

search has been disclosed or used in violation of section 1827 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

- (1) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;
- (2) punitive damages; and
- (3) reasonable attorney's fees and other investigative and litigation costs reasonably incurred.

(Pub. L. 95-511, title III, §308, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

§ 1829. Authorization during time of war

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title III, §309, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

SUBCHAPTER III—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

§ 1841. Definitions

As used in this subchapter:

- (1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 1801 of this title.
- (2) The terms “pen register” and “trap and trace device” have the meanings given such terms in section 3127 of title 18.
- (3) The term “aggrieved person” means any person—

(A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by this subchapter; or

(B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by this subchapter to capture incoming electronic or other communications impulses.

(Pub. L. 95-511, title IV, §401, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2404.)

PRIOR PROVISIONS

A prior section 401 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

§ 1842. Pen registers and trap and trace devices for foreign intelligence and international terrorism investigations

(a) Application for authorization or approval

(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an applica-

tion for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(2) The authority under paragraph (1) is in addition to the authority under subchapter I of this chapter to conduct the electronic surveillance referred to in that paragraph.

(b) Form of application; recipient

Each application under this section shall be in writing under oath or affirmation to—

(1) a judge of the court established by section 1803(a) of this title; or

(2) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

(c) Executive approval; contents of application

Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application; and

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(d) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

(2) An order issued under this section—

(A) shall specify—

(i) the identity, if known, of the person who is the subject of the investigation;

(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility

to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(B) shall direct that—

(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

(ii) such provider, landlord, custodian, or other person—

(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

(II) shall maintain, under security procedures approved by the Attorney General and the Director of National Intelligence pursuant to section 1805(b)(2)(C)¹ of this title, any records concerning the pen register or trap and trace device or the aid furnished; and

(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance; and

(C) shall direct that, upon the request of the applicant, the provider of a wire or electronic communication service shall disclose to the Federal officer using the pen register or trap and trace device covered by the order—

(i) in the case of the customer or subscriber using the service covered by the order (for the period specified by the order)—

(I) the name of the customer or subscriber;

(II) the address of the customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any temporarily assigned network address or associated routing or transmission information;

(IV) the length of the provision of service by such provider to the customer or subscriber and the types of services utilized by the customer or subscriber;

(V) in the case of a provider of local or long distance telephone service, any local or long distance telephone records of the customer or subscriber;

(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and

(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and

(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications to or from the service covered by the order—

(I) the name of such customer or subscriber;

(II) the address of such customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; and

(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.

(e) Time limitation

(1) Except as provided in paragraph (2), an order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d) of this section. The period of extension shall be for a period not to exceed 90 days.

(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.

(f) Cause of action barred

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance under subsection (d) of this section in accordance with the terms of an order issued under this section.

(g) Furnishing of results

Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.

(Pub. L. 95-511, title IV, § 402, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2405; amended Pub. L. 107-56, title II, § 214(a), Oct. 26, 2001, 115 Stat. 286; Pub. L. 107-108, title III, § 314(a)(5), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§ 105(c), 128(a), Mar. 9, 2006, 120 Stat. 195, 228; Pub. L. 111-259, title VIII, § 806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(1), is set out as a note under section 401 of this title.

Section 1805(b)(2)(C) of this title, referred to in subsec. (d)(2)(B)(ii)(II), was redesignated section 1805(c)(2)(C) of this title by Pub. L. 106-567, title VI, § 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

¹ See References in Text note below.

AMENDMENTS

2010—Subsec. (d)(2)(B)(ii)(II). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2006—Subsec. (d)(2)(A). Pub. L. 109-177, § 128(a)(1), inserted “and” at end of cl. (ii) and substituted semicolon for period at end of cl. (iii).

Subsec. (d)(2)(C). Pub. L. 109-177, § 128(a)(2), (3), added subpar. (C).

Subsec. (e). Pub. L. 109-177, § 105(c), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), an order issued” for “An order issued”, and added par. (2).

2004—Subsec. (d)(2)(B)(ii)(II). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(1). Pub. L. 107-56, § 214(a)(1), substituted “for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “for any investigation to gather foreign intelligence information or information concerning international terrorism”.

Subsec. (c)(1). Pub. L. 107-108, § 314(a)(5)(A), inserted “and” after semicolon at end.

Subsec. (c)(2). Pub. L. 107-56, § 214(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and”.

Subsec. (c)(3). Pub. L. 107-56, § 214(a)(3), struck out par. (3) which read as follows: “information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

“(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

“(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.”

Subsec. (d)(2)(A). Pub. L. 107-56, § 214(a)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall specify—

“(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

“(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—

“(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

“(II) the number and, if known, physical location of the telephone line; and

“(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii)—

“(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

“(II) the number of the instrument or device; and”.

Subsec. (f). Pub. L. 107-108, § 314(a)(5)(B), substituted “terms of an order issued” for “terms of a court”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 1843. Authorization during emergencies

(a) Requirements for authorization

Notwithstanding any other provision of this subchapter, when the Attorney General makes a determination described in subsection (b) of this section, the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution if—

(1) a judge referred to in section 1842(b) of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 1842 of this title is made to such judge as soon as practicable, but not more than 7 days, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

(b) Determination of emergency and factual basis

A determination under this subsection is a reasonable determination by the Attorney General that—

(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution before an order authorizing the installation and use of the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 1842 of this title; and

(2) the factual basis for issuance of an order under such section 1842 of this title to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.