

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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November 16, 2023

Mr. Brian Moynihan  
Chief Executive Officer, Bank of America Corporation  
c/o Karen Elizabeth Christian  
Akin Gump Strauss Hauer & Feld LLP  
Robert S. Strauss Tower  
2001 K Street, NW  
Washington, DC 20006

Dear Mr. Moynihan:

The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government are conducting oversight of the Federal Bureau of Investigation's (FBI) receipt of information about American citizens from private entities without legal process. On May 25, 2023, we requested your voluntary cooperation with our oversight efforts to determine the extent to which financial institutions, such as Bank of America Corporation (BoA), worked with the FBI to collect Americans' data.<sup>1</sup> In response, the Committee has received 223 pages of documents responsive to our original requests. However, to date, BoA has refused to provide the Committee and Select Subcommittee with the filing it turned over to the FBI.

In 2021, BoA provided the FBI—voluntarily and without any legal process—with a list of individuals who made transactions in the Washington, D.C., metropolitan area using a BoA credit or debit card between January 5 and January 7, 2021.<sup>2</sup> When that information was brought to the attention of Steven Jensen, the FBI's then-Section Chief of the Domestic Terrorism

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<sup>1</sup> Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Brian Moynihan, Chief Exec. Officer of Bank of Am. Corp. (May 25, 2023).

<sup>2</sup> Transcribed Interview of Mr. George Hill 74-75 (Feb. 7, 2023) (describing that "Bank of America, with no directive from the FBI, data-mined its customer base. And they data-mined a date range of 5 to 7 January of any BOA customer who used a BOA product"); Transcribed Interview of Mr. Steve Jensen 146 (May 19, 2023) (stating that "one of my unit chiefs . . . advised that a number of leads had gone out regarding Bank of America information of subjects"); Transcribed Interview with Mr. Joseph Bonavolonta 11 (May 4, 2023) ("I am aware of information that was forwarded to us related to a Bank of America lead, yes"); Transcribed Interview of Mr. Steven D'Antuono (Jun. 7, 2023) (recalling that "[he learned that Bank of America provided information] probably through the course of the investigation at some point."); Transcribed Interview of Mr. Steven Jensen 147 (May 19, 2023) ("My understanding of that information was, it was certain purchaser transaction records of individuals that Bank of America provided over to the FBI that wasn't requested by the FBI. It was of their own volition.").

Operations Section, he acted to “pull” the BoA information from FBI systems because “the leads lacked allegations of federal criminal conduct.”<sup>3</sup> Documents obtained by the Committee and Select Subcommittee show that the FBI also provided BoA with specific search query terms, indicating that the FBI was “interested in all financial relationships” of BoA customers transacting in Washington D.C. and that had made “ANY historical purchase” of a firearm, or those who had purchased a hotel, Airbnb, or airline travel within a given date range.<sup>4</sup>

From: [REDACTED]@fbi.gov  
Sent: 1/15/2021 12:40:26 PM  
To: [REDACTED]@bofa.com; [REDACTED]@bofa.com  
Subject: Re: upcoming SAR product idea/brainstorming and check-in with you both

[REDACTED]

As always, thanks for the very quick communication/response over the phone this morning.

To recap our morning call, we [FBI] are prepared to action **[immediately]** the following thresholds:

- o CTD/SPES/SEU is interested in all financial relationships that meet the following thresholds:
  - \* Customers confirmed as transacting, either through bank account [debit card] or credit card, Washington D.C. purchases between 1/5/21 and 1/6/21, with the additional [identifying] targeting thresholds:
    - \* Purchases made for hotel/airbnb RSVPs in the DMV area [the day before and during Inauguration Day] -----since 1/6/21.
    - \* ANY historical purchase [going back 6 months generally, for weapons or weapons related-vendor purchases].
    - \* Secondly, purchases made for returns to Washington, D.C. and the surrounding DMV area:
      - \* With Airline travel to DMV area for Inauguration Day
      - \* With no identified airline purchases for the DMV.\*\*

\*\* - SEU intends to capture, with its FI-partner concurrence, all customers who might be more strategic in carrying out attacks related to CTD interests; travel with weapons by vehicle and [not by] air, given the current threat and aftermath of the 6 Jan Capitol building incidents. The intention by SEU is to identify all potential networks of threats vs. individual threats to Inauguration Day and beyond.

In its June 22, 2023, letter to the Committee, BoA asserted that its actions “were within a legal process initiated by the United States Department of the Treasury.”<sup>5</sup> Contrary to these assertions, however, documents on file with the Committee and Select Subcommittee indicate

From: [REDACTED] (FBI) [REDACTED]@fbi.gov  
Sent: 1/15/2021 9:56:49 AM  
To: [REDACTED]@bofa.com; [REDACTED]@bofa.com  
Subject: upcoming SAR product idea/brainstorming and check-in with you both

[REDACTED]

Ahead of next week's inauguration, I wanted to touch base on a couple things.

If either or both of you have time this morning to discuss SARs and a couple ideas, that would be great.

I will be on my cell this morning.

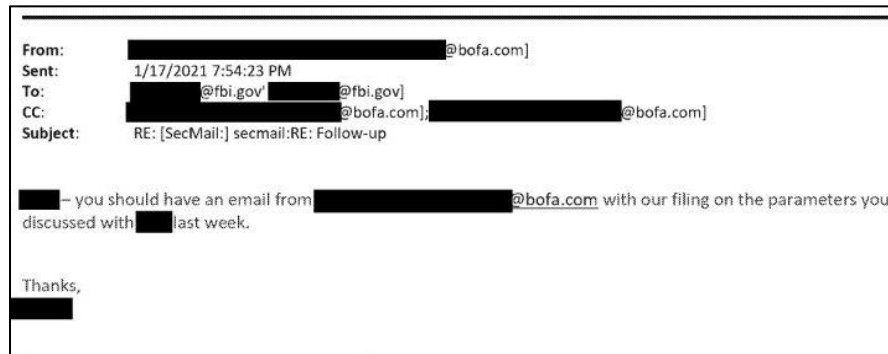
[REDACTED]

<sup>3</sup> Transcribed Interview of Mr. Steven Jensen 152, 166 (May 19, 2023).

<sup>4</sup> BofA-HJUD-0000002 (on file with Committee).

<sup>5</sup> Letter from Ms. Karen Christian and Mr. Raphael Prober, Legal Counsel for Bank of Am., to Rep. Jim Jordan Chairman, H. Comm. on the Judiciary (June 22, 2023) at 1 (hereinafter “Christian Letter”).

that the FBI—not the U.S. Department of the Treasury—initiated contact directly to BoA, and without legal process.<sup>6</sup> As a result, it is unclear what “legal” process permits the FBI or BoA to share the sensitive customer information of potentially thousands of BoA customers and implicate them in a federal law enforcement investigation without any clear criminal nexus. To that end, BoA’s letter claimed that certain federal laws—namely, the Anti-Money Laundering Act and the Bank Secrecy Act—permit such an arrangement.<sup>7</sup> However, these laws and corresponding regulations primarily contemplate information-sharing with the U.S. Department of Treasury and its components, not external correspondence with the FBI.<sup>8</sup>



Indeed, if such a lawful authority exists, as BoA asserts, for BoA to freely share private financial information without any legal process or specific nexus to criminality, Congress has a responsibility to consider reforms that adequately protect Americans’ information. It should not be the case that federal law enforcement has carte blanche access to Americans’ financial information by deeming a transaction or class of transactions as “suspicious” or otherwise. For that reason, to inform such legislation, it is critical that the Committee understand the full extent of the information-sharing between BoA and the FBI, including review of BoA’s “filing” that it emailed to the FBI.<sup>9</sup>

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”<sup>10</sup> Pursuant to the Rules of the House of Representatives, the Committee is authorized to conduct oversight of matters involving civil liberties and criminal

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<sup>6</sup> BofA-HJUD-0000001 (on file with Committee).

<sup>7</sup> Christian Letter, *supra* note 5, at 2-3 (discussing the Anti-Money Laundering Act and Bank Secrecy Act).

<sup>8</sup> See U.S. GOV’T ACCOUNTABILITY OFFICE HIGHLIGHTS, GAO-19-582, BANK SECRECY ACT: AGENCIES AND FINANCIAL INSTITUTIONS SHARE INFORMATION BUT METRICS AND FEEDBACK NOT REGULARLY PROVIDED (2019) (observing “FinCEN is responsible for administering BSA and has delegated examination responsibility to supervisory agencies.”); LIANA ROSEN & RENA MILLER, CONG. RESEARCH SERV., R47255, THE FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN): ANTI-MONEY LAUNDERING ACT OF 2020 IMPLEMENTATION AND BEYOND (2022) (noting FinCEN as “the primary federal agency responsible for implementing many of AMLA’s provisions.”).

<sup>9</sup> BofA-HJUD-00000197.

<sup>10</sup> See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

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law to inform potential legislative reforms.<sup>11</sup> These potential legislative reforms could include, among other proposals, legislation to prescribe how federal law-enforcement entities collect or receive private customer data, legislation to enhance the protections of civil liberties for customers of financial institutions, or legislation to prevent the misuse of Americans' private financial information. The documents and information we have requested from BoA are necessary to inform such potential legislation.

Accordingly, and in light of your lack of compliance with our earlier voluntary request, please find attached a subpoena from the Committee on the Judiciary to compel the production of the requested documents. To the extent that any responsive documents to the subpoena include information such as customer names, addresses, credit card numbers, birth dates, or social security numbers, the Committee requests that the information be redacted to protect personal identifiable information.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is stylized with a large "J" and a long, sweeping underline.

Jim Jordan  
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

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<sup>11</sup> Rules of the U.S. House of Representatives, R. X (2023) (118<sup>th</sup> Cong.).