

AMENDMENT TO H.R. 8035
OFFERED BY MR. HIMES OF CONNECTICUT

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

1 **SEC. 2. JUDICIAL REVIEW OF CERTAIN UNITED STATES**

2 **PERSON QUERIES.**

3 (a) JUDICIAL REVIEW.—

4 (1) FOREIGN INTELLIGENCE SURVEILLANCE
5 COURT REVIEW.—Section 702 of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1881a)
7 is amended—

8 (A) in subsection (f)—

9 (i) by redesignating paragraph (5) as
10 paragraph (7) and transferring such para-
11 graph so as to appear after paragraph (6);

12 (ii) by redesignating paragraph (4) as
13 paragraph (5); and

14 (iii) by inserting after paragraph (3)
15 the following new paragraph:

16 “(4) REQUIREMENT FOR COURT ORDER FOR
17 FBI ACCESS TO CERTAIN UNITED STATES PERSON
18 QUERY RESULTS.—

19 “(A) IN GENERAL.—Federal Bureau of In-
20 vestigation personnel may not access informa-

1 tion retrieved pursuant to a query described in
2 subsection (j)(4)(B) unless such access is—

3 “(i) approved by the Foreign Intel-
4 ligence Surveillance Court under sub-
5 section (j)(4); or

6 “(ii) in accordance with subparagraph
7 (B).

8 “(B) EXCEPTION TO ORDER REQUIRE-
9 MENTS.—The requirements of subparagraph
10 (A)(i) shall not apply with respect to accessing
11 information retrieved pursuant to a query de-
12 scribed in subsection (j)(4)(B) if—

13 “(i) a Federal Bureau of Investigation
14 attorney who is authorized to access
15 unminimized information obtained through
16 acquisitions authorized under subsection
17 (a) determines that there is a reasonable
18 belief that the information retrieved from
19 such query may assist in mitigating or
20 eliminating a threat to life, a threat of se-
21 rious bodily harm, a significant and time
22 sensitive threat to the national security of
23 the United States, or a threat of signifi-
24 cant malicious cyber activity;

1 “(ii) the United States person associ-
2 ated with the query is the target of an
3 order under section 105, section 304, sec-
4 tion 703, or section 704;

5 “(iii) the United States person associ-
6 ated with the query is the target of an
7 emergency authorization under section 105
8 or section 304; or

9 “(iv) the United States person associ-
10 ated with the query consents to Federal
11 Bureau of Investigation access to such in-
12 formation.

13 “(C) RELATIONSHIP TO OTHER REQUIRE-
14 MENTS.—The requirements of this paragraph
15 are in addition to the requirements of para-
16 graph (3).

17 “(D) MONTHLY REPORT TO FOREIGN IN-
18 TELLIGENCE SURVEILLANCE COURT.—As soon
19 as practicable but in no event later than the
20 date that is 14 days after the last day of each
21 calendar month, the Director of the Federal
22 Bureau of Investigation shall submit to the
23 Court a report that—

24 “(i) identifies each query described in
25 subsection (j)(4)(B) conducted by the Fed-

1 eral Bureau of Investigation during such
2 calendar month that was not subject to the
3 requirements of subparagraph (A) due to
4 the application of subparagraph (B);

5 “(ii) a description of the query terms
6 used for each such query and the reasons
7 such query was not subject to the require-
8 ments of subparagraph (A) due to the ap-
9 plication of subparagraph (B); and

10 “(iii) if such query was not subject to
11 the requirements of subparagraph (A) due
12 to the application of clause (i) of subpara-
13 graph (B), an identification of the type of
14 threat the information retrieved is intended
15 to assist in mitigating or eliminating.

16 “(E) FOREIGN INTELLIGENCE SURVEIL-
17 LANCE COURT REVIEW OF REPORTS.—The For-
18 eign Intelligence Surveillance Court shall review
19 each report submitted under subparagraph (D)
20 and may take any action the Court considers
21 appropriate to address the potential or actual
22 misuse of the application of subparagraph (B)
23 to queries described in subsection (j)(4)(B).”;
24 and

25 (B) in subsection (j)—

1 (i) by redesignating paragraphs (4)
2 and (5) as paragraphs (5) and (6), respec-
3 tively; and

4 (ii) by inserting after paragraph (3)
5 the following new paragraph:

6 “(4) COURT ORDER FOR FBI ACCESS TO CER-
7 TAIN UNITED STATES PERSON OR ORGANIZATION
8 QUERY RESULTS.—

9 “(A) APPLICATIONS FOR APPROVAL.—An
10 application by the Federal Bureau of Investiga-
11 tion for approval to access information retrieved
12 pursuant to a query described in subparagraph
13 (B) shall be made by a Federal officer in writ-
14 ing upon oath or affirmation to the Court and
15 shall be made in such manner, be submitted in
16 such form, and contain such information as de-
17 termined by the Court.

18 “(B) QUERY DESCRIBED.—A query de-
19 scribed in this subparagraph is a query made
20 using a query term that is associated with a
21 specific—

22 “(i) United States person;

23 “(ii) political organization substan-
24 tially composed of United States persons;

25 or

1 “(iii) organization described in section
2 501(c)(3) or (c)(4) of the Internal Revenue
3 Code of 1986.

4 “(C) JURISDICTION.—The Court shall
5 have jurisdiction to review applications sub-
6 mitted in accordance with subparagraph (A).

7 “(D) TIME OF REVIEW.—Subject to sub-
8 section (k)(2), the Court shall review each ap-
9 plication submitted in accordance with subpara-
10 graph (A) as expeditiously as possible con-
11 sistent with subsection (k)(1), but in no event
12 later than 5 business days after the date on
13 which such application is submitted.

14 “(E) STANDARD OF REVIEW; ISSUANCE OF
15 ORDER.—If in reviewing an application sub-
16 mitted in accordance with subparagraph (A) the
17 Court finds that the information retrieved pur-
18 suant to the query or queries that are the sub-
19 ject of such application is reasonably likely to
20 include foreign intelligence information, the
21 Court shall issue an order approving such appli-
22 cation. If the Court does not so find, the Court
23 shall issue an order denying such application.

24 “(F) REPEAT QUERIES.—The Court may
25 include in an order approving an application

1 under this paragraph authorization for Federal
2 Bureau of Investigation personnel to conduct a
3 query described in subparagraph (B) and access
4 the information retrieved pursuant to such
5 query for a specified period of time following
6 the issuance of such order if such query is
7 made—

8 “(i) using a term that is the subject
9 of the application with respect to which
10 such order is issued; or

11 “(ii) using a term that a Federal Bu-
12 reau of Investigation attorney reasonably
13 determines is associated with the same spe-
14 cific United States person or organization
15 that is associated with a term that is the
16 subject of such application.

17 “(G) PERIOD OF APPLICATION OF
18 ORDER.—An order approving an application
19 under this paragraph may authorize Federal
20 Bureau of Investigation personnel to conduct a
21 query described in subparagraph (B) and access
22 the information retrieved pursuant to such
23 query for a period of not more than one year.

24 “(H) DEFINITIONS.—In this paragraph:

1 “(i) CONTENTS; QUERY.—The terms
2 ‘contents’ and ‘query’ have the meaning
3 given the terms in paragraph (7) of sub-
4 section (f).

5 “(ii) UNITED STATES PERSON.—The
6 term ‘United States person’ has the mean-
7 ing given the term in section 603(g).”.

8 (2) CLARIFICATION OF SCOPE OF FOREIGN IN-
9 TELLIGENCE SURVEILLANCE COURT OF REVIEW JU-
10 RISDICTION.—Paragraph (5)(A) of subsection (j) of
11 such section 702, as redesignated by paragraph
12 (1)(A) of this subsection, is amended—

13 (A) in the first sentence, by striking “this
14 subsection” and inserting “paragraph (3)”; and

15 (B) in the third sentence, by inserting
16 “under paragraph (3)” before the period.

17 (b) CONGRESSIONAL OVERSIGHT.—Section 707 of
18 such Act (50 U.S.C. 1881f) is amended by adding at the
19 end the following new subsection:

20 “(c) ADDITIONAL SEMIANNUAL REPORT ON UNITED
21 STATES PERSON QUERIES.—

22 “(1) REPORT TO CONGRESS.—Not later than
23 January 31 and July 31 of each year, the Assistant
24 Attorney General for National Security and the Civil
25 Liberties Protection Officer of the Office of the Di-

1 rector of National Intelligence shall jointly submit to
2 the congressional intelligence committees and the
3 Committees on the Judiciary of the House of Rep-
4 resentatives and the Senate a report on Federal Bu-
5 reau of Investigation queries of United States per-
6 sons that were conducted during the half-year period
7 ending on the December 31 and June 30, respec-
8 tively, that immediately precede the date on which
9 such report is required to be submitted. Such report
10 shall include—

11 “(A) an assessment of the implementation
12 of the requirements of subsections (f)(4) and
13 (j)(4) of section 702;

14 “(B) an identification of the number of
15 queries (as defined in section 702(f)(7)) con-
16 ducted by the Federal Bureau of Investigation
17 using a query term that the Federal Bureau of
18 Investigation personnel conducting the query
19 reasonably believe is associated with a United
20 States person (as defined in section 101);

21 “(C) an identification of the number of
22 queries described in section 702(j)(4)(B) con-
23 ducted by the Federal Bureau of Investigation;

24 “(D) an identification of the number of
25 such queries that were not subject to the re-

1 requirements of subparagraph (A) of section
2 702(f)(4) due to the application of subpara-
3 graph (B) of such section, disaggregated by—

4 “(i) the clause of such subparagraph
5 (B) that applied to each of those queries;
6 and

7 “(ii) with respect to the threats de-
8 scribed in clause (i) of such subparagraph,
9 by such threats; and

10 “(E) the number of applications submitted
11 to the Foreign Intelligence Surveillance Court
12 under section 702(j)(4)(A) that were—

13 “(i) approved;

14 “(ii) denied and not subsequently ap-
15 proved after resubmission of an application
16 or modified application; and

17 “(iii) denied and subsequently ap-
18 proved after resubmission of an application
19 or modified application.

20 “(2) PUBLIC AVAILABILITY.—Not later than 60
21 days after the date on which the Assistant Attorney
22 General and the Civil Liberties Protection Officer
23 submit a report required under paragraph (1), the
24 Assistant Attorney General and the Civil Liberties

1 Protection Officer shall make publicly available an
2 unclassified version of such report.”.

3 (c) APPLICABILITY DATE.—

4 (1) IN GENERAL.—The amendments made by
5 subsections (a) and (b) shall apply to queries de-
6 scribed in section 702(j)(4)(B) of such Act, as added
7 by subsection (a), that are conducted on or after the
8 first date on which the Foreign Intelligence Surveil-
9 lance Court issues an order approving a certification
10 under section 702(j)(3) of such Act (50 U.S.C.
11 1881a(j)(3)) that occurs after the date of the enact-
12 ment of this Act.

13 (2) NOTIFICATION OF APPLICABILITY DATE.—
14 Not later than seven days after the applicability date
15 described in paragraph (1), the Attorney General
16 shall submit to the Permanent Select Committee on
17 Intelligence of the House of Representatives, the Se-
18 lect Committee on Intelligence of the Senate, and
19 the Committees on the Judiciary of the House of
20 Representatives and the Senate notice of the date on
21 which the amendments made by subsections (a) and
22 (b) began to apply.

