

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

§ 1881. Definitions

(a) In general

In this subchapter, the terms “agent of a foreign power”, “Attorney General”, “contents”, “electronic surveillance”, “foreign intelligence information”, “foreign power”, “person”, “United States”, and “United States person” have the meanings given such terms in section 1801 of this title, except as specifically provided in this subchapter.

(b) Additional definitions

In this subchapter:

(1) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Foreign Intelligence Surveillance Court; Court

The terms “Foreign Intelligence Surveillance Court” and “Court” mean the court established under section 1803(a) of this title.

(3) Foreign Intelligence Surveillance Court of Review; Court of Review

The terms “Foreign Intelligence Surveillance Court of Review” and “Court of Review” mean the court established under section 1803(b) of this title.

(4) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) any other service provider who has access to equipment that is being or may be used to transmit or store wire or electronic communications, but not including any entity that serves primarily as—

(i) a public accommodation facility, as that term is defined in section 1861(4) of this title;

(ii) a dwelling, as that term is defined in section 3602 of title 42;

(iii) a community facility, as that term is defined in section 1592n of title 42; or

(iv) a food service establishment, as that term is defined in section 1638 of title 7; or

(F) an officer, employee, custodian, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(5) Intelligence community

The term “intelligence community” has the meaning given the term in section 3003(4) of this title.

(Pub. L. 95–511, title VII, § 701, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2437; amended Pub. L. 115–118, title II, § 205(a)(5), Jan. 19, 2018, 132 Stat. 21; Pub. L. 118–49, § 25(a), Apr. 20, 2024, 138 Stat. 893.)

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; Pub. L. 118–31, div. G, title IX, § 7902(a)(1), Dec. 22, 2023, 137 Stat. 1108; Pub. L. 118–49, § 19(a)(1), Apr. 20, 2024, 138 Stat. 891, 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 two years after Apr. 20, 2024, this section is repealed.

Editorial Notes

PRIOR PROVISIONS

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

AMENDMENTS

2024—Subsec. (b)(4)(D). Pub. L. 118–49, § 25(a)(2), struck out “or” at end.

Subsec. (b)(4)(E). Pub. L. 118–49, § 25(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 118–49, § 25(a)(1), (4), redesignated subpar. (E) as (F), inserted “custodian,” after “employee,” and substituted “(C), (D), or (E)” for “(C), or (D)”.

2018—Subsec. (a). Pub. L. 115–118, § 205(a)(5)(A), substituted “In this subchapter, the terms” for “The terms”.

Subsec. (b). Pub. L. 115–118, § 205(a)(5)(B)(i), inserted introductory provisions.

Subsec. (b)(5). Pub. L. 115–118, § 205(a)(5)(B)(ii), made technical amendment to reference in original act which appears in text as reference to section 3003(4) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–96, div. A, § 1002, Dec. 22, 2017, 131 Stat. 2045, which temporarily extended the effective date of the amendments made by section 403(b) of Pub. L. 110–261 to Jan. 19, 2018, was repealed by its own terms upon the enactment, on Jan. 19, 2018, of section 201(a) of Pub. L. 115–118, which amended the dates specified in section 403(b) of Pub. L. 110–261, and by Pub. L. 115–120, div. B, § 2002, Jan. 22, 2018, 132 Stat. 31, which was effective on Jan. 22, 2018.

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; Pub. L. 118–31, div. G, title IX, § 7902(a)(1), Dec. 22, 2023, 137 Stat. 1108; Pub. L. 118–49, § 19(a)(1), Apr. 20, 2024, 138 Stat. 891, 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 two years after Apr. 20, 2024.

[Pub. L. 115–118, title II, § 201(c), Jan. 19, 2018, 132 Stat. 19, provided that: “The amendments made to the FISA

Amendments Act of 2008 (Public Law 110–261) by this section [amending sections 1881 to 1881g of this title and provisions set out as notes under section 1801 of this title and section 2511 of Title 18, Crimes and Criminal Procedure] shall take effect on December 31, 2017.”]

§ 1881a. Procedures for targeting certain persons outside the United States other than United States persons

(a) Authorization

Notwithstanding any other provision of law, upon the issuance of an order in accordance with subsection (j)(3) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

(b) Limitations

An acquisition authorized under subsection (a)—

- (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
- (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
- (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
- (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;
- (5) may not intentionally acquire communications that contain a reference to, but are not to or from, a target of an acquisition authorized under subsection (a); and
- (6) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

(c) Conduct of acquisition

(1) In general

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

- (A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and
- (B) upon submission of a certification in accordance with subsection (h), such certification.

(2) Determination

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (j)(3) prior to the implementation of such authorization.

(3) Timing of determination

The Attorney General and the Director of National Intelligence may make the determination under paragraph (2)—

- (A) before the submission of a certification in accordance with subsection (h); or
- (B) by amending a certification pursuant to subsection (j)(1)(C) at any time during which judicial review under subsection (j) of such certification is pending.

(4) Construction

Nothing in subchapter I shall be construed to require an application for a court order under such subchapter for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

(d) Targeting procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

- (A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and
- (B) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(2) Judicial review

The procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (j).

(e) Minimization procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate, for acquisitions authorized under subsection (a).

(2) Judicial review

The minimization procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (j).

(3) Publication

The Director of National Intelligence, in consultation with the Attorney General, shall—

- (A) conduct a declassification review of any minimization procedures adopted or amended in accordance with paragraph (1); and
- (B) consistent with such review, and not later than 180 days after conducting such review, make such minimization procedures publicly available to the greatest extent practicable, which may be in redacted form.

(f) Queries

(1) Procedures required

(A) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence,