

to contest the invocation of executive privilege” unless the prosecutor had been properly appointed. 418 U.S. at 694-95. If the Attorney General lacked authority to appoint the Special Prosecutor, the regulation empowering that prosecutor to represent the sovereign interests of the United States in litigation would have had no force. The Court’s conclusion that statutory authority supported the appointment was not merely a “prefatory, stage-setting paragraph” that “served to tee up the case-or-controversy analysis that followed,” Dkt. 672 at 62, but was instead central to its conclusion that “[s]o long as this regulation [conferring authority on the Special Prosecutor] is extant it has the force of law.” *Nixon*, 418 U.S. at 695. That conclusion undergirded the Court’s determination that a justiciable case existed between an “independent Special Prosecutor with his asserted need for the subpoenaed material” and a “President with his steadfast assertion of privilege against disclosure.” *Id.* at 697.

Accordingly, the Court’s determination was “a necessary antecedent to determining whether the regulations were valid,” which in turn “was necessary to the decision that a justiciable controversy existed.” *In re Grand Jury Investigation*, 916 F.3d 1047, 1053 (D.C. Cir. 2019); see *In re Sealed Case*, 829 F.2d 50, 55 & n.30 (D.C. Cir. 1987) (relying on *Nixon*, 418 U.S. at 694-96); *In re Grand Jury Investigation*, 315 F. Supp. 3d 602, 652 (D.D.C. 2018). Because that