

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Silver Bull Resources, Inc.

v.

United Mexican States

(ICSID Case No. ARB/23/24)

PROCEDURAL ORDER NO. 4

Concerning an application for a witness to give evidence remotely

Members of the Tribunal

Mr. Ian Glick KC, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Prof. Philippe Sands KC, Arbitrator

Secretary of the Tribunal

Ms. C. E. Salinas Quero

15 September 2025

I. INTRODUCTION

1. On 31 August 2025, the Respondent submitted the Second Witness Statement of Mr. Lorenzo Fraire Hernández, in which he indicated that he cannot testify in person at the hearing, due to take place in Washington DC in early October 2025, because he does not currently hold a United States visa.
2. In subsequent correspondence, the Respondent proposed that Mr. Fraire Hernández should testify remotely from the Ministry of the Economy's offices in Mexico City.
3. On 5 September 2025, the Claimant applied to the Tribunal for an order that the Tribunal should direct the Respondent to promptly take all necessary steps to secure Mr. Fraire Hernández's in-person attendance at the hearing or alternatively that he should testify from a neutral location in Mexico City.
4. By letter dated 5 September 2025 but received the following day, the Respondent applied for the Tribunal to authorise Mr. Fraire Hernández to attend the hearing remotely.
5. On 6 September 2025, the Claimant agreed to a suggestion from the Tribunal that the latter should treat the Claimant's application of 5 September 2025 as its response to the Respondent's application for Mr. Fraire Hernández to give evidence remotely.
6. On 11 September 2025, the Claimant served its reply (dated 10 September 2025).

II. PARTIES' SUBMISSIONS

7. The Parties' submissions are set out in full in the correspondence mentioned above, and do not need to be rehearsed at length here.
8. In brief, the Respondent relied on:

- (a) Mr. Fraire Hernández's personal circumstances, in particular his modest income, and his remoteness from a United States consulate;
- (b) his lack of even a Mexican passport, the cost of obtaining one and of a US visa, and the lengthy waiting time for obtaining such a visa;
- (c) the fact that requiring him to obtain such a visa would be excessively burdensome for him, especially having regard to the fact that he could give evidence remotely from the Ministry of the Economy in Mexico City;
- (d) the fact that none of the instruments cited by the Claimant establishes the strict standard it attempts to impose for the authorisation of remote testimony. All that need be considered is whether the circumstances are reasonable;
- (e) the fact that the Respondent cannot issue a passport or intervene in the issuance of a United States visa: Mr. Fraire Hernández is neither a diplomatic officer nor eligible for a visa of that kind and any intervention could be deemed an improper "incentive", particularly in the light of his socioeconomic condition and US migration policies that restrict visa issuance;
- (f) the fact that the Respondent only recently learned of his lack of the necessary documents, by when there would not have been sufficient time to obtain a passport and a visa;
- (g) the fact Mr. Fraire Hernández is an elderly individual in a vulnerable economic situation who lacks the travel documents required precisely because of his socioeconomic condition;
- (h) the fact that the Government of Mexico does not provide any remuneration or compensation to witnesses so as to ensure they remain objective; for

which reason the Respondent cannot provide financial assistance for the purposes of obtaining a visa;

- (i) the fact that his remote testimony would allow both the Respondent and the Tribunal to question him directly, thereby ensuring due process and equality of arms.

9. Similarly in brief, the Claimant relied on:

- (a) the fact that in-person attendance is the default position: see ICSID Arbitration Rule 38(5) and Article 8.1 of the 2020 IBA Rules on the Taking of Evidence in International Arbitration;
- (b) the necessity for Mr. Fraire Hernández's credibility to be tested, like other witnesses, in a physical environment that will allow the Tribunal to assess it fully;
- (c) paragraphs 18.2 and 18.3 of Procedural Order Number 1, which provide that each party "shall be responsible for summoning its own witnesses to the hearing" and "shall be responsible for the practical arrangements, costs and availability of any witness it offers". The Respondent has failed to make any effort to secure Mr. Fraire Hernández's attendance at the hearing, and has sought to shift the cost and effort of securing a passport and a visa on to him;
- (d) the fact that when the Respondent designated him as a witness in December 2024 it was already aware of the hearing dates and has had ample time to ensure that he obtained both a Mexican passport and a US visa;
- (e) the fact that the Respondent has known of Mr. Fraire Hernández's means since it chose him as a witness and it should have asked him whether he had a passport and a visa at that time;

- (f) the failure of the Respondent to identify the steps it has taken to ensure his appearance;
- (g) the fact that United States Embassies routinely prioritise visa applications when the purpose is to appear before an International Tribunal. ICSID sent an email on 21 July 2025 offering to facilitate the visa process by inviting the parties to identify participants requiring a travel certificate for the hearing.

III.DISCUSSION

10. It is unfortunate that Mr. Fraire Hernández's lack of the travel documents necessary for him to attend personally the hearing was not discovered earlier. He is likely to prove a significant witness in this arbitration. However, as matters stand now (and already stood when this application was made), even if the Tribunal directed the Respondent to "take all necessary steps to secure Mr. Fraire Hernández's in-person attendance at the Hearing", as the Claimant requests, it is very doubtful whether he could obtain the necessary documentation in time.
11. That being so, the Tribunal considers that it would be better to make arrangements that are reasonably certain to ensure he can give evidence orally from Mexico City rather than try, and quite likely fail, to have him give evidence in Washington. Moreover, in the Tribunal's view, trying to get him to Washington but making back-up arrangements for him to testify in Mexico City is likely to result in confusion and unnecessary expense. Accordingly, it has concluded that Mr. Fraire Hernández should give his evidence remotely from Mexico City.
12. The question then arises whether, as the Respondent suggests, that evidence should be given from the Ministry of the Economy's offices: that is from premises belonging to and occupied by the Respondent itself – in short, the Respondent's "home ground".

13. The Claimant objects to this and the Tribunal notes that the Respondent says (at the end of its reply) that it “would not oppose remote testimony from a “neutral location””, though mentioning that this might entail additional expense.
14. In the Tribunal’s judgment the witness should give his evidence from an environment approximating as closely as possible to the hearing room in Washington, not the Respondent’s own offices. Thus, a neutral location in Mexico City is the best solution to the current problem.

IV. ORDER

15. Accordingly, the Tribunal directs the Parties to co-operate to arrange for Mr. Fraire Hernández to give his evidence remotely from a neutral location in Mexico City. An example would be the offices of a law firm unconnected with this arbitration; though it does not have to be a law firm. It does, however, need to be a location that can provide a reliable and secure connection to the hearing room in Washington. Both Parties’ legal representatives will, of course, be entitled to be present at the chosen location whilst he is giving his evidence.
16. For the avoidance of doubt, and in accordance with paragraph 18.3 of Procedural Order No. 1, the Tribunal also directs the Respondent to pay Mr. Fraire Hernández’s expenses for travelling to and from, and for his accommodation and subsistence in, Mexico City, without prejudice to how the Tribunal may ultimately allocate those costs as between the Parties.

On behalf of the Tribunal,

[Signed]

Ian Glick KC
President of the Tribunal
Date: 15 September 2025