

**Cour
Pénale
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**International
Criminal
Court**

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No.: **ICC-02/18**
Date: **18 August 2025**

THE PRESIDENCY

Before: Judge Tomoko Akane, President
Judge Rosario Salvatore Aitala, First Vice-President
Judge Reine Alapini-Gansou, Second Vice-President

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public

Prosecutor's Request to be Excused from the Venezuela I Situation

Source: The Prosecutor

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I. Introduction

1. In compliance with the Appeals Chamber's instruction,¹ the Prosecutor hereby respectfully requests the Presidency to excuse him from the *Venezuela I* situation.

II. Procedural History

2. On 12 November 2024, the Registry transmitted Arcadia Foundation's "Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest".² On 29 November 2024, the Prosecutor responded,³ opposing the Recusal Request on the basis that the Arcadia Foundation lacked standing and that, in the Prosecutor's view and for reasons given, there was no real possibility of bias.

3. Following further pleadings, on 10 February 2025, the Appeals Chamber dismissed the Recusal Request.⁴ The majority of the Appeals Chamber held that the Recusal Request was inadmissible because the Arcadia Foundation lacked standing.⁵ The First Appeals Chamber Decision continued:

*This notwithstanding, the Appeals Chamber, by majority, notes the submissions of the Prosecutor concerning the merits of the Request. In this context, the Appeals Chamber recalls that the Prosecutor is bound to exercise his or her functions impartially in accordance with article 45 of the Statute at any stage of the proceedings, and that he or she has a duty to request to be excused, under rule 35 of the Rules, if he or she has reason to believe that a ground for disqualification exists. In the present situation, in light of the Request and the views and concerns of the victims with respect to the matter at hand, the Appeals Chamber invites the Prosecutor to vigilantly and continuously uphold his aforementioned statutory obligations, and take any necessary measures to preserve his impartiality and ultimately the integrity of the proceedings in order to remain in compliance with his duties.*⁶

¹ [ICC-02/18-118](#) ("Second Appeals Chamber Decision"), para. 45.

² [ICC-02/18-92-AnxII](#) ("Recusal Request").

³ ICC-02/18-99-Conf-Exp.

⁴ [ICC-02/18-109](#) ("First Appeals Chamber Decision"), paras. 61, 64-68.

⁵ First Appeals Chamber Decision, para. 68.

⁶ First Appeals Chamber Decision, para. 69.

4. Judge Ibáñez Carranza, in dissent, considered that the Recusal Request was admissible and further stated that she would have dismissed it on its merits.⁷ The dissenting opinion expressly indicated that Judge Ibáñez Carranza would have concluded that *“on the basis of the facts and circumstances of the Venezuela Situation, no reasonable observer properly informed would apprehend bias in the present case warranting the disqualification of the Prosecutor”*.⁸

5. On 6 February 2025, US President Trump issued the Executive Order imposing sanctions on officials of the International Criminal Court. Section 5 of the Order directed the Secretary of State to submit a report to the President identifying additional persons who should be included in the scope of the Order.⁹ On 13 February 2025, the Applicant, Mr Robert Carmona-Borjas, CEO of the Washinton D.C.-based “Arcadia Foundation”, publicly disparaged the 10 February 2025 Decision of the Appeals Chamber and directly and unequivocally threatened the Judges of the Appeals Chamber and their families. In his public statement tagging US Secretary of State Marco Rubio and Prime Minister Netanyahu of Israel, the Applicant promised that *“Arcadia Foundation will submit a report next Monday, February 17, to Secretary of State @SecRubio and the White House requesting that, in accordance with Article 5 of the executive order signed by President Donald Trump on February 6, 2025, sanctions be imposed on the ICC magistrates responsible for this ruling, except for Judge Luz del Carmen Ibanez Carranza, for having shielded Prosecutor Karim Khan and consolidating a system of impunity that allows for the political manipulation of investigations. These sanctions would include revoking visas, freezing assets and prohibiting financial transactions in the United States for the magistrates and their direct family members.”*¹⁰ These threats by the Applicant may also constitute encouragement of United States officials to impose sanctions against the judges of the Appeals Chamber because of his disagreement with the first Appeals Chamber Decision. Such coercive and intimidatory tactics should be unequivocally condemned.

⁷ First Appeals Chamber Decision, para. 72.

⁸ First Appeals Chamber Decision, para. 75.

⁹ [Executive Order “Imposing Sanctions on the International Criminal Court”, February 6, 2025.](#)

¹⁰ X Post by Robert Carmona-Borjas is available here : <https://x.com/CarmonaBorjas/status/1889872271906422819>.

6. On 8 April 2025, the Registry transmitted Arcadia Foundation's "Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor's Conflict of Interest in the Venezuela I Situation".¹¹ On 15 April 2025, the Prosecutor responded and opposed the Request.¹²

7. On 16 May 2025, as the Presidency is aware, the Prosecutor voluntarily took leave of absence until the conclusion of an ongoing investigation of the United Nations Office of Internal Oversight Services into allegations of misconduct.

8. On 1 August 2025, the Appeals Chamber concluded that *"in light of the Prosecutor's close family relationship with Ms Alagendra, combined with their previous professional and hierarchical relationship, a fair-minded and reasonable observer, properly informed and having considered all facts and circumstances, would reasonably apprehend bias"*.¹³ The Appeals Chamber instructed the Prosecutor to comply with his duty to request excusal within three weeks.¹⁴

9. On 10 August 2025, the Applicant, Mr Robert Carmona-Borjas, CEO of the "Arcadia Foundation", publicly disseminated a letter addressed to ICC Deputy Prosecutor Niang concerning the latter's public statement on the recently concluded visit of the Vice President of Venezuela to the ICC. In his letter, Mr Carmona-Borjas threatened Deputy Prosecutor Niang that he would call for his *"removal on grounds ranging from incompetence to collusion."*¹⁵ The Applicant's threats must be deprecated in the strongest terms.

10. As the Presidency is aware, the Prosecutor already faces an arrest warrant issued by the Russian Federation, is subject to sanctions pursuant to an Executive Order signed by President Trump, has been reported by UK Lawyers for Israel to the Bar

¹¹ [ICC-02/18-110](#) ("Request").

¹² [ICC-02/18-112](#).

¹³ Second Appeals Chamber Decision, para. 44

¹⁴ Second Appeals Chamber Decision, para. 45.

¹⁵ X Post by Robert Carmona-Borjas is available here : <https://x.com/CarmonaBorjas/status/1954266762490564704> "[DP Niang] was also made aware that granting diplomatic honors and institutional legitimacy to figures from that regime not only erodes confidence in the Court, but also compromises its credibility and brings it dangerously close to complicity. Persisting in this stance will open the door to demands for his removal for incompetence or collusion."

Standards Board because of the decision to apply for warrants in the *Palestine* situation for Israeli officials, and is reportedly also subject to a purported lawsuit filed in Israel seeking 20 million shekels in damages because of related complaints arising out of the *Palestine* situation.¹⁶ Various judges of the Court, including all members of the Presidency, also face arrest warrants issued by the Russian Federation, with Judge Alapini-Gansou also being subject to sanctions pursuant to President Trump's Executive Order. The Court has hitherto shown remarkable fortitude and resilience that refuses to bend to threats such as those made by the Applicant in this case. Continued vigilance is needed, however. In this context, the Applicant's unabashed threats should not only be viewed as inappropriate and calculating, but also dangerous and prohibited by the Rome Statute itself.

III. Request for Excusal

11. The Prosecutor respects the authority of the Appeals Chamber to rule on matters including the existence of a reason to believe that a ground for disqualification of the Prosecutor exists. Accordingly, in full compliance with the Second Appeals Chamber Decision, and in advance of the deadline stipulated therein, the Prosecutor respectfully requests the Presidency to excuse him from the *Venezuela I* situation.

12. Nonetheless, the Prosecutor places on record his concern with aspects of the Second Appeals Chamber Decision which may potentially have broader implications for future issues concerning the disqualification of a Judge, Prosecutor, or Deputy Prosecutor.

13. First, whilst the Second Appeals Chamber Decision faults the Prosecutor for not requesting to be excused earlier,¹⁷ the First Appeals Chamber Decision did not instruct or advise the Prosecutor to request to be excused. It bears emphasis that the First Appeals Chamber Decision found in the Prosecutor's favour. It dismissed the Applicant's Request. The minority of the Appeals Chamber additionally indicated

¹⁶ <https://www.jpost.com/israel-news/article-864140>.

¹⁷ Second Appeals Chamber Decision, para. 26.

that, in its view, no reasonable observer properly informed would apprehend bias.¹⁸ The majority “note[d]” the Prosecutor’s submissions on the merits of the Recusal Request but did not indicate disagreement with them.¹⁹ In that context, and entirely reasonably, the Prosecutor understood the majority’s invitation to “vigilantly and continuously uphold his aforementioned statutory obligations, and take any necessary measures to preserve his impartiality and ultimately the integrity of the proceedings in order to remain in compliance with his duties”²⁰ as a general affirmation of his statutory obligations. With respect, and notwithstanding the Appeals Chamber’s reasoning, he did not contemplate that the absence of any change in circumstances would itself be considered by the Appeals Chamber to constitute a change in circumstances. If the Appeals Chamber had clearly indicated that the Prosecutor should seek excusal, or take any specific action it considered necessary, the Prosecutor would, of course, have respected that decision and immediately complied, as the Prosecutor has done now by submitting the present request.

14. In any event, the Prosecutor assures the Presidency that there was no “apparent inaction” following the First Appeals Chamber Decision.²¹ The Prosecutor sought to show vigilance and uphold his statutory obligations by continuing expeditiously with the investigation of the *Venezuela I* situation. For example, by confidential communication to the Presidency on 2 June 2025, the Prosecutor, addressing a separate and unrelated matter, also made it clear that developments in the *Venezuela I* situation were progressing as of 16 May 2025. After 16 May 2025, the Presidency is aware that the Prosecutor has been on voluntary leave and has not been involved in the ongoing work of the Office, including the *Venezuela I* situation. The Prosecutor was therefore simply not in a position to take any further steps or demonstrate further vigilance after 16 May 2025.

¹⁸ First Appeals Chamber Decision, para. 75.

¹⁹ First Appeals Chamber Decision, para. 69.

²⁰ First Appeals Chamber Decision, para. 69.

²¹ Second Appeals Chamber Decision, para. 26.

15. Second, the reliance on a “previous professional and hierarchical relationship” as a ground for excusal sets a novel precedent which could have significant broader implications for the Court. Since the establishment of the ICC, a number of ICC judges have had prior involvement in ICC activities. Certain ICC judges have previously served as government lawyers or officials and have subsequently engaged with matters involving States that had earlier appointed them to such roles or previously instructed them. Other ICC judges have sat on matters involving counsel that they themselves had previously instructed in other situations prior to their election. Similarly, there are ICC judges who have worked with or supervised current OTP staff in the ICC or in other courts or tribunals. These staff have then appeared before such ICC judges, quite properly, without comment or controversy. For instance, Judge Silvia Fernández de Gurmendi was employed by the Office of the Prosecutor from June 2003 to December 2006, including as Chef de Cabinet to former Prosecutor Ocampo, at a time when former Prosecutor Bensouda was Deputy Prosecutor.²² She was thus in “a professional and hierarchical relationship” with both former Prosecutors Ocampo and Bensouda. Although Judge Silvia Fernández de Gurmendi sought excusal from some cases, it was, quite properly, never suggested that her past professional and hierarchical relationships disqualified her from all cases involving former Prosecutors Ocampo and Bensouda (still less that they should be disqualified from all cases to which Judge Silvia Fernández de Gurmendi was appointed). Similarly, at the Kosovo Specialist Chambers, entirely correctly, there has been no suggestion that Judge Guénaél Mettraux has a conflict of interest, although he has previously worked on Defence teams with Counsel appearing before him in the *Thaçi et al* trial.²³

16. The Second Appeals Chamber Decision does not cite any authority in support of its reliance on “previous professional and hierarchical relationships” or elucidate which previous professional and hierarchical relationships are sufficient to warrant

²² See, for instance, [ICC-01/04-01/06-3154-Anx1](#), para. 9.

²³ Judge Guénaél Mettraux worked with Luka Misetic on Prosecutor v Gotovina (see, for instance, Prosecutor v. Gotovina and Markac, [IT-06-90-A](#), Appellant Ante Gotovina’s Supplemental Brief on Alternate Modes of Liability, 31 August 2012, cover page). Mr Misetic is currently lead Counsel to Hashim Thaçi.

the disqualification of the Prosecutor or indeed of Counsel. It similarly fails to address each individual Counsel's responsibilities under the ICC Code of Professional Conduct for Counsel, or to other rules of deontology that demonstrate the concept, contours, or applicability of any "superior-subordinate" doctrine to Counsel, as postulated by the Applicant. In the course of his prior international practice, the Prosecutor has been in what is described as "professional and hierarchical" relationships on various cases over decades with a significant number of members on the ICC list of Counsel. It cannot be the case that such previous professional and allegedly hierarchical relationships automatically—or even together with other factors—must give rise to a reasonable apprehension of bias which would require the Prosecutor to seek excusal whenever a Counsel with whom he has previously worked is appointed to a case. Indeed, to the Prosecutor's knowledge, the Registry does not screen Counsel seeking to be appointed on behalf of States, Defence or Victims for previous professional relationships with the Prosecutor or indeed with the Judges. In short, inherent in the concept and reasoning, as apparently advanced by the Appeals Chamber, is the potential to significantly delay, or disrupt ICC judicial work. In this regard, it is noteworthy that no order or application was addressed at any point to Venezuela or its legal team whereas the usual practice would have been to seek the recusal or disqualification of one of the various Counsel acting for Venezuela rather than the Court's elected Prosecutor. This is especially so as the Prosecutor was sworn in on 16 June 2021, some years *before* Venezuela's legal team was apparently constituted. It is also telling that this option was never sought by the Applicant. Nor was it explored in the Second Appeals Chamber Decision, as part of its supervisory functions.

17. The Prosecutor notes that the only example cited in the reasoning of the Appeals Chamber of the "previous professional and hierarchical relationship" was the *Ruto and Sang* case, which concluded on 5 April 2016.²⁴ No factual details defining the extent of Ms V. Alagendra's involvement in the *Ruto and Sang* case were set out in the Second

²⁴ [ICC-01/09-01/11-2027-Red-Corr.](#)

Appeals Chamber Decision. Had the Appeals Chamber enquired further from the Registry, it would have been apparent that Ms V. Alagendra did not even appear in Court for a day, nor did she take any witness or make any submissions. The Prosecutor concedes that he could have clarified that her appointment was to strengthen the team in the event the Defence was called upon to present its case. As the proceedings concluded at the close of the Prosecution's case, her active role was not ultimately required and, as such, she did not receive remuneration. Although the Second Appeals Chamber Decision also mentioned the *Gadafi* case in summarising the submissions of the Arcadia Foundation,²⁵ it did not record that the Arcadia Foundation's submission was completely wrong. Ms V. Alagendra was never appointed by Karim A. A. Khan KC in the *Gadafi* case. Indeed, she was appointed as Associate Counsel sometime after he had withdrawn from the case.²⁶ As a result, the factual foundation for the finding that there was a previous professional and hierarchical relationship sufficient to support the disqualification of the Prosecutor appears to rest on a single case which concluded nine years earlier.²⁷

18. Finally, the Prosecutor regrettably submits that there is an absence of *bona fides* in the application filed by Mr Carmona-Bojas. This is evident from the tone and content of his filings and posts, his threats directed against ICC Appeals Chamber Judges and the Deputy Prosecutor, his deliberate decision not to seek the disqualification of associate Counsel for Venezuela but of the Prosecutor who opened the investigation into that situation. It may also be discerned, it is submitted, by the Applicant's apparent preoccupation with the Prosecutor's decisions in the *Palestine* situation and especially his decision to submit applications for warrants of arrest against certain Israeli officials. On the subject of complementarity, the Applicant makes no effort to engage with the Prosecutor's decisions and approach in Colombia, Guinea, Central African Republic, or the Democratic Republic of the Congo, nor with the OTP's Policy

²⁵ Second Appeals Chamber Decision, para. 14.

²⁶ [ICC-02/18-106](#), para. 4(a).

²⁷ This is not to deny that the Prosecutor has worked with V Alagendra in some cases in the past and before his election as Prosecutor, but merely to demonstrate that various factual averments postulated by the Applicant and repeated or relied upon by the Appeals Chamber in its Second Decision were inaccurate or misconceived in various respects.

on Complementarity. Likewise, the Applicant also does not make any reference to the Prosecutor's applications for arrest warrants in respect of the situations in Ukraine, Afghanistan, or Myanmar/Bangladesh. Instead, he seeks to inject his opinions on the merits of warrants issued in the *Palestine* situation into his filings. For example, he criticises *"The Prosecutor's swift decision to pursue allegations against Prime Minister Benjamin Netanyahu under Article 8 of the Rome Statute – despite his role as a leader of a democratic nation operating a robust judicial system and grappling with existential security concerns."*²⁸ And *"the Prosecutor's decision to pursue the Netanyahu case with unprecedented urgency, while allowing the Venezuela I situation to languish...casts a shadow over the ICC's credibility. Israel, a nation with one of the most robust and independent judicial systems in the world, possesses the institutional capacity to address allegations of war crimes through its domestic mechanisms. Yet, the Prosecutor failed to engage meaningfully with Israeli judicial authorities, bypassing an opportunity for dialogue and mutual accountability."*²⁹ And *"how can the Prosecutor justify advancing charges against the leader of a democracy committed to the rule of law, while simultaneously hesitating to act decisively against a regime that murders, tortures and starves its own defenceless people."*³⁰ In his public statement on X, the Applicant again states *"however when it came to Israel, the prosecutor abandoned any pretense of impartiality. He never visited the country, never met with Prime Minister Benjamin Netanyahu or any of Israel's magistrates and without giving an opportunity to one of the most robust judicial systems in the world, namely Israel's, he acted with unprecedented haste and expeditiously requested the detention of Prime Minister @netanyahu and the Minister of Defense."* It is significant that the Applicant chose to tag Mr Netanyahu in his post.

19. The Applicant's focus of interest on warrants issued against Israeli officials in the *Palestine* situation is, perhaps, not without significance. His filings are replete with false or erroneous statements, misapprehensions or vituperative comments. Some of these were mentioned in the Prosecutor's various responses to the Appeals Chamber

²⁸ [ICC-02/18-105-AnxI](#), para. 132.

²⁹ *Ibid*, para. 136.

³⁰ *Ibid*, para. 137.

and will not be repeated here. The Applicant errs in his public statement that the Prosecutor has never visited Israel. He apparently fails to appreciate that the *Venezuela* situation is more recent than the *Palestine* situation or that every investigation has its own challenges and opportunities. He deliberately, or by omission, fails to acknowledge, cite, or have regard to clear statements made by the Prosecutor in various fora, including before the Assembly of States Parties, as to the priority given by the Office to investigations in the *Venezuela I* situation.³¹ Be that as it may, various claims of the Applicant addressed in this and previous responses of the Prosecutor are plainly wrong and contradicted by evidence. His recourse to threats, advocating for US sanctions against ICC Appeals Chamber judges before he filed his renewed (and eventually successful) application to the Appeals Chamber, and his recent threats against the Deputy Prosecutor give cause to pause when assessing the motives, conduct, and averments of the Applicant in this matter.

20. Despite respectfully disagreeing with the reasoning of the Second Appeals Chamber Decision and the process adopted in this matter, the Prosecutor fully abides by the Decision in hereby seeking the authorisation of the Presidency to recuse himself from the *Venezuela I* situation in light of that decision.

21. If the Presidency grants this request for excusal, it goes without saying that the Prosecutor will ensure that he has no ongoing involvement in the *Venezuela I* situation and has no access to any confidential filings submitted or decisions rendered. He will not engage in any way in the investigative or legal work of the situation. The situation will continue to be supervised by Deputy Prosecutor Niang.



Karim A.A Khan KC, Prosecutor

Dated this 18th day of August 2025
At The Hague, The Netherlands

³¹ [Remarks by ICC Prosecutor Karim A.A. Khan KC at the opening of the 23rd Session of the Assembly of States Parties, 2 December 2024.](#)