

112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d)(1), and (g), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

§ 1881c. Other acquisitions targeting United States persons outside the United States

(a) Jurisdiction and scope

(1) Jurisdiction

The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

(2) Scope

No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order with respect to such targeted United States person or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d), respectively, or any other provision of this chapter.

(3) Limitations

(A) Moving or misidentified targets

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States during the effective period of such order.

(B) Applicability

If an acquisition for foreign intelligence purposes is to be conducted inside the United States and could be authorized under section 1881b of this title, the acquisition may only be conducted if authorized under section 1881b of this title or in accordance

with another provision of this chapter other than this section.

(C) Construction

Nothing in this paragraph shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(b) Application

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

(3) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the United States person who is the target of the acquisition is—

(A) a person reasonably believed to be located outside the United States; and

(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(4) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

(5) a certification made by the Attorney General, an official specified in section 1804(a)(6) of this title, or the head of an element of the intelligence community that—

(A) the certifying official deems the information sought to be foreign intelligence information; and

(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

(6) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(7) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

(c) Order

(1) Findings

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;

(B) on the basis of the facts submitted by the applicant, for the United States person

who is the target of the acquisition, there is probable cause to believe that the target is—

- (i) a person reasonably believed to be located outside the United States; and
- (ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(C) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(5) is not clearly erroneous on the basis of the information furnished under subsection (b).

(2) Probable cause

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) Review

(A) Limitations on review

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

(B) Review of probable cause

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(C) Review of minimization procedures

If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(D) Scope of review of certification

If the judge determines that an application under subsection (b) does not contain all the required elements, or that the certification

provided under subsection (b)(5) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(4) Duration

An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

(5) Compliance

At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

(d) Emergency authorization

(1) Authority for emergency authorization

Notwithstanding any other provision of this section, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection can, with due diligence, be obtained, and

(B) the factual basis for the issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

(2) Minimization procedures

If the Attorney General authorizes an emergency acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) be followed.

(3) Termination of emergency authorization

In the absence of an order under subsection (c), an emergency acquisition under paragraph (1) shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) Use of information

If an application submitted to the Court pursuant to paragraph (1) is denied, or in any

other case where the acquisition is terminated and no order with respect to the target of the acquisition is issued under subsection (c), no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any 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 no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(e) Appeal

(1) Appeal to the Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

(2) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(Pub. L. 95-511, title VII, § 704, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2453.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), (3)(B), (C), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

§ 1881d. Joint applications and concurrent authorizations

(a) Joint applications and orders

If an acquisition targeting a United States person under section 1881b or 1881c of this title is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 1881b(a)(1) or 1881c(a)(1) of this title may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of sections 1881b(b) and 1881c(b) of this title, orders under sections 1881b(c) and 1881c(c) of this title, as appropriate.

(b) Concurrent authorization

If an order authorizing electronic surveillance or physical search has been obtained under section 1805 or 1824 of this title, the Attorney General may authorize, for the effective period of that order, without an order under section 1881b or 1881c of this title, the targeting of that United States person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.

(c) Emergency authorization

(1) Concurrent authorization

If the Attorney General authorized the emergency employment of electronic surveillance or a physical search pursuant to section 1805 or 1824 of this title, the Attorney General may authorize, for the effective period of the emergency authorization and subsequent order pursuant to section 1805 or 1824 of this title, without a separate order under section 1881b or 1881c of this title, the targeting of a United States person subject to such emergency employment for the purpose of acquiring foreign intelligence information while such United States person is reasonably believed to be located outside the United States.

(2) Use of information

If an application submitted to the Court pursuant to section 1804 or 1823 of this title is denied, or in any other case in which the acquisition pursuant to paragraph (1) is terminated and no order with respect to the target of the acquisition is issued under section 1805 or 1824 of this title, all information obtained or evidence derived from such acquisition shall be handled in accordance with section 1881c(d)(4) of this title.

(Pub. L. 95-511, title VII, § 705, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457; amended Pub. L. 115-118, title I, § 105, Jan. 19, 2018, 132 Stat. 13.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.

AMENDMENTS

2018—Subsec. (c). Pub. L. 115-118 added subsec. (c).