AMENDMENT TO H.R. 6395, AS REPORTED
OFFERED BY MR. MALINOWSKI OF NEW JERSEY

At the appropriate place in title XII, insert the following:

SEC. 12. AUTHORITY TO CONTROL ITEMS AND SERVICES
THAT INCLUDE FACIAL RECOGNITION TECHNOLOGIES.

Section 1754 of the Export Control Reform Act of 2018 (50 U.S.C. 4813) is amended by adding at the end the following:

“(g) AUTHORITY TO CONTROL ITEMS AND SERVICES THAT INCLUDE FACIAL RECOGNITION TECHNOLOGIES.—

“(1) LICENSE REQUIREMENT.—

“(A) IN GENERAL.—The Secretary shall issue regulations to require a license and impose a policy of presumption of denial for any request for the export, reexport, or in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons, or the provision of services by any United States person, to covered foreign countries if, at the time of export, reexport, or in-country transfer—
“(i) the item or service includes facial recognition technology; and

“(ii) the item or service includes remote or en-suite access to a database of photographs of United States persons.

“(B) NOTICE AND COMMENT.—The regulations required under subparagraph (A) shall include a notice and comment period before a final rule is published.

“(2) CONTROL OF ITEMS AND SERVICES.—

“(A) MULTILATERAL CONTROLS.—

“(i) IN GENERAL.—The Secretary of State, in consultation with the Secretary and the heads of other Federal agencies, as appropriate, shall propose that any item or service controlled pursuant to paragraph (1) be added to the lists of items and services controlled by the relevant multilateral export control regimes.

“(ii) WASSENAAR ARRANGEMENT.—If the Secretary of State proposes to a multilateral export control regime under clause (i) to add an item or service controlled pursuant to paragraph (1) to the control list of that regime and the regime and the
item or service is not within the charter or other organizing document of the regime, the Secretary of State shall engage in robust efforts to seek to convince the members and leadership of the Wassenaar Arrangement to modify the Wassenaar Arrangement’s charter so that the item or service is identified on the Wassenaar Arrangement’s List of Dual-Use Goods and Technologies and Munitions List, agreed to on July 12, 1996, or any subsequent revision of those Lists.

“(iii) OTHER NATO MEMBER STATES AND CLOSE ALLIES.—Unless and until items and services controlled pursuant to paragraph (1) are controlled in accordance with clause (ii), as the case may be, the Secretary of State shall engage in robust efforts to urge the governments of other member states of the North Atlantic Treaty Organization (NATO) and other close allies of the United States to revise their domestic laws as necessary to unilaterally adopt similar controls over such items and services.
“(B) UNILATERAL CONTROLS.—If the Secretary of State proposes to a multilateral export control regime under subparagraph (A) to add an item or service controlled pursuant to paragraph (1) to the control list of that regime and that regime does not add the item or service to the control list during the 3-year period beginning on the date of the proposal, the Secretary of State, in coordination with the Secretary, shall determine whether the national security objectives of the United States of regulating such items or services warrants continued unilateral controls with respect to the item or service.

“(3) DEFINITIONS.—In this subsection:

“(A) COVERED FOREIGN COUNTRY.—The term ‘covered foreign country’ means any country the government of which is listed in the annual human rights report required under section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)) for systematic acts of political repression, including arbitrary arrest or detention, torture, extrajudicial or politically motivated killing, or other gross violations of human rights.
“(B) FACIAL RECOGNITION.—The term ‘facial recognition’ means an automated or semi-automated process that assists in identifying or verifying an individual based on the physical characteristics of an individual’s face geometry.

“(C) FACIAL RECOGNITION TECHNOLOGY.—The term ‘facial recognition technology’ means any computer software or application that performs facial recognition.”