



THE WHITE HOUSE  
WASHINGTON

December 15, 2023

Special Counsel Robert K. Hur  
Deputy Special Counsel Marc Krickbaum  
Department of Justice  
145 N Street Northeast  
Washington, D.C. 20503

Dear Special Counsel Hur and Deputy Special Counsel Krickbaum:

Thank you for taking the time to meet last week.

We appreciated your confirmation that you do not have any questions with respect to the President's cooperation in this matter. As noted in the meeting, the President has cooperated extensively in your inquiry, well beyond what is normally understood to be full cooperation, in this year-long investigation initiated upon the President's self-report. We wanted no possible question on that score. We further welcomed your confirmation that you will be guided by the Department of Justice precedent, policies, and practices in the resolution of this matter and the manner in which you will prepare the eventual confidential report to the Attorney General.<sup>1</sup>

It was also helpful for us to hear that you currently have no questions about substantive legal issues other than those we have already answered in response to your November 7 letter. It was and remains especially important that you raise any outstanding legal question or concern you have so that we may address it. Particularly given the record of cooperation in this case, it would be deeply unfair and prejudicial for us to learn in your final report that you disagreed with our analysis on a material point without giving us the opportunity to provide a more comprehensive presentation on that particular point.

In our meeting, you also have maintained that your obligation under the Special Counsel regulations to provide the Attorney General with a "confidential" report prevents you from addressing with us your views of the law or facts in this case. We respectfully disagree. In every criminal investigation, the prosecutors must submit a confidential report at the conclusion of the case to their supervisors, but that requirement does not prevent substantive discussions with defense counsel about law and facts. We cannot find a basis in the regulations governing Special Counsels that would justify a different outcome here. Indeed, under those rules, the confidentiality requirement is meant only to ensure that the Special Counsel's report is handled like "internal documents relating to *any* federal criminal investigation." Office of Special Counsel, 64 Fed. Reg. 37038, 37041 (Jul. 9, 1999) (emphasis added). In no way does it create some *sui generis* prohibition on discussions with counsel.

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<sup>1</sup> See 28 C.F.R. 600.7(a) ("A Special Counsel shall comply with the rules, regulations, procedures, practices and policies of the Department of Justice.").

This kind of discussion is especially important in the context of our shared commitment to a thorough and rigorous investigation, which we all recognize will be the subject of keen public interest. It is in everyone's interest for there to be clarity on the legal as well as factual issues in this case. We believe that our previous exchanges have been fruitful, as in the discussions of the law, policy and practice governing presidents' and vice presidents' retention of their notes and notebooks, the constitutional status of the vice presidency, and the various ways that the Executive Branch procedures binding on other senior staff do not bind presidents and vice presidents. We hope upon reflection you will reconsider your position with regard to discussing the factual and legal issues in the case before you finalize your report to the Attorney General.

We turn now to our request to review the report before it is made public. We make that request yet again. While we believe that review would be most productive before the report is submitted by your office to the Attorney General, we should at least have the opportunity to review it after its submission to the Attorney General. We understand that some review has been afforded in the past to both White House Counsel's Office and personal counsel to the President.

As to the White House Counsel's Office, we believe our global privilege agreement dated April 26, 2023, with your Office *requires* that we be provided the opportunity to review the report before any information covered by our agreement is disclosed outside of the Executive Branch. As we noted at the meeting, Attorney General Garland has already committed to making public as much of your eventual report as possible, "consistent with legal requirements and Department policy." *See* Dep't of Justice, "Attorney General Merrick Garland Delivers a Statement" (Aug. 11, 2023). This raises the probability that information covered by the agreement—including documents and/or witness testimony—will be released to the public. Consequently, we believe that our agreement mandates giving our Office a sufficient opportunity to review your report, including for the well-established purpose of reviewing for executive privilege concerns. If you disagree with this assessment, please let us know.

Additionally, as we have stated on numerous occasions, both the White House and personal counsel seek to review the report to identify and seek correction of any potential errors or omissions. The importance of our ability to conduct this review is made plain by the fact that, as in any complex investigation, the prosecution will at times make inaccurate, unsupported, or inadvertently mistaken statements. The publication of a report with any such statements could have grave consequences, particularly given the heightened national security context of this case, focusing as it does on the highly sensitive subject of the management of classified information. The Special Counsel's report when made public will be read closely and with consequence both in the United States and abroad. Given these important national security concerns, and given the extent of the President's cooperation, this opportunity for review would seem both appropriate and fair.

We understand that this request may require consultation with the Attorney General, and we ask that you share this letter with his office. In addition, if you have concerns about this request or if the Attorney General's Office disagrees with our position, we would respectfully seek a meeting with the interested parties.

Finally, as we discussed in the meeting, we reiterate our request for access to the classification review performed by the Office of the Director of National Intelligence and for the return of President Biden's personal notebooks and notecards.

Respectfully,



Richard Sauber  
*Special Counsel to the President*



Bob Bauer  
*Personal Counsel to Joseph R. Biden Jr.*