

Congress of the United States
Washington, DC 20515

April 4, 2017

The Honorable Dana Boente
Acting Deputy Attorney General
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 1145
Washington, D.C. 20530

Dear Acting Deputy Attorney General Boente:

Thank you for your service as Acting Attorney General for all matters in which Attorney General Jeff Sessions has recused himself, including the FBI investigation into possible collusion between the Donald Trump for President campaign and Russia. As former prosecutors, we know that governmental investigations must be independent and free of conflicts of interest. Because you serve at the pleasure of the President, it is our belief that you have a conflict of interest and cannot exercise true independence into an investigation that may implicate the President. That is one of several reasons we request that you appoint a Special Counsel to investigate any collusion with Russia.

The recent disclosure that President Trump's first National Security Advisor, Michael Flynn, has asked for immunity provides a second reason why you need to appoint a special prosecutor. We support the ongoing investigations by the relevant committees in the House and the Senate, as well as the Protecting Our Democracy Act. Congress, however, cannot grant immunity from prosecution on behalf of the Department of Justice.¹ Only the Department can make that decision, which is why we need a Special Counsel to decide.

Based on the above reasons, we believe that Title 28 of the Code of Federal Regulations (CFR) requires you to appoint a Special Counsel. Section 600.1 states:

“Grounds for appointing a Special Counsel.

The Attorney General, or in cases in which the Attorney General is recused, the Acting Attorney General, *will* appoint a Special Counsel when he or she determines that criminal investigation of a person or matter is warranted and—

(a) That investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would

¹ We note that in the Watergate scandal, White House Counsel John Dean was granted use immunity from the U.S. Senate and also prosecuted by the Department of Justice.

present a conflict of interest for the Department or other extraordinary circumstances; and

(b) That under the circumstances, it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.” CFR § 600.1 (emphasis added).

The factors set forth in Section 600.1 of the CFR are met in this case. The investigation into possible Russian collusion may implicate President Trump and Attorney General Sessions. Your present position is dependent on the President not firing you. President Trump has shown no hesitation in firing Department of Justice officials who stand up to him, as demonstrated by his firing of then Acting Attorney General Sally Yates. He also fired 46 U.S. Attorneys. You have a built-in-conflict of interest and cannot exercise independence for an investigation that may implicate either of your bosses (the Attorney General or the President of the United States), upon whom you depend for your employment.

The public interest also demands that a special prosecutor be appointed. There is no more important matter to our nation than the issue of whether or not the Trump campaign colluded with Russia. At stake is the legitimacy of the Presidency and whether high crimes occurred. In the Watergate scandal, there were investigations both by Congress as well as a special prosecutor. In Watergate, Democratic National Committee (DNC) documents were stolen but never revealed to the public in an attempt to alter an election. In this case, DNC emails were stolen and disclosed to the public by the Russians. If the Trump campaign colluded with the Russians, then the scale of the current scandal would be far greater than Watergate.

The extraordinary development that President Trump’s former National Security Advisor is seeking immunity adds urgency to our request. As former prosecutors, we know that people normally request immunity if they believe they have committed, or are likely to be prosecuted for, a crime. We need a Special Counsel who can exercise true independence in the Russia collusion investigation and make decisions on issues such as immunity, whether the request comes from General Flynn or potentially other witnesses.

We ask you to follow the Code of Federal Regulations and appoint a Special Counsel to investigate possible collusion between the Trump campaign and Russia. Thank you for your attention to this critical matter.

Sincerely,



Ted W. Lieu
Member of Congress



Kathleen Rice
Member of Congress



Stacey Plaskett
Member of Congress