

United States Senate

WASHINGTON, DC 20510

September 14, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch:

We are writing to you in regard to Fifth Amendment issues relating to Mr. Bryan Pagliano, the IT Specialist who was responsible for managing Secretary of State Hillary Clinton's non-government email server during her time leading the State Department. As you may already know, the Judiciary Committee, which has jurisdiction over the Freedom of Information Act (FOIA), as well as certain national security matters, and the Homeland Security and Governmental Affairs Committee, which has jurisdiction over national security procedures and federal records, are investigating the circumstances surrounding the use of that non-government email server. According to news reports, the FBI is also "looking into" the security of former Secretary Clinton's private email setup, although it unclear whether the FBI has opened a full field criminal investigation, and if so, who are the subjects of that investigation.¹

Upon attempting to contact Mr. Pagliano, his attorneys informed us that "[i]f any effort is made to compel our client's testimony, Mr. Pagliano will decline to answer such questions in reliance on his right under the 5th Amendment." We subsequently replied to Mr. Pagliano's attorneys, writing that the Committees will certainly respect and defer to any legitimate assertion of an individual's constitutional rights, but also noting that the Committees have the authority to obtain an immunity order to acquire the information needed for oversight while also protecting Mr. Pagliano's right against self-incrimination. We requested that Mr. Pagliano's attorneys meet with the Committees' staff to explore the possibility of a proffer session in order to assess whether it might be appropriate to consider seeking an immunity order.

Mr. Pagliano's attorneys responded stating, among other things, that any proffer session on the part of Mr. Pagliano or his attorneys creates the risk that he will later be deemed to have waived his constitutional protections. Although we are seeking additional information from the State Department through requests to interview other witnesses who worked with Mr. Pagliano and requests for records of Mr. Pagliano's communications regarding former Secretary Clinton's

¹ Carol D. Leonnig, Rosalind S. Helderman, Tom Hamburger, *FBI Looking into the Security of Hillary Clinton's Private email setup*, THE WASHINGTON POST (Aug. 5, 2015), available at http://www.washingtonpost.com/politics/fbi-looks-into-security-of-clintons-private-e-mail-setup/2015/08/04/2bdd85ec-3aae-11e5-8e98-115a3cf7d7ae_story.html.

email server, the State Department has been extremely unresponsive to previous requests. This leaves the Committees with very little information on which to base a decision as important as whether to seek an immunity order to compel Mr. Pagliano's testimony.

Accordingly, we request that you provide us with responses to the following questions by September 21, 2015:

1. If Mr. Pagliano or his attorneys provide information to the Committees' counsel during a confidential proffer to assist the Committees in deciding whether to seek an immunity order, with the Committees' express agreement that the witness is not waiving his Fifth Amendment rights, would the Department of Justice consider the proffer to be a waiver of his Fifth Amendment rights? Please explain why or why not.
2. Does the FBI or any other component of the Department of Justice currently have a criminal investigation open relating to Secretary Clinton's private server? If so, is Mr. Pagliano a subject of that investigation?
3. Does the FBI or any other component of the Department of Justice currently have any other type of inquiry open relating to Secretary Clinton's private server? If so, please explain the nature and status of that inquiry and indicate whether Mr. Pagliano is a subject of that inquiry.
4. Does the FBI or any other component of the Department of Justice currently have a criminal investigation open relating to Mr. Pagliano, including any concerning his concurrent employment by the State Department and the Clintons, or concerning allegations that he failed to report to the government his outside income from the Clintons?
5. Does the FBI or any other component of the Department of Justice currently have any other type of inquiry open relating to Mr. Pagliano? If so, please explain the nature and status of that inquiry.
6. Has the FBI or any other component of the Justice Department engaged in negotiations with Mr. Pagliano regarding any potential proffer, plea, or immunity agreement? If so, please explain.
7. If the Department does enter into any proffer, plea, or immunity agreement with Mr. Pagliano, will you please ensure that such an agreement requires that Mr. Pagliano cooperate fully with our Committees' investigations? If not, please explain why not.

Thank you for your attention to this matter. If you have any questions, please contact Patrick Davis of the Judiciary Committee staff at (202) 224-5225 or David Brewer of the Homeland Security and Governmental Affairs Committee staff at (202) 224-4751.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs

Cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs