

May 17, 2018

Eric M. Thorson
Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Suspicious activity reports possibly missing from FinCEN databases

Dear Mr. Thorson:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Inspector General (“OIG”) review and investigate the possibility that certain documents were improperly removed from a database maintained by the Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). The possibility that such documents were improperly removed is an extremely troubling one. We understand that the mere fact that certain documents did not appear in an individual search or searches, even if true, would not necessarily mean the documents were improperly removed or otherwise handled. However, as you know, this information is critical to effective law enforcement, so it is essential that you immediately and thoroughly investigate its possible compromise.

The Bank Secrecy Act of 1970 created a system “to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.”¹ Under the authority granted by Congress in this and subsequent legislation, the Secretary of the Treasury has issued regulations designed to “ensure[] that national banks file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act.”²

Treasury regulations require, for example, that a national bank send a report to FinCEN when it detects certain transactions “where the bank believes that . . . the bank was used to facilitate a criminal transaction” or where the bank has at least reason to suspect that the transaction involves potential money laundering, is designed to evade regulations, or “has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.”³

On May 8, 2018, the *New York Times* reported that Michael D. Cohen, personal lawyer to President Trump, “received payments totaling more than \$1 million from an American

¹ 31 U.S.C.A. §5311.

² 12 C.F.R. § 21.11(a).

³ 12 C.F.R. § 21.11(c)(3), (4).

company linked to a Russian oligarch and several corporations with business before the Trump administration.”⁴ The story was based on “[f]inancial records reviewed by” the *Times* primarily involving two banks: First Republic Bank and City National Bank.⁵ On May 10, 2018, the Associated Press reported that it had also reviewed “[f]inancial documents” that supported similar assertions about these payments to Cohen, and further noted that your office had indicated it had opened an investigation into “how allegations about Cohen’s banking records became public.”⁶

On May 16, 2018, the *New Yorker* reported that the source of the documents, “a law-enforcement official, . . . had grown alarmed after being unable to find two important reports on Cohen’s financial activity in a government database.”⁷ In particular, the source stated that a “suspicious activity report” (SAR) filed by First Republic Bank, where the account of Mr. Cohen’s shell company received payments, referred to two earlier SARs the bank had filed flagging additional suspicious transactions totaling more than three million dollars.⁸ However, according to the source, these earlier SARs were not available in the FinCEN database.⁹ The source asserted that the unavailability of SARs in the database was highly unusual, and the fact that some reports involving Cohen were missing while another was available was troubling.¹⁰

Based on interviews, the *New Yorker* identified several possibilities that could explain why the two prior SARs did not appear when its source attempted to access them but would not necessarily indicate that the reports themselves or the FinCEN database was compromised. These included, for example, the possibility that access was restricted in response to a request from Special Counsel Robert Mueller or another federal investigator already reviewing the reports.¹¹

We hope that one of these innocent explanations proves to be true. However, based on the facts that have been made public in recent days, there is reason to think that these SARs may be relevant to significant potential criminal conduct, and OIG should thoroughly investigate the possibility that the reports were improperly removed from FinCEN’s database. Interference with law enforcement processes for improper purposes could pose a threat to the

⁴ Mike McIntire, Ben Prosser, and Jim Rutenberg, Firm Tied to Russian Oligarch Made Payments to Michael Cohen, *New York Times*, May 8, 2018, available at <https://www.nytimes.com/2018/05/08/us/politics/michael-cohen-shell-company-payments.html>.

⁵ *Id.*

⁶ Jeff Horwitz, Catherine Lucey, and Jonathan Lemire, Insight or Influence? Trump attorney’s business scrutinized, Associated Press, May 10, 2018, available at <https://www.apnews.com/193c6f3bda0b46e6b718b88c622dfc99>.

⁷ Ronan Farrow, Missing Files Motivated the Leak of Michael Cohen’s Financial Records, *New Yorker*, May 16, 2018, available at <https://www.newyorker.com/news/news-desk/missing-files-motivated-the-leak-of-michael-cohen-financial-records>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Hon. Eric M. Thorson
May 17, 2018
Page 3

rule of law, and any such risk to the ability of law enforcement agencies to protect the public must be addressed swiftly and strongly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder". The signature is stylized with a large initial "N" and a long horizontal stroke at the end.

Noah Bookbinder
Executive Director

A handwritten signature in blue ink, appearing to read "Norman L. Eisen". The signature is written in a cursive style with a large initial "N" and a long horizontal stroke at the end.

Ambassador (Ret.) Norman L. Eisen
Chair