

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

September 12, 2016

Mr. Mark J. MacDougall
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue NW
Washington, D.C. 20036

Dear Mr. MacDougall:

On September 7, 2016, the Committee invited your client, Brian Pagliano, to testify at a hearing on September 13, 2016, titled “Examining Preservation of State Department Federal Records.” As the invitation stated, the hearing will examine federal recordkeeping, including the circumstances that resulted in a failure to preserve federal records belonging to the State Department. Mr. Pagliano is one of five witnesses invited to appear at the hearing.¹

You, however, were aware that Mr. Pagliano would be asked to testify even before the invitation was transmitted, and you advised the Committee that Mr. Pagliano would not appear voluntarily. You further advised that if he did appear, he would assert his rights under the Fifth Amendment and decline to answer questions related to the matters that are the subject of the hearing. In light of Mr. Pagliano’s unwillingness to appear voluntarily, a subpoena was issued to compel him to appear. You received the subpoena on September 8, 2016—five days before the hearing.

Today, on the eve of the hearing, you advised the Committee in a letter that Mr. Pagliano intends to assert his rights under the Fifth Amendment and will decline to appear.² The letter further stated that Mr. Pagliano was previously called to answer questions by the Select Committee on Benghazi (he declined and asserted his Fifth Amendment privilege) and the Federal Bureau of Investigation (he fully cooperated subject to an immunity agreement).³

Mr. Pagliano’s prior experience makes two things clear with respect to the topic of tomorrow’s hearing: (1) Mr. Pagliano is uniquely qualified to answer questions that will assist the Committee’s investigation, which is why at least two other investigative entities sought his

¹ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov’t Reform, to Mark J. MacDougall (Sept. 7, 2016).

² Letter from Mark J. MacDougall to Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov’t Reform, re: Subpoena issued on September 8, 2016 to Bryan Pagliano (Sept. 12, 2016).

³ *Id.* at 1.

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testimony, and (2) Mr. Pagliano has in fact provided testimony under certain conditions, specifically, to the FBI pursuant to an immunity agreement.

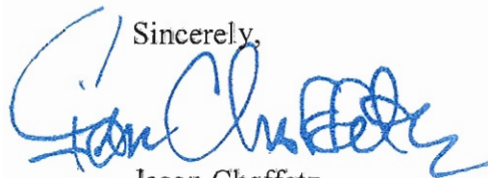
It is therefore improper to assert, as you did, that Mr. Pagliano's appearance before the Committee "furthers no legislative purpose and is a transparent effort to publicly harass and humiliate our client for unvarnished political purposes."⁴ The Committee invited Mr. Pagliano to appear with the expectation that his testimony will advance the Committee's investigation, which seeks information about former Secretary Hillary Clinton's use of a private, non-secure email server during her time at the Department of State. The Committee requires Mr. Pagliano's appearance because of, among other reasons, the possibility that he will waive or choose not to assert the privilege as to some or all questions, the possibility that the Committee will agree to hear his testimony in executive session, and the possibility that the Committee will immunize his testimony pursuant to 18 U.S.C. § 6005.⁵

For those reasons, the subpoena for Mr. Pagliano remains in effect. The subpoena compels Mr. Pagliano to appear before the Committee on September 13, 2016, at 10:00 a.m.

In a separate letter, regarding the Committee's subpoena for Mr. Pagliano's immunity agreement(s) with the Department of Justice, you stated "we have no documents or other materials for production to your Committee in response to this subpoena."⁶ The U.S. House of Representatives does not recognize the privileges your letter refers to as the basis for that position, as the subpoena itself states.⁷ The subpoena remains in effect. The subpoena requires Mr. Pagliano to produce the covered materials at or before 10:00 a.m. on September 13, 2016.

Please contact the Committee staff at (202) 225-5074 with any additional questions.

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

⁴ *Id.* at 2.

⁵ D.C. Bar Legal Ethics Opinion 358 (2011), while inapposite for a number of reasons, recognizes that there are legitimate reasons for a congressional committee to summon a witness who expresses an intention to assert his or her privilege against self-incrimination.

⁶ Letter from Mark J. MacDougall to Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, re: Subpoena issued on September 9, 2016 to Bryan Pagliano (Sept. 12, 2016).

⁷ Subpoena Instruction 14 states, in pertinent part: "In complying with the subpoena, be apprised that the U.S. House of Representatives and the Committee do not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections"