right of free association and collective bargaining under “laws necessary to fulfill the obligations of the Party under this Agreement.” The terms “freedom of association” and “collective bargaining” are closely related, often used interchangeably, and touch on much of the same subject-matter, including the right to freely engage in labor organizing and union activity (hence, the agreed-upon title of Annex 23-A of the Agreement, “Worker Representation in Collective Bargaining in Mexico”). We have already discussed the scope of those freedom of association and collective bargaining rights pertinent to the RRM which are laid out in Chapter 23 of the USMCA and within Annex 23-A. The phrase “under laws necessary to fulfill the obligations of the other Party” reflects that any denial of rights would be the result of a failure to comply with those laws which protect the right to freedom of association and collective bargaining as required under the USMCA.

¹⁴⁶ See Mexico’s Initial Written Submission, at 175.

¹⁴⁷ See Mexico’s Initial Written Submission, at 176.

79. A “denial” is a “refusal of anything asked for or desired.”¹⁴⁸ Therefore, where the law requires that something be granted to workers in order to protect their right to freedom of association and collective bargaining, an employer’s failure to follow that law results in a denial of that right. When a worker exercises their right to be represented by an independent union and then is fired for doing so, that worker has been denied their right to freedom of association and to collective bargaining. When a facility actively encourages workers to join the union of its choice in the lead-up to a representational vote – including by making threats that the facility would otherwise close and promising benefits to workers for supporting its favored union – those workers have been denied their right to freedom of association and collective bargaining. Mexico’s contention that workers’ right to freedom of association and collective bargaining must be wholly denied, such that no aspect of that right is respected by an employer, is not only unsupported by the text of the USMCA, but would render the RRM practically useless. Indeed, an employer could easily evade consequences under the RRM simply by complying with some, but not all, Mexican laws relating to freedom of association and collective bargaining.

80. Therefore, the panel should decline to adopt Mexico’s interpretation of the term Denial of Rights, and should recognize that Atento committed a Denial of Rights based on its failure to comply with Articles 133.IV, 133.V, 133.VII, 133.XVII, and 357 of the FLL.

VII. THE ACTIONS TAKEN BY MEXICO AGAINST ATENTO DID NOT REMEDIATE THE DENIALS OF RIGHTS

81. As described above, the evidence gathered by both Mexico and the United States establishes that a Denial of Rights occurred at the Atento call center facility. The question before the Panel is whether that Denial of Rights was remediated by the actions taken by Mexico during its 45-day review period, or whether those actions were insufficient, such that the Denial of Rights persists.¹⁴⁹

82. At the outset, the United States wishes to clarify that we do not argue that the actions taken, or not, by Mexico to remediate the Denial of Rights would themselves constitute a Denial of Rights, as Mexico suggests in its Initial Written Submission.¹⁵⁰ Similarly, the United States is not arguing that Mexico failed to properly apply or enforce its own laws.¹⁵¹ Rather, the United States asks this Panel to review whether the actions taken by Mexico – whether or not they were consistent with or otherwise restrained by Mexican law – were sufficient to remediate the Denial of Rights perpetrated by Atento.

¹⁴⁸ See USA-45, Denial, Oxford English Dictionary. Oxford University Press, 2024 (available at https://www.oed.com/dictionary/denial_n?tab=meaning_and_use&hide-all-quotations=true#7116171)

¹⁴⁹ In the event the Panel finds the Denial of Rights not to have been resolved, Mexico may request that the Panel include in its report a recommendation as to what additional steps it might take to fully remediate the Denial of Rights. See USMCA Article 31-A.8.4 (“If the respondent Party so requests, the panel shall include a recommendation on a course of remediation if the panel determines there is a Denial of Rights.”).

¹⁵⁰ Mexico’s Initial Written Submission, section IV.A.2.

¹⁵¹ Mexico’s Initial Written Submission, para. 120.

83. Article 31-A.1 of the Agreement provides that the purpose of the RRM is to “ensure remediation of a Denial of Rights.” “Remediate” means to “provide a remedy for, redress, counteract; to take remedial action against.”¹⁵² To “redress” something means to “set right, repair, rectify.”¹⁵³ To “counteract” something means to “act against, in opposition to, or contrary to.” It can also mean to “hinder or defeat by contrary action; to neutralize the action or effect of.”¹⁵⁴ Therefore, to remediate the Denial of Rights, Mexico would need to have taken actions against the company sufficient to act against or neutralize the effect of the company’s actions against its workers. In other words, Mexico must take action to undo, as much as possible, the harm caused by Atento’s actions. It has not.

84. In the context of the RRM, Mexico took certain additional actions that went further than the legal resolutions achieved through the actions of the workers alone, including reinstating illegally dismissed workers and providing them with additional backpay.

85. Specifically, in its report to the United States, Mexico concluded that the denials of rights were fully remediated by Atento, in coordination with STPS, through the following actions:

- i. Publication and dissemination of a neutrality statement by Atento;
- ii. Publication and dissemination of guidelines of conduct by Atento;
- iii. Trainings of workers at the Covered Facility by Atento on the contents of the neutrality statement and guidelines of conduct;
- iv. Training of workers at the Covered Facility by STPS on the right to freedom of association and collective bargaining;
- v. Training of 12 former workers by STPS on the right to freedom of association and collective bargaining;
- vi. Atento’s written commitment to STPS to reinstate a worker;
- vii. Atento’s settlement payments to five workers;
- viii. Atento’s written commitment to STPS to make settlement payments to two workers;

¹⁵² See USA-46 Remediate (verb²), Oxford English Dictionary. Oxford University Press, 2024 (available at https://www.oed.com/dictionary/remediate_v2?tab=meaning_and_use&hide-all-quotations=true#26016703).

¹⁵³ See USA-47 Redress, Oxford English Dictionary. Oxford University Press, 2024 (available at https://www.oed.com/dictionary/redress_v1?tab=meaning_and_use&hide-all-quotations=true#26398983).

¹⁵⁴ See USA-48 Counteract, Oxford English Dictionary. Oxford University Press, 2024 (available at https://www.oed.com/dictionary/counteract_v?tab=meaning_and_use&tl=true).

- ix. Atento's rehiring of three workers who had settled their cases; and
- x. Atento's supplementary settlement payments to two workers.¹⁵⁵

86. With respect to allegations of irregularities during the representation election, the report concluded that the Federal Center had determined that a complaint that STRM filed with the Federal Center was without merit.¹⁵⁶ Therefore, Mexico did not consider that any action was necessary or appropriate with respect to the Representation Vote.

87. In the U.S. view, while the above actions are necessary to the remediation of the Denials of Rights at Atento, they are not sufficient. First, some workers who were illegally dismissed by Atento were not reinstated by the company, or were not given all the benefits they would have received had they not been fired, such that the workers continue to be effectively penalized for their support of the independent union. To the extent that STRM supporters are no longer present at the facility, the ability of STRM to gain any right to representation in the future also continues to be hampered. Moreover, current workers indicate that Atento continues to interfere in union activities, demonstrating that Atento continues to actively deny workers their right to freedom of association and collective bargaining. Second, no actions were taken by Mexico to counteract the impact of the illegal activity on the Representation Vote – namely, the certification of Atento's chosen union, FOSRM, as the workers' collective bargaining representative. Third, no action was taken by Mexico to sanction or otherwise penalize the employer for its multiple violations of Mexican law.

A. Atento's denials of its workers' right have not been remediated because workers Atento unlawfully dismissed have not been reinstated and because Atento continues to interfere in union activity.

88. Atento's denials of rights are not remediated because not all unlawfully dismissed workers have been offered reinstatement with the full benefits and seniority they would have had had they not been fired.¹⁵⁷ In this way, workers continue to be penalized for their union activities. The workers who have not been brought back to work also are unable to access the facility and organize for STRM, which is of course the very reason they were fired in the first place. In addition, any organizing activities that active workers are attempting to carry out are being conducted against the backdrop of FOSRM – the union that directly benefitted from Atento's denials of rights – serving as the workers' collective bargaining representative.

89. The steps taken by Atento and Mexico to-date include reinstating some of the unlawfully dismissed workers, providing them monetary payments of varying sums, and providing trainings, a neutrality statement, and new company guidelines on freedom of association and collective

¹⁵⁵ MEX-03 (Internal Investigation Results) at 46.

¹⁵⁶ MEX-03 (Internal Investigation Results) at 13-14.

¹⁵⁷ See, e.g., MEX-50 (List of Dismissals, Agreements, Challenges) (Confidential)).

bargaining. To be sure, the trainings, the neutrality statement, and guidelines provide workers with important information affirming that they have the right to freely engage in freedom of association and collective bargaining. We agree with Mexico, in its Initial Written Submission, that these actions help workers understand “the practices and actions that are allowed, as well as [] make them aware of which actions are in violation of the FLL.”¹⁵⁸

90. However, standing alone, these steps have neither brought all unlawfully dismissed workers back to work with full benefits, nor have they created actual, on-the-ground conditions in which workers can engage in organizing activities without fear of reprisal. Atento’s failure to reinstate and provide full backpay to the dismissed workers means that those workers continue to be penalized for their union activities, and has a chilling effect on other workers, who may decide not to challenge FOSRM’s status as collective bargaining representative or otherwise attempt to engage in union activities. Although Mexico argues, in its Initial Written Submission, that STRM has the right under Mexican law to eventually seek another representation vote, doing so would be futile under the conditions that persist at the facility.

91. In fact, evidence from this month indicates that Atento continues to deny workers’ rights in a similar manner, including by pressuring workers to support FOSRM as the company’s favored union. For example:

- i. Worker ██████████ stated that in late July 2024, prior to the August 9, 2024, vote with respect to the CBA, Atento Supervisor Hector Ayala told workers that Atento will close if the CBA is voted down.¹⁵⁹ Atento Supervisor Miguel Angel Garcia and Customer Service Agent Teresa (last name unknown) told workers they should consider what they want, things were “tough,” it was “maybe the last few days of the company,” and Atento “only had a few months left” because of “the issue with the union.”¹⁶⁰ BBVA Supervisor Martha Yañez told workers, similarly, that “everything is in their hands, whether or not they will remain employed.”¹⁶¹ ██████████ understood this to mean that if workers do not vote for the CBA, the company will close.¹⁶²
- ii. Worker ██████████ stated that in late July 2024, prior to the August 9, 2024, vote with respect to the CBA, Atento Supervisor Ayala told workers, “it would be best if workers vote in favor of the contract of the white

¹⁵⁸ See Mexico’s Initial Written Submission, para. 129.

¹⁵⁹ USA-49 (August 6, 2024, Notes from United States Investigatory Interviews with ██████████ (Confidential)) at 3, 6.

¹⁶⁰ USA-49 (August 6, 2024, Notes from United States Investigatory Interviews with ██████████ (Confidential)) at 4.

¹⁶¹ USA-49 (August 6, 2024, Notes from United States Investigatory Interviews with ██████████ (Confidential)) at 3.

¹⁶² USA-49 (August 6, 2024, Notes from United States Investigatory Interviews with ██████████ (Confidential)) at 3.

union, and that with the *telefonistas*, the company will close and they will be punished.”¹⁶³ BBVA Supervisor Yañez told [REDACTED] that workers should vote in favor of the CBA.¹⁶⁴

- iii. Worker [REDACTED] stated that on August 2, 2024, FOSRM held a meeting with workers to discuss the upcoming CBA vote. FOSRM delegates gave workers backpacks and thanked them for supporting the “company union.” Atento Supervisor Ismael Pacheco told workers to vote for the “company union,” and that if they do not, their jobs would end.¹⁶⁵

92. Consequently, we ask the Panel to determine that the actions taken by Mexico against Atento were not sufficient to remediate the Denials of Rights that occurred, because workers who were illegally dismissed have not been reinstated, and because Atento continues to interfere in workers’ union activities.

B. Mexico failed to remediate the impact of Atento’s denials of its workers’ rights on the representation election.

93. In its Initial Written Submission, Mexico argues that no remedial action was required with respect to the representation election, because the Federal Center had determined that a complaint that STRM filed with the Federal Center was without merit, and because the result of the vote indicated that the actions of Atento were “not decisive in affecting or modifying the majority decision of the voters”. However, Mexico does not explain why the complaints filed by workers during the weeks and months preceding the vote were not fully investigated, or why no actions could have been taken to postpone or cancel the vote as a result of Atento’s illegal activity. Nor does it explain why the application of Mexican law in this case was sufficient to remediate the Denial of Rights. Rather, Mexico seems to ask the Panel to presume that any application of Mexican law – however incomplete it might be – is necessarily sufficient to remediate a Denial of Rights. That is not the case.

94. In its Initial Written Submission, Mexico acknowledges that workers complained to the Federal Center that Atento arbitrarily dismissed workers.¹⁶⁶ However, the Federal Center’s January 24, 2024, opinion assessing complaints related to the vote does not address the impact of worker dismissals on the election.¹⁶⁷ In addition, in its opinion, the Federal Center acknowledged that workers complained, and filed evidence, with respect to Atento’s influence on the election, including refusing to allow STRM members facility access to post the voting

¹⁶³ USA-50 (August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)) at 1.

¹⁶⁴ USA-50 (August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)) at 4, 8, 10.

¹⁶⁵ USA-51 (August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)) at 1-8.

¹⁶⁶ See Mexico’s Initial Written Submission, para. 53.

¹⁶⁷ MEX-29 (Opinion Assessing Election Complaints).

certificate; providing FOSRM a “permanent presence” in the facility, while refusing to allow STRM access; and waging a campaign of “intimidation and aggression” against STRM supporters, including by warning them that if STRM won the vote, Atento would “close the company and take it elsewhere.”¹⁶⁸ However, the Federal Center’s opinion failed to weigh or analyze the impact of these allegations on the vote. Instead, the Federal Center determined that “it cannot be seen that such circumstances had a direct influence on the casting of votes by the workers,”¹⁶⁹ and focused solely on whether workers were hampered in completing their ballot.

95. Mexico echoes this troubling argument in its Initial Written Submission, asserting that Atento’s actions cannot be considered to have influenced the vote because they are not “direct violations on the exercise of voting,” did not have “a direct effect on the casting of votes by the workers,” or indicate an alteration of the votes cast or that any worker was denied access to vote.¹⁷⁰ Mexico’s analysis appears to be inconsistent with Mexican law, however, which considers whether company interference prior to the election affected the voting results. Considering company interference before the election makes eminent sense. A company’s year-long campaign of intimidation to vote for its favored union, as here, can significantly influence a vote, even if workers had no trouble completing their ballot on election day.

96. Specifically, Article 390bis.III of the FLL, which governs representation elections, includes:

- i. Article 390bis.III(b), in which the Federal Center “must guarantee that the place designated for voting is accessible to workers and meets the necessary conditions for them to cast their vote freely, peacefully, agilely and safely, without being coerced in any way;”
- ii. Article 390bis.III(c), in which “[e]ach applicant party may previously accredit before the Registration Authority two representatives for each polling place, who must be allowed to be present during the polling station, specifically in the installation and accreditation of voters, as well as in the acts of scrutiny and count of votes, without being able to be in the assigned space in which the workers deposit their vote. No person outside the procedure may be present at the voting, unless the registration authority has accredited him as observer of the vote. Said authority will take care of and provide what is conducive so that no person who is not authorized, participates or intervenes in the development of the voting procedure.”

¹⁶⁸ MEX-29 (Opinion Assessing Election Complaints) at 4-7. *See also* USA-18, (December 11, 2023, STRM Complaint to Federal Center (Confidential)) at 2; USA-19 December 7, 2023, [REDACTED] Complaint to Federal Center (Confidential) at 3.

¹⁶⁹ MEX-29 (Opinion Assessing Election Complaints) at 9.

¹⁷⁰ *See* Mexico’s Initial Written Submission, paras. 143, 145.

- iii. Article 390bis.III(d), in which the “vote of the workers will be made in a personal, free, direct and secret way;” and
- iv. Article 390bis.III(i), in which, “[i]n the case of acts of coercion or intimidation to prevent workers from exercising their vote with full freedom, or they are intended to hinder or prevent in any way access to the place of the proceeding, the authorized official will request the assistance of the police and will take the measures that it deems conducive to carry out the voting in the conditions established by this Law.”

97. Article 897-G of the FLL vests Mexican authorities with the authority to prevent the employer from favoring one of the unions seeking collective bargaining rights during the voting process:

With regard to the conflicts between unions referred to in articles 389 and 418 of this Law, if in the course of the procedure the interference of the employer in favor of any of the contending unions or the commission is noticed or there are acts of violence by some of the parties, the Judge will take the necessary measures so that the exercise of the vote of the workers is carried out in full freedom and security, regardless of informing the corresponding criminal and administrative authorities of the facts for their sanction.

98. Article 386bis of the FLL codifies the significance of the guarantee of a free election to workers’ right to freedom of association and collective bargaining. It provides:

The support of the workers through personal, free and secret votes constitutes a guarantee for the protection of the freedom of collective bargaining and its legitimate interests. The demonstration of said support in accordance with the procedures established in articles 390 Bis and 390 Ter, is of public order and social interest...

99. In addition, the Federal Center’s General Guidelines for Trade Union Democracy Procedures (“election guidelines”) prohibit irregularities that “affect” the right of workers to a free vote and, in such cases, permit the Federal Center to hold the election invalid, set aside the results, and/or schedule a rerun, pursuant to the following articles of the guidelines:¹⁷¹

- i. Article 10, in which the Federal Center may order the “cancellation or postponement of the consultation in order to safeguard the principles of certainty,

¹⁷¹ USA-52 (Lineamientos Generales para los Procedimientos de Democracia Sindical (August 17, 2022) (“Election Guidelines”), available at:

https://www.gob.mx/cms/uploads/attachment/file/787317/Extracto_del_acuerdo_por_el_que_se_aprueban_los_Lineamientos_Generales_para_los_Procedimientos_de_Democracia_Sindical.pdf.

- security, freedom and secrecy of the vote or when the physical integrity of workers or verification personnel is endangered.”
- ii. Article 34, in which the “verification staff will observe that the consultations with the workers are carried out in accordance with the provisions of these Guidelines and the provisions of the Law...they shall verify that:”
 1. “Prior to the consultation...[t]here are no acts of dissemination of false or misleading information about the corresponding procedure of union democracy, tending to induce workers to desist from voting, or to generate fear or deception in them so that they vote in a certain way [and]...[t]here is no delivery or promise of payments, gifts, goods, or benefits.”
 2. “During the consultation...[t]he place that was designated for the vote is accessible to workers, as well as to those who have a disability, and meets the necessary conditions for them to cast their vote freely, peacefully, with agility and safely, without any coercion...[t]he employer does not have any interference or intromission in the consultation...[and] [a]n environment free of violence, intimidation or coercion prevails that allows workers to exercise their vote freely.”
 - iii. Article 35, “If the irregularities that led to the cancellation of a consultation are of such seriousness that they merit that it be rerun, the Centre shall establish the terms and conditions under which it must be rerun, without prejudice to the administrative sanctions that may result in the event of conduct contrary to the principles of freedom of association and collective bargaining.”
 - iv. Article 45, which provides, “[i]rregularity is understood to be any act or omission that violates the principles of security, transparency, reliability and certainty in voting or that affects the right of workers to cast their vote in a personal, free, direct, secret, peaceful, agile and safe manner. To this end, the Center will analyze the certificates issued by the verification staff, the nonconformities presented by one or more workers, or any other element, evidence or indication that is available.”
 - v. Article 51, which provides, “[i]n the event of the existence of irregularities due to the nonconformity raised, the Centre will integrate it as an additional element in its determination with respect to the validity or invalidity of the consultation, without prejudice to the administrative sanctions that must be determined for having violated these Guidelines and/or violating any right in terms of freedom of association or collective bargaining.”

- vi. Article 52, which provides, “[i]f, as a result of the analysis of the nonconformity, as well as the records of the file integrated for the purpose of the procedure in question, the existence of the irregularities is not proven, or they are considered to be true, but when assessed as a whole with the other non-conformities presented, they are not decisive in affecting or modifying the majority decision of the voters in a consultation, the Centre will issue the corresponding agreement in a well-founded and reasoned manner.”

100. Mexico does not explain in its Initial Written Submission whether and how the many complaints of the workers prior to the election were investigated or considered by the Federal Center in evaluating whether to postpone or cancel the vote. Nor does it seem that STPS’s findings, in its report following its 45-day RRM investigation, informed the determination of whether the election results should be set aside.

101. However, the evidence gathered by both Mexico and the United States shows that, prior to the election, Atento committed several irregularities “affect[ing]” the right of workers to vote in a free manner under Article 45 of the Federal Center’s election guidelines. In the year leading up to the election, Atento dismissed dozens of STRM supporters, including three workers on December 1 and two on December 5, the day before the election was held. Atento held multiple meetings in which it threatened workers with reprisals, including warning them that if STRM won the election BBVA would end its contract. Further, Atento made clear it was in charge of union activities at the facility. It selected a slate of “worker committee” candidates, oversaw their election on the company intranet, and tasked them with administering benefits and supporting FOSRM’s organizing efforts. The foregoing acts intimidated STRM supporters and pressured workers to vote for FOSRM, thereby “favor[ing]” FOSRM in a manner prohibited by Articles 133(IV), (V), (VII), and (XVII) of the FLL, and in which Mexican authorities have the authority to prevent pursuant to Article 897-G of the FLL. These acts also “tend[ed] to encourage the constitution of organizations of workers dominated by an employer or an organization of employers, or to support in any way organizations of workers in order to place them under their control,” under Article 357. Finally, Atento’s statements constitute “misleading information about the corresponding procedure of union democracy, tending to...generate fear or deception in them so that they vote in a certain way” within the meaning of Article 34(I)(d) of the election guidelines.

102. Also prior to the election, Atento made a “promise of payments, gifts, goods, or benefits,” prohibited by Article 133(IV), (V), (VII), and (XVII) of the FLL and Article 34(I)(e) of the Federal Center’s election guidelines. Namely, Atento offered workers payments if they voted for FOSRM.

103. During the election, Atento’s favoritism for FOSRM continued as FOSRM and Atento officials who were not accredited as observers were present in the “assigned space in which the workers deposit their vote” under Article 390bis.III(c) of the FLL. For the same reason, the places designated for voting failed to meet the conditions for workers to “vote freely,” “without

being coerced in any way,” under Article 390bis.III(b), and the vote was not conducted in a “personal, free, direct and secret way,” under Article 390bis.III(d). The vote was not “secret” for the additional reason that surveillance cameras reportedly recorded the voting area.

104. The foregoing irregularities show that the vote was tainted by “intimidation or coercion” that prevented workers from exercising their vote “freely” under Article 34 of the Federal Center’s election guidelines.

105. Mexico argues in its Initial Written Submission that “[i]solated” actions could not have influenced FOSRM’s decisive victory,¹⁷² but Atento’s misconduct was hardly isolated. For over a year before the election, Atento engaged in a scorched-earth campaign, first ridding the facility of STRM members and then threatening the workers who remained to support FOSRM. Although FOSRM prevailed by a wide margin, the existence of the several, significant irregularities, “when assessed as a whole” appear to have been “decisive in affecting or modifying the majority decision of the voters” under Article 52 of the election guidelines. Therefore, although FOSRM prevailed by a wide margin, there is no reason to believe Atento’s violations of law were not decisive in *affecting or modifying* the majority decision of voters. It is possible, and even likely, that the vote was lopsided in favor of FOSRM because a significant number of workers – who were warned that the facility would close if they voted for STRM and frightened by the example of the dozens of workers fired for supporting STRM – feared for their livelihood had they failed to vote for FOSRM. In fact, Mexico’s interpretation of what would be considered “decisive in affecting or modifying” the vote suggests that the more effective an employer is at intimidating the workers, the less likely the result of the vote will be overturned. Here, for example, Mexico simply concludes that “the difference is so large that it is not objectively reasonable to assume that the Telefonistas Union could have won.”¹⁷³

106. Whatever the standard for postponing, canceling or annulling the election results, it is clear that Mexico’s failure to take any action against the company with respect to the representation vote constitutes a failure to remediate the denial of workers’ rights to freedom of association and collective bargaining. As a result of Atento’s extensive interference, workers were not afforded their right to organize and to exercise their vote with “full freedom”, as required under Article 390bis.III(i) of the FLL.

C. Mexico failed to sanction or otherwise penalize Atento for its violations of Mexican law.

107. Remediating a Denial of Rights under Annex 31-A means not only putting workers back in the position they would have been in had the Denial of Rights not occurred, but also sanctioning the offending company so that the company in question, as well as other companies, are deterred from committing Denials of Rights in the future. Put simply, companies need to

¹⁷² See Mexico’s Initial Written Submission, para. 142.

¹⁷³ See Mexico’s Initial Written Submission, para. 141.

know that they cannot get away with violating workers’ right to freedom of association and collective bargaining with impunity. Both the USMCA and Mexican law reflect the need for appropriate and effective sanctions.¹⁷⁴ Indeed, in its investigation report, Mexico acknowledged that, according to general principles of the International Labor Organization (ILO), “it is important to forbid and *penalize* in practice all acts of anti-union discrimination in respect of employment.”¹⁷⁵

108. The FLL empowers Mexico to sanction employers who violate workers’ right to freedom of association and collective bargaining. Article 992 of the FLL provides:

Violations of labor standards committed by employers, union leaders or workers, will be punished in accordance with the provisions of this Title, regardless of the responsibility that corresponds to them for the breach of their obligations, without prejudice of the sanctions provided for in other laws and of the legal consequences that may arise in the matter of concessioned goods and services.

The quantification of the financial penalties established in this Title will be made based on the calculation of the Unit of Measurement and Update (UMA) at the time of the violation.

For the imposition of the sanctions, the following will be taken into account:

¹⁷⁴ Article 23-A.2(b) of the Agreement requires that Mexico adopt and maintain laws giving it the authority to sanction actors for violating workers’ right to freedom of association and collective bargaining:

Mexico shall ... Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements and the recognition of unions, through legislation establishing (i) an independent entity for conciliation and registration of unions and collective bargaining agreements ... The legislation shall provide for the independent entity for conciliation and registration to have the *authority to issue appropriate sanctions against those who violate its orders*. [emphasis added]

Article 31-A.7.3 of the Agreement also contemplates that Mexico will consider sanctioning the Covered Facility:

In cases in which the timeframe granted to the Covered Facility to eliminate the Denial of Rights has elapsed and the Covered Facility has allegedly not taken the necessary measures to comply with the remediation, the panel shall request the respondent Party to submit, within 10 business days of the petition a document establishing the results of the respondent Party’s investigation and conclusions and the actions and *sanctions it took against the Covered Facility* as a result of the Request for Review and Remediation under Article 31-A.4. The complainant Party may respond to the respondent Party’s submission. [emphasis added]

¹⁷⁵ See MEX-03 (Internal Investigation Results) at 40 (citing general principle number 1075 from the Compilation of Decisions by the ILO Committee on Freedom of Association) (emphasis added).

- I. The intentional character or not of the action or omission that constituted the violation;
- II. The severity of the violation;
- III. The damages that were produced or can be produced;
- IV. The economic capacity of the offender; and
- V. The recidivism of the offender.¹⁷⁶

109. Article 357 of the FLL refers to sanctions in the context of interference with workers' right to freedom of association and collective bargaining, by providing that "[a]ny undue interference will be sanctioned under the terms of the Law."

110. The Federal Center's election guidelines also contemplate sanctions, pursuant to the following articles of the guidelines:

- i. Article 35, which provides, "[i]f the irregularities that led to the cancellation of a consultation are of such seriousness that they merit that it be rerun, the Centre shall establish the terms and conditions under which it must be rerun, without prejudice to the administrative sanctions that may result in the event of conduct contrary to the principles of freedom of association and collective bargaining."
- ii. Article 38, which provides, "[i]n the event that there are irregularities in relation to violations of the applicable regulatory provisions on freedom of association and collective bargaining, or, acts of simulation, violence, intimidation, disinformation or coercion of the vote are accredited and any other that affects the right of workers to vote in a personal free, secret, direct, peaceful and safe manner, the persons responsible may be subject to the penalties referred to in articles 992 to 1002 of the Law; the foregoing, without prejudice to the invalidity of the consultation that may be generated."
- iii. Article 51, which provides, "[i]n the event of the existence of irregularities due to the disagreement raised, the Centre will integrate it as an additional element in its determination with respect to the validity or invalidity of the consultation, without prejudice to the administrative sanctions that must be determined for having violated these Guidelines and/or violating any right in terms of freedom of association or collective bargaining."

¹⁷⁶ In addition, Article 1002 of the FLL provides, "For violations of labor standards not sanctioned in this Title or in any other provision of this Law, the violator will be subject to a fine equivalent to 50 to 5,000 times the Unit of Measurement and Update (UMA)."

111. Therefore, it appears that Mexican law would require that sanctions be imposed on Atento for committing several serious denials of its workers’ right to freedom of association and collective bargaining. Under Article 38 of the Federal Center’s election guidelines, Atento committed “irregularities” in the conduct of the vote and acts of “intimidation [and] coercion of the vote” that “affect[ed] the right of workers to vote in a personal free, secret, direct, peaceful and safe manner.” Atento’s misconduct “sever[ely]” violated workers’ right to freedom of association and collective bargaining under Article 992 of the FLL.

112. The reasons that Atento’s misconduct influenced the election results are detailed in the sections immediately above and also support a finding that sanctions should have been imposed against Atento. In short, in the lead-up to the election, Atento dismissed dozens of workers because they supported STRM, threatened to shut down if workers voted for STRM, promised workers benefits for supporting FOSRM, and took other actions that interfered with workers’ right to freely select their bargaining representative. Atento’s misconduct warrants sanctions under Article 38 of the election guidelines and Article 992 of the FLL. Indeed, if any misconduct warrants sanctions under Mexican law, it appears to be Atento’s year-long, willful, and severe misconduct. Sanctions appropriate to these violations would have the effect of deterring both Atento and other companies from committing similar violations in the future.

113. Unfortunately, the current situation at the Atento facility shows precisely how the lack of effective sanctions can even embolden a company to repeat the same behavior that the parties’ have found to constitute a Denial of Rights in the first place. Since the establishment of this Panel, in the run up to the August 9, 2024, vote on the new CBA negotiated between Atento and FOSRM, Atento again threatened and coerced workers, and again succeeded in preventing workers from freely exercising their rights to freedom of association and collective bargaining.¹⁷⁷

VIII. CONCLUSION

114. For the reasons set forth above, the United States respectfully requests that the Panel, after conducting its verification, issue a report and make a determination that the actions Mexican took against Atento were not sufficient to remediate the Denial of Rights, such that that Denial of Rights continues to exist.

¹⁷⁷ USA-49 (August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)) at 1, 3, 6, 8; USA-50 (August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)) at 1, 3, 4, 8, 10; USA-51 (August 6, 2024, Notes from United States Investigatory Interviews with [REDACTED] (Confidential)) at 2-3.