

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

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

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.—In accordance
4 with section 103(a)(3), subparagraph (A)
5 shall not apply to a query related to a
6 United States person if—

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

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

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

22 “(bb) in order to prevent or
23 mitigate this threat, the query
24 must be conducted before author-
25 ization pursuant to subclause (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.”.

7 **SEC. ____ . ON-CALL FISC JUDGE TO REVIEW APPLICATIONS**
8 **FOR ORDERS OR WARRANTS TO CONDUCT**
9 **UNITED STATES PERSON QUERIES.**

10 Section 103(a) of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1803(a)) is amended by add-
12 ing at the end the following new paragraph:

13 “(3)(A) In addition to the judges designated under
14 paragraph (1), the Chief Justice of the United States, in
15 consultation with the President, shall designate 1 judge
16 in regular active service from the United States district
17 courts or courts of appeals who may be called upon at
18 any hour of any day to receive, review, and issue an order
19 or warrant approving or denying an application described
20 in subparagraph (B).

21 “(B) An application described in this subparagraph
22 is an application by the United States Government to con-
23 duct a covered query of information acquired under sec-
24 tion 702 in an effort to find the contents of communica-

1 tions or information of or about 1 or more United States
2 persons.

3 “(C) An application described in subparagraph (B)
4 may take the form of—

5 “(i) an application for a new order under title
6 I or title III or for a new warrant issued pursuant
7 to the Federal Rules of Criminal Procedure; or

8 “(ii) an application justifying an exception spec-
9 ified in clause (i) of section 702(f)(2)(B).

10 “(D) The judge designated under subparagraph (A)
11 shall review an application justifying an exception speci-
12 fied in clause (i) of section 702(f)(2)(B) to determine
13 whether the exception is properly invoked. The judge shall
14 make such determination in writing.

15 “(E) In this paragraph, the term ‘covered query’ has
16 the meaning given that term in section 702(f).

17 “(F) The authority under this paragraph terminates
18 on the date that is two years after the date of the enact-
19 ment of this paragraph.”.

