

Public Version

*UNITED STATES – SAN MARTÍN MINE*

(MEX-USA-2023-31A-01)

**CLOSING STATEMENT**  
**OF THE UNITED STATES OF AMERICA**

**February 29, 2024**

1. Good afternoon, Mr. Chair and members of the Panel. On behalf of the U.S. delegation, I would like to begin by thanking the Panel members, the support staff assisting you, and the Mexican Section of the USMCA Secretariat for your work on this dispute.

2. At this point you have had an opportunity to question multiple witnesses during the verification, and have heard the arguments of the Parties in detail over the last two days. This is a complicated situation to be sure. But the ultimate question put to this Panel in the context of this proceedings is nonetheless a straightforward one. The Panel has been requested to determine whether there has been a Denial of Rights at the facility. Yes or No. First, whether IMMSA has violated Mexican law by operating its facility normally during an ongoing strike, and Second, whether IMMSA has violated Mexican law by negotiating with a group not the representative union of the workers at the facility.

3. With respect to the ongoing operations at the mine, Mexico claimed that no Denial of Rights can be found because the Imputability Award ended the strike. The United States has explained why this Award has not ended the strike. Los Mineros filed an amparo that included a request for suspension of the return-to-work order, and that suspension was granted. But more importantly, the Denial of Rights has not been resolved because, quite simply, nothing has changed. That the violation of Mexican law may have technically ceased, based on a change in the legal status of a strike, does not mean that violation – and the consequent Denial of Rights it has created – has been remediated. IMMSA was operating at full capacity before the Imputability Award, and they continue to do so after the Imputability Award. Therefore, the

facts on the ground that gave rise to the Denial of Rights remain. And contrary to Mexico’s contentions, the Imputability Award will not resolve this situation.

4. Regardless of how the amparos to that Award are resolved, negotiations will be needed to determine how workers can return to work safely, and in a manner consistent with the current CBA in force at the facility. To make that happen – and for the leverage of the unionized workers to be realized at all – operations must cease. Professor Bensusan and all the Parties agree – the situation at the San Martin Mine is highly atypical. This is the reason that the Panel finds it so difficult to determine what a proper resolution might entail. But to get to anything like a typical situation, the situation on the ground must return to “typical.” And what would be “typical” is a situation consistent with Mexican law, and one that reflects effective recognition of the right to freedom of association and collective bargaining, including – pivotally – the effective right to strike, is one in which operations have ceased.

5. Resolution of this issue will go a long way to also resolving the second Denial of Rights identified by the United States in our panel request – the illegal bargaining and illegal application of the results of that bargaining at the facility. Put simply – IMMSA cannot continue to operate as if the strike was not occurring, and as if Los Mineros is not the legal representative union and holder of the CBA.

6. Is this situation complicated and difficult to resolve? Yes. Absolutely. Does that mean no resolution can or should be found? Of course not. Negotiations will be needed. But that will only be possible if the situation on the ground is as close to what it should be under proper application of Mexican law.

7. I'd like to step back a moment to recall why we are all here. In the USMCA, the United States and Mexico agreed to a groundbreaking enforcement mechanism aimed at ensuring the remediation of Denials of Rights to freedom of association and collective bargaining at specific facilities. This mechanism has resulted in wrongfully terminated workers returning to work, millions of dollars in backpay and lost benefits being paid to workers, and has helped secure free and fair elections for union representation. The United States and Mexico have been able to do this, not because panels have forced their hands, but because they have worked together to investigate allegations of Denials of Rights, and have cooperated in ensuring that, where Denials of Rights were found, those denials were promptly and fully remediated.

8. We did not do this by imposing an impossibly high standard for what would constitute a Denial of Rights, or by artificially limiting the scope of laws that might apply. We did this by looking at the law and looking at the facts and making a reasonable determination as to whether the workers in question had been denied their rights to freedom of association and collective bargaining under Mexican law.

9. We, and Mexico, found Denials of Rights to exist:

- where workers were harassed or intimidated in the exercise of their union activities,
- where they were threatened or fired because of those activities, where they were discriminated against for their union activities,
- where employers favored one union over another and attempted to influence the outcome of a vote,

- where workers' rights under a sectoral agreement were not being applied at a facility,
- and where – as here – an employer otherwise interfered with workers' rights to freedom of association and collective bargaining.

10. The Panel in this dispute is being asked to address a specific set of facts and come to specific legal conclusions. But the Panel's report will do more than that. By interpreting the relevant USMCA laws in accordance with their plain meaning and in their proper context, the Panel will assist the Parties in continuing this important work in their ongoing goals of ensuring that the RRM can be used to successfully resolve Denial of Rights on the ground in Mexico.

11. This is the goal of the RRM. If successful, the RRM will serve to support Mexico in its own historic attempts to realize real, effective union democracy at every workplace in Mexico. And based on what we have heard from the Panel throughout these proceedings, the United States believes this Panel shares the same goal.

12. So with that, we thank the Panel very much for its work in these proceedings. We thank the Secretariat for their ceaseless assistance to both us and the Panel. And we thank very much our colleagues from Mexico, for their ongoing work with us on these matters, and for their gracious hospitality over the last two days here in Mexico City.