

118TH CONGRESS
1ST SESSION

H. R. 5440

To amend the Foreign Assistance Act of 1961 to prohibit assistance to foreign governments that engage in the use of foreign commercial spyware to target United States persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2023

Mr. HIMES (for himself, Mr. STEWART, Mr. CASTRO of Texas, and Mr. CRAWFORD) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To amend the Foreign Assistance Act of 1961 to prohibit assistance to foreign governments that engage in the use of foreign commercial spyware to target United States persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Americans
5 from Foreign Commercial Spyware Act”.

1 **SEC. 2. PROHIBITION ON ASSISTANCE TO FOREIGN GOV-**
2 **ERNMENTS THAT ENGAGE IN THE USE OF**
3 **FOREIGN COMMERCIAL SPYWARE TO TAR-**
4 **GET UNITED STATES PERSONS.**

5 Chapter 1 of part III (22 U.S.C. 2351 et seq.) of
6 the Foreign Assistance Act of 1961 is amended by adding
7 at the end the following new section:

8 **“SEC. 620N. PROHIBITION ON ASSISTANCE TO FOREIGN**
9 **GOVERNMENTS THAT ENGAGE IN THE USE**
10 **OF FOREIGN COMMERCIAL SPYWARE TO TAR-**
11 **GET UNITED STATES PERSONS.**

12 “(a) IN GENERAL.—Except as otherwise provided in
13 this section, no assistance may be provided under this Act
14 to the central government of a country with respect to
15 which the President makes a determination based on cred-
16 ible information and in accordance with subsection (c) that
17 the government engages in the use of foreign commercial
18 spyware to target United States persons.

19 “(b) WAIVER.—If the President certifies in writing
20 to the appropriate congressional committees that extraor-
21 dinary circumstances or national security priorities exist
22 warranting provision to a central government of a country
23 of assistance otherwise prohibited pursuant to subsection
24 (a), the United States may provide to such government
25 such assistance.

1 “(c) DETERMINATION.—In making a determination
2 under subsection (a) with respect to the central govern-
3 ment of a country, the President shall give particular con-
4 sideration to whether the government—

5 “(1) has a record of acquiring commercial for-
6 eign commercial spyware;

7 “(2) has used foreign commercial spyware
8 against its own citizens, particularly journalists, po-
9 litical opponents, or activists; and

10 “(3) has failed to undertake serious and sus-
11 tained efforts to combat the use of foreign commer-
12 cial spyware in undemocratic ways.

13 “(d) EXCEPTION.—The prohibition under subsection
14 (a) does not apply to military assistance.

15 “(e) TERMINATION.—The prohibition under sub-
16 section (a) with respect to the central government of a
17 country shall terminate 1 year after the President makes
18 a determination that the government no longer engages
19 in the use of foreign commercial spyware to target United
20 States persons.

21 “(f) REPORT.—The President shall annually submit
22 to the Committee on Foreign Affairs and the Permanent
23 Select Committee on Intelligence of the House of Rep-
24 resentatives and the Committee on Foreign Relations and
25 the Select Committee on Intelligence of the Senate as part

1 of the presentation materials for assistance programs pro-
2 posed for each fiscal year, a full and complete classified
3 report, prepared in consultation with the intelligence com-
4 munity’s classified annex, required under section 1102A
5 of the National Security Act of 1947 (50 U.S.C. 3232a),
6 with respect to governmental use of foreign commercial
7 spyware to target United States persons in each country
8 proposed as a recipient of assistance under this Act.

9 “(g) DEFINITIONS.—In this section:

10 “(1) FOREIGN COMMERCIAL SPYWARE.—The
11 term ‘foreign commercial spyware’ means a tool (or
12 set of tools) sold, leased, marketed, or otherwise pro-
13 vided as an end-to-end system originally developed
14 or owned by a foreign spyware company that pro-
15 vides a purchaser remote access to information
16 stored on or transiting through an electronic device
17 connected to the internet, including end-to-end sys-
18 tems that—

19 “(A) allow malign actors to infect mobile
20 and internet-connected devices with malware
21 over both wireless internet and cellular data
22 connections, including without any action re-
23 quired by the user of the device;

24 “(B) can record telephone calls and other
25 audio;

1 “(C) track the location of the device; or

2 “(D) access and retrieve information on
3 the device, including text messages, files, e-
4 mails, transcripts of chats, contacts, photos,
5 and browsing history.

6 “(2) INTELLIGENCE COMMUNITY.—The term
7 ‘intelligence community’ has the meaning given such
8 term in section 3(4) of the National Security Act of
9 1947 (50 U.S.C. 3003(4)).

10 “(3) UNITED STATES PERSON.—The term
11 ‘United States person’ has the meaning given such
12 term in section 560.314 of title 31, Code of Federal
13 Regulations.”.

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