

Questions for the Record for Travis LeBlanc
From Senator Mazie Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

No.

b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

No.

2. Many Americans are concerned about the volume of electronic information collected by our intelligence community, and what it means for their privacy. While Section 702 of the Foreign Intelligence Surveillance Act is designed to allow the intelligence community to target and surveil non-U.S. citizens, privacy advocates are rightfully concerned that U.S. citizens can get caught up as well. These concerns were exacerbated by last year's reauthorization of Section 702, which allowed authorities to access communications that are "about" a target, even if the target is not a participant in the communication.

What will you do—should you be confirmed—to strengthen the public trust that civil rights and liberties are being protected in the face of so much intelligence collection?

In response to a serious compliance problem reported to the Foreign Intelligence Surveillance Court (FISC) in late 2016, and after unsuccessful attempts to remedy that problem, the National Security Agency (NSA) announced in April 2017 that it would cease "abouts" collection. Resuming this practice would require FISC approval, followed by a congressional review procedure recently mandated by Congress.

In the past, the Board's work has enhanced public understanding of the implications of this type of collection for Americans' privacy and civil liberties. If NSA seeks to resume such collection by requesting approval from the FISC and Congress, and should that request, in turn, be granted and the collection resume, the attendant privacy and civil liberties concerns would once again become an appropriate and important focus for the Board's independent expertise and continued oversight.

If confirmed, I would work with fellow Board members to identify opportunities for the Board to improve the transparency of how Section 702 affects U.S. persons, including evaluating how the Intelligence Community might estimate the number of U.S. persons who are involved in Section 702 collection and how the FBI might estimate its queries of Section 702 data that involve U.S. persons.

I would also encourage the Board to pursue greater public education efforts on Section 702, FISA, government surveillance, and privacy and civil liberties more generally. Much of the Board's prior work product has been tailored to government audiences, including 200+ page reports. To the extent that the Board is able to make its findings and reports public, consistent with the protection of classified information, I hope to work with fellow

Board members to identify how we might develop straightforward, user-friendly versions that are readily understandable by the public.

3. I am concerned that Section 702 surveillance and use of data collected under Section 702 may impact vulnerable communities such as communities of color, immigrant communities, and the Muslim community at significantly higher rates than it affects Caucasian or non-immigrant communities.

- a. Do you believe that an individual's race, religion, ethnicity, or nation of origin is a factor that should be weighed into a decision to target someone for foreign intelligence information? Why or why not?

I do not believe that the Intelligence Community should target an individual on the basis of these traits. An illustrative but by no means complete list of my concerns about the potential effects of such discriminatory targeting practices would include: 1) the risk of overlooking true national security threats; 2) the marginalization and demoralization of affected communities; 3) the likelihood of violating constitutional and legal prohibitions; and 4) the lack of credible evidence that such practices enhance the nation's safety and security.

- b. Should you be confirmed, do you commit to undertaking a quantitative study to determine whether surveillance targeting under Section 702 disparately impacts vulnerable communities? Any such study should include a qualitative analysis of whether the intelligence community's targeting decisions are based—even in part—on an individual or community's racial, religious, or ethnic makeup, or on the country where they reside, rather than wholly on objective indicators that a target possesses foreign intelligence information.

Targeting decisions that are based on discriminatory factors or that disparately impact vulnerable communities raise serious concerns, whether they are made pursuant to Section 702 or any other surveillance program. If confirmed as a Board Member, I would be interested to learn of any such practices and encourage fellow Board Members to assess their impact on privacy and civil liberties with empirical rigor.

4. In December 2016, then-Director of National Intelligence Clapper committed to providing Congress with an estimate of the number of Americans whose communications have been incidentally collected under Section 702. The Trump Administration reversed course and has refused to provide Congress with this estimate.

Should you be confirmed, do you commit to reviewing the Trump Administration's claims about the feasibility of obtaining such an estimate and work with the Office of the Director of National Intelligence to determine a way to obtain a meaningful estimate? Do you further commit to providing a public report describing your findings?

Encouraging responsible statistical transparency about the effects of programs within the Board's jurisdiction on U.S. persons' privacy, including Section 702, has been, and should remain, an important element of the Board's work.

Given this issue's importance, the Board's past work on it, and NSA's expression of interest, described in the Board's February 2016 Recommendations Assessment Report, in "work[ing] with Board staff to develop ... measures" for U.S. person

communications collected under Section 702, this should be an appropriate and important subject for continued Board oversight.

If confirmed to the Board, I would work with fellow Board Members to continue the Board's important oversight work on this matter and, if appropriate, to provide a public report, transparent to the greatest extent possible consistent with the demands of national security and the protection of classified information.

5. Pursuant to the USA Freedom Act of 2015, the National Security Agency (NSA) instituted the call data records (CDR) program in which it collects communications records that are within "two hops" of a target. In June 2018, it came to light that the NSA had received some records it was not authorized to receive and, to comply with the USA Freedom Act, deleted all the records it had received since 2015. To date, the NSA has failed to provide basic information about its improper access of CDRs, including how the issue occurred, how many people it affected, why it took the NSA years to discover the issue, and how the NSA plansto ensure that it will not reoccur.

Should you be confirmed, do you commit to investigating the issue to ensure proper oversight and to bolster public confidence?

If confirmed to the Board, I would work with fellow Members to set the Board's agenda. I would support examining this issue and would commit to being a resource to Congress as it considers reauthorization of the CDR component of the USA FREEDOM Act later this year.