

**AMENDMENT TO H.R. 8035**  
**OFFERED BY MR. BIGGS OF ARIZONA**

At the end of the bill add the following new section:

1 **SEC. 2. PROHIBITION ON WARRANTLESS QUERIES FOR THE**  
2 **COMMUNICATIONS OF UNITED STATES PER-**  
3 **SONS.**

4 (a) PROHIBITION ON WARRANTLESS QUERIES.—

5 (1) PROHIBITION.—Section 702(f) of the For-  
6 eign Intelligence Surveillance Act of 1978 (50  
7 U.S.C. 1881a(f)) is amended by inserting after para-  
8 graph (1) the following new paragraph (2):

9 “(2) PROHIBITION ON WARRANTLESS QUERIES  
10 FOR THE COMMUNICATIONS AND OTHER INFORMA-  
11 TION OF UNITED STATES PERSONS.—

12 “(A) IN GENERAL.—Except as provided in  
13 subparagraphs (B) and (C), no officer or em-  
14 ployee of the United States may conduct a cov-  
15 ered query of information acquired under this  
16 section in an effort to find the contents of com-  
17 munications or information of or about 1 or  
18 more United States persons.

19 “(B) EXCEPTIONS FOR CONCURRENT AU-  
20 THORIZATION, CONSENT, EMERGENCY SITUA-

1           TIONS, AND CERTAIN DEFENSIVE CYBERSECUR-  
2           RITY QUERIES.—

3                   “(i) IN GENERAL.—Subparagraph (A)  
4           shall not apply to a query related to a  
5           United States person if—

6                           “(I) such person is the subject of  
7                           an order or emergency authorization  
8                           authorizing electronic surveillance  
9                           under section 105 or a physical search  
10                          under section 304, or a warrant  
11                          issued pursuant to the Federal Rules  
12                          of Criminal Procedure by a court of  
13                          competent jurisdiction authorizing the  
14                          conduct of the query;

15                           “(II) the officer or employee car-  
16                          rying out the query has a reasonable  
17                          belief that—

18                                   “(aa) an emergency exists  
19                                   involving an imminent threat of  
20                                   death or serious bodily harm; and

21   “(bb) in order to prevent or  
22   mitigate this threat, the query  
23   must be conducted before author-  
24   ization pursuant to subelause (I)

1 can, with due diligence, be ob-  
2 tained;

3 “(III) such person or, if such  
4 person is incapable of providing con-  
5 sent, a third party legally authorized  
6 to consent on behalf of such person,  
7 has provided consent to the query on  
8 a case-by-case basis; or

9 “(IV)(aa) the query uses a  
10 known cybersecurity threat signature  
11 as a query term;

12 “(bb) the query is conducted, and  
13 the results of the query are used, for  
14 the sole purpose of identifying tar-  
15 geted recipients of malicious software  
16 and preventing or mitigating harm  
17 from such malicious software; and

18 “(cc) no additional contents of  
19 communications retrieved as a result  
20 of the query are accessed or reviewed.

21 “(ii) LIMITATIONS.—

22 “(I) USE IN SUBSEQUENT PRO-  
23 CEEDINGS AND INVESTIGATIONS.—No  
24 information retrieved pursuant to a  
25 query authorized by clause (i)(II) or

1 information derived from such query  
2 may be used, received in evidence, or  
3 otherwise disseminated in any inves-  
4 tigation, trial, hearing, or other pro-  
5 ceeding in or before any court, grand  
6 jury, department, office, agency, regu-  
7 latory body, legislative committee, or  
8 other authority of the United States,  
9 a State, or political subdivision there-  
10 of, except in proceedings or investiga-  
11 tions that arise from the threat that  
12 prompted the query.

13 “(II) ASSESSMENT OF COMPLI-  
14 ANCE.—Not less frequently than an-  
15 nually, the Attorney General shall  
16 submit to the congressional intel-  
17 ligence committees and the Commit-  
18 tees on the Judiciary of the Senate  
19 and the House of Representatives an  
20 assessment of the compliance with the  
21 requirements under subclause (I).

22 “(iii) REPORTING OF USE OF CERTAIN  
23 EXCEPTIONS.—

24 “(I) FISC.—The Foreign Intel-  
25 ligence Surveillance Court shall be

1 provided a description of each query  
2 that is conducted pursuant to an ex-  
3 ception described in subclause (II) or  
4 (IV) of clause (i) by not later than 90  
5 days after the date on which the  
6 query is conducted.

7 “(II) CONGRESS.—The congres-  
8 sional intelligence committees and the  
9 Committees on the Judiciary of the  
10 House of Representatives and of the  
11 Senate shall be provided a description  
12 of each query that is conducted pursu-  
13 ant to an exception described in sub-  
14 clause (II) of clause (i) by not later  
15 than 90 days after the date on which  
16 the query is conducted.

17 “(C) MATTERS RELATING TO EMERGENCY  
18 QUERIES.—

19 “(i) TREATMENT OF DENIALS.—In  
20 the event that a query for the contents of  
21 communications or information of or about  
22 1 or more United States persons is con-  
23 ducted pursuant to an emergency author-  
24 ization described in subparagraph (B)(i)(I)  
25 and the application for such emergency au-

1                   thorization is denied, or in any other case  
2                   in which the query has been conducted and  
3                   no order is issued approving the query—

4                   “**(I)** no information obtained or  
5                   evidence derived from such query may  
6                   be used, received in evidence, or other-  
7                   wise disseminated in any investiga-  
8                   tion, trial, hearing, or other pro-  
9                   ceeding in or before any court, grand  
10                  jury, department, office, agency, regu-  
11                  latory body, legislative committee, or  
12                  other authority of the United States,  
13                  a State, or political subdivision there-  
14                  of; and

15                  “**(II)** no information concerning  
16                  any United States person acquired  
17                  from such query may subsequently be  
18                  used or disclosed in any other manner  
19                  without the consent of such person,  
20                  except with the approval of the Attor-  
21                  ney General if the information indi-  
22                  cates a threat of death or serious bod-  
23                  ily harm to any person.

24                  “**(ii) ASSESSMENT OF COMPLIANCE.—**

25                  Not less frequently than annually, the At-

1           torney General shall submit to the congres-  
2           sional intelligence committees and the  
3           Committees on the Judiciary of the Senate  
4           and the House of Representatives an as-  
5           sessment of the compliance with the re-  
6           quirements under subclause (I).”.

7           (2) DEFINITIONS.—Such section 702(f) (50  
8           U.S.C. 1881a(f)) is further amended by striking  
9           paragraph (5)(B) and inserting the following:

10           “(B) The term ‘query’—

11           “(i) means the use of any technique,  
12           whether manual or automated, to detect or  
13           retrieve information obtained through ac-  
14           quisitions authorized under subsection (a)  
15           from within a system, collection, or assort-  
16           ment of information, or a subset thereof;  
17           and

18           “(ii) does not include the manual ob-  
19           servation of retrieved information.

20           “(C)(i) The term ‘covered query’ means a  
21           query that—

22           “(I) is conducted using 1 or more  
23           terms associated with 1 or more covered  
24           persons, including personally identifiable  
25           information;

1           “(II) is conducted in whole or in part  
2           for the purpose of detecting or retrieving  
3           information of, or concerning, 1 or more  
4           covered persons; or

5           “(III) is conducted with specific rea-  
6           son to believe the query will detect or re-  
7           trieve information of, or concerning, 1 or  
8           more covered persons.

9           “(ii) Whether a query is a covered query  
10          shall be determined without regard to whether  
11          the information subject to the query has al-  
12          ready been detected or retrieved using a method  
13          other than a query described in clause (i).

14          “(D) The term ‘covered person’ means a  
15          United States person.”.

16          (3) CONFORMING AMENDMENTS.—Such section  
17          702(f) (50 U.S.C. 1881a(f)) is further amended as  
18          follows:

19                 (A) In paragraph (3), by striking subpara-  
20                 graph (A).

21                 (B) By redesignating the second paragraph  
22                 (2) (relating to Prohibition on conduct of que-  
23                 ries that are solely designed to find and extract  
24                 evidence of a crime) as subparagraph (A) (and  
25                 redesignating the subordinate provisions accord-

1           ingly) and transferring such subparagraph so as  
2           to appear in paragraph (3) before subparagraph  
3           (B) of such paragraph.

4                   (C) In paragraph (3)(B)(ii), as so redesign-  
5           nated, by striking “under subparagraph (A)”  
6           and inserting “under clause (i)”.

7           (b) METADATA; DATASETS.—Such section 702(f) (50  
8 U.S.C. 1881a(f)) is further amended—

9                   (1) by redesignating paragraph (5) as para-  
10          graph (8) and moving such paragraph so as to ap-  
11          pear at the end;

12                   (2) by redesignating paragraph (6) as para-  
13          graph (5); and

14                   (3) by inserting before paragraph (8), as so re-  
15          designated, the following new paragraphs:

16                   “(6) PROHIBITION ON RESULTS OF METADATA  
17          QUERY AS A BASIS FOR ACCESS TO COMMUNICA-  
18          TIONS AND OTHER PROTECTED INFORMATION.—If a  
19          query of information acquired under this section is  
20          conducted in an effort to find communications  
21          metadata of 1 or more United States persons the re-  
22          sults of the query shall not be used as a basis for  
23          reviewing communications or information a query for  
24          which is otherwise prohibited under this section.

1           “(7) FEDERATED DATASETS.—The prohibitions  
2           and requirements in this section shall apply to que-  
3           ries of federated and mixed datasets that include in-  
4           formation acquired under this section, unless a  
5           mechanism exists to limit the query to information  
6           not acquired under this section.”.

