

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION

600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580,

Petitioner,

Case No. 20-mc-00111-CRC

v.

STEPHEN K. BANNON

210 A Street, N.E.
Washington, D.C. 20002,

Respondent.

**FEDERAL TRADE COMMISSION’S REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR AN ORDER ENFORCING CIVIL INVESTIGATIVE DEMAND**

The Opposition filed by Respondent Stephen K. Bannon supplies no reason this Court should decline to enforce the Commission’s Civil Investigative Demand (“CID”) for an investigational hearing. Perhaps realizing that he cannot refuse to attend the investigational hearing simply because he intends to invoke his Fifth Amendment rights, Bannon resorts to groundless accusations of improper motive. But it’s all just bluster. Contrary to Bannon’s contention, there is no “abuse of power” or undue burden in demanding his appearance at a hearing—remotely, if he prefers—to assert the Fifth Amendment privilege on a question-by-question basis, as well-established law requires. Bannon’s argument that the Commission has failed to show prejudice is doubly wrong: that is not a condition for enforcement of a lawfully-issued CID, and, in fact, further delay will impair the Commission’s and the public interest. Bannon’s further argument that the testimony sought is “unreasonably duplicative” is likewise

(D.D.C. 2010) (“*Bisaro II*”); *see also* *FTC v. Bisaro*, No. MISC. 10-289 (CKK), 2010 WL 4910268, at *6 (D.D.C. Aug. 17, 2010) (district court “must accept the Commission’s own appraisal of relevhe.003 Tc (i)-2 /r5tvI

C. Bannon’s Refusal to Provide Testimony Prejudices the Commission’s Efforts to Enforce the FTC Act and Protect the Public.

Nor should the Court credit Bannon’s argument that the Commission would not be prejudiced by further delaying the investigational hearing until after his criminal trial (a delay of nearly six additional months). The Commission need not demonstrate prejudice to obtain enforcement of a lawfully-issued CID. And this contention is wrong, in any event.

Here, Bannon’s refusal to appear for the September 2020 investigational hearing has prejudiced the Commission in two separate ways. *First*, Bannon’s refusal to sit for the investigational hearing has prevented the Commission from completing its investigation. *See* ECF No. 1-2 (Kopp Decl.) at ¶¶ 26-28. As set forth in the Commission’s opening memorandum, courts have routinely denied requests for a stay pending resolution of related criminal actions given the Commission’s strong interest in timely enforcing its own laws. ECF No. 1-1 at 14-15. *Second*, the Commission’s interest in protecting the public has been harmed by non-compliance. *Id.* at 15. Bannon attempts to diminish the significance of this harm by claiming that the Commission “expressed no concern about the supposed prejudice caused by the delay” during the past twelve months. ECF No. at 3. But this ignores that from January 2020 to September 2020, Bannon had no objection to sitting for an investigational hearing. And it ignores that Commission staff postponed Bannon’s appearance date due to his counsel’s scheduling issues and concerns related to the ongoing COVID-19 pandemic. ECF No. 1-2 (Kopp Decl.) at ¶¶ 17-18. Bannon’s refusal to sit for the investigational hearing in September 2020 and his current request for another six-month delay merely magnifies, not undermines, the prejudice to the Commission and consumers.

Lacking any valid ground for resisting enforcement of the CID, Bannon accuses the Commission of being improperly motivated by a “fascination” with the 2016 Presidential

election and Bannon’s supposed “celebrity.” ECF No. 12 at 1-2.³ This baseless charge supplies no basis to refuse enforcement of the CID. This Circuit has made clear that “the validity of Commission subpoenas is to be measured against the purposes stated in the resolution, and not by reference to extraneous evidence.” *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1091 (D.C. Cir. 1992) (quoting *FTC. v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980)).⁴ The Commission showed in its opening memorandum the CID was issued pursuant to the Commission’s lawful authority and seeks information relevant to the investigation. ECF No. 1-1 at 8-11. Nothing in Bannon’s Opposition undermines this showing.

³ This argument ignores that the heart of the challenged conduct took place two years *before* the 2016 election and the Commission has held non-“celebrity” individuals responsible for their involvement in Cambridge Analytica’s misdeeds. *See* ECF No. 1-2 (Kopp Decl.) at ¶¶ 6-8.

⁴ Indeed, “agencies are entitled to a presumption of administrative regularity and good faith, and [w]ith no indication that the Commission will act cavalierly or in bad faith, [the Commission’s] assertions with respect to the treatment of subpoenaed material should be accepted at face value.” *Invention Submission*, 965 F.2d. at 1091 (quoting *FTC v. Owens–Corning Fiberglas Corp.*, 626 F.2d 966, 975 (D.C. Cir. 1980) (internal quotation marks omitted)).

CONCLUSION

For the foregoing reasons, this Court should direct Bannon to comply in full with the CID by appearing—either in-person or remotely via videoconference—for an investigational hearing.

Dated: December 18, 2020

Respectfully submitted,

ALDEN F. ABBOTT
General Counsel

JAMES REILLY DOLAN
Principal Deputy General Counsel

MICHELE ARINGTON
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Litigation

/s/ Brian Berggren
LINDA HOLLERAN KOPP (472355)
BRIAN BERGGREN (*Appearing pursuant to*
LCvR 83.2(e))

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