

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

UNITED STATES OF AMERICA,)	
)	
v.)	Case No.: 1:18-cr-218 (TSC)
)	
MARIIA BUTINA, a/k/a)	
MARIA BUTINA,)	
)	
Defendant.)	
_____)	

**DEFENDANT MARIA BUTINA’S
MOTION FOR ISSUANCE OF RULE 17(c) SUBPOENA**
(to American University)

Pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, Defendant Maria Butina moves this court for an order authorizing the issuance of a subpoena duces tecum, commanding the pretrial production of certain documents from American University, as more particularly set forth in the proposed Rule 17(c) subpoena submitted herewith (at Doc. 39-2). In support, Maria Butina states that the production of the requested documents is necessary for the fair evaluation of the government’s case and is available through no other means than subpoena.

Maria Butina further states in response to the Court’s Minute Order of October 5, 2018 that generally, the recipient of the subpoena or party with a legitimate interest in the targeted records have standing to contest a subpoena duces tecum. In this context, American University has an opportunity to challenge the first and second category of requested documents. As to the third category, the burden of notifying any affected students or parents prior to compliance with the subpoena under the Family Educational Rights and Privacy Act (“FERPA”) falls on the educational institution. *Mattie T. v. Johnston*, 74 F.R.D. 498, 501 (N.D. Miss. 1976).

However, FERPA does not provide a privilege against the disclosure of student records. *Rios v. Read*, 73 F.R.D. 589, 598 (E.D.N.Y. 1977) (“The statute says nothing about the existence

of a school-student privilege analogous to a doctor-patient or attorney-client privilege.”) FERPA also does not require some kind of qualified immunity or heightened showing of good cause before a court can compel production of student records. *See, e.g., Maggard v. Essar Global Ltd.*, No. 2:12-cv-00031, 2013 WL 6158403, at *7 (W.D. Va. Nov. 25, 2013) (finding that “there is no heightened burden on a party seeking student records.”); and *see In re Subpoena Issued to Smith*, 155 Ohio Misc. 2d 46, 921 N.E. 2d 731, 732-733 (2009). Instead, FERPA expressly permits the production of student records in compliance with a “judicial order” or “any lawfully issued subpoena.” 20 U.S.C. § 1232g(b)(2)(B) (emphasis added). Student consent is not required when a judicial order or subpoena requires production of records, only notice from the institution. *Id.* And Congress provided no right under FERPA for a student to intervene in an action to object to a judicial order or subpoena compelling production of the same. *Whittaker v. Morgan State University*, 842 F. Supp. 2d 845, 846 (D. Md. 2012).

The subpoenaed documents should be delivered to the court clerk within 30 days of issuance, with copies made available to all counsel of record for inspection.

Prior to the filing of this motion, the undersigned conferred with counsel for American University, who indicated that the university had no position regarding the relief sought. However, the university stated that 30 days would yield sufficient time for the university to satisfy its notification requirements under FERPA and comply with a subpoena. Maria Butina further directs the court to the memorandum in support filed herewith.

WHEREFORE, Defendant Maria Butina respectfully requests that the court grant this motion, authorizing the issuance of the attached Rule 17(c) subpoena, together with such other relief as this court deems just and proper. A proposed order is attached.

Dated: October 12, 2018

Respectfully submitted,

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Issuance of Rule 17(c) Subpoena, together with its Memorandum in Support and exhibits, were electronically filed in this case with the clerk of the court and served on this 12th day of October, 2018 through the court's CM/ECF system, which will send notification of this filing to all counsel of record for the government. And I further certify that I have served a copy of the same on this 12th day of October, 2018 by first-class mail, postage prepaid, to the following:

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Justin A. Perillo, Associate General Counsel
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