

# ADDENDUM

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Entered: February 5, 2019  
MOORE, TARANTO, and CHEN, Circuit Judges

001

United States Court of Appeals for the  
Federal Circuit

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KAREN KHAN,  
Plaintiff-Appellant

v.

UNITED STATES,  
Defendant-Appellee

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2018-2196

---

Appeal from the United States Court of Federal  
Claims in No. 1:18-cv-00609-CFL, Judge Charles F.  
Lettow.

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Decided: February 5, 2019

KAREN KHAN, Poughkeepsie, NY, pro se.

ALISON VICKS, Commercial Litigation Branch,  
Civil Division, United States Department of Justice,  
Washington, DC, for defendant-appellee. Also repre-  
sented by JOSEPH H. HUNT, ROBERT EDWARD  
KIRSCHMAN, JR., PATRICIA M. MCCARTHY.

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Before MOORE, TARANTO, and CHEN, Circuit  
Judges.

**PER CURIAM.**

Karen Khan seeks review of a judgment by the U.S. Court of Federal Claims (Claims Court) granting the Government's motion to dismiss Ms. Khan's complaint for lack of jurisdiction and failure to state a claim. J.A. 2. Ms. Khan's complaint alleged violations under the Civil Rights Act (42 U.S.C. §§ 1985, 1986), the Fifth and Fourteenth Amendments of the U.S. Constitution, and the Racketeer Influenced and Corrupt Organizations Act (RICO). See J.A. 103–50. Because the Claims Court properly granted the Government's motion, we affirm.

**BACKGROUND**

Ms. Khan is an attorney admitted to the bar of the State of New York and the U.S. District Court for the Southern District of New York (S.D.N.Y.). Appellant Op. Br. at 2. In April 2018, Ms. Khan filed an action in the Claims Court alleging, inter alia, conspiracy for human trafficking for the purpose of impeding, hindering, obstructing, and defeating the due course of justice with the intent to deny Ms. Khan the equal protection of the laws. J.A. 103. These allegations were based in part on “domestic violence” actions taken by the Supreme Court of the State of New York, Dutchess County, in handling a divorce proceeding of one of Ms. Khan's clients. J.A. 104–06. Ms. Khan alleged that after these actions took place, she and her client approached the U.S. Department of Justice (DOJ), Civil Rights Division in 2011 and filed a complaint. J.A. 107. Ms. Khan alleged that the DOJ and the Federal Bureau of Investigation (FBI) have since been interfering with her personal and professional life, including her law practice. See J.A. 107–50. Ms. Khan detailed the alleged actions taken by the FBI and DOJ—including telephone calls, internet communications, and personal visits—throughout the

MOORE, TARANTO, and CHEN, Circuit Judges

remainder of her complaint. *Id.* Ms. Khan sought \$30 million in damages, as well as “[a]ny and all other relief to which [she] is entitled.” J.A. 150.

The Government moved to dismiss Ms. Khan’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims (RCFC). See J.A. 10–28. The Claims Court granted the Government’s motion, agreeing that Ms. Khan’s allegations, though detailed, “do not link explicitly to claims for relief under any money mandating source of law.” J.A. 2–3. The Claims Court concluded that Ms. Khan’s assertions do not establish all of the material elements necessary to sustain recovery under any viable legal theory, and therefore fail to state a claim. J.A. 3.

The Claims Court also concluded that the federal district courts, not the Claims Court, have jurisdiction over civil-rights and RICO claims. *Id.* The Claims Court then rejected Ms. Khan’s transfer request to S.D.N.Y., finding that the transfer would not be in the interests of justice, given Ms. Khan’s failure to state any plausible claim for relief. *Id.*

Ms. Khan appeals. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(3).

## DISCUSSION

“This court reviews *de novo* whether the Court of Federal Claims possessed jurisdiction and whether the Court of Federal Claims properly dismissed for failure to state a claim upon which relief can be granted, as both are questions of law.” *Wheeler v. United States*, 11 F.3d 156, 158 (Fed. Cir. 1993).

“Subject matter jurisdiction is a threshold requirement for a court’s power to exercise jurisdiction over a case . . . .” *Dow Jones & Co. v. Ablaise Ltd.*, 606 F.3d 1338, 1348 (Fed. Cir. 2010). “The Tucker Act . . . is itself only a jurisdictional statute; it does not create

MOORE, TARANTO, and CHEN, Circuit Judges

any substantive right enforceable against the United States for money damages.” *James v. Caldera*, 159 F.3d 573, 580 (Fed. Cir. 1998) (quoting *United States v. Testan*, 424 U.S. 392, 398 (1976)) (internal quotation marks omitted). Thus, “[i]n order to invoke jurisdiction under the Tucker Act, a plaintiff must point to a substantive right to money damages against the United States.” *Hamlet v. United States*, 63 F.3d 1097, 1101 (Fed. Cir. 1995). “What this means is that a Tucker Act plaintiff must assert a claim under a separate money-mandating constitutional provision, statute, or regulation, the violation of which supports a claim for damages against the United States.” *James*, 159 F.3d at 580.

The Claims Court lacks jurisdiction over claims under the Civil Rights Act, including provisions 42 U.S.C. §§ 1985 and 1986. See 28 U.S.C. § 1343(a) (vesting original jurisdiction in federal “district courts”); see also *Searles v. United States*, 88 Fed. Cl. 801, 804 (2009). The Claims Court likewise lacks jurisdiction over Ms. Khan’s constitutional claims because they are not based on money-mandating provisions. *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (finding allegations of violations “under the Due Process Clauses of the Fifth and Fourteenth Amendments” and “the Equal Protection Clause of the Fourteenth Amendment” not to be “a sufficient basis for jurisdiction because they do not mandate payment of money by the government”). The Claims Court also lacks jurisdiction over RICO claims. See 18 U.S.C. § 1965(a) (“Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.”); see also *Hufford v. United States*, 87 Fed. Cl. 696, 702 (2009) (“This



court has no jurisdiction over RICO claims . . . .”). Because Ms. Khan did not plead any claims over which the Claims Court has jurisdiction, we find that the Claims Court properly dismissed Ms. Khan’s complaint under RCFC 12(b)(1).

The Claims Court also properly rejected Ms. Khan’s request to transfer the case to S.D.N.Y. When courts lack jurisdiction, 28 U.S.C. § 1631 requires them to transfer the case to any other court in which the action could have been brought at the time it was filed or noticed, “if it is in the interest of justice.” While Ms. Khan’s complaint could have been filed in S.D.N.Y., the Claims Court correctly concluded that it would not have been in the interest of justice to transfer the case.

In addition to dismissing for lack of jurisdiction, the Claims Court scrutinized Ms. Khan’s complaint and concluded that it must be dismissed for failure to state a plausible claim. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); accord *Twombly*, 550 U.S. at 555 (“Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” (internal citation omitted)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556).

Under those standards, the Claims Court properly concluded that Ms. Khan has not pleaded any facts that support her allegations against the Government. For example, Ms. Khan alleges that the “FBI has used different channels . . . [to] convey[] its perversions to [Ms. Khan] to deny her equal protection of the laws.” Appellant Op. Br. at 19. Ms. Khan cites to emails and photographs as support for her allegations. E.g., *id.* at 19–21. But none of these documents evidences any communication by the Government. See, e.g., J.A. 469, 471, 473–76, 488, 502–05, 531–32, 543–52, 576–86. The remainder of the evidence cited by Ms. Khan similarly fails to establish any plausible basis for her allegations.

Ms. Khan’s complaint, in fact, falls far short of complying with the “plausibility” standard set out by the Supreme Court in *Twombly* and *Iqbal*, and Ms. Khan has advanced no basis for thinking that the deficiency could be cured by amendment. In these circumstances, we see no error in the Claims Court’s ruling that it would not have been in the interest of justice to transfer this case to S.D.N.Y. See *Galloway Farms, Inc. v. United States*, 834 F.2d 998, 1000–01 (Fed. Cir. 1987).

We have reviewed Ms. Khan’s other arguments but find them unpersuasive. Accordingly, we affirm the Claims Court’s judgment granting the Government’s motion to dismiss under RCFC 12(b)(1) and denying the request to transfer.

**AFFIRMED**

NOTE: This order is nonprecedential  
UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT

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KAREN KHAN  
PLAINTIFF-APPELLANT

v.

UNITED STATES  
DEFENDANT-APPELLEE

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2018-2196

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Appeal from the United States Court of Federal  
Claims in No. 1:18-cv-00609-CFL, Judge Charles F.  
Lettow.

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ON PETITION FOR PANEL REHEARING AND RE-  
HEARING EN BANC

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Before PROST, Chief Judge, NEWMAN, LOURIE,  
DYK, MOORE, O'MALLEY, REYNA, WALLACH,  
TARANTO, CHEN, HUGHES, and STOLL, Circuit  
Judges.

PER CURIAM

ORDER

Appellant Karen Khan filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,  
IT IS ORDERED THAT:  
The petition for panel rehearing is denied.  
The petition for rehearing en banc is denied.  
The mandate of the court will issue on April 17, 2019.

April 10, 2019

FOR THE COURT

Date                    /s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

Entered: April 17, 2019

009

UNITED STATES COURT OF APPEALS FOR THE  
FEDERAL CIRCUIT

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KAREN KHAN  
PLAINTIFF-APPELLANT

v.

UNITED STATES  
DEFENDANT-APPELLEE

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2018-2196

---

Appeal from the United States Court of Federal  
Claims  
in No. 1: 18-cv-00609-CFL, Senior Judge Charles F.  
Lettow

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MANDATE

In accordance with the judgment of this Court, entered February 5, 2019, and pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the formal mandate is hereby issued.

April 17, 2019

FOR THE COURT  
/s/ Peter R. Marksteiner  
Clerk of Court

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 18-609C

(Filed: July 12, 2018)

(NOT TO BE PUBLISHED)

\*\*\*\*\*

KAREN KHAN, )
Plaintiff, )
v. )
UNITED STATES, )
Defendant )

\*\*\*\*\*

Karen Khan, prose, Poughkeepsie, New York. Alison S. Vicks, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With her on the briefs were Chad A. Readler, Acting Assistant Attorney General, Civil Division, and Robert E. Kirschman, Jr., Director, and Patricia M. McCarthy, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C.

OPINION AND ORDER

LETTOW, Judge.

Pending before the court is defendant's motion to dismiss pursuant to Rules 12(6)(1) and 12(6)(6) of the Rules of the Court of Federal Claims ("RCFC"). Plaintiff, Karen Khan, alleges that federal governmental agencies, including the Federal Bureau of

2.1.

Investigation and the Department of Justice, unlawfully interfered in her personal and professional life. Compl. 9, 13-14, 16, 18, 27, 30, 34-35.<sup>1</sup> Ms. Khan contends that this interference occurred via a number of means, including telephone calls, internet communications, and personal conversations. Compl. 15, 19-21, 31-33, 42-46, 51-53, 69-73, 76-90, 93-96, 107. She claims that the federal governmental agencies' actions have "denied ... the rights of women [,] including [herself], to the equal protection of the laws." Compl. 28; see also Compl. 1, 28-29. The basis for Ms. Khan's allegations additionally relate to her professional interactions in and with several federal courts and courts of the State of New York. Compl. 1-8, 11, 30-41.<sup>2</sup>

Ms. Khan asserts defendant's actions violate 42 U.S.C. §§ 1985, 1986 and the Fifth and Fourteenth Amendments to the United States Constitution. Compl. at 44 (heading), 52 (heading), 57 (heading), 113. She seeks \$30,000,000 in damages and "all other relief to which [she] is entitled." Compl. 114-15. For the reasons set out below, the court grants the government's motion to dismiss for lack of jurisdiction and for failure to state a claim.

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<sup>1</sup> Citations to particular portions of the plaintiffs complaint refer to the pages in the order in which they actually appear, not as they are numbered.

<sup>2</sup> Ms. Kahn represents that she is a lawyer admitted to the bar in the State of New York and the United States District Court for the Southern District of New York. Compl. at 12, 60; see also Compl. 15, 16, 96.

## STANDARDS FOR DECISION

The Tucker Act provides this court with jurisdiction to entertain "any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). The Tucker Act does not grant a plaintiff substantive right. *In re United States*, 463 F.3d 1328, 1333 (Fed. Cir. 2006). Rather, "a plaintiff must identify a separate source of substantive law that creates the right to money damages" to establish jurisdiction. *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc in relevant part) (citing *United States v. Mitchell*, 463 U.S. 206, 216 (1983); *United States v. Testan*, 424 U.S. 392, 398 (1976)). "Where the court has not been granted jurisdiction to hear a claim, the case must be dismissed." *Trevino v. United States*, 113 Fed. Cl. 204, 207 (2013) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)).

Under Rule 12(b)(6), a complaint that "fail[s] to state a claim upon which relief can be granted" shall be dismissed. To survive a motion invoking Rule 12(b)(6), a plaintiff's complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court is bound "to take the well-pleaded factual allegations in the complaint as true." *Papasan v. Allain*, 478 U.S. 265, 283 (1986); see also *Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009). "However, regardless of whether the plaintiff is proceeding pro se or is represented by counsel, 'conclusory allegations or legal conclusions masquerading as factual conclusions



will not suffice to prevent a motion to dismiss." *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007) (internal citations omitted); see also *Williams v. United States*, 100 Fed. Cl. 263,275 (2011).

## ANALYSIS

Where a plaintiff "has alleged-but ... has not show[n]-that [she] is entitled to relief," relief cannot be granted. *Ashcroft*, 556 U.S. at 678 (internal citations omitted). Ms. Khan sets out her allegations in considerable detail, but these allegations do not link explicitly to claims for relief under any money mandating source of law. See generally *Compl.*; *Pl.'s Am. Resp. to the Def.'s Mot. to Dismiss* ("*Pl.'s Am. Resp.*"), ECF No. 17. Her assertions do not establish "all the material elements necessary to sustain recovery under some viable legal theory," *Twombly*, 550 U.S. at 562 (quoting *Car Carriers v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984) (emphasis omitted)), and they therefore fail to state a claim.

Ms. Khan concedes that her claims under the Civil Rights Acts, specifically, 42 U.S.C. §§ 1985, 1986, are properly within the jurisdiction of federal district courts and not that of this court. *Pl.'s Am. Resp.* at 27. She also initially conceded that her claims under the Racketeer Influenced and Corrupt Organization Act ("*RICO*"), 18 U.S.C. §§ 1961-68, were within the jurisdiction of federal district courts, see *Pl.'s Resp. to Def.'s Mot. to Dismiss*, at 27, ECF No. 16, but she subsequently withdrew that concession, see *Pl.'s Am. Resp.* at 27.<sup>3</sup> In light of Ms. Khan's acknowledgment of the

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<sup>3</sup> She withdrew that initial concession regarding jurisdiction over RICO claims based on the decision by the Federal Circuit in

jurisdictional posture of her claims, she requests that this court transfer the case to the United States District Court for the Southern District of New York. *Id.* at 26. Such a transfer would be appropriate under 28 U.S.C. § 1631 if specified requirements are satisfied, namely that (1) the transferor court lacks subject matter jurisdiction; (2) at time the case was filed, it could have been brought in the transferee court; and (3) such transfer is in the interest of justice. See *Kolek v. Engen*, 869 F.2d 1281, 1284 (9th Cir. 1989); see also *Gray v. United States*, 69 Fed. Cl. 95, 100 (2005); *Skillo v. United States*, 68 Fed. Cl. 734, 744 (2005).

As previously discussed, Ms. Khan's claims satisfy the first element. And, federal district courts can hear claims brought under the Civil Rights Acts and RICO, thus fulfilling the second element. See *Ingram v. Madison Square Garden Ctr., Inc.*, 482 F. Supp. 414,422 (S.D.N.Y. 1979) (Civil Rights Acts); *4 K & D Corp. v. Concierge Auctions, LLC*, 2 F. Supp. 3d 525, 535 (S.D.N.Y. 2014) (RICO). Even so, Ms. Khan's claims fail to satisfy the third element.

To satisfy this last element, a plaintiff's claims should be sufficient to state a plausible claim. See *Galloway Farms, Inc. v. United States*, 834 F.2d 998, 1000 (Fed. Cir. 1987). Because Ms. Khan does not support her claims for monetary relief with plausible evidence, the interests of justice will not be furthered by transferring Ms. Khan's claims to the United States District Court for the Southern District of New York. See generally Comp I. Consequently, the court finds that

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*Jones v. United States*, 655 Fed. Appx. 839 (Fed.Cir.2016). See PI.'s Am. Resp. at 28. Nonetheless, this change in position and citation to *Jones* is unavailing given the provisions of 18 U.S.C. § 1964(c), which specify that district courts shall have jurisdiction over civil suits by persons injured by violations of RICO.

Ms. Khan has not satisfied the prerequisites for transfer.

### CONCLUSION

For the reasons stated, the government's motion to dismiss plaintiffs complaint is GRANTED.<sup>4</sup> The clerk shall enter judgment in accord with this disposition.

No costs.

It is so ORDERED.

Charles F. Lettow Judge

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<sup>4</sup> Ms. Khan previously filed, with leave of court, a Motion for Temporary and Permanent Injunction, ECF No. 7, and a Revised Motion for Temporary and Permanent Injunction, ECF No. 8, on May 3 and May 15, 2018, respectively. The government sought and was granted leave to respond to both motions and Ms. Khan's complaint in a single filing. See Order of June 4, 2018, ECF No. 11. Because the court grants the United States' motion to dismiss, Ms. Khan's motions seeking injunctive relief are DENIED as moot.

**STATE OF NEW YORK  
COURT OF APPEALS**

At a session of the Court held at Court of  
Appeals Hall in the City of Albany  
On the twenty-third day of February 2010

Present, HON. JONATHAN LIPPMAN, Chief Judge,  
presiding

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Mo. No. 2009-1359

Timothy Makara,  
Respondent,

v.

Kelly Makara  
Appellant,

Karen Khan,  
Nonparty Appellant.

Raylene Shayo,  
Nonparty Respondent.

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A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant and nonparty appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks leave to appeal from the portion of the September 2009 Appellate Division order that affirmed the imposition of sanctions against appellants and the grant of a counsel fee award to nonparty Shayo be and the same hereby is denied; and it is

Entered: February 23, 2010

017

Motion No. 2009-1359      February 23, 2010

ORDERED, that the said motion for leave to appeal otherwise be and the same hereby is dismissed upon the ground that the remainder of the September 2009 Appellate Division order and the Appellate Division order denying re-argument or, in the alternative, leave to appeal to this Court, do not finally determine the action within the meaning of the Constitution.

Stuart M. Cohen  
Clerk of the Court

SUPREME COURT OF THE STATE OF  
NEW YORK APPELLATE DIVISION:  
SECOND JUDICIAL DEPARTMENT

D24288

T/prt

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\_\_AD3d \_\_

PETER B. SKELOS, J.P. **Argued- June 15, 2009**  
DANIEL D. ANGIOLILLO  
RUTH C. BALKIN  
ARIEL E. BELEN, JJ.

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2008-06411

2008-06601

2008-07634

**DECISION & ORDER**

2008-11426

2008-11427

Timothy Makara, plaintiff-respondent, v Kelly  
Makara, defendant-appellant; Karen Khan, nonparty-  
appellant; Raylene Shayo, nonparty-respondent.  
(Index No. 7305/06)

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Karen Khan, Poughkeepsie, N.Y., nonparty-appellant  
pro se, and for defendant-appellant.

Ostertag O'Leary Barrett & Faulkner, Poughkeepsie,  
N.Y. (Sharon M. Faulkner of counsel), for plaintiff-re-  
spondent.

Raylene K. Shayo, Poughkeepsie, N.Y., attorney for the children and non-party respondent pro se.  
Schiff Hardin LLP, New York, N.Y. (Paul Scrudato of counsel for amicus curiae First Star)

In a matrimonial action in which the parties were divorced by judgment dated June 10, 2008, the defendant appeals (1), as limited by her brief, from so much of an order of the Supreme Court, Dutchess County (Pagones, J.), dated April 8, 2008, as, in effect, upon renewal, adhered to its original determination in an order dated January 17, 2008, denying her prior motion to disqualify nonparty Raylene Shayo as attorney for the parties' five children, (2) from an order of the same court dated June 10, 2008, which granted the application of nonparty Raylene Shayo, as attorney for the parties' five children, for an award of an attorney's fee, and directed her to pay the sum of \$5,532.52 of that fee to nonparty Raylene Shayo, (3) from a judgment of the same court dated August 8, 2008, which, upon the order dated June 10, 2008, is in favor of nonparty Raylene Shayo, as attorney for the parties' five children, and against her in the principal sum of \$5,532.52, (4), as limited by her brief, from so much of an order of the same court dated December 3, 2008, as granted those branches of the plaintiffs cross motion and the separate cross motion of nonparty Raylene Shayo, as attorney for the parties' five children, which were for an award of costs and sanctions against her pursuant to 22 NYCRR 130-1.1, and (5), as limited by her brief, from stated portions of an order of the same court dated December 12, 2008, which, inter alia, denied those branches of her motion which were to vacate certain portions of the judgment of divorce, to set aside a stipulation of settlement between the parties dated April 21, 2008, for recusal, and for an award of an attorney's fee against the plaintiff, and

granted those branches of the plaintiffs cross motion and the separate cross motion of nonparty Raylene Shayo, as attorney for the parties' five children, which were for an award of costs and sanctions against her pursuant to 22 NYCRR 130-1.1, and nonparty Karen Kahn separately appeals, as limited by her brief, from so much of the orders dated December 3, 2008, and December 12, 2008, as granted those branches of the plaintiff's cross motions and the separate cross motions of nonparty Raylene Shayo, as attorney for the parties' five children, which were for sanctions against her pursuant to 22 NY CRR 130-1.1.

**ORDERED** that the appeal from the order dated June 10, 2008, is dismissed; and it is further,

**ORDERED** that the orders dated April 8, 2008, December 3, 2008, and December 12, 2008, are affirmed insofar as appealed from; and it is further,

**ORDERED** that the judgment dated August 8, 2008, is affirmed; and it is further,

**ORDERED** that the respondents are awarded one bill of costs.

The appeal from the order dated June 10, 2008, must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment dated August 8, 2008 (see *Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order dated June 10, 2008, are brought up for review and have been considered on the appeal from the judgment dated August 8, 2008 (see CPLR 5501[a][1]).

A challenge to a stipulation of settlement which is incorporated but not merged into a judgment of divorce must be made by plenary action, and not by motion (see *Candela v Kiel*, 33 AD3d 833, 834; *Spataro v Spataro*, 268 AD2d 467, 468; *Scalabrini v Scalabrini*, 242 AD2d 725, 726). Here, the defendant sought to set aside the stipulation of settlement by motion rather



Entered: September 8, 2009

021

than by plenary action. Consequently, the Supreme Court properly denied her request for relief (see *Reiter v Reiter*, 39 AD3d 616).

The remaining contentions of the defendant and non-party Karen Khan either are not properly before this Court, refer to matter dehors the record, or are without merit.

SKELOS, J.P., ANGIOLILLO, BALKIN and BELEN, JJ., concur.

ENTER:

James Edward Pelzer  
Clerk of the Court

Entered: October 10, 2010 022  
Judge: Hon. John M. Leventhal Associate Justice Appellate Division: Second Department

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

In the matter of a Divorce Action

\_\_\_\_\_ X R# 55914  
Date: 9/ /2008

TIMOTHY MAKARA,

2008-09106

Plaintiff,

-- against-

Index No. 2006/7305

ORDER TO SHOW CAUSE

KELLY MAKARA,

Defendant.

\_\_\_\_\_ X

Upon the annexed affirmation of Karen Khan, dated September 17, 2008, and the papers annexed hereto, LET the Plaintiff through his attorney Sharon Faulkner, Esq., and the Attorney for the Children Raylene Shayo, Esq., through her attorney Michael Connor SHOW CAUSE BEFORE THIS COURT, at the courthouse thereof, located at 10 Market Street, Poughkeepsie, New York 12601, on the 24<sup>th</sup> day of October 2008 at 9:30 o'clock in the forenoon of that date or as soon as counsel may be heard, why an order should not be made and entered:

Entered: October 10, 2010  
Judge: Hon. John M. Leventhal Associate Justice Appellate Division: Second Department

1. Consolidating the motion for a stay and this motion.
2. Setting aside the coerced stipulations dated April 21, 2008.
3. Vacating the contempt finding.
4. Partially vacating the Judgment of Divorce dated June 10, 2008.
5. Vacating the court order dated April 8, 2008.
6. That the Honorable James Pagones recuse himself from this case
7. Granting the Defendant attorney fees and costs
8. Granting any other relief to the Defendant in the interest of Justice

ORDERED that the service of a copy of this order to show cause and the papers upon which it was made upon the attorney for the children, and the Plaintiff through his counsel, Sharon Faulkner, Esq., pursuant to CPLR 2103(g) (i); (3) or (6) on or before October 10, 2008, shall be deemed sufficient thereof.

Dated: Brooklyn New York

October 10, 2008

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Hon. James Pagones

Entered: October 10, 2010 024  
Judge: Hon. John M. Leventhal Associate Justice Appellate Division: Second Department

2008-9106

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Application pursuant to CPLR 5704 to sign the foregoing order to show cause, which was denied by the Supreme Court, Dutchess County, in an ex parte order dated September 23, 2008.

ORDERED that the application is granted and the order to show cause is executed as indicated.

Dated: Brooklyn, NY

October 10, 2008

ENTER

"s/" \_\_\_\_\_  
Hon. John M. Leventhal  
Associate Justice  
Appellate Division: Second Department

Entered: September 23, 2008  
Judge: Hon. James D. Pagonos A.J.S.C.

025

SUPREME COURT OF THE STATE OF NEW  
YORK- COUNTY OF DUTCHESS

-----X

TIMOTHY MAKARA,

Plaintiff,

DECISION

-- against-

Index No.7305/06

KELLY MAKARA,

Defendant.

-----X

PAGONES, J.D. A.J.S.C.

On September 19, 2008, counsel for defendant Kelly Makara submitted a proposed order to show cause with supporting papers.

The allegations set forth in the supporting papers are inherently frivolous as defined by Part 130 of the Rules of the Chief Administrator.

The court, in the exercise of its discretion, declines to sign the proposed order to show cause.

Counsel's remedy, if so disposed, is to apply to the Supreme Court, Appellate Division, Second Judicial Department, pursuant to CPLR §5704(a). (*Greenhaus v. Milano*, 242 AD2d 383, 384 [2d Dept. 1997]; Siegel, *New York Practice*, 4th Ed., pgs. 421-22.)

The foregoing constitutes the decision of the Court.

Dated: Poughkeepsie, New York September 23, 2008

ENTER

"s/" \_\_\_\_\_  
HON. JAMES D. PAGONES A.J.S.C.

**Genesis 1:26-27****Authorized (King James) Version (AKJV)**

<sup>26</sup> And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. <sup>27</sup> So God created man in his *own* image, in the image of God created he him; male and female created he them

**New International Version [NIV]**

**26** Then God said, "Let Us make man in Our image, according to Our likeness; and let them rule over the fish of the sea and over the birds of the sky and over the cattle and over all the earth, and over every creeping thing that creeps on the earth." **27** God created man in His own image, in the image of God He created him; male and female He created them.

**Genesis 5: 1-2****Authorized (King James) Version (AKJV)**

**5** This *is* the book of the generations of Adam. In the day that God created man, in the likeness of God made he him; <sup>2</sup> male and female created he them; and blessed them, and called their name Adam, in the day when they were created.

**New International Version [NIV]**

**1**This is the written account of Adam's family line.

When God created mankind, he made them in the likeness of God. **2**He created them male and female and blessed them. And he named them "Mankind" <sup>a</sup> when they were created

**John 4:24**

**Authorized (King James) Version (AKJV)**

<sup>24</sup>God *is* a Spirit: and they that worship him must worship *him* in spirit and in truth.

**New International Version [NIV]**

<sup>24</sup>God is spirit, and his worshipers must worship in the Spirit and in truth.”



**Romans 4:13****Authorized (King James) Version (AKJV)**

<sup>13</sup> For the promise, that he should be the heir of the world, *was* not to Abraham, or to his seed, through the law, but through the righteousness of faith.

**New International Version [NIV]**

13 It was not through the law that Abraham and his offspring received the promise that he would be heir of the world, but through the righteousness that comes by faith.

**John 4:23-24****Authorized (King James) Version (AKJV)**

**23.** But the hour cometh, and now is, when the true worshippers shall worship the Father in spirit and in truth: for the Father seeketh such to worship him. **24.** God *is* a Spirit: and they that worship *him* must worship him in spirit and in truth.

**New International Version [NIV]**

**23**Yet a time is coming and has now come when the true worshipers will worship the Father in the Spirit and in truth, for they are the kind of worshipers the Father seeks. **24**God is spirit, and his worshipers must worship in the Spirit and in truth.”

## 1 Corinthians 13: 1-13

### Authorized (King James) Version (AKJV)

13 Though I speak with the tongues of men and of angels, and have not charity, I am become *as* sounding brass, or a tinkling cymbal. <sup>2</sup> And though I have *the gift of* prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains, and have not charity, I am nothing. <sup>3</sup> And though I bestow all my goods to feed *the poor*, and though I give my body to be burned, and have not charity, it profiteth me nothing.

<sup>4</sup> Charity suffereth long, *and* is kind; charity envieth not; charity vaunteth not itself, is not puffed up, <sup>5</sup> doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil; <sup>6</sup> rejoiceth not in iniquity, but rejoiceth in the truth; <sup>7</sup> beareth all things, believeth all things, hopeth all things, endureth all things.

<sup>8</sup> Charity never faileth: but whether *there be* prophecies, they shall fail; whether *there be* tongues, they shall cease; whether *there be* knowledge, it shall vanish away. <sup>9</sup> For we know in part, and we prophesy in part. <sup>10</sup> But when that which is perfect is come, then that which is in part shall be done away.

<sup>11</sup> When I was a child, I spake as a child, I understood as a child, I thought as a child: but when I became a man, I put away childish things. <sup>12</sup> For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known. <sup>13</sup> And now abideth faith, hope, charity, these three; but the greatest of these *is* charity.

**New International Version [NIV]**

**1**If I speak in the tongues <sup>a</sup> of men or of angels, but do not have love, I am only a resounding gong or a clanging cymbal. **2**If I have the gift of prophecy and can fathom all mysteries and all knowledge, and if I have a faith that can move mountains, but do not have love, I am nothing. **3**If I give all I possess to the poor and give over my body to hardship that I may boast, <sup>b</sup> but do not have love, I gain nothing.

**4**Love is patient, love is kind. It does not envy, it does not boast, it is not proud. **5**It does not dishonor others, it is not self-seeking, it is not easily angered, it keeps no record of wrongs. **6**Love does not delight in evil but rejoices with the truth. **7**It always protects, always trusts, always hopes, always perseveres.

**8**Love never fails. But where there are prophecies, they will cease; where there are tongues, they will be stilled; where there is knowledge, it will pass away. **9**For we know in part and we prophesy in part, **10**but when completeness comes, what is in part disappears. **11**When I was a child, I talked like a child, I thought like a child, I reasoned like a child. When I became a man, I put the ways of childhood behind me. **12**For now we see only a reflection as in a mirror; then we shall see face to face. Now I know in part; then I shall know fully, even as I am fully known.

**13**And now these three remain: faith, hope and love. But the greatest of these is love.

**Galatians 5:22-26****Authorized (King James) Version (AKJV)**

<sup>22</sup> But the fruit of the Spirit is love, joy, peace, longsuffering, gentleness, goodness, faith, <sup>23</sup> meekness, temperance: against such there is no law. <sup>24</sup> And they that are Christ's have crucified the flesh with the affections and lusts. <sup>25</sup> If we live in the Spirit, let us also walk in the Spirit. <sup>26</sup> Let us not be desirous of vain glory, provoking one another, envying one another.

**New International Version [NIV]**

22 But the fruit of the Spirit is love, joy, peace, forbearance, kindness, goodness, faithfulness, 23 gentleness and self-control. Against such things there is no law. 24 Those who belong to Christ Jesus have crucified the flesh with its passions and desires. 25 Since we live by the Spirit, let us keep in step with the Spirit. 26 Let us not become conceited, provoking and envying each other.

## 1 Corinthians 12: 7-11

### Authorized (King James) Version (AKJV)

<sup>7</sup>But the manifestation of the Spirit is given to every man to profit withal. <sup>8</sup>For to one is given by the Spirit the word of wisdom; to another the word of knowledge by the same Spirit; <sup>9</sup>to another faith by the same Spirit; to another the gifts of healing by the same Spirit; <sup>10</sup>to another the working of miracles; to another prophecy; to another discerning of spirits; to another *divers* kinds of tongues; to another the interpretation of tongues: <sup>11</sup>but all these worketh that one and the selfsame Spirit, dividing to every man severally as he will.

### New International Version [NIV]

7Now to each one the manifestation of the Spirit is given for the common good. 8To one there is given through the Spirit a message of wisdom, to another a message of knowledge by means of the same Spirit, 9to another faith by the same Spirit, to another gifts of healing by that one Spirit, 10to another miraculous powers, to another prophecy, to another distinguishing between spirits, <sup>a</sup> and to still another the interpretation of tongues. <sup>b</sup> 11All these are the work of one and the same Spirit, and he distributes them to each one, just as he determines.

**Romans 4:17****Authorized (King James) Version (AKJV)**

<sup>17</sup> (as it is written, I have made thee a father of many nations,) before him whom he believed, *even* God, who quickeneth the dead, and calleth those things which be not as though they were.

**New International Version [NIV]**

17As it is written: "I have made you a father of many nations." <sup>e</sup> He is our father in the sight of God, in whom he believed—the God who gives life to the dead and calls into being things that were not.

**John 1: 1-5 and John 1:14-18****Authorized (King James) Version (AKJV)**

In the beginning was the Word, and the Word was with God, and the Word was God. <sup>2</sup>The same was in the beginning with God. <sup>3</sup>All things were made by him; and without him was not anything made that was made. <sup>4</sup>In him was life; and the life was the light of men. <sup>5</sup>And the light shineth in darkness; and the darkness comprehended it not.

<sup>14</sup>And the Word was made flesh, and dwelt among us, (and we beheld his glory, the glory as of the only begotten of the Father,) full of grace and truth.

<sup>15</sup>John bare witness of him, and cried, saying, This was he of whom I spake, He that cometh after me is preferred before me: for he was before me. <sup>16</sup>And of his fulness have all we received, and grace for grace. <sup>17</sup>For the law was given by Moses, *but* grace and truth came by Jesus Christ. <sup>18</sup>No man hath seen God at any time; the only begotten Son, which is in the bosom of the Father, he hath declared *him*.

**New International Version [NIV]**

1In the beginning was the Word, and the Word was with God, and the Word was God. 2He was with God in the beginning. 3Through him all things were made; without him nothing was made that has been made. 4In him was life, and that life was the light of all mankind. 5The light shines in the darkness, and the darkness has not overcome a it.



14The Word became flesh and made his dwelling among us. We have seen his glory, the glory of the one and only Son, who came from the Father, full of grace and truth.

15(John testified concerning him. He cried out, saying, "This is the one I spoke about when I said, 'He who comes after me has surpassed me because he was before me.'") 16Out of his fullness we have all received grace in place of grace already given. 17For the law was given through Moses; grace and truth came through Jesus Christ. 18No one has ever seen God, but the one and only Son, who is himself God and <sup>b</sup> is in closest relationship with the Father, has made him known.

**Matthew 23: 23-24****Authorized (King James) Version (AKJV)**

23. Woe unto you, scribes and Pharisees, hypocrites! for ye pay tithe of mint and anise and cummin, and have omitted the weightier *matters* of the law, judgment, mercy, and faith: these ought ye to have done, and not to leave the other undone. <sup>24</sup> Ye blind guides, which strain at a gnat, and swallow a camel.

**New International Version [NIV]**

**23**“Woe to you, teachers of the law and Pharisees, you hypocrites! You give a tenth of your spices—mint, dill and cumin. But you have neglected the more important matters of the law—justice, mercy and faithfulness. You should have practiced the latter, without neglecting the former. **24**You blind guides! You strain out a gnat but swallow a camel.

**John 4:1-26****Authorized (King James) Version (AKJV)**

When therefore the Lord knew how the Pharisees had heard that Jesus made and baptized more disciples than John, <sup>2</sup>(though Jesus himself baptized not, but his disciples,) <sup>3</sup>he left Judea, and departed again into Galilee. <sup>4</sup>And he must needs go through Samaria. <sup>5</sup>Then cometh he to a city of Samaria, which is called Sychar, near to the parcel of ground that Jacob gave to his son Joseph. <sup>6</sup>Now Jacob's well was there. Jesus therefore, being wearied with *his* journey, sat thus on the well: *and* it was about the sixth hour. <sup>7</sup>There cometh a woman of Samaria to draw water: Jesus saith unto her, Give me to drink. <sup>8</sup>(For his disciples were gone away unto the city to buy meat.) <sup>9</sup>Then saith the woman of Samaria unto him, How is it that thou, being a Jew, askest drink of me, which am a woman of Samaria? for the Jews have no dealings with the Samaritans. <sup>10</sup>Jesus answered and said unto her, If thou knewest the gift of God, and who it is that saith to thee, Give me to drink; thou wouldest have asked of him, and he would have given thee living water. <sup>11</sup>The woman saith unto him, Sir, thou hast nothing to draw with, and the well is deep: from whence then hast thou that living water? <sup>12</sup>Art thou greater than our father Jacob, which gave us the well, and drank thereof himself, and his children, and his cattle? <sup>13</sup>Jesus answered and said unto her, Whosoever drinketh of this water shall thirst again: <sup>14</sup>but whosoever drinketh of the water that I shall give him shall never thirst; but the water that I shall give him shall be in him a well of water springing up into everlasting life. <sup>15</sup>The woman saith unto him, Sir, give me this water, that I thirst not, neither come hither to draw.

<sup>16</sup> Jesus saith unto her, Go, call thy husband, and come hither. <sup>17</sup> The woman answered and said, I have no husband. Jesus said unto her, Thou hast well said, I have no husband: <sup>18</sup> for thou hast had five husbands; and he whom thou now hast is not thy husband: in that saidst thou truly. <sup>19</sup> The woman saith unto him, Sir, I perceive that thou art a prophet. <sup>20</sup> Our fathers worshipped in this mountain; and ye say, that in Jerusalem is the place where men ought to worship. <sup>21</sup> Jesus saith unto her, Woman, believe me, the hour cometh, when ye shall neither in this mountain, nor yet at Jerusalem, worship the Father. <sup>22</sup> Ye worship ye know not what: we know what we worship: for salvation is of the Jews. <sup>23</sup> But the hour cometh, and now is, when the true worshippers shall worship the Father in spirit and in truth: for the Father seeketh such to worship him. <sup>24</sup> God *is* a Spirit: and they that worship him must worship *him* in spirit and in truth. <sup>25</sup> The woman saith unto him, I know that Messiah cometh, which is called Christ: when he is come, he will tell us all things. <sup>26</sup> Jesus saith unto her, I that speak unto thee am *he*.

### **New International Version [NIV]**

Not Included

**John 8:1-11****Authorized (King James) Version (AKJV)**

Jesus went unto the mount of Olives. <sup>2</sup> And early in the morning he came again into the temple, and all the people came unto him; and he sat down, and taught them. <sup>3</sup> And the scribes and Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst, <sup>4</sup> they say unto him, Master, this woman was taken in adultery, in the very act. <sup>5</sup> Now Moses in the law commanded us, that such should be stoned: but what sayest thou? <sup>6</sup> This they said, tempting him, that they might have to accuse him. But Jesus stooped down, and with *his* finger wrote on the ground, *as though he heard them not*. <sup>7</sup> So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her. <sup>8</sup> And again he stooped down, and wrote on the ground. <sup>9</sup> And they which heard *it*, being convicted by *their own* conscience, went out one by one, beginning at the eldest, *even* unto the last: and Jesus was left alone, and the woman standing in the midst. <sup>10</sup> When Jesus had lifted up himself, and saw none but the woman, he said unto her, Woman, where are those thine accusers? hath no man condemned thee? <sup>11</sup> She said, No man, Lord. And Jesus said unto her, Neither do I condemn thee: go, and sin no more.

**New International Version [NIV]**

Not Included

**Luke 8:1-3****Authorized (King James) Version (AKJV)**

And it came to pass afterward, that he went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God: and the twelve *were* with him, <sup>2</sup> and certain women, which had been healed of evil spirits and infirmities, Mary called Magdalene, out of whom went seven devils, <sup>3</sup> and Joanna the wife of Chuza Herod's steward, and Susanna, and many others, which ministered unto him of their substance.

**New International Version [NIV]**

1After this, Jesus traveled about from one town and village to another, proclaiming the good news of the kingdom of God. The Twelve were with him, 2and also some women who had been cured of evil spirits and diseases: Mary (called Magdalene) from whom seven demons had come out; 3Joanna the wife of Chuza, the manager of Herod's household; Susanna; and many others. These women were helping to support them out of their own means.

**Matthew 17:27****Authorized (King James) Version (AKJV)**

27 Notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; and when thou hast opened his mouth, thou shalt find a piece of money: that take, and give unto them for me and thee.

**New International Version [NIV]**

**27**“But so that we may not cause offense, go to the lake and throw out your line. Take the first fish you catch; open its mouth and you will find a four-drachma coin. Take it and give it to them for my tax and yours.”

**Matthew 14:13-21****Authorized (King James) Version (AKJV)**

<sup>13</sup> When Jesus heard *of it*, he departed thence by ship into a desert place apart: and when the people had heard *thereof*, they followed him on foot out of the cities. <sup>14</sup> And Jesus went forth, and saw a great multitude, and was moved with compassion toward them, and he healed their sick.

<sup>15</sup> And when it was evening, his disciples came to him, saying, This is a desert place, and the time is now past; send the multitude away, that they may go into the villages, and buy themselves victuals. <sup>16</sup> But Jesus said unto them, They need not depart; give ye them to eat. <sup>17</sup> And they say unto him, We have here but five loaves, and two fishes. <sup>18</sup> He said, Bring them hither to me. <sup>19</sup> And he commanded the multitude to sit down on the grass, and took the five loaves, and the two fishes, and looking up to heaven, he blessed, and brake, and gave the loaves to *his* disciples, and the disciples to the multitude. <sup>20</sup> And they did all eat, and were filled: and they took up of the fragments that remained twelve baskets full. <sup>21</sup> And they that had eaten were about five thousand men, beside women and children.

**New International Version [NIV]**

Not Included



**John 6:1-14****Authorized (King James) Version (AKJV)**

After these things Jesus went over the sea of Galilee, which is *the sea* of Tiberias. <sup>2</sup> And a great multitude followed him, because they saw his miracles which he did on them that were diseased. <sup>3</sup> And Jesus went up into a mountain, and there he sat with his disciples. <sup>4</sup> And the passover, a feast of the Jews, was nigh. <sup>5</sup> When Jesus then lifted up *his* eyes, and saw a great company come unto him, he saith unto Philip, Whence shall we buy bread, that these may eat? <sup>6</sup> And this he said to prove him: for he himself knew what he would do. <sup>7</sup> Philip answered him, Two hundred pennyworth of bread is not sufficient for them, that every one of them may take a little. <sup>8</sup> One of his disciples, Andrew, Simon Peter's brother, saith unto him, <sup>9</sup> There is a lad here, which hath five barley loaves, and two small fishes: but what are they among so many? <sup>10</sup> And Jesus said, Make the men sit down. Now there was much grass in the place. So the men sat down, in number about five thousand. <sup>11</sup> And Jesus took the loaves; and when he had given thanks, he distributed to the disciples, and the disciples to them that were set down; and likewise of the fishes as much as they would. <sup>12</sup> When they were filled, he said unto his disciples, Gather up the fragments that remain, that nothing be lost. <sup>13</sup> Therefore they gathered *them* together, and filled twelve baskets with the fragments of the five barley loaves, which remained over and above unto them that had eaten.

<sup>14</sup> Then those men, when they had seen the miracle that Jesus did, said, This is of a truth that prophet that should come into the world.

**New International Version [NIV]**

Not Included

4.9.8.

**Matthew 15:32-39****Authorized (King James) Version (AKJV)**

<sup>32</sup> Then Jesus called his disciples *unto him*, and said, I have compassion on the multitude, because they continue with me now three days, and have nothing to eat: and I will not send them away fasting, lest they faint in the way. <sup>33</sup> And his disciples say unto him, Whence should we have so much bread in the wilderness, as to fill so great a multitude? <sup>34</sup> And Jesus saith unto them, How many loaves have ye? And they said, Seven, and a few little fishes. <sup>35</sup> And he commanded the multitude to sit down on the ground. <sup>36</sup> And he took the seven loaves and the fishes, and gave thanks, and brake *them*, and gave to his disciples, and the disciples to the multitude. <sup>37</sup> And they did all eat, and were filled: and they took up of the broken *meat* that was left seven baskets full. <sup>38</sup> And they that did eat were four thousand men, beside women and children. <sup>39</sup> And he sent away the multitude, and took ship, and came into the coasts of Magdala.

**New International Version [NIV]**

Not Included

**Deuteronomy 30:19-20****Authorized (King James) Version (AKJV)**

I call heaven and earth to record this day against you, that I have set before you life and death, blessing and cursing: therefore choose life, that both thou and thy seed may live: 20 that thou mayest love the LORD thy God, and that thou mayest obey his voice, and that thou mayest cleave unto him: for he *is* thy life, and the length of thy days: that thou mayest dwell in the land which the LORD sware unto thy fathers, to Abraham, to Isaac, and to Jacob, to give them.

**New International Version [NIV]**

Not Included

U.S.C.A. Const. Art. I § 8, cl. 1  
Section 8, Clause 1. Powers of Congress; Levy of  
Taxes for  
Common Defense and General Welfare; Uniformity  
of Taxation

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

U.S.C.A. Const. Amend. V-Due Process  
Amendment V. Due Process clause

No person shall be \* \* \* deprived of life, liberty, or  
property, without due process of law; \* \* \*

U.S.C.A. Const. Amend. XIV, § 1-Due Proc  
Section 1. Due process of law

\* \* \* nor shall any State deprive any person of life, liberty, or property, without due process of law; \* \* \* nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C.A. Const. Amend. XI  
Amendment XI. Suits Against States

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.



5 C.F.R. § 2635.101  
§ 2635.101 Basic obligation of public service.

(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially

affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a

reasonable person with knowledge of the relevant facts.

(c) Related statutes. In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

5 U.S.C.A. § 702  
§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

18 U.S.C.A. § 1961  
§ 1961. Definitions  
Effective: May 11, 2016

As used in this chapter--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to

obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), 1 sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright),

section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto

Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) “person” includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) “pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) “unlawful debt” means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) “racketeering investigator” means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) “racketeering investigation” means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United



States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter.

Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C.A. § 1962  
§ 1962. Prohibited activities

**(a)** It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

**(b)** It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

**(c)** It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the

conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. **(d)** It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C.A. § 1964  
§ 1964. Civil remedies

**(a)** The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

**(b)** The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

**(c)** Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

18 U.S.C.A. § 2510  
§ 2510. Definitions  
Effective: November 2, 2002

As used in this chapter--

- (1) “wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;
- (2) “oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;
- (3) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;
- (4) “intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
- (5) “electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than--
- (a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of

its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

**(b)** a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

**(6)** “person” means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

**(7)** “Investigative or law enforcement officer” means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

**(8)** “contents”, when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;

**(9)** “Judge of competent jurisdiction” means--

**(a)** a judge of a United States district court or a United States court of appeals; and

**(b)** a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;

**(10)** “communication common carrier” has the meaning given that term in section 3 of the Communications Act of 1934;

**(11)** “aggrieved person” means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

**(12)** “electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo optical system that affects interstate or foreign commerce, but does not include--

**(A)** any wire or oral communication;

**(B)** any communication made through a tone-only paging device;

**(C)** any communication from a tracking device (as defined in section 3117 of this title); or

**(D)** electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

**(13)** “user” means any person or entity who--

**(A)** uses an electronic communication service; and

**(B)** is duly authorized by the provider of such service to engage in such use;

**(14)** “electronic communications system” means any wire, radio, electromagnetic, photo optical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

**(15)** “electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications;

**(16)** “readily accessible to the general public” means, with respect to a radio communication, that such communication is not--

**(A)** scrambled or encrypted;

- (B)** transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;
  - (C)** carried on a subcarrier or other signal subsidiary to a radio transmission;
  - (D)** transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or
  - (E)** transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;
- (17)** “electronic storage” means--
- (A)** any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
  - (B)** any storage of such communication by an electronic communication service for purposes of backup protection of such communication;
- (18)** “aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception;
- (19)** “foreign intelligence information”, for purposes of section 2517(6) of this title, means--
- (A)** information, whether or not concerning a United States person, that relates to the ability of the United States to protect against--
    - (i)** actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
    - (ii)** sabotage or international terrorism by a foreign power or an agent of a foreign power; or



**(iii)** clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

**(B)** information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to--

**(i)** the national defense or the security of the United States; or

**(ii)** the conduct of the foreign affairs of the United States;

**(20)** "protected computer" has the meaning set forth in section 1030; and

**(21)** "computer trespasser"--

**(A)** means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and

**(B)** does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

## 18 U.S.C.A. § 2511

§ 2511. Interception and disclosure of wire, oral, or  
electronic communications prohibited

Effective: November 16, 2018

**(1)** Except as otherwise specifically provided in this chapter any person who--

**(a)** intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

**(b)** intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when--

**(i)** such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

**(ii)** such device transmits communications by radio, or interferes with the transmission of such communication; or

**(iii)** such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

**(iv)** such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

**(v)** such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

**(c)** intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

**(d)** intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

**(e)(i)** intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)-(c), 2511(2)(e), 2516, and 2518 of this chapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation, shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

**(2)(a)(i)** It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that

a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

**(ii)** Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with--

**(A)** a court order directing such assistance or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978 signed by the authorizing judge, or

**(B)** a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished a court order or certification under this chapter, except as may otherwise be required by legal process and

then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order, statutory authorization, or certification under this chapter.

**(iii)** If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision and shall certify that the statutory requirements have been met.

**(b)** It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

**(c)** It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

**(d)** It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one

of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

**(e)** Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

**(f)** Nothing contained in this chapter or chapter 121 or 206 of this title, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire, oral, and electronic communications may be conducted.

**(g)** It shall not be unlawful under this chapter or chapter 121 of this title for any person--

**(i)** to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

**(ii)** to intercept any radio communication which is transmitted--

**(I)** by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

**(II)** by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

**(III)** by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

**(IV)** by any marine or aeronautical communications system;

**(iii)** to engage in any conduct which--

**(I)** is prohibited by section 633 of the Communications Act of 1934; or

**(II)** is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

**(iv)** to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

**(v)** for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

**(h)** It shall not be unlawful under this chapter--

**(i)** to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

**(ii)** for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

**(i)** It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if--

**(I)** the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

**(II)** the person acting under color of law is lawfully engaged in an investigation;

**(III)** the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

**(IV)** such interception does not acquire communications other than those transmitted to or from the computer trespasser.

**(j)** It shall not be unlawful under this chapter for a provider of electronic communication service to the public or remote computing service to intercept or disclose the contents of a wire or electronic communication in response to an order from a foreign government that is subject to an executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523.

**(3)(a)** Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other



than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

**(b)** A person or entity providing electronic communication service to the public may divulge the contents of any such communication--

**(i)** as otherwise authorized in section 2511(2)(a) or 2517 of this title;

**(ii)** with the lawful consent of the originator or any addressee or intended recipient of such communication;

**(iii)** to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

**(iv)** which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

**(4)(a)** Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

**(b)** Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted--

**(i)** to a broadcasting station for purposes of retransmission to the general public; or

**(ii)** as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

**[(c) Redesignated (b)]**

**(5)(a)(i)** If the communication is--

**(A)** a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

**(B)** a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

**(ii)** In an action under this subsection--

**(A)** if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

**(B)** if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory \$500 civil fine.

**(b)** The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than \$500 for each violation of such an injunction.

## 18 U.S.C.A. § 2512

§ 2512. Manufacture, distribution, possession, and  
advertising of wire,  
oral, or electronic communication intercepting de-  
vices prohibited

Effective: November 16, 2018

**(1)** Except as otherwise specifically provided in this chapter, any person who intentionally--

**(a)** sends through the mail, or sends or carries in interstate or foreign commerce, any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications;

**(b)** manufactures, assembles, possesses, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications, and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

**(c)** places in any newspaper, magazine, handbill, or other publication or disseminates by electronic means any advertisement of--

**(i)** any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

**(ii)** any other electronic, mechanical, or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral, or electronic communications, knowing the content of the advertisement and knowing or

having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce, shall be fined under this title or imprisoned not more than five years, or both.

**(2)** It shall not be unlawful under this section for--

**(a)** a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication service, or

**(b)** an officer, agent, or employee of, or a person under contract with, the United States, a State, or a political subdivision thereof, in the normal course of the activities of the United States, a State, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications.

**(3)** It shall not be unlawful under this section to advertise for sale a device described in subsection (1) of this section if the advertisement is mailed, sent, or carried in interstate or foreign commerce solely to a domestic provider of wire or electronic communication service or to an agency of the United States, a State, or a political subdivision thereof which is duly authorized to use such device.

## 18 U.S.C.A. § 2513

## § 2513. Confiscation of wire, oral, or electronic communication intercepting devices

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to (1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code, (2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (3) the remission or mitigation of such forfeiture, (4) the compromise of claims, and (5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

## 18 U.S.C.A. § 2515

§ 2515. Prohibition of use as evidence of intercepted  
wire or oral communications

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

## 18 U.S.C.A. § 2516

§ 2516. Authorization for interception of wire, oral, or  
electronic communications

Effective: December 21, 2018

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, 1 or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of--

(a) any offense punishable by death or by imprisonment for more than one year under sections 2122 and 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 10 (relating to biological weapons), chapter 37 (relating to espionage), chapter 55 (relating to kidnapping), chapter 90 (relating to protection of trade secrets), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots), chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

**(b)** a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

**(c)** any offense which is punishable under the following sections of this title: section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism), section 81 (arson within special maritime and territorial jurisdiction), section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1581 (peonage), section 1582 (vessels for slave trade), section 1583 (enticement into slavery), section 1584 (involuntary servitude), section 1585 (seizure, detention, transportation or sale of slaves), section 1586 (service on vessels in slave trade), section 1587 (possession of slaves aboard vessel), section 1588 (transportation of slaves from United States), section 1589 (forced labor), section



1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), section 1591 (sex trafficking of children by force, fraud, or coercion), section 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), section 1992 (relating to terrorist attacks against mass transportation), sections 2251 and 2252 (sexual exploitation of children), section 2251A (selling or buying of children), section 2252A (relating to material constituting or containing child pornography), section 1466A (relating to child obscenity), section 2260 (production of sexually explicit depictions of a minor for importation into the United States), sections 2421, 2422, 2423, and 2425 (relating to transportation for illegal sexual activity and related crimes), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain

motor vehicles or motor vehicle parts), section 2340A (relating to torture), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 38 (relating to aircraft parts fraud), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), section 1341 (relating to mail fraud), a felony violation of section 1030 (relating to computer fraud and abuse), section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), section 175c (relating to variola virus), section 956 (conspiracy to harm persons or property overseas), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), section 1546 (relating to fraud and misuse of visas, permits, and other documents), or section 555 (relating to construction or use of international border tunnels);

#### 5.9.6.

- (d)** any offense involving counterfeiting punishable under section 471, 472, or 473 of this title;
- (e)** any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;
- (f)** any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;
- (g)** a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions), or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited);
- (h)** any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;
- (i)** any felony violation of chapter 71 (relating to obscenity) of this title;
- (j)** any violation of section 60123(b) (relating to destruction of a natural gas pipeline), section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft) of title 49;
- (k)** any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);
- (l)** the location of any fugitive from justice from an offense described in this section;
- (m)** a violation of section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens);

- (n)** any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);
  - (o)** any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms);
  - (p)** a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents), section 1028A (relating to aggravated identity theft) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or
  - (q)** any criminal violation of section 229 (relating to chemical weapons) or section 2332, 2332a, 2332b, 2332d, 2332f, 2332g, 2332h 3 2339, 2339A, 2339B, 2339C, or 2339D of this title (relating to terrorism);
  - (r)** any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3);
  - (s)** any violation of section 670 (relating to theft of medical products);
  - (t)** any violation of the Export Control Reform Act of 2018; or
  - (u)** any conspiracy to commit any offense described in any subparagraph of this paragraph.
- (2)** The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge

for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, human trafficking, child sexual exploitation, child pornography production, prostitution, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

**(3)** Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

## 18 U.S.C.A. § 2517

§ 2517. Authorization for disclosure and use of intercepted wire, oral, or electronic communications  
Effective: November 25, 2002

- (1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.
- (2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.
- (3) Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any State or political subdivision thereof.
- (4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character.
- (5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein,

intercepts wire, oral, or electronic communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

**(6)** Any investigative or law enforcement officer, or attorney for the Government, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to any other Federal law enforcement, intelligence, protective, immigration, national defense, or national security official to the extent that such contents include foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in subsection (19) of section 2510 of this title), to assist the official who is to receive that information in the performance of his official duties. Any Federal official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information.

**(7)** Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or

evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.



## 18 U.S.C.A. § 2518

§ 2518. Procedure for interception of wire, oral, or  
electronic communications  
Effective: October 20, 1998

**(1)** Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

**(a)** the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

**(b)** a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

**(c)** a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

**(d)** a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first

obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

**(e)** a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

**(f)** where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

**(2)** The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

**(3)** Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that--

**(a)** there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;

**(b)** there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

- (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.
- (4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify--

  - (a) the identity of the person, if known, whose communications are to be intercepted;
  - (b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;
  - (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;
  - (d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and
  - (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of

## 18 U.S.C.A. § 2520

§ 2520. Recovery of civil damages authorized  
Effective: November 16, 2018

**(a) In general.**--Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

**(b) Relief.**--In an action under this section, appropriate relief includes--

**(1)** such preliminary and other equitable or declaratory relief as may be appropriate;

**(2)** damages under subsection (c) and punitive damages in appropriate cases; and

**(3)** a reasonable attorney's fee and other litigation costs reasonably incurred.

**(c) Computation of damages.**--**(1)** In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

**(A)** If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or

statutory damages of not less than \$50 and not more than \$500.

**(B)** If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1000.

**(2)** In any other action under this section, the court may assess as damages whichever is the greater of--

**(A)** the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

**(B)** statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

**(d) Defense.**--A good faith reliance on--

**(1)** a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

**(2)** a request of an investigative or law enforcement officer under section 2518(7) of this title; or

**(3)** a good faith determination that section 2511(3), 2511(2)(i), or 2511(2)(j) of this title permitted the conduct complained of; is a complete defense against any civil or criminal action brought under this chapter or any other law.

**(e) Limitation** --A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.

**(f) Administrative discipline.**--If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise

serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

**(g) Improper disclosure is violation.** --Any willful disclosure or use by an investigative or law enforcement officer or governmental entity of information beyond the extent permitted by section 2517 is a violation of this chapter for purposes of section 2520(a).

28 U.S.C.A. § 1331  
§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C.A. § 1343  
§ 1343. Civil rights and elective franchise

**(a)** The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

**(1)** To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

**(2)** To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

**(3)** To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

**(4)** To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

**(b)** For purposes of this section--

**(1)** the District of Columbia shall be considered to be a State; and

**(2)** any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.



## 28 U.S.C.A. § 1491

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority  
Effective: December 31, 2011

**(a)(1)** The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

**(2)** To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 7104(b)(1) of title 41, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other

## 28 U.S.C.A. § 1631

§ 1631. Transfer to cure want of jurisdiction  
Effective: December 19, 2018

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

28 U.S.C.A. § 2201  
§ 2201. Creation of remedy  
Effective: March 23, 2010

**(a)** In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

**(b)** For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

28 U.S.C.A. § 2202  
§ 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

6.6.1.

28 U.S.C.A. § 2679  
§ 2679. Exclusiveness of remedy

**(a)** The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

**(b)(1)** The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

**(2)** Paragraph (1) does not extend or apply to a civil action against an employee of the Government--

**(A)** which is brought for a violation of the Constitution of the United States, or

**(B)** which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

**(c)** The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver

within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

**(d)(1)** Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

**(2)** Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

**(3)** In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) 1 of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

**(4)** Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

**(5)** Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if--

**(A)** the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

**(B)** the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

**(e)** The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.



## 42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights  
Effective: October 19, 1996

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

## 42 U.S.C.A. § 1985

## § 1985. Conspiracy to interfere with civil rights

**(1) Preventing officer from performing duties**

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

**(2) Obstructing justice; intimidating party, witness, or juror**

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection

of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

**(3) Depriving persons of rights or privileges**

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C.A. § 1986  
§ 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C.A. § 2000e  
§ 2000e. Definitions

For the purposes of this subchapter--

**(a)** The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

**(b)** The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

**(c)** The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

**(d)** The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other



