

AMENDMENT TO THE AMENDMENT TO S. 1318
OFFERED BY MR. BIGGS OF ARIZONA

Page 1, after line 3, insert the following new section
(and redesignate the subsequent sections accordingly):

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.

1 “(B) EXCEPTIONS FOR CONCURRENT AU-
2 THORIZATION, CONSENT, EMERGENCY SITUA-
3 TIONS, AND CERTAIN DEFENSIVE CYBERSECU-
4 RITY QUERIES.—

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

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

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

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

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

1 ization pursuant to subclause (I)
2 can, with due diligence, be ob-
3 tained;

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

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

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

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

22 “(ii) LIMITATIONS.—

23 “(I) USE IN SUBSEQUENT PRO-
24 CEEDINGS AND INVESTIGATIONS.—No
25 information retrieved pursuant to a

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

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

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

1 “(I) FISC.—The Foreign Intel-
2 ligence Surveillance Court shall be
3 provided a description of each query
4 that is conducted pursuant to an ex-
5 ception described in subclause (II) or
6 (IV) of clause (i) by not later than 90
7 days after the date on which the
8 query is conducted.

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

19 “(C) MATTERS RELATING TO EMERGENCY
20 QUERIES.—

21 “(i) TREATMENT OF DENIALS.—In
22 the event that a query for the contents of
23 communications or information of or about
24 1 or more United States persons is con-
25 ducted pursuant to an emergency author-

1 ization described in subparagraph (B)(i)(I)
2 and the application for such emergency au-
3 thorization is denied, or in any other case
4 in which the query has been conducted and
5 no order is issued approving the query—

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

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

1 “(ii) ASSESSMENT OF COMPLIANCE.—
2 Not less frequently than annually, the At-
3 torney General shall submit to the congress-
4 sional intelligence committees and the
5 Committees on the Judiciary of the Senate
6 and the House of Representatives an as-
7 sessment of the compliance with the re-
8 quirements under subclause (I).”.

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

12 “(B) The term ‘query’—

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

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

22 “(C)(i) The term ‘covered query’ means a
23 query that—

24 “(I) is conducted using 1 or more
25 terms associated with 1 or more covered

1 persons, including personally identifiable
2 information;

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

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

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

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

18 (3) CONFORMING AMENDMENTS.—Such section
19 702(f) (50 U.S.C. 1881a(f)) is further amended as
20 follows:

21 (A) In paragraph (3), by striking subpara-
22 graph (A).

23 (B) By redesignating the second paragraph
24 (2) (relating to Prohibition on conduct of que-
25 ries that are solely designed to find and extract

1 evidence of a crime) as subparagraph (A) (and
2 redesignating the subordinate provisions accord-
3 ingly) and transferring such subparagraph so as
4 to appear in paragraph (3) before subparagraph
5 (B) of such paragraph.

6 (C) In paragraph (3)(A)(ii), as so redesignig-
7 nated, by striking “under subparagraph (A)”
8 and inserting “under clause (i)”.

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

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

14 (2) by redesignating paragraph (6) as para-
15 graph (5); and

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

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

1 reviewing communications or information a query for
2 which is otherwise prohibited under this section.

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

Page 8, strike lines 1 through 7 (and redesignate
the subsequent sections accordingly).

