

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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April 27, 2017

The Honorable Jefferson B. Sessions III
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

The Committee on Science, Space, and Technology (Committee) has been conducting a comprehensive investigation into the security of former Secretary of State Hillary Clinton's private server and e-mail arrangement used during her tenure at the U.S. Department of State. Today, I write to refer Platte River Networks (PRN) Chief Executive Officer (CEO) Treve Suazo for prosecution pursuant to 2 U.S.C. § 192, 18 U.S.C § 1001, and 18 U.S.C. § 1505, for the following reasons: (a) failing to produce documents and information demanded in August 23, 2016, and September 16, 2016, subpoenas *duces tecum* issued by the Committee, (b) making false statements, regarding not having custody or control of responsive documents, and (c) for obstructing the Committee's investigation. As Chairman of the Committee, I am writing to refer Mr. Suazo since in his position as CEO of PRN, he has custody and control of all company documents and is liable for the company's conduct.¹ See Exhibit 1. PRN's counsel, Ken Eichner, represents both Mr. Suazo and PRN. Copies of all prior communications between the Committee and Mr. Eichner discussed herein are enclosed as exhibits.

To further the Committee's investigation, which began in January 2016, the Committee requested documents and information from PRN and other companies retained by former Secretary Clinton and her staff to manage her unique server arrangement. The Committee also requested transcribed interviews of PRN employees. PRN, according to media reports and Federal Bureau of Investigation (FBI) documents, performed certain services related to maintaining and securing former Secretary Clinton's private email server. The Committee

¹ Through communications with the Committee, Mr. Ken Eichner, Principal of the Eichner Law Firm, confirmed he is counsel for Mr. Suazo and by extension PRN. At one point during the Committee's investigation, Mr. Eichner rebuked the Committee for having conversations with his client, in reference to Mr. Suazo. Following the Committee's issuance of subpoenas to Mr. Suazo, Mr. Eichner provided responses to the Committee. See E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Jan. 19, 2016, 5:10 p.m.). [Exhibit 1].

sought the documents, information, and testimony pursuant to the rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the U.S. Constitution.² To date, Mr. Suazo, on behalf of PRN and through his attorney, has refused to produce documents, as directed by congressional subpoenas *duces tecum* and refused to allow his employees to provide testimony to the Committee.

The following sections explain the Committee's authority to conduct oversight as well as the facts giving rise to the need for this referral. As part of this referral, the Committee is providing relevant exhibits discussed throughout the letter. The Committee's production is voluntary, and it does not constitute a waiver of Congress' Speech and Debate privilege.³

I. The Committee's Jurisdictional Authority to Conduct Oversight

Pursuant to House Rule X, the Committee on Science, Space, and Technology is delegated legislative, authorizing, and oversight jurisdiction over the National Institute of Standards and Technology (NIST), the agency charged with promulgating guidelines related to cybersecurity.⁴ Rule IX of the Committee's rules governs the issuance of subpoenas, as provided under clause 2(m)(3)(A)(i) of House Rule XI. House Rule XI specifically authorizes the Committee to "require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary."⁵ The rule further provides that the "power to authorize and issue subpoenas" may be delegated to the Committee Chairman.⁶

In addition to the Committee's jurisdiction based upon the Rules of the House, the Committee's investigation is compliant with case law in this area. The Committee's subpoenas to PRN's CEO, Mr. Suazo, are valid exercises of the House's constitutional oversight authority. First, this oversight is authorized by the House Rules and second, this oversight satisfies the test laid out by the Supreme Court in the 1961 case, *Wilkinson v. United States*.⁷ *Wilkinson* requires that the Committee's investigation be authorized by Congress;⁸ that the Committee have a "valid legislative purpose" for conducting its investigation;⁹ and that the subpoena be pertinent to the subject matter authorized by Congress.¹⁰

Under the first prong of the *Wilkinson* test, the Committee's investigation must be authorized. As previously noted, House Rule X grants each standing committee of the House

² U.S. CONST., art I. § 5, clause 2. Pursuant to House Rule X, the Committee on Science, Space, and Technology is charged with legislative, authorizing, and oversight jurisdiction over the National Institutes of Standards and Technology (NIST). See H. Rule X, clause 1(p).

³ U.S. CONST., art I. § 6, clause 1.

⁴ See H. Rule X, clause 1(p)(7).

⁵ House Rule XI, clause (2)(m)(1)(B).

⁶ House Rule XI, clause (2)(m)(3)(A)(1).

⁷ 365 U.S. 399, 408-09 (1961).

⁸ *Id.*

⁹ *Id.* at 409.

¹⁰ *Id.*

legislative “jurisdiction and related functions” such as oversight authority.¹¹ In the case of the Science Committee, Rule X grants the Committee legislative and “general oversight responsibilities” over NIST “to assist the House in its analysis, appraisal, and evaluation of ... Federal laws ... enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.”¹² NIST is the federal agency responsible for updating and promulgating standards and requirements used to safeguard federal information systems.¹³ NIST’s responsibility for setting cybersecurity standards for federal information systems is codified in the Federal Information Security Management Act of 2002.¹⁴ The Federal Information Security Modernization Act of 2014 (FISMA), which provided a significant update to the 2002 law, reaffirmed NIST’s role in setting standards and guidelines for federal information systems.¹⁵ Specifically, the 2014 law provided that the Director of the Office of Management and Budget shall promulgate cybersecurity standards based on those developed by NIST for federal information systems.¹⁶ The 2014 law also provided that while the Secretary of the Department of Homeland Security is responsible for coordinating government-wide efforts on information security policies and practices, it shall do so in consultation with NIST.¹⁷ Pursuant to FISMA, NIST developed the “Framework for Improving Critical Infrastructure Cybersecurity” (“Framework”), which aims to ensure “the national and economic security of the United States” by managing cybersecurity risk through a series of standards and best practices.¹⁸ Currently, it is optional for the private sector to follow the Framework guidance.

The Committee’s investigation also has a “valid legislative purpose.” Indeed, the Committee can take numerous legislative options that readily satisfy the second prong of the *Wilkinson* test. For example, in the past the Committee has reported legislation amending FISMA, and could find facts through its investigation that commend similar action here. Specifically, the Committee could amend FISMA to cover government officials choosing to use networks other than federal government networks. Another possible legislative solution would be for the Committee to require NIST to account for scenarios such as former Secretary Clinton’s unique server arrangement by amending the Framework to cover senior Cabinet level officials and their communications, both official and non-official. The Committee could also require NIST to provide a Framework to cover contractors providing information technology services to high-ranking government officials both in their official and unofficial capacity.

¹¹ See H. Rule X, clause 1(p)(7).

¹² House Rule X, clause 2(b)(1)-(2).

¹³ *Id.*; Federal Information Security Management Act of 2002, H.R. 2458-48, 107th Cong. § 1131(f) (2002).

¹⁴ Federal Information Security Management Act of 2002, H.R. 2458-48, 107th Cong. § 1131(f) (2002); Nat’l Institute of Standards & Tech., Computer Security Division, Computer Security Research Center, Federal Information Security Management Act (FISMA) Implementation Project, <http://csrc.nist.gov/groups/SMA/fisma/>.

¹⁵ Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283, 44 U.S.C. § 3553(a); *see also* 40 U.S.C. § 11331(b)(1)(A).

¹⁶ Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283, 44 U.S.C. § 3553(a).

¹⁷ *Id.* at § 3553 (b)(5).

¹⁸ Nat’l Inst. of Standards & Tech., *Framework for Improving Critical Infrastructure Cybersecurity* (Feb. 12, 2015), available at <https://www.nist.gov/sites/default/files/documents/cyberframework/cybersecurity-framework-021214.pdf>.

Over the course of prior congresses, the Committee has conducted rigorous oversight and passed legislation utilizing this important cybersecurity jurisdiction as it relates to Executive Branch departments and agencies' cybersecurity posture. During the 114th Congress, the Committee conducted robust oversight of the Federal Deposit Insurance Corporation's cybersecurity posture, holding hearings on the topic on May 12, 2016, and July 14, 2016.¹⁹ Additionally, as part of the Committee's legislative authority over portions of FISMA, on September 21, 2016, the Committee marked up and ordered reported to the House H.R. 6066, the Cybersecurity Responsibility and Accountability Act of 2016.²⁰

Legislative options necessarily depend upon findings of fact in this case. The questions asked and information compelled in this investigation are pertinent to uncovering the appropriate legislative solution here. Currently, implementation of cybersecurity standards and guidelines such as NIST's Framework are optional for non-governmental entities.²¹ Because former Secretary Hillary Clinton chose to forego using the Department of State's official government computer systems, which are governed by strict FISMA compliant federal cybersecurity guidelines, the Committee launched an investigation to determine whether the level of security of her private server and email account was comparable to the cybersecurity standards prescribed by NIST and FISMA. As a result of PRN's central role in managing material stored on former Secretary Clinton's private server, it is important for the Committee to understand whether PRN employed standards and guidelines prescribed in NIST's cybersecurity Framework or another set of standards used in the private sector. The information demanded in the Committee's subpoenas to PRN directly relate to these concerns and is therefore pertinent as required by the third prong of *Wilkinson*. Depending upon the findings of this current investigation, information in documents sought by the Committee's subpoenas to PRN, and testimony requested of PRN employees, the Science Committee may determine that legislation as discussed above is necessary as it relates to NIST's role in setting cybersecurity standards.

II. Background Giving Rise to the Committee's Investigation

A. Timeline of the Committee's Attempts to Obtain Documents

Despite the legitimacy of the Committee's investigation of PRN, conducted with a focus on whether additional legislation is necessary to bolster cybersecurity standards, PRN and its CEO, through counsel, Ken Eichner, have obstructed the Committee's investigation at every turn. Since January 2016, Mr. Suazo and his counsel repeatedly refused to comply with requests for documents. Furthermore, Mr. Suazo refuses to comply with lawfully issued subpoenas, making no valid legal arguments for its refusal to comply.

¹⁹ H. Comm. on Science, Space, & Tech., *Hearing on FDIC Data Breaches: Can Americans Trust that Their Private Banking Information Is Secure?*, 114th Cong. (May 12, 2016); H. Comm. on Science, Space, & Tech., *Hearing on Evaluating FDIC's Response to Major Data Breaches: Is the FDIC Safeguarding Consumers' Banking Information?*, 114th Cong. (Jul. 14, 2016).

²⁰ Cybersecurity Responsibility and Accountability Act of 2016, H.R. 6066, 114th Cong. (2016).

²¹ See e.g., Nat'l Institute of Standards and Technology, Security & Privacy Controls for Federal Information Systems & Organizations, 800-53, Revision 4, at ii, *available at* <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>.

On January 8, 2016, the Committee held a hearing entitled "Cybersecurity: What the Federal Government Can Learn from the Private Sector," where private sector cybersecurity experts testified on industry approaches and best practices for safeguarding against cybersecurity threats.²² At that hearing, industry experts raised concerns regarding the precautions taken to secure the Clinton private server and legality of such an email arrangement.²³ On January 14, 2016, following this testimony, the Committee wrote PRN, Datto, and SECNAP, all companies that played a role in securing data stored on Secretary Clinton's private server.²⁴ *See* Exhibit 2. Among other items, the Committee requested their assistance in understanding work each company performed to secure the server, and whether it was performed in accordance with NIST's Framework.²⁵ *See* Exhibit 2. As part of my January 14, 2016, letter, the Committee requested, from PRN's CEO, Mr. Suazo, all documents and communications related to the cybersecurity measures taken to secure former Secretary Clinton's private email server.²⁶ *See* Exhibit 2. PRN responded through its counsel, Mr. Eichner, on February 3, 2016, stating that the company did not have any responsive documents in its possession.²⁷ *See* Exhibit 3.

On July 12, 2016, Chairman Ron Johnson of the Senate Homeland Security and Governmental Affairs Committee and the Science Committee, together, wrote to PRN's CEO reiterating the Science Committee's January 14, 2016, request for documents, and additionally requested transcribed interviews of seven PRN employees.²⁸ This letter also placed PRN on notice that the Committee would "consider use of the compulsory process" to obtain documents.²⁹ *See* Exhibit 4. On July 21, 2016, Mr. Suazo's counsel responded to the Committees' letter.³⁰ *See* Exhibit 5. Mr. Suazo's counsel declined the request for interviews of PRN employees and declined to address the second request for voluntary production of documents, citing the then-completed investigation by the FBI.³¹ *See* Exhibit 5.

Following PRN's July 21, 2016, response, between July 25, 2016 and August 6, 2016, Science Committee staff attempted to reach out to PRN and its counsel through telephone calls, voicemails, and emails in an effort to glean whether PRN intended to respond to the Committee by voluntarily providing responsive documents and making PRN employees available for the

²² H. Comm. on Science, Space, & Tech., *Hearing on Cybersecurity: What the Federal Gov't Can Learn from the Private Sector*, 114th Cong. (Jan. 8, 2016).

²³ *Id.* (question and answer by Chairman Lamar Smith).

²⁴ Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Mr. Treve Suazo, CEO, Platte River Networks (Jan. 14, 2016). [Exhibit 2].

²⁵ *Id.* [Exhibit 2].

²⁶ *Id.* [Exhibit 2].

²⁷ Letter from Ken Eichner, Principal, Eichner Law Firm, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (Feb. 3, 2016). [Exhibit 3].

²⁸ Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., & Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security & Governmental Affairs, to Mr. Treve Suazo, CEO, Platte River Networks (Jul. 12, 2016) [hereinafter Jul. 12, 2016 Letter]. [Exhibit 4].

²⁹ *Id.* [Exhibit 4].

³⁰ Letter from Ken Eichner, Principal, Eichner Law Firm, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, and Tech. & Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security & Governmental Affairs (Jul. 21, 2016). [Exhibit 5].

³¹ *Id.* [Exhibit 5].

requested transcribed interviews. PRN's counsel rebuffed these attempts and in fact, these overtures were met with derogatory statements to and about staff; PRN's counsel criticized the efforts to reach him via telephone, and demanded that the Committee communicate with him only in writing.³² See Exhibits 6, 7, and 8. Then, when asked, via email, to have a telephone conversation regarding PRN's response to Chairman Johnson and my July 12, 2016, letter, PRN's counsel refused to respond, citing his travels in Europe.³³ See Exhibit 9.

More than a month after the July 12, 2016, letter containing requests for documents and transcribed interviews of PRN employees, and after multiple attempts by Committee staff to communicate with PRN's counsel, the company finally responded to Committee staff. On August 19, 2016, PRN's counsel unequivocally refused on behalf of PRN to accept electronic service of a Committee subpoena, stating in the subject line of an e-mail, "Platte River Networks REJECTS electronic service," and providing no explanation.³⁴ See Exhibit 10.

Because Mr. Suazo and by extension PRN, through counsel, never produced any documents to the Committee and refused to cooperate with the investigation, including refusals to accept electronic service, I was forced to direct the U.S. Marshals to serve an August 23, 2016, subpoena *duces tecum* on PRN's CEO, Mr. Suazo, compelling the production of documents.³⁵ See Exhibits 11 and 12. The August 23, 2016, subpoena required PRN's CEO to produce all documents and communications referring or relating to the following: private servers or networks used by Secretary Clinton for official purposes, the methods used to store and maintain data on private servers or networks used by Secretary Clinton for official purposes, any data security breaches to private servers or networks used by Secretary Clinton for official purposes, and any documents related to the NIST Framework or FISMA.³⁶ See Exhibit 11. Because any work performed by PRN during or after Secretary Clinton served as Secretary of State is pertinent to the Committee's investigation, the subpoena required the production of *all* such documents, and not just documents relating to work carried out while Secretary Clinton served as Secretary of State.

On September 8, 2016, Mr. Suazo and PRN's counsel, responded in writing to the August 23, 2016, subpoena.³⁷ See Exhibit 13. In its response, the company categorically misinterpreted the language of the Committee's subpoena in a manner to absolve the company, in its view, from

³² E-mail from Ken Eichner, Principal, Eichner Law Firm, to Committee Staff (Aug. 6, 2016, 4:46 p.m.). [Exhibit 6]; E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Sept. 2, 2016, 11:42 a.m.) [Exhibit 7]; E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Nov. 16, 2016, 3:59 p.m.). [Exhibit 8].

³³ E-mail from Ken Eichner, Principal, Eichner Law Firm, to Committee Staff (Aug. 18, 2016, 3:28 p.m.). [Exhibit 9].

³⁴ E-mail from Ken Eichner, Principal, Eichner Law Firm, to Committee Staff (Aug. 19, 2016, 10:34 p.m.). [Exhibit 10].

³⁵ Subpoena from H. Comm. on Science, Space, and Tech., to Mr. Treve Suazo, CEO, Platte River Networks (Aug. 23, 2016) [hereinafter Aug. 23, 2016 Subpoena] [Exhibit 11]; See, e.g., E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Aug. 8, 2016, 2:28 p.m.). [Exhibit 12].

³⁶ Aug. 23, 2016 Subpoena, *supra* note 32. [Exhibit 11].

³⁷ Letter from Ken Eichner, Principal, Eichner Law Firm, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (Sept. 8, 2016) [hereinafter Sept. 8, 2016 Letter]. [Exhibit 13].

searching for and identifying responsive documents by restricting the plain language of the subpoena as relating solely to work carried out by PRN when Secretary Clinton served as Secretary of State, from January 21, 2009, to February 1, 2013.³⁸ See Exhibit 13. Specifically, in his letter, PRN's counsel stated that the company "has nothing to produce that is responsive to your subpoena," and asserted that the company "had no relationship with former Secretary Clinton during her time in office."³⁹ See Exhibit 13. Along with these assertions, the company stated in its letter that it was therefore "unable to produce any materials relating thereto."⁴⁰ See Exhibit 13.

Following this deliberate misinterpretation of the August 23, 2016, subpoena, the Committee began receiving responsive materials from Datto, showing that Datto and PRN employees communicated regularly regarding the status of backups of the Clinton server.⁴¹ See Exhibits 14, 15, and 16. These communications show that PRN purposefully withheld documents and materials responsive to the August 23, 2016, subpoena. This demonstrates that PRN restricted the plain language of the subpoena as relating solely to any work carried out by PRN when Secretary Clinton served as Secretary of State, from January 1, 2009, to February 1, 2013, despite the fact that the subpoena called for "all documents and communications" for the time period beyond Secretary Clinton's time in office.⁴² See Exhibit 11. More specifically, the schedule called for documents related to Secretary Clinton's private server or network, any breaches of the server or network, and methods used to store and maintain data on Secretary Clinton's private server.⁴³ See Exhibit 11.

Based on Mr. Suazo's refusal to provide materials and independent confirmation that PRN had custody of responsive documents, on September 12, 2016, Committee staff attempted to electronically serve Mr. Suazo, through counsel, with another subpoena. Service was not perfected.⁴⁴ See Exhibit 17. Then, on September 16, 2016, I directed the U.S. Marshals to serve a second subpoena *duces tecum* on Mr. Suazo.⁴⁵ See Exhibit 18. This second subpoena *duces tecum* required the production of more focused categories of documents.⁴⁶ See Exhibit 18. Specifically, the September 16, 2016, subpoena included requests for documents and materials regarding PRN's work related to maintaining former Secretary Clinton's private server, as well

³⁸ *Id.* [Exhibit 13].

³⁹ *Id.* [Exhibit 13].

⁴⁰ *Id.* [Exhibit 13].

⁴¹ See, e.g., E-mail from Paul Combetta, Platte River Networks, to Leif McKinley, Datto, Inc. (Aug. 21, 2015, 12:27 a.m.) [Exhibit 14]; E-mail from Leif McKinley, Datto, Inc., to Paul Combetta, Platte River Networks (Aug. 6, 2015, 3:24 p.m.) [Exhibit 15]; E-mail from Treve Suazo, CEO, Platte River Networks, to Leif McKinley, Datto, Inc. (Aug. 6, 2015, 5:41 p.m.) [Exhibit 16].

⁴² Aug. 23, 2016 Subpoena, *supra* note 35. [Exhibit 11] [emphasis added].

⁴³ *Id.* [Exhibit 11].

⁴⁴ On September 12, 2016, Committee staff attempted to serve Mr. Suazo electronically. See E-mail from H. Comm. on Science, Space, & Tech. Staff, to Ken Eichner, Principal, Eichner Law Firm (Sept. 12, 2016, 1:55 p.m.) [Exhibit 17].

⁴⁵ Subpoena from H. Comm. on Science, Space, and Tech., to Mr. Treve Suazo, CEO, Platte River Networks (Sept. 16, 2016) [hereinafter Sept. 16, 2016 Subpoena]. [Exhibit 18].

⁴⁶ Sept. 16, 2016 Subpoena, *supra* note 41. [Exhibit 18].

as documents the company provided to the FBI during the course of the FBI's investigation.⁴⁷ See Exhibit 18.

Despite the Committee's second subpoena, which was more narrowly tailored, Mr. Suazo, through counsel, refused to work in good faith with the Committee to comply with the September 16, 2016, subpoena. After PRN's CEO received the second subpoena, Mr. Suazo, through counsel, sent a September 23, 2016, letter stating that "[a]ll PRN employees will be ceasing voluntary cooperation with your committee pursuant to their rights under the Fourth and Fifth Amendments."⁴⁸ See Exhibit 19. This response made little sense since Mr. Suazo and PRN had never cooperated with the Committee in the first place. Despite multiple attempts made by the Committee to find a reasonable and suitable date for the requested transcribed interviews, the September 23, 2016, letter from Mr. Suazo's counsel did not address the Committee's pending requests for transcribed interviews or the September 16, 2016, subpoena.⁴⁹ See Exhibits 19, 20, 21, 22, 23, and 24. In the same letter, Mr. Suazo, through counsel, wrongfully attempted to attribute to the Science Committee the conduct of a separate body (e.g. the Senate) and separate House Committee as a basis to defy the Committee's subpoena.⁵⁰ See Exhibits 19 and 25. Finally, in the same letter, PRN's counsel threatened to file baseless ethics complaints against Committee staff.⁵¹ See Exhibit 19.

Not having received any subpoenaed materials from Mr. Suazo, on September 28, 2016, the Committee wrote to Mr. Eichner, counsel to Mr. Suazo, reiterating the Committee's demand for documents subpoenaed on September 16, 2016. This letter also explained in greater detail the Committee's jurisdictional interests and placed Mr. Suazo on notice of the Committee's intentions to consider finding PRN and its CEO, Mr. Suazo, in contempt of Congress, if the company continued its pattern of obstruction.⁵² See Exhibit 26. Additionally, the Committee's September 28, 2016, letter, requested that Mr. Suazo's counsel provide a final answer, by October 4, 2016, regarding whether Mr. Suazo and PRN would comply with the September 16, 2016, subpoena *duces tecum*.⁵³ See Exhibit 26. On October 3, 2016, Mr. Eichner requested additional time to respond, citing religious holiday celebrations.⁵⁴ See Exhibit 27. The Committee granted a one-week extension in hopes of gaining compliance. On October 11, 2016,

⁴⁷ *Id.* [Exhibit 18].

⁴⁸ Letter from Ken Eichner, Principal, Eichner Law Firm, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (Sept. 23, 2016) [hereinafter Sept. 23, 2016 Letter]. [Exhibit 19].

⁴⁹ *Id.* [Exhibit 19]; E-mail from H. Comm. on Science, Space, & Tech. Staff, to Ken Eichner, Principal, Eichner Law Firm (Sept. 21, 2016, 8:37 a.m.) [Exhibit 20]; E-mail from H. Comm. on Science, Space, & Tech. Staff, to Ken Eichner, Principal, Eichner Law Firm (Sept. 9, 2016, 12:36 p.m.) [Exhibit 21]; E-mail from H. Comm. on Science, Space, & Tech. Staff, to Ken Eichner, Principal, Eichner Law Firm (Sept. 9, 2016, 9:53 a.m.) [Exhibit 22]; E-mail from H. Comm. on Science, Space, & Tech. Staff, to Ken Eichner, Principal, Eichner Law Firm (Sept. 6, 2016, 2:59 p.m.) [Exhibit 23]; E-mail from H. Comm. on Science, Space, & Tech. Staff, to Ken Eichner, Principal, Eichner Law Firm (Sept. 2, 2016, 12:59 p.m.) [Exhibit 24].

⁵⁰ Sept. 23, 2016 Letter, *supra* note 45. [Exhibit 19]; E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Aug. 22, 2016, 11:02 a.m.). [Exhibit 25].

⁵¹ Sept. 23, 2016 Letter, *supra* note 45. [Exhibit 19].

⁵² Letter from from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Mr. Ken Eichner, Principal, Eichner Law (Sept. 28, 2016). [Exhibit 26].

⁵³ *Id.* [Exhibit 26].

⁵⁴ Email from Ken Eichner, Principal, Eichner Law Firm to Committee Staff (Oct. 3, 2016, 1:19 p.m.). [Exhibit 27].

Mr. Suazo's counsel responded with a two-sentence letter, stating: "I am in receipt of your letter dated September 28, 2016. Neither I nor any personnel at Platte River Networks have anything further to add beyond that contained in my correspondence dated September 23, 2016."⁵⁵ See Exhibit 28.

As CEO for PRN, Mr. Suazo is responsible for all company documents not simply those in his possession. Mr. Suazo's failure to comply with valid congressional subpoenas, as described in the preceding paragraphs, are a violation of 2 U.S.C. § 192. Mr. Suazo's counsel failed to articulate a legal basis for shielding the company's work performed for former Secretary Clinton from congressional and public scrutiny. The refusal to provide witnesses for transcribed interviews without a valid assertion of privilege(s) prevented the Committee from completing its investigation. Further, PRN's false statements to the Committee concerning a lack of responsive documents (belied by Datto's production to the Committee) and complete failure to respond to the Committee's lawfully issued subpoenas, amount to obstruction under 18 U.S.C. § 1505, as well as a violation of 18 U.S.C. § 1001 for false statements made to the Committee. Although the Committee provided multiple accommodations to Mr. Suazo allowing for additional time to respond to the Committee throughout the investigation, despite multiple missed deadlines, these accommodations did not yield production of any responsive materials or witnesses for transcribed interviews.⁵⁶ See Exhibits 29, 30, 31, and 9.

Public releases of information obtained during the nearly year-long investigation undertaken by the FBI confirmed that PRN played a principal role in maintaining data storage for former Secretary Clinton's personal server, including the storage of classified national security information. PRN's employees undoubtedly have information related to the security of former Secretary Clinton's private server arrangement as discussed in Section IV below. Additionally, documents subpoenaed by the Committee from two other companies retained by Secretary Clinton to perform work related to backing up and securing her private server, Datto and SECNAP, definitively show that PRN has responsive, subpoenaed materials that it has intentionally withheld from the Committee.

III. Relevant Authority

This letter focuses on the respective actions of Treve Suazo, CEO of PRN. The statutes set forth in this section are discussed below as applied to the actions of Mr. Suazo.

⁵⁵ Letter from Ken Eichner, Principal, Eichner Law Firm, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (Oct. 11, 2016). [Exhibit 28].

⁵⁶ E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Oct. 3, 2016, 1:19 p.m.) [Exhibit 29]; E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Sept. 18, 2016, 11:20 a.m.) [Exhibit 30]; E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. (Sept. 19, 2016, 10:19 a.m.) [Exhibit 31]; E-mail from Ken Eichner, Principal, Eichner Law Firm, to H. Comm. on Science, Space, & Tech. Staff (Aug. 18, 2016, 3:28 p.m.). [Exhibit 9].

Mr. Suazo, through his counsel, refused to produce subpoenaed documents to Congress, a crime under 2 U.S.C. § 192. Section 192 states:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 not less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.⁵⁷

Mr. Suazo, through counsel, obstructed the Committee's investigation at every turn, not only through his refusal to provide subpoenaed documents, but also through his purposeful false statements to the Committee concerning a lack of any responsive documents, a crime under 18 U.S.C. § 1001. Section 1001 states, in pertinent part:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under this title, imprisoned not more than 5 years . . . or both.⁵⁸

In addition to making false statements about having custody of responsive documents, Mr. Suazo obstructed the Committee's investigation. Specifically, his refusal to turn over subpoenaed documents thwarted the Committee's understanding of any cybersecurity measures employed by PRN employees. Productions provided to the Committee by Datto and SECNAP confirm that Mr. Suazo and through extension PRN are in possession of responsive documents. This pattern of obstruction is further evidenced by Mr. Suazo's refusal to allow the Committee to interview PRN employees as part of its investigation.

Mr. Suazo's obstruction of the Committee's investigation is a crime under 18 U.S.C. § 1505, which prohibits the obstruction of proceedings before departments, agencies, and Congressional committees. The statute states, in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under

⁵⁷ 2 U.S.C. § 192

⁵⁸ 18 U.S.C. § 1001.

which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined under this title, imprisoned not more than 5 years . . . or both.⁵⁹

Mr. Suazo, through his attorney, refused to produce documents, made misrepresentations about having custody of responsive documents, and refused to allow PRN employees to be interviewed by the Committee. Moreover, Mr. Suazo's conduct through his counsel frustrated the Committee's investigation as evidenced by counsel's refusal to speak with Committee staff over the phone, refusal to accept electronic service, and threats of baseless ethics complaints. These actions, coupled with the clear violations of 2 U.S.C. § 192 and 18 U.S.C. § 1001, amount to obstruction.

IV. Key Revelations Surrounding the Committee's Investigation

A. The FBI Confirms Platte River Networks and its Employees Played a Critical Role in Securing and Maintaining Secretary Clinton's Private Server

Following a nearly year-long investigation into former Secretary Clinton's use of a personal email system and server, on July 5, 2016, FBI Director James Comey announced that the Bureau would not recommend charges in the case against former Secretary Clinton.⁶⁰ In his public statement, Director Comey provided insight into and confirmation of the nature of information stored on Secretary Clinton's private server.⁶¹ Director Comey confirmed that Secretary Clinton exchanged official government information using her private email server, including classified national security information.⁶² Shortly thereafter, and following numerous calls upon the FBI to release information obtained during its investigation,⁶³ the FBI made several public releases of its investigative materials.⁶⁴ Included in these materials were a

⁵⁹ 18 U.S.C. § 1505.

⁶⁰ Federal Bureau of Investigation, Press Release, *Statement by FBI Director James B. Comey on the Investigation of Sec'y Hillary Clinton's Use of a Personal Email System* (Jul. 5, 2016), available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See, e.g., Harper Neidig, *Clinton Camp Wants FBI Interview Files Released to the Public*, THE HILL, Aug. 16, 2016, available at <http://thehill.com/blogs/ballot-box/presidential-races/291646-clinton-campaign-calls-for-fbi-interview-notes-to-be>; Reena Flores, *FBI Releases Documents from Hillary Clinton Email Investigation*, CBS NEWS, Sept. 2, 2016, available at <http://www.cbsnews.com/news/fbi-releases-documents-from-hillary-clinton-email-investigation/>.

⁶⁴ Federal Bureau of Investigation, *The Vault: Hillary R. Clinton*, available at <https://vault.fbi.gov/hillary-r.-clinton> [hereinafter FBI: The Vault].

summary of Secretary Clinton's July 2, 2016, interview with the FBI; a summary of the investigation; and FBI agent notes from interviews with key individuals, including PRN employees.⁶⁵

The FBI's public releases, although heavily redacted, confirmed that PRN played a principal role in maintaining data storage for former Secretary Clinton's personal server, including the storage of classified national security information. Interviews summarized by the FBI indicate that a PRN employee, at the behest of Mrs. Clinton's top adviser, Cheryl Mills, apparently carried out mass deletions of information contained on Secretary Clinton's email server, using software called BleachBit, after the *New York Times* uncovered the existence of her private server in March 2015.⁶⁶ During an interview with the FBI, the PRN employee explained that he forgot to delete emails as instructed and stated he had an "oh s***" moment when he remembered that he had been directed to delete the files back in December 2014.⁶⁷ This anecdote demonstrates that PRN employees have direct knowledge and materials that answer key questions the Committee has related to the level of cybersecurity of former Secretary Clinton's server and network, and that PRN was keenly aware that it had responsive information to the Committee's investigation. The Committee required documents and requested on-the-record testimony from these key PRN employees who are uniquely positioned to understand and elaborate on what steps the company took to prevent unlawful breaches and whether the systems used were FISMA compliant.

The FBI's release of information raised additional concerns for the Committees about how PRN and its employees handled the highly sensitive nature of materials stored on Secretary Clinton's server. Following the conclusion of the FBI's initial investigation and in light of information learned from the FBI's public releases, the Committee began pressing PRN to provide materials related to its maintenance and management of Secretary Clinton's private server, eventually issuing subpoenas to obtain the requested information. The documents, information, and witness testimony are necessary for the Committee to assess the extent of any records retention problems associated with the private servers, any national security concerns related to cybersecurity weaknesses, and whether legislation is necessary, related to NIST cybersecurity standards, to address such issues.

B. The Science Committee's Subpoenas to Datto, Inc. and SECNAP, Inc. Definitively Show that Platte River Networks Purposefully Withheld Subpoenaed Materials and Misled the Committee

Documents subpoenaed by the Committee from two other information technology companies, Datto and SECNAP, definitively show that PRN has responsive materials demanded by the September 16, 2016 subpoena. To date, PRN is continuing to withhold these materials

⁶⁵ *Id.*

⁶⁶ *Id.* at 17–19 (Pt. 01 of 02); Michael Schmidt, *Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, NY TIMES, Mar. 2, 2016, available at http://www.nytimes.com/2015/03/03/us/politics/hillary-clintons-use-of-private-email-at-state-department-raises-flags.html?_r=0.

⁶⁷ FBI: The Vault, *supra* note 55, at 19 (Pt. 01 of 02).

from the Committee. These documents, which include conversations among counsel to the parties, show a willful refusal by PRN to comply with the Committee's subpoenas. Documents received from Datto and SECNAP also show that PRN and its CEO, through counsel, willfully misled the Committee on multiple occasions through statements that it does not have materials responsive to the subpoenas.⁶⁸ *See* Exhibit 13.

The Committee obtained from Datto email exchanges between Datto and PRN's employees, regarding the status of backups of material stored on Secretary Clinton's private server and security measures to reduce the vulnerability of the information.⁶⁹ *See* Exhibits 14, 15, and 16. In fact, the Committee has received from Datto several formal letters from Datto's attorneys addressed to PRN's counsel, as well as to the FBI, raising significant concerns about the security of information stored on the server due to the lack of encryption on Datto's cloud backup device.⁷⁰ *See* Exhibits 32, 33, and 34. Datto's information technology experts raised concerns of potential vulnerabilities to the server, starting as early as August 2015, the same timeframe the FBI began its investigation into the security of Secretary Clinton's private server.⁷¹ *See* Exhibits 32, 33, and 34. These documents are pertinent to the Committee's FISMA related inquiries and are certainly covered by the September 16, 2016, subpoena, expressly demonstrating that Mr. Suazo and by extension PRN, through counsel, obstructed the Committee's investigation when it had documents in its possession responsive to the Committee's request that it failed to produce. Further, correspondence between Datto and PRN's employees obtained by the Committee shows that Mr. Suazo and by extension, PRN, through counsel, made false statements to the Committee when stating that Mr. Suazo nor PRN had anything responsive to produce in response to the Committee's initial subpoena.

Additional subpoenaed documents produced to the Committee by SECNAP highlight significant vulnerabilities that existed on former Secretary Clinton's private server and also raise concerns about whether PRN employees sufficiently acted on known vulnerabilities to prevent intrusions into Secretary Clinton's network. Materials obtained by the Committee conclusively show that there were numerous attempted intrusions from hackers around the world, originating in China, Germany, Korea, France, and the United States.⁷² *See* Exhibit 35 and 36. In fact, Paul Combetta, the PRN employee who acted as the conduit between PRN and former Secretary Clinton's top aides, received each of these alerts.⁷³ *See* Exhibit 37. Alarming, the documents

⁶⁸ *See, e.g.*, Sept. 8, 2016 Letter, *supra* note 34. [Exhibit 13].

⁶⁹ *See, e.g.*, E-mail from Paul Combetta, Platte River Networks, to Leif McKinley, Datto, Inc. (Aug. 21, 2015, 12:27 a.m.) [Exhibit 14]; E-mail from Leif McKinley, Datto, Inc., to Paul Combetta, Platte River Networks (Aug. 6, 2015, 3:24 p.m.) [Exhibit 15]; E-mail from Treve Suazo, CEO, Platte River Networks, to Leif McKinley, Datto, Inc. (Aug. 6, 2015, 5:41 p.m.) [Exhibit 16].

⁷⁰ *See, e.g.*, Letter from Michael Fass, General Counsel, Datto, Inc., to Kim L. Ritter, Esq., Minor & Brown, P.C. & Former Attorney for Platte River Networks (Aug. 13, 2015) [Exhibit 32]; Letter from Stanley A. Twardy, Jr., Attorney at Law, Day Pitney, LLP, to Kim L. Ritter, Esq., Minor & Brown, P.C. & Former Attorney for Platte River Networks (Sept. 14, 2015) [Exhibit 33]; Letter from Stanley A. Twardy, Jr., Attorney at Law, Day Pitney, LLP, to Agent, Federal Bureau of Investigation (Oct. 23, 2015). [Exhibit 34].

⁷¹ *Id.* [Exhibit 32] [Exhibit 33] [Exhibit 34].

⁷² *See, e.g.*, SECNAP Security Incident Report, Ticket #1420061 (Jul. 14, 2014) [Exhibit 35]; SECNAP Security Incident Report, Ticket #1418549 (Jun. 19, 2014). [Exhibit 36].

⁷³ *See, e.g.*, SECNAP, Security Incident Report, Ticket #1418274 (Jun. 15, 2014). [Exhibit 37].

indicate that Mr. Combetta was largely annoyed with the constant alerts, instructing a SECNAP employee at one point to “disregard” an alert regarding outdated software on the server.⁷⁴ See Exhibit 38. Public statements of FBI Director Comey confirm these cybersecurity threats. Only Mr. Suazo, PRN, and their employees can provide the Committee, via subpoena documents and requested testimony, with the full picture of what steps were taken to secure former Secretary Clinton’s server and network.

In total, materials received in response to the subpoenas to Datto and SECNAP show that PRN played a crucial role in managing former Secretary Clinton’s private server, determining when and whether to apply security measures to the server. These materials show that despite repeated urging from cybersecurity experts to bolster the private server’s security, the buck ultimately stopped with PRN when shaping the server’s cybersecurity posture. While these documents solidify concerns that Secretary Clinton’s private server was not subject to even basic cybersecurity protocols, such as encryption measures, they also provide evidence of Mr. Suazo’s and PRN’s willful refusal to produce materials demanded in the September 16, 2016, subpoena. It also reflects that Mr. Suazo and PRN purposefully misled the Committee when it stated that it had no responsive documents, to the initial voluntary request for documents or the Committee’s first subpoena. Likewise, third party productions confirm that Mr. Suazo and PRN are withholding subpoenaed materials from the Committee in violation of statute. Without documents, information, and testimony from PRN employees the Committee’s investigation is incomplete and obstructed. The Committee is unable to fulfill their legislative purpose and evaluate whether FISMA, the relevant statute, should be amended.

V. Conclusion

There is no legal basis for Mr. Suazo’s refusal to cooperate and comply fully with the Committee’s subpoenas. Instead of cooperation, the Committee was met with obstruction and refusal to comply with subpoenas and requests for transcribed interviews. These actions, taken together, as well as Mr. Suazo’s false statements to the Committee, made through counsel, support the pattern of obstruction. If left unaddressed, Mr. Suazo’s conduct in ignoring lawful congressional subpoenas, misleading the Committee through false statements, and bald refusal to respond to reasonable requests could gravely impair Congress’s ability to exercise its core constitutional authorities of oversight and legislation. In light of Mr. Suazo’s conduct in willfully refusing to produce subpoenaed documents to the Committee, the Department should bring the matter before a grand jury for its action or file an information charging Mr. Suazo with violating 2 U.S.C. § 192, 18 U.S.C. § 1001, and 18 U.S.C § 1505.

⁷⁴ See SECNAP Security Incident Report, Ticket #1411151 (Jan. 24, 2014). [Exhibit 38].

Thank you for your prompt attention to this important matter.

Sincerely,



Lamar Smith
Chairman
House Committee on Science, Space, &
Technology

cc: The Honorable Paul D. Ryan, Speaker of the House of Representatives

The Honorable Eddie Bernice Johnson, Ranking Member, House Committee on Science,
Space, and Technology

The Honorable James B. Comey, Director, Federal Bureau of Investigation