



THE WHITE HOUSE  
WASHINGTON

October 18, 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:

At our meeting last Friday, we requested that you provide an overview of where matters stand in this case, particularly any remaining questions or concerns we should address. We also asked for the opportunity to discuss your expected report to the Attorney General at the conclusion of the investigation, including time to review it prior to its submission to the Attorney General. You advised us that you were not prepared to engage with these requests at that time but would take them under consideration.

We believe that our requests are well-founded and in the interests of all in the exceptional circumstances of this case. We briefly reviewed our reasons at the meeting and set them in out in more detail below.

#### *Meeting Regarding Overview of Case*

When counsel for the subject of an investigation seeks to engage with prosecutors, it is standard Department of Justice (DOJ) practice to permit defense counsel an opportunity to be heard and to address unresolved issues toward the conclusion of the investigation. This is especially true where there has been a record of cooperation, as we have in this case. President Biden directed his counsel from the start to inform the authorities immediately upon the discovery of documents that should have been in the National Archives, and his cooperation has continued undiminished since then. He has taken steps that no previous occupant of the office has undertaken. President Biden has agreed to three consent searches of his personal residence, waived his right under the Presidential Records Act to prior review of records produced from the Archives, permitted a classification review of his personal notebooks, and sat for five hours of a voluntary interview. President Biden has consistently directed and supported cooperation at every juncture. This history of cooperation should weigh decisively in favor of our request.

The DOJ practice we ask be followed here is partially based on fairness to the subject but it is also seen as a benefit to prosecutors and to the public interest because such a discussion can avoid reliance by the prosecutors on assumptions that may be inaccurate or otherwise misguided.

Special Counsel Robert K. Hur  
Deputy Special Counsel Marc Krickbaum  
Page 2 of 3

The lawyers for the President have many decades of experience and none can recall a single case in which prosecutors have declined a request for such a discussion.

As part of that process, and so the meeting is productive, it is customary that the prosecutors provide counsel with at least some information about the prosecutors' general remaining legal and factual questions and concerns. That way counsel can focus their presentation on the issues of greatest interest to the prosecutors rather than relying on guesses about the statutes, legal theories, or factual conclusions at issue. A meeting affords the subject of the investigation an opportunity to be heard on these central issues and provides the prosecutors an opportunity to identify any avoidable error of law or fact.

That this case involves the President of the United States and the discharge of core constitutional functions heightens the need for standard process of the kind we are requesting. The President's cooperation reflects not only the President's personal commitment to supporting, in all appropriate ways, this law enforcement inquiry, but also a belief that this matter implicates institutional interests of importance to future presidencies. As such, the President seeks to ensure that, in matters of both process and substance, the resolution reached will stand the test of time.

The discussions we have had to date have enabled us, among other subjects, to address any uncertainty about the law and practice governing Presidents and Vice President keeping and retention of notes, including those that contain classified information. We have also been able to supply detailed legal analysis confirming the independent constitutional standing of Vice Presidents in managing classified information in the conduct of their official duties. In these and other instances, we have extended our cooperation to the critical mission of assuring that the resolution of this cases rests on firm legal as well as factual ground. Our request for a meeting to hear about other questions you may have is offered to the same end, as it is not in the interest of DOJ, the White House, or the public for there to develop any gaps, omissions, or misunderstandings involving questions we could address with appropriate notice.

#### *Discussion and Review of the Report to the Attorney General*

Attorney General Garland has committed to making public as much as possible of the "confidential report" you are required to provide under the special counsel regulations. 28 C.F.R. § 600.8(c); see Dep't of Justice, "Attorney General Merrick Garland Delivers a Statement" (Aug. 11, 2023) ("*As with each Special Counsel who has served since I have taken office, I am committed to making as much of [Weiss's] report public as possible, consistent with legal requirements and Department policy*" (emphasis added)). Depending on the nature and scope of the report you prepare and submit, its release could have a major impact in the first instance on public understanding of the case. Accordingly, this release underscores the importance of avoiding any unidentified factual or legal defects that might surface in the course of a focused meeting between your office and the President's counsel.

Moreover, to the extent that your report touches in any way upon procedures in this or prior administrations for the handling of sensitive national security information, your report will

Special Counsel Robert K. Hur  
Deputy Special Counsel Marc Krickbaum  
Page 3 of 3

also be read with intense interest in every foreign capital. It could affect the national security interests of the United States in ways that none of us can anticipate.

We certainly do not seek to “edit” your report—nor could we—but this process would allow for the identification of factual or legal inaccuracies, or other issues in the report involving national security matters that would be of clear and compelling concern to a president. We would provide all such comments in writing to establish a clear record of the process followed for this purpose.

We will submit additional views on issues relating to the report. At this time, we ask that you favorably consider the requests we made at the Friday meeting and that we renew here.

Respectfully,



Richard Sauber  
*Special Counsel to the President*



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