

## AMENDMENT TO H.R. 8035

### OFFERED BY MR. MASSIE OF KENTUCKY

At the end of the bill, add the following:

#### **SEC. 2. PROTECTIONS RELATED TO WARRANTLESS QUERIES FOR THE COMMUNICATIONS OF UNITED STATES PERSONS AND PERSONS LOCATED IN THE UNITED STATES.**

(a) IN GENERAL.—Section 702(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(f)) is amended—

(1) in paragraph (1)(A), by inserting “and the limitations and requirements in this subsection” after “Constitution of the United States”;

(2) in paragraph (5)—

(A) in subparagraph (B), by striking “means” and all that follows through the period and inserting the following: “means the use of 1 or more terms, whether conducted through manual or automated means, to retrieve any information acquired under this section, including retrieval from a subset of such information, whether that subset was created by retrieval through a query or other means.”;

(B) by redesignating subparagraph (B) as subparagraph (D); and

(C) by inserting after subparagraph (A) the following:

“(B) The term ‘covered information’ means—

“(i) communications content; and

“(ii) information, the compelled disclosure of which would require a probable cause warrant if sought for law enforcement purposes inside the United States.

“(C) The term ‘covered query’ means a query that is conducted—

“(i) using a term associated with 1 or more covered persons; or

“(ii) for a significant purpose of retrieving information of or concerning 1 or more covered persons.”; and

(3) by adding at the end the following:

“(7) PROHIBITION ON WARRANTLESS QUERIES FOR THE COMMUNICATIONS AND OTHER INFORMATION OF UNITED STATES PERSONS AND PERSONS LOCATED IN THE UNITED STATES.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), no officer or employee of the Federal Government may access covered information returned in response to a covered query.

“(B) EXCEPTIONS FOR CONCURRENT AUTHORIZATION, CONSENT, EMERGENCY SITUATIONS, AND CERTAIN DEFENSIVE CYBERSECURITY QUERIES.—Subparagraph (A) shall not apply if—

“(i) the covered person to whom the covered query relates is the subject of an order or emergency authorization authorizing electronic surveillance or physical search under section 105 or 304 of this Act, or a warrant issued pursuant to the Federal Rules of Criminal Procedure by a court of competent jurisdiction, if—

“(I) such order, authorization, or warrant covers the period of the covered query; and

“(II) the covered query is conducted and covered information is accessed in compliance with all use, dissemination, querying, retention, and other minimization limitations required by the order, authorization, or warrant;

“(ii)(I) the officer or employee accessing the covered information has a reasonable belief that—

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

“(bb) in order to prevent or mitigate the threat described in item (aa), the covered information must be accessed before authorization described in clause (i) can, with due diligence, be obtained; and

“(II) not later than 14 days after the covered information is accessed, a description of the circumstances justifying the accessing of the covered information is provided to the Foreign Intelligence Surveillance Court and the appropriate committees of Congress;

“(iii) the covered person to whom the covered query relates or, if such person is incapable of providing consent, a third party legally authorized to consent on behalf of such person, has provided consent for the access on a case-by-case basis; or

“(iv) (I) the covered information is accessed and used for defensive cybersecurity purposes, including the protection of a covered person from cybersecurity attack;

“(II) other than for such defensive cybersecurity purposes, no covered information is accessed or reviewed; and

“(III) not later than 14 days after the covered information is accessed, a description of the circumstances justifying the accessing of the covered information is provided to the Foreign Intelligence Surveillance Court and the appropriate committees of Congress.

“(C) MATTERS RELATING TO EMERGENCY QUERIES.—

“(i) TREATMENT OF DENIALS.—If covered information is accessed pursuant to an emergency authorization described in subparagraph (B)(i) and the subsequent application to authorize electronic surveillance, a physical search, or an acquisition pursuant to section 105(e) or section

304(e) of this Act is denied, or in any other case in which covered information is accessed in violation of this paragraph—

“(I) no covered information accessed, or information or evidence derived from such access may be used, received in evidence, or otherwise disseminated in any investigation, trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof; and

“(II) no covered information accessed may subsequently be used or disclosed in any other manner without the consent of such person, except if the Attorney General personally approves the use or disclosure of such information in order to prevent the death of or serious bodily harm to any person and not later than 14 days of such approval, a description of the circumstances justifying the approval is provided to the Foreign Intelligence Surveillance Court and the appropriate committees of Congress.

“(ii) ASSESSMENT OF COMPLIANCE.—Not less frequently than once each year, the Attorney General shall assess compliance with the requirements under clause (i).

“(D) FOREIGN INTELLIGENCE PURPOSE REQUIRED FOR QUERIES.—

“(i) IN GENERAL.—Except as provided in clause (ii), no officer or employee of the Federal Government may conduct a query unless the query is—

“(I) reasonably likely to retrieve foreign intelligence information; and

“(II) is made with a significant foreign intelligence purpose.

“(ii) EXCEPTIONS.—An officer or employee of the Federal Government is permitted to conduct a query if an exception described in clauses (i) and (ii) of paragraph (2)(B) applies.

“(E) DOCUMENTATION.—No officer or employee of the Federal Government may conduct a query, or access covered information returned in response to a covered query, unless an electronic record is created that includes—

“(i) for each query—

“(I) each term used for the conduct of the query;

“(II) the date of the query;

“(III) the identifier of the officer or employee who conducted the query; and

“(IV) a statement of facts justifying that the query is reasonably likely to retrieve foreign intelligence information and the significant foreign intelligence purpose for the query or, if an exception under subparagraph (D)(ii) applies, a description of the basis for such exception; and

“(ii) for each access—

“(I) the date of the access;

“(II) the identifier of the officer or employee who did the particular access; and

“(III) a statement of facts showing that an access is authorized by an exception under subparagraph (B).

“(F) QUERY RECORD SYSTEM.—Each head of an agency who is authorized to conduct a covered query shall ensure that a system, mechanism, or business practice is in place to maintain the records described in subparagraph (E), including ensuring that any queries or accesses to covered information returned in response to covered queries, that are conducted by automated means are attributed to the officer or employee who was the proximate cause of such query or access.”.

(b) REPORT ON COMPLIANCE WITH QUERY RECORD SYSTEM REQUIREMENT.—Not later than 90 days after the date of enactment of this Act, each head of a Federal agency described in section 702(f)(7)(F) of such Act, as added by subsection (a), shall submit to the appropriate committees of Congress a report on the compliance of the Federal agency with the requirement of such section.

(c) CONFORMING AMENDMENTS.—Section 702(f) of such Act, as amended by subsection (a), is further amended—

(1) in the headings for subparagraph (B) of paragraph (1), subparagraph (A) of paragraph (2), and subparagraph (A) of paragraph (3), by striking “united states person” each place it appears and inserting “covered person”;

(2) in paragraph (6)—

(A) in the heading, by striking “NON-UNITED STATES PERSONS” and inserting “NONCOVERED PERSONS”; and

(B) by striking “non-United States persons” and inserting “noncovered persons”; and

(3) in paragraphs (1) through (6), by striking “United States person” each place it appears and inserting “covered person”.