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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
WASHINGTON, DC 20510-6075

January 19, 2024

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Ms. Andrea Gacki
Director
Financial Crimes Enforcement Network
2070 Chain Bridge Road
Vienna, VA 22182

Dear Secretary Yellen and Director Gacki,

I write regarding recent reporting that the U.S. Treasury Department (Treasury) through its Financial Crimes Enforcement Network (FinCEN) urged private financial institutions to surveil customers' transaction-level data using politically charged search terms, in order to flag certain customer profiles on behalf of Federal law enforcement.¹ These allegations, if true, represent a flagrant violation of Americans' privacy and the improper targeting of U.S. citizens for exercising their constitutional rights without due process.

According to recent news reports, Treasury provided materials to financial institutions instructing them to search and filter Americans' transaction-level financial data using specific keywords, search terms, and particular merchant category codes (MCC) to aid federal law enforcement in identifying persons of interest.² Further, these instructions allegedly recommended financial institutions search Zelle payment messages for politically charged terms, such as "Trump" and "MAGA," as well as transactions that could indicate the legal purchase of a firearm, such as transactions with a MCC for "Sporting and Recreational Goods and Supplies".³ In addition, the instructions reportedly urged financial institutions to use indicators that could include "the purchase of books (including religious texts) and subscriptions to other media containing extremist views."⁴

These allegations are particularly concerning given past efforts to weaponize the financial system and payment activity against politically disfavored, lawful activity. Under the Obama-administration's "Operation Choke Point" initiative, the Department of Justice (DOJ) coordinated with federal financial regulators to intimidate financial institutions into denying

¹ Brooke Singman, 'Alarming' surveillance: Feds asked banks to search private transactions for terms like 'MAGA,' 'Trump', FoxNews (Jan. 17, 2024), <https://www.foxnews.com/politics/alarming-surveillance-feds-asked-banks-search-private-transactions-terms-maga-trump>.

² *Id.*

³ *Id.*

⁴ *Id.*

services to legitimate businesses that the administration was ideologically opposed to, including gun retailers.⁵ Unfortunately, the weaponization and misuse of MCC codes is not a new issue either. Recently, the public and members of Congress raised concerns about the potential to surveil the free exercise of lawful activity using an MCC code—the same concern is at issue here.

Federal government efforts to target individuals and entities based on their political views is a blatant and egregious violation of our Constitution. Additionally, reported actions like these disrupt confidence in federal law enforcement and raise significant questions regarding the independence of federal financial regulators. Given these disturbing reports of unwarranted financial surveillance, please answer the following questions by no later than February 2, 2024:

1. What role, if any, did Treasury/FinCEN play in soliciting financial data from private companies to help law enforcement identify targets following January 6, 2021, including the role played in convening meetings, virtual or otherwise, the dissemination of information, and collecting post-search information from the financial institutions?
2. Did anyone from another executive branch department or agency, such as the Department of Justice or the Federal Bureau of Investigation, ever direct, request, engage in, or encourage Treasury/FinCEN to engage in such reported activities? If so, please describe in detail.
3. Did anyone from an independent financial regulatory agency, such as the Federal Reserve, FDIC, or OCC, ever direct, request, engage in, or encourage Treasury/FinCEN to engage in such reported activities? If so, please describe in detail.
4. According to news reports, federal agencies such as Treasury/FinCEN warned financial institutions that “religious texts” could indicate “extremism.”⁶ Which religious texts were flagged as potentially indicative of extremism?
 - a. On what basis did Treasury/FinCEN conclude that purchasing or possessing of religious texts, may be indicative of extremism?
 - b. Who made the decision for Treasury/FinCEN to warn financial institutions that religious texts may indicate extremism?

⁵ See e.g., Frank Keating, *Operation Choke Point reveals true injustices of Obama's Justice Department*, The Hill (Nov. 7, 2018), <https://thehill.com/blogs/congress-blog/politics/415478-operation-choke-point-reveals-true-injustices-of-obamas-justice/>; Norbert Michel, *Newly Unsealed Documents Show Top FDIC Officials Running Operation Choke Point*, Forbes (Nov. 5, 2018), <https://www.forbes.com/sites/norbertmichel/2018/11/05/newly-unsealed-documents-show-top-fdic-officials-running-operation-choke-point/?sh=17cf4d901191>.

⁶ Brooke Singman, *'Alarming' surveillance: Feds asked banks to search private transactions for terms like 'MAGA,' 'Trump'*, FoxNews (Jan. 17, 2024), <https://www.foxnews.com/politics/alarming-surveillance-feds-asked-banks-search-private-transactions-terms-maga-trump>.

5. Reporting has suggested that Treasury targeted shoppers who frequent sporting goods stores, such as Bass Pro Shops, Gander Mountain, Cabela's, and Dick's Sporting Goods, as individuals who present a heightened risk of being violent extremists. Please confirm whether such shoppers were presented as posing such a risk. Additionally, if such shoppers were identified as posing a heightened risk, please explain Treasury's rationale.

In addition, I request that you produce the following information by no later than February 2, 2024:

1. A list of all financial institutions that were asked to meet with Treasury, to search and filter customer financial data based on keywords such as "Trump," "MAGA," "Bass Pro Shops," "Gander Mountain," "Cabela's," and "Dick's Sporting Goods";
2. A list of all departments, agencies, and components of the federal government involved in the decision or implementation of the decision to demand or ask financial institutions to search and filter customer financial data based on keywords such as "Trump," "MAGA," "Bass Pro Shops," "Gander Mountain," "Cabela's," and/or "Dick's Sporting Goods";
3. All slides or other written materials that Treasury/FinCEN disseminated to any financial institution to warn them of any "extremism" indicators such as "Trump," "MAGA," "Bass Pro Shops," "Gander Mountain," "Cabela's," and/or "Dick's Sporting Goods";
4. All communications between and among employees at FinCEN, Treasury's Office of General Counsel, and financial institutions that were asked to search and filter customer financial data based on keywords such as "Trump," "MAGA," "Bass Pro Shops," "Gander Mountain," "Cabela's" and/or "Dick's Sporting Goods".

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Scott".

Tim Scott
Ranking Member