

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

Page 14, strike line 15 and all that follows through
line 17 on page 15. and insert the following:

1 (a) PROHIBITION ON WARRANTLESS QUERIES FOR
2 THE COMMUNICATIONS OF UNITED STATES PERSONS.—
3 Section 702(f) of the Foreign Intelligence Surveillance Act
4 of 1978 (50 U.S.C. 1881a(f))—

5 (1) in paragraph (1)(A) by inserting “and the
6 limitations and requirements in paragraph (2)” after
7 “Constitution of the United States”;

8 (2) by redesignating paragraph (3) as para-
9 graph (7); and

10 (3) by striking paragraph (2) and inserting the
11 following:

12 “(2) PROHIBITION ON WARRANTLESS QUERIES
13 FOR THE COMMUNICATIONS AND OTHER INFORMA-
14 TION OF UNITED STATES PERSONS.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraphs (B) and (C), no officer or em-
17 ployee of the United States may conduct a
18 query of information acquired under this sec-
19 tion for the purpose of finding communications

1 or information the compelled production of
2 which would require a probable cause warrant
3 if sought for law enforcement purposes in the
4 United States, of a United States person.

5 “(B) EXCEPTIONS FOR CONCURRENT AU-
6 THORIZATION, CONSENT, EMERGENCY SITUA-
7 TIONS, AND CERTAIN DEFENSIVE CYBERSECU-
8 RITY QUERIES.—

9 “(i) IN GENERAL.—Subparagraph (A)
10 shall not apply to a query related to a
11 United States person if—

12 “(I) such person is the subject of
13 an order or emergency authorization
14 authorizing electronic surveillance or
15 physical search under section 105 (50
16 U.S.C. 1805) or section 304 (50
17 U.S.C. 1824) of this Act, or a war-
18 rant issued pursuant to the Federal
19 Rules of Criminal Procedure by a
20 court of competent jurisdiction;

21 “(II)(aa) the officer or employee
22 conducting the query has a reasonable
23 belief that—

1 “(AA) an emergency exists
2 involving an imminent threat of
3 death or serious bodily harm; and

4 “(BB) in order to prevent or
5 mitigate the threat described in
6 subitem (AA), the query must be
7 conducted before authorization
8 described in subclause (I) can,
9 with due diligence, be obtained;
10 and

11 “(bb) a description of the query
12 is provided to the Foreign Intelligence
13 Surveillance Court and the congress-
14 sional intelligence committees and the
15 Committees on the Judiciary of the
16 House of Representatives and of the
17 Senate in a timely manner;

18 “(III) such person or, if such
19 person is incapable of providing con-
20 sent, a third party legally authorized
21 to consent on behalf of such person,
22 has provided consent to the query on
23 a case-by-case basis; or

1 “(IV)(aa) the query uses a
2 known cybersecurity threat signature
3 as a query term;

4 “(bb) the query is conducted, and
5 the results of the query are used, for
6 the sole purpose of identifying tar-
7 geted recipients of malicious software
8 and preventing or mitigating harm
9 from such malicious software;

10 “(cc) no additional contents of
11 communications acquired as a result
12 of the query are accessed or reviewed;
13 and

14 “(dd) each such query is reported
15 to the Foreign Intelligence Surveil-
16 lance Court.

17 “(ii) LIMITATIONS.—

18 “(I) USE IN SUBSEQUENT PRO-
19 CEEDINGS.—No information acquired
20 pursuant to a query authorized under
21 clause (i)(II) or information derived
22 from the information acquired pursu-
23 ant to such query may be used, re-
24 ceived in evidence, or otherwise dis-
25 seminated in any trial, hearing, or

1 other proceeding in or before any
2 court, grand jury, department, office,
3 agency, regulatory body, legislative
4 committee, or other authority of the
5 United States, a State, or political
6 subdivision thereof, except in a pro-
7 ceeding that arises from the threat
8 that prompted the query.

9 “(II) ASSESSMENT OF COMPLI-
10 ANCE.—Not less frequently than an-
11 nually, the Attorney General shall as-
12 sess compliance with the requirements
13 under subclause (I).

14 “(C) MATTERS RELATING TO EMERGENCY
15 QUERIES.—

16 “(i) TREATMENT OF DENIALS.—In
17 the event that a query for communications
18 or information, the compelled production of
19 which would require a probable cause war-
20 rant if sought for law enforcement pur-
21 poses in the United States, of a United
22 States person is conducted pursuant to an
23 emergency authorization described in sub-
24 paragraph (B)(i)(I) and the subsequent
25 application for such surveillance pursuant

1 to section 105(e) (50 U.S.C. 1805(e)) or
2 section 304(e) (50 U.S.C. 1824(e)) of this
3 Act is denied, or in any other case in which
4 the query has been conducted in violation
5 of this paragraph—

6 “(I) no information acquired or
7 evidence derived from such query may
8 be used, received in evidence, or other-
9 wise disseminated in any trial, hear-
10 ing, or other proceeding in or before
11 any court, grand jury, department, of-
12 fice, agency, regulatory body, legisla-
13 tive committee, or other authority of
14 the United States, a State, or political
15 subdivision thereof; and

16 “(II) no information concerning
17 any United States person acquired
18 from such query may subsequently be
19 used or disclosed in any other manner
20 without the consent of such person,
21 except in the case that the Attorney
22 General approves the use or disclosure
23 of such information in order to pre-
24 vent death or serious bodily harm to
25 any person.

1 “(ii) ASSESSMENT OF COMPLIANCE.—

2 Not less frequently than annually, the At-
3 torney General shall assess compliance
4 with the requirements under clause (i).

5 “(D) FOREIGN INTELLIGENCE PURPOSE.—

6 Except as provided in subparagraph (B)(i)(II)-
7 (IV), no officer or employee of the United
8 States may conduct a query of information ac-
9 quired under this section for the purpose of
10 finding information of a United States person
11 unless the query is reasonably likely to retrieve
12 foreign intelligence information.

13 “(3) DOCUMENTATION.—No officer or employee
14 of the United States may conduct a query of infor-
15 mation acquired under this section for the purpose
16 of finding information of or about a United States
17 person, unless an electronic record is created that in-
18 cludes the following:

19 “(A) Each term used for the conduct of
20 the query.

21 “(B) The date of the query.

22 “(C) The identifier of the officer or em-
23 ployee.

1 “(D) A statement of facts showing that the
2 use of each query term included under subpara-
3 graph (A)—

4 “(i) falls within an exception specified
5 in paragraph (2)(B)(i); and

6 “(ii) is—

7 “(I) reasonably likely to retrieve
8 foreign intelligence information; or

9 “(II) in furtherance of an excep-
10 tion described in subclauses (II)
11 through (IV) of paragraph (2)(B)(i).

12 “(4) QUERY RECORD SYSTEM.—The head of
13 each agency that conducts queries shall ensure that
14 a system, mechanism, or business practice is in place
15 to maintain the record described in paragraph (3).
16 Not later than 90 days after enactment of this para-
17 graph, the head of each agency shall report to Con-
18 gress on its compliance with this procedure.

19 “(5) PROHIBITION ON RESULTS OF METADATA
20 QUERY AS A BASIS FOR ACCESS TO COMMUNICA-
21 TIONS AND OTHER PROTECTED INFORMATION.—If a
22 query of information acquired under this section is
23 conducted for the purpose of finding communica-
24 tions metadata of a United States person and the
25 query returns such metadata, the communications

1 content associated with the metadata may not be re-
2 viewed except as provided under paragraph (2)(B)(i)
3 of this subsection.

4 “(6) FEDERATED DATASETS.—The prohibitions
5 and requirements under this subsection shall apply
6 to queries of federated and mixed datasets that in-
7 clude information acquired under this section, unless
8 each agency has established a system, mechanism, or
9 business practice to limit the query to information
10 not acquired under this section.”

