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June 6, 2017

The Honorable Rod Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Deputy Attorney General Rosenstein:

I write to follow up on a question I raised during your recent briefing to Members of the House of Representatives, on May 19, 2017, regarding the appointment of Special Counsel Robert Mueller. Specifically, I request that you clarify the scope of Mr. Mueller's authority, and the limitations, if any, that may be placed on his ability to fully and independently investigate the possible coordination between Russia and the Trump Campaign, as well as any matters that may arise out of such investigation.

Let me begin by assuring you that I strongly support your appointment of a Special Counsel, and in particular Robert Mueller. Your action, which I believe was taken in the best interest of the country, showed courage and a commitment to the rule of law.

As you know, in 2003 when then-Deputy Attorney General James Comey appointed Patrick Fitzgerald as Special Counsel to investigate the leak of former CIA agent Valerie Plame's identity, he delegated "all the authority of the Attorney General" with respect to that investigation.¹ He further clarified that "my conferral on you of the title of 'Special Counsel' in this matter should not be misunderstood to suggest that your position and authorities are defined and limited by 28 CFR Part 600."² By contrast, your appointment of former FBI Director

¹ Letter from James B. Comey, Deputy Attorney General, to Patrick J. Fitzgerald, United States Attorney (Dec. 30, 2003), available at https://www.justice.gov/archive/osc/documents/2006_03_17_exhibits_a_d.pdf.

² Letter from James B. Comey, Deputy Attorney General, to Patrick J. Fitzgerald, United States Attorney (Feb. 6, 2004), available at https://www.justice.gov/archive/osc/documents/2006_03_17_exhibits_a_d.pdf.

Mueller was explicitly pursuant to 28 CFR Part 600,³ which delegates “the full power and independent authority to exercise all investigative and prosecutorial functions of any United States Attorney.”⁴ It appears that the authority—and independence—granted under this appointment is of lesser scope than that granted to Mr. Fitzgerald.

As former Acting Solicitor General Neal Katyal, who wrote the Special Counsel regulations, recently stated in the *Washington Post*, an appointment pursuant to these regulations is “a highly imperfect solution, because it doesn’t foreclose the possibility of political interference in the investigation.”⁵ In particular, whereas Mr. Fitzgerald’s authority was plenary, Mr. Mueller’s appointment provides that the Attorney General (in this case, you as Acting Attorney General for this matter) “may request that the Special Counsel provide an explanation for any investigative or prosecutorial step, and may after review conclude that the action is so inappropriate or unwarranted under established Departmental practices that it should not be pursued.”⁶ This provision implies that you have the power, as his supervisor, not only to block certain actions of the Special Counsel but to remain currently advised of all aspects of the investigation.

It is important for the public to know, not only how you intend to exercise this authority under the regulations, but also how these regulations could enable a successor, particularly one without a serious commitment to the integrity of the investigation, to interfere with the Special Counsel’s work. As you have acknowledged, Mr. Mueller’s investigation could expand to encompass your own role in the firing of former FBI Director James Comey, and you have rightly said that you would recuse yourself, if necessary.⁷ Please explain how you intend to exercise your authority to inform yourself of, and to supervise, Mr. Mueller’s activities, as well as any limitation that could be placed by you, or by a successor, on his ability to pursue the investigation as he sees fit, including challenges to any assertion of any privileges, including executive privilege.

I appreciate the assertion that because Special Counsel Mueller was not an employee of the Department of Justice at the time of his appointment, he was not eligible for the sweeping authority granted to Mr. Fitzgerald. In making your decision, however, did you explore any options that might have enabled you to grant a broader delegation of authority than what was granted to Mr. Mueller? Does the law need to be modified in any way to ensure that Mr. Mueller

³ Rod Rosenstein, Deputy Attorney General, APPOINTMENT OF SPECIAL COUNSEL TO INVESTIGATE RUSSIAN INTERFERENCE WITH THE 2016 PRESIDENTIAL ELECTION, Order No. 3915-2017 (May 17, 2017), *available at* <https://www.nytimes.com/interactive/2017/05/17/us/politics/document-Robert-Mueller-Special-Counsel-Russia.html>.

⁴ 28 C.F.R. § 600.6.

⁵ Neal Katyal, Op-Ed, *Trump or Congress can still block Robert Mueller. I know. I wrote the rules.*, WASH. POST, May 19, 2017, *available at* https://www.washingtonpost.com/posteverything/wp/2017/05/19/politics-could-still-block-muellers-investigation-i-know-i-wrote-the-rules/?utm_term=.570f0c4245a0.

⁶ 28 C.F.R. § 600.7.

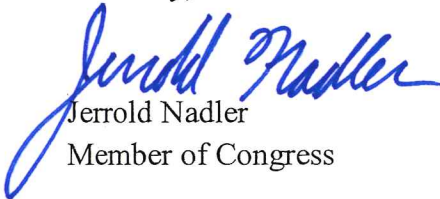
⁷ Sadie Gurman, Eric Tucker, and Jeff Horowitz, *Special counsel Mueller’s investigation seems to be growing*, ASSOC. PRESS, June 3, 2017, *available at* <https://apnews.com/2fa69c1f399c485e96cc312f7a5039ec/AP-sources:-Special-counsel-on-Russia-probe-expanding-scope>.

may pursue this investigation wherever it may lead, without the possibility of political interference?

Ensuring that Mr. Mueller has full and independent authority to investigate this matter takes on extra significance in light of recent reports that the White House considered twisting the intent of certain ethics rules as a means of limiting the scope of his investigation.⁸ According to a *Reuters* article, shortly after Mr. Mueller's appointment, the White House began exploring whether it could argue that rules restricting attorneys from investigating clients of their former law firm would prevent Mr. Mueller from investigating key figures, including Jared Kushner and Paul Manafort, because they were represented by his former law firm, though never by Mr. Mueller himself.⁹ I appreciate the Justice Department's decision to waive this rule, and I urge you to take whatever other actions may be required to guarantee that Mr. Mueller has no artificial restrictions on the scope of his authority.

It is of paramount importance that Mr. Mueller's investigation proceed unimpeded by any officials who may have a conflict of interest or other ethical bar, or by political interference of any kind. I look forward to hearing from you in writing about these matters as soon as possible.

Sincerely,



Jerrold Nadler
Member of Congress

⁸ Julia Edwards Ainsley, *White House looking at ethics rule to weaken special investigation: sources*, REUTERS, May 19, 2017, available at <http://www.reuters.com/article/us-usa-trump-mueller-idUSKCN18F2KK>.

⁹ *Id.*