United States Senate

WASHINGTON, DC 20510

March 3, 2016

VIA ELECTRONIC TRANSMISSION

Mr. Bryan M. Pagliano
c/o Mark MacDougall, Esq.
Constance O'Connor, Esq.
Connor Mullin, Esq.
Sean D'Arcy, Esq.
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

Dear Mr. Pagliano:

We are writing to request that you reconsider your decision to not participate in an interview with the Committees in light of the recent news that you have been granted immunity by the Department of Justice.[1] We respect your constitutional rights and any legitimate personal assertion of your Fifth Amendment privilege against self-incrimination. However, the privilege is confined to instances in which the witness has reasonable cause to apprehend danger of prosecution based on his answers. *See Hoffman v. U.S.*, 341 U.S. 479, 486 (1951). Because the Department of Justice has granted you immunity from prosecution in this situation, there is no longer reasonable cause for you to believe that discussing these matters with the relevant oversight committees could result in your prosecution. Accordingly, we write to request that you make yourself available to provide information relevant to the Committees' ongoing examination of former Secretary of State Hillary Clinton's use of a private email account and server during her time at the State Department. In addition, we request that you provide a copy of the immunity agreement.

As mentioned in our prior correspondence, on August 19, 2015, staff of the Homeland Security and Governmental Affairs Committee requested an informal, voluntary interview with you to which you, through your attorney, declined and suggested you would likely avail yourself of your Fifth Amendment right against self-incrimination. Then, on August 28, 2015, staff of the Judiciary Committee reached out to you seeking an interview regarding your role in setting up and maintaining Secretary Clinton's private email and server. In response, your attorneys suggested that you would rely on your Fifth Amendment right and decline to answer any questions the Committee posed. In an attempt to find a path forward, we wrote to you and your attorneys requesting your attorneys meet with Committee staff to explore alternative options,

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[1] *See e.g.*, Adam Goldman, *Justice Dept. grants immunity to staffer who set up Clinton email server*, THE WASHINGTON POST (March 2, 2016) https://www.washingtonpost.com/world/national-security/in-clinton-email-investigation-justice-department-grants-immunity-to-former-state-department-staffer/2016/03/02/e421e39e-e0a0-11e5-9c36-e1902f6b6571_story.html.

such as a proffer session, to obtain the unique information you possess.[2] Rather than meet with Committee staff, your attorneys declined to participate in any further discussions.[3] On September 14, 2015, we wrote to you again to reconsider your decision to not voluntarily engage with the Committees.[4] On September 15, 2015, your attorneys again declined to cooperate with Committee staff to discuss possible alternatives to obtain your testimony.[5]

As the Committees continue investigating Secretary Clinton's use of a private email account and server, and in light of your recent grant of immunity by the Department of Justice, the Fifth Amendment privilege is no longer applicable, and we are thus reintroducing our request to speak with you voluntarily regarding your involvement with Secretary Clinton's private email account and server. We are also reintroducing our October 8, 2015 request that you produce all documents and communications sent or received from your @pagliano.com email address referring or relating to Secretary Clinton's use of a private email account or server.[6] The Committees believe that you possess unique information about this matter that is otherwise unavailable and would appreciate your full cooperation with the Committees' requests, including providing a copy of the immunity agreement. As such, we request that you or your attorney contact Committee staff by March 10, 2016 to arrange the interview and production of responsive documents.

Thank you for your attention to this important matter.

Sincerely,

Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs

Charles E. Grassley
Chairman
Committee on the Judiciary

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

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

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[2] Letter from Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Mark J. MacDougall et al., Akin Gump Strauss Hauer & Feld LLP (Sept. 4, 2015).
[3] Letter from Mark J. MacDougall et al., Akin Gump Strauss Hauer & Feld LLP, to Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary (Sept. 9, 2015).
[4] Letter from Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Mark J. MacDougall et al., Akin Gump Strauss Hauer & Feld LLP (Sept. 14, 2015).
[5] Letter from Mark J. MacDougall et al., Akin Gump Strauss Hauer & Feld LLP, to Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary (Sept. 15, 2015).
[6] *See* Letter from Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs, & Charles E. Grassley, S. Comm. on the Judiciary, to Mark J. MacDougall et al., Akin Gump Strauss Hauer & Feld LLP (Oct. 8, 2015).