

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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### MEMORANDUM

May 10, 2023

**To: Democratic Members of the Committee on Oversight and Accountability**

**Fr: Democratic Staff**

**Re: Chairman Comer's Misuse and Distortion of Confidential Bank Information**

In recent statements to the press, Chairman Comer has made unfounded accusations against President Biden and his family based on cherry-picked and misleading information about banking documents, including Suspicious Activity Reports (SARs) reviewed by the Committee at the Department of the Treasury. None of the SARs allege, or even suggest, any potential misconduct by President Biden, and many of the SARs, including those on which Chairman Comer relies, are based on erroneous or unfounded claims.

In light of the strict confidentiality provisions governing SARs, this memorandum provides only general information that is necessary for Members of the Committee to properly evaluate Chairman Comer's misleading statements and innuendo.

#### I. BACKGROUND

Last month, Ranking Member Raskin wrote a letter to Chairman Comer urging him "not to take any actions that would set a dangerous precedent for this Committee regarding the potentially unlawful disclosure of confidential and law enforcement information." Ranking Member Raskin also urged the Chairman to exercise "caution with regard to this confidential law enforcement information and avoid characterizing or mischaracterizing the unverified allegations" contained in the SARs documents.<sup>1</sup>

Yet Chairman Comer has intentionally mischaracterized SARs documents, presenting unverified tips from financial institutions as facts. Committee Republicans' inexplicable misuse of these confidential law enforcement documents is not only irresponsible, it demonstrates the hyper-partisan nature of Committee Republicans' probe into the Biden family.

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<sup>1</sup> Letter from Ranking Member Jamie Raskin, Committee on Oversight and Accountability, to Chairman James Comer, Committee on Oversight and Accountability (Apr. 20, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-04-20.JBR%20to%20Comer%20re%20SARs.pdf>).

## II. SARS ARE PRELIMINARY AND UNVERIFIED TIPS

Although Chairman Comer continues to portray SARs as “bank violations” during his media appearances, they clearly are not that.<sup>2</sup> According to the Department of the Treasury, SARs are merely “preliminary and unverified tip-and-lead information.” They are not evidence of a crime, wrongdoing, or even evidence of an existing investigation.<sup>3</sup> The sheer number of SARs filed every year demonstrates this point: in 2020 alone, financial institutions submitted 2.5 million SARs to the U.S. government.<sup>4</sup> Of the millions of SARs filed each year, very few produce actionable leads that are pursued by the government.<sup>5</sup> According to the Bank Policy Institute (BPI), a nonpartisan public policy, research, and advocacy group that represents the nation’s leading banks, only 4% of SARs result in any follow-up action from law enforcement agencies.<sup>6</sup> As BPI has explained, “Since banks are subject to enforcement action if they fail to file a SAR when they should have, but suffer no sanction if they file a useless SAR, the general presumption is to file a SAR.”<sup>7</sup>

Financial institutions must file a SAR with the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) within 30 days of any account activity that they deem to be suspicious or out of the ordinary.<sup>8</sup> These transactions are generally identified by rules-based algorithms and reported to FinCEN when a bank cannot easily explain behavior flagged as irregular by the algorithms—the bank does not need to obtain evidence or show proof that a crime has occurred.<sup>9</sup> FinCEN requires that each SAR identify five elements of suspicious activity: (1) the person or entity conducting the suspicious activity; (2) the instruments or mechanisms being used; (3) the time period during which the suspicious activity took place; (4) where the suspicious activity took place; and (5) the reason(s) the filer thinks the activity is suspicious.<sup>10</sup>

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<sup>2</sup> E.g., Rep. James Comer (@RepJamesComer), Twitter (Apr. 16, 2023) (online at <https://twitter.com/jamescomer/status/1647645180260958211?s=46>).

<sup>3</sup> Letter from Assistant Secretary Jonathan Davidson, Department of the Treasury, to the Honorable James Comer, Ranking Member, Committee on Oversight and Reform (Sept. 2, 2022) (online at <https://oversight.house.gov/wp-content/uploads/2022/09/09.02.2022-Response-to-Representative-Comer.pdf>).

<sup>4</sup> *Suspicious Activity Reports Related to Cash Transactions Surge*, Wall Street Journal, (Feb. 9, 2021) (online at [www.wsj.com/articles/suspicious-activity-reports-related-to-cash-transactions-surge-11612900800](http://www.wsj.com/articles/suspicious-activity-reports-related-to-cash-transactions-surge-11612900800)).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Bank Policy Institute, *The Truth About Suspicious Activity Reports* (Sept. 22, 2020) (online at <https://bpi.com/the-truth-about-suspicious-activity-reports/>); *Banks Are Closing Customer Accounts, With Little Explanation*, New York Times (Apr. 8, 2023) (online at [www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html](http://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html)).

<sup>8</sup> E.g., Investopedia, *What Is A Suspicious Activity Report (SAR)? Triggers and Filing* (Jan. 25, 2022) (online at [www.investopedia.com/terms/s/suspicious-activity-report.asp](http://www.investopedia.com/terms/s/suspicious-activity-report.asp)).

<sup>9</sup> *Banks Are Closing Customer Accounts, With Little Explanation*, New York Times (Apr. 8, 2023) (online at [www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html](http://www.nytimes.com/2023/04/08/your-money/bank-account-suspicious-activity.html)).

<sup>10</sup> Investopedia, *What Is A Suspicious Activity Report (SAR)? Triggers and Filing* (Jan. 25, 2022) (online at [www.investopedia.com/terms/s/suspicious-activity-report.asp](http://www.investopedia.com/terms/s/suspicious-activity-report.asp)); Financial Crimes Enforcement Network, *Form 109*

In a January 11, 2023, letter to the Department of the Treasury, Chairman Comer requested that the Department produce SARs generated in connection with three members of the Biden family and three associates, as well as any “corporate entities linked to them.”<sup>11</sup> The Department of the Treasury accommodated this request by making the SARs responsive to his requests available for *in camera* review at the Department. Chairman Comer’s broad request included many individuals and entities involved in transactions that had nothing to do with any member of the Biden family.<sup>12</sup> In fact, the transactions covered by more than half of the SARs reviewed by the Committee did not involve any member of the Biden family.

### III. FINDINGS

#### 1. None of the SARs Implicate President Biden

Chairman Comer has publicly stated that the alleged financial wrongdoing that Committee Republicans are investigating, including the SARs, implicate “the entire [Biden] family.”<sup>13</sup> However, none of the SARs reviewed by Committee staff allege, or even suggest, any potential misconduct by President Biden, nor do they show President Biden’s involvement in Hunter Biden’s financial or business relationships. This finding is consistent with recent statements by Eric Schwerin, Hunter Biden’s former business associate and then-Vice President Biden’s former financial adviser, with whom Committee Republican and Democratic staff met last month. During the meeting, Mr. Schwerin explained that between 2009 and 2017, he performed a number of administrative and bookkeeping tasks for the then-Vice President and Hunter Biden. In doing so, he had the ability to view President Biden’s bank account transactions and stated that he was not aware of any involvement by President Biden in the financial conduct of his relatives’ businesses, much less any transactions into or out of the then-Vice President’s bank account related to business conducted by any Biden family member. Mr.

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*Suspicious Activity Report by Money Services Business* (online at [www.irs.gov/pub/irs-tege/fin109\\_sarmsb.pdf](http://www.irs.gov/pub/irs-tege/fin109_sarmsb.pdf)) (accessed May 10, 2023).

<sup>11</sup> Letter from Chairman James Comer, Committee on Oversight and Accountability, to the Honorable Janet Yellen, Secretary, Department of the Treasury (Jan. 11, 2023) (online at <https://oversight.house.gov/wp-content/uploads/2023/01/2023-01-11-Treasury.pdf>).

<sup>12</sup> For example, Senate Republicans have previously reported on the connection between Hunter Biden and China Energy Co. Ltd (CEFC). CEFC is known to have paid \$5 million for an apartment at Trump World Tower. *A Chinese Tycoon Sought Power and Influence. Washington Responded.*, New York Times (Dec. 12, 2018) (online at [www.nytimes.com/2018/12/12/business/cefc-biden-china-washington-ye-jianming.html](http://www.nytimes.com/2018/12/12/business/cefc-biden-china-washington-ye-jianming.html)). Any SAR involving CEFC, including a SAR mentioning the relationship between CEFC and former President Trump or his entities, would fall within the universe of SARs requested by Chairman Comer.

<sup>13</sup> “*There’s No Bigger Tax Cheat Than the Biden Family*”: *Rep. James Comer*, Fox News (Apr. 21, 2023) (online at [www.foxnews.com/video/6325510578112](http://www.foxnews.com/video/6325510578112)). Chairman Comer has also stated that President Biden’s grandchildren were involved in alleged “influence peddling” and such involvement is demonstrated in the SARs. *James Comer: The Walls Are Closing In On The Biden Family*, Fox News (Apr. 20, 2023) (online at [www.foxnews.com/video/6325417604112](http://www.foxnews.com/video/6325417604112)); *Have Taxpayer Dollars Been Going to Fund the Taliban?*, Fox Business (Apr. 19, 2023) (online at <https://video.foxbusiness.com/v/6325404357112#sp=show-clips>). Yet only one SAR mentioned any of President Biden’s seven grandchildren, and the grandchild mentioned was a minor during much of the time period covered by the SAR. Importantly, the SAR does not describe any potential wrongdoing by that grandchild.

Schwerin also explained that he knew of no request for then-Vice President Biden to take any official action on behalf of Hunter Biden in connection with any of his businesses.

## **2. Many of the SARs, Including Those on Which Chairman Comer Relies, Are Based on Erroneous or Unfounded Claims**

Several banks cited a 2020 report released by Senate Republicans that relied on widely discredited allegations as the reason for filing Hunter Biden-related SARs.<sup>14</sup> The report was co-authored by Senator Ron Johnson, who acknowledged that the pursuit of the Senate Republicans' probes "would certainly help Donald Trump win reelection."<sup>15</sup>

Similarly, some banks filed SARs solely in response to conjecture in the media. For example, several SARs cited a debunked *Federalist* article that claimed Hunter Biden received \$1.5 billion dollars from the Chinese government while his father was Vice President.<sup>16</sup>

Other SARs indicate they were initiated solely because of Hunter Biden's (1) familial relation to the former Vice President; (2) relationship with his former business associate Devon Archer, who was indicted on an unrelated fraud charge; or (3) relationship with Ye Jianming, the CEO of CEFC, who was under investigation in China for economic crimes unrelated to Hunter Biden. Yet other SARs merely stated they were filed due to "negative" media attention about Hunter Biden. Tellingly, Chairman Comer has not revealed any of these underlying reasons when publicly discussing SARs.

By promoting conspiracy theories and claims against Hunter Biden, Republicans have fueled negative reporting upon which financial institutions have then relied to inform the filing

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<sup>14</sup> Majority Staff, U.S. Senate Committee on Homeland Security and Governmental Affairs and U.S. Senate Committee on Finance, *Hunter Biden, Burisma, and Corruption: The Impact on U.S. Government Policy and Related Concerns* (Sept. 23, 2020) (online at [www.finance.senate.gov/imo/media/doc/HSGAC%20-%20Finance%20Joint%20Report%202020.09.23.pdf](http://www.finance.senate.gov/imo/media/doc/HSGAC%20-%20Finance%20Joint%20Report%202020.09.23.pdf)). Notably, the report failed to reveal any wrongdoing or improper influence by President Biden. See, e.g., *Republican Inquiry Finds No Evidence of Wrongdoing by Biden*, New York Times (Sept. 23, 2020) (online at [www.nytimes.com/2020/09/23/us/politics/biden-inquiry-republicans-johnson.html](http://www.nytimes.com/2020/09/23/us/politics/biden-inquiry-republicans-johnson.html)); Minority Staff, U.S. Senate Committee on Homeland Security and Governmental Affairs and U.S. Senate Committee on Finance, *Election Interference: Majority Investigation Amplifies Russian Attack on 2020 Election* (Sept. 23, 2020) (online at [www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/200923\\_FullReport\\_PetersHSGACWydenFinance.pdf](http://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/200923_FullReport_PetersHSGACWydenFinance.pdf)).

<sup>15</sup> *Besieged on All Sides, Ron Johnson Says His Probe "Would Certainly" Help Trump Win Reelection*, Politico (Aug. 13, 2020) (online at [www.politico.com/news/2020/08/13/dems-ron-johnson-probe-trump-win-reelection-394987](http://www.politico.com/news/2020/08/13/dems-ron-johnson-probe-trump-win-reelection-394987)) (quoting Senator Johnson saying that exposing alleged corruption in the Obama Administration "would certainly help Donald Trump win reelection"); see also *GOP Senators' Anti-Biden Report Repackages Old Claims*, Politico (Sept. 23, 2020) (online at [www.politico.com/news/2020/09/23/gop-senators-anti-biden-report-420362](http://www.politico.com/news/2020/09/23/gop-senators-anti-biden-report-420362)).

<sup>16</sup> *Biden's Alleged Financial Ties to U.S. Enemy China Overshadow his 2020 Bid*, The Federalist (May 2, 2019) (online at <https://thefederalist.com/2019/05/02/bidens-alleged-financial-ties-u-s-enemy-china-overshadow-2020-bid/>); but see *Fact-Checking Trump's Claims About the Bidens*, CNN (Oct. 4, 2019) (online at [www.cnn.com/2019/09/27/politics/fact-check-trump-bidens-china/index.html](http://www.cnn.com/2019/09/27/politics/fact-check-trump-bidens-china/index.html)); *Trump's False Claims about Hunter Biden's China Dealings*, Washington Post (Sept. 26, 2019) (online at [www.washingtonpost.com/politics/2019/09/26/trumps-false-claims-about-hunter-bidens-china-dealings/](http://www.washingtonpost.com/politics/2019/09/26/trumps-false-claims-about-hunter-bidens-china-dealings/)).

of SARs. In turn, Committee Republicans are using these SARs as the basis to make additional novel and unfounded claims for media consumption.

Last fall, Chairman Comer stated, “I want to be clear: This is an investigation of Joe Biden.” However, because Committee Republicans have failed to uncover any evidence of President Biden’s involvement in the SARs, Chairman Comer has resorted to crude guilt-by-association and innuendo smear tactics by misrepresenting confidential information to generate headlines.<sup>17</sup>

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<sup>17</sup> *House Republicans Vow to Investigate Biden and His Family's Business Dealings*, CNN (Nov. 17, 2022) (online at [www.cnn.com/2022/11/17/politics/house-republicans-white-house-hunter-biden/index.html](http://www.cnn.com/2022/11/17/politics/house-republicans-white-house-hunter-biden/index.html)).