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U.S. Attorney General Merrick Garland
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

January 18, 2023

Attorney General Garland,

I write to you today to express my deep concern about the process being used to investigate President Biden's mishandling of classified documents obtained during his time as Vice President and then illegally stored in the years since. It has become clear, since the discovery of his illegally stored records, that President Biden's apparent disregard for the rule of law extends beyond unconstitutional executive orders and agency actions. The President appears to believe that the rules do not apply to him.

President Biden's mishandling of classified information may have jeopardized our national security and made us vulnerable to foreign adversaries, but until the American people have more information, we will not have a conclusion. Regardless, the revelation of President Biden's mishandling of classified documents has further shaken the nation's confidence in President Biden. Our nation expects the sitting President of the United States to approach with delicacy and discretion his obligation to protect the most important government secrets.

At a time when faith in our elected officials is at an all-time low, President Biden needs to lead with transparency and accountability. Instead, the President acted questionably at key junctures – all while assuring the public that there is nothing to see here. With so many questions still unresolved about the President and his family's business dealings in between the time he served as Vice President and President, this heightens the importance of a thorough and independent investigation.

While your appointment of a special counsel is a necessary first step in the investigation of President Biden, there remain serious questions about White House and Department of Justice actions since the initial discovery of classified material in unsecured locations.

Media reports and public statements suggest that both the White House and Department of Justice failed to take obvious steps in response to the discovery of the first classified document,

allowing classified documents to remain for months in unsecured locations and allowing private representatives of the President – the person responsible for the documents and now under investigation – to control the search for more documents and, eventually, to discover and handle more documents in more unsecured locations. In addition, some of these representatives reportedly did not themselves hold security clearances, meaning that the newly discovered documents were necessarily handled by those without the proper clearances to view or handle them.

The appointment of a special counsel further does not absolve the President and the White House of their responsibility not to interfere with, or apply public pressure to, the special counsel. Public statements from White House lawyers expressing confidence about the eventual findings of the investigation call into question the independence of the special counsel's investigation, given the President's control of the unitary executive branch. Since the public disclosure of the classified documents at the Penn Biden Center and the President's private residence, the President has brushed off and attempted to minimize these revelations. And he has repeatedly sent his press secretary out with incorrect or misleading information to brief the press and, in turn, the American people. To say there is little faith that the President or his Administration are being forthcoming on this issue is an understatement.

Although President Biden repeatedly boasts about depoliticizing the Department of Justice, these statements, statements about other ongoing investigations, differential treatment of similarly situated groups, and other political actions coming from the Department indicate otherwise. These actions can only lead the American people to believe that he expects the Department to do his bidding rather than enforce the rule of law.

Therefore, I am requesting that you take additional steps to maintain an independent investigation of President Biden's retaining and storage of classified documents. First and foremost, the White House must immediately cease meddling in the investigation and allow the special counsel to conduct an independent investigation. Media reports about the actions of White House Counsel staff – and, the Department's permissive stance toward allowing them to direct the search for documents for weeks or months after the initial discovery of documents -- shed doubt on the ability of the Department to act independently of President Biden.

Second, the American people are owed an explanation without delay to the many unanswered questions about the Department's investigation into the President's handling of classified documents. The Department should immediately provide a timeline and explanation that clarifies the following:

- At what point was the Department informed of the discovery of these documents?

Who directed the Department to delay public disclosure of the discovery of the documents? Who was involved in making this decision?

- What steps did the Department take, on what dates, concerning the documents until the appointment of the special counsel?
- Are public reports correct that the Department allowed the President's representatives to control searches subsequent to the initial discovery? If so, who made this determination? Was the Department aware that civilians without proper security clearances would be searching for classified documents?

- At what point was an investigation opened into the President's handling of the document? Who was responsible? What was the outcome of any initial investigation?

This is in addition to the basic questions we assume Special Counsel Hur is investigating:

- What is the type of classified content of the illegally stored records? At what level were they classified? Will the government be declassifying them in whole or in part?
- Why did the President remove and retain these documents at the end of his term as Vice President?
- How did he decide which documents to store at which location?
- Had he any justified reason to interact with the documents during his time as a private citizen between 2016 and 2021? Did he do so? Did he retain his security clearance in order to do so?
- Who viewed the illegally stored records during this time, and at what location did they view them?
- What security protocols were in place at the Biden family's private Delaware residence and at the Penn Biden Center in Washington, D.C., to safeguard the illegally stored records?
- Can President Biden confirm that all of the confidential documents he took to his private residence in 2016 were recovered in their entirety?

Please take these steps swiftly and assure the American people that the Department will no longer allow President Biden or his representatives to interfere with the investigation of his own potentially criminal actions. Your reputation and the reputation of the Department of Justice are on the line. Your response is of the utmost importance.

Sincerely,

A handwritten signature in black ink that reads "Kris W. Kobach". The signature is written in a cursive, flowing style.

Kris W. Kobach
Kansas Attorney General