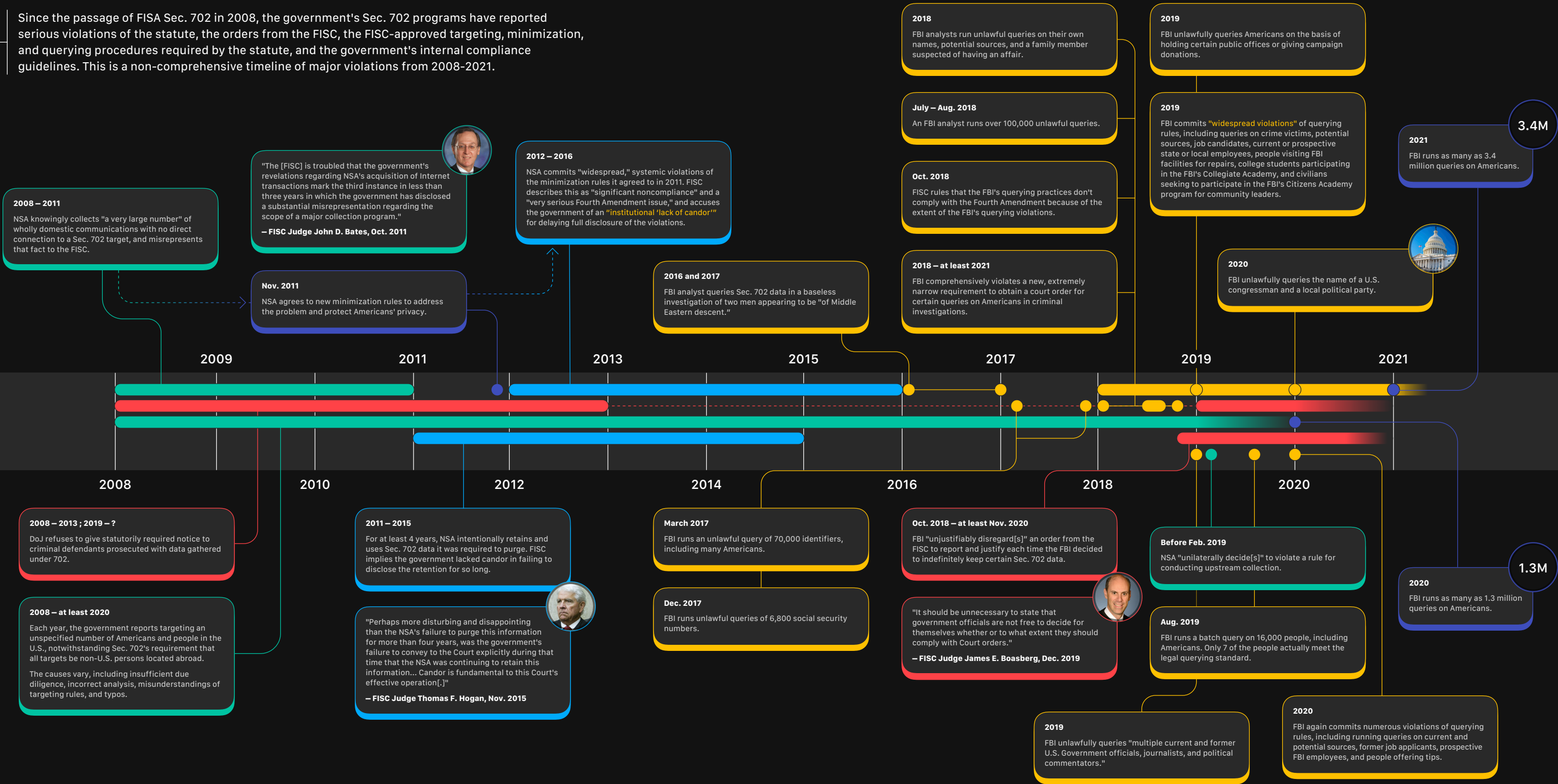




Selected Section 702 Violations on the Record

Since the passage of FISA Sec. 702 in 2008, the government's Sec. 702 programs have reported serious violations of the statute, the orders from the FISC, the FISC-approved targeting, minimization, and querying procedures required by the statute, and the government's internal compliance guidelines. This is a non-comprehensive timeline of major violations from 2008-2021.



Some dates are approximate.

Violation type



Query



Minimization



Reporting



Targeting



Non-Violation Event

Citations

2008 – 2011 | NSA knowingly collects "a very large number" of wholly domestic communications with no direct connection to a Sec. 702 target, and misrepresents that fact to the FISC.

[REDACTED], FISA Ct. Oct. 3, 2011, at 5-10, 15-18, 27-79.

2008 – 2013; 2019 – ? | DoJ refuses to give statutorily required notice to criminal defendants prosecuted with data gathered under 702.

Adam Liptak, A Secret Surveillance Program Proves Challengeable in Theory Only, N.Y. Times (July 15, 2013); Patrick C. Toomey, Why Aren't Criminal Defendants Getting Notice of Section 702 Surveillance — Again?, Just Security (Dec. 11, 2015); Notice of Intent to Use FISA Information, U.S. v. Al-Jayab, No. 1:16-cr-00181 (N.D. Ill. 2016); Notice of Intent to Use FISA Information, U.S. v. Kandic, No. 1:17-cr-00449 (E.D.N.Y. 2017).

2008 – at least 2020 | Each year, the government reports targeting an unspecified number of Americans and people in the U.S., notwithstanding Sec. 702's requirement that all targets be non-U.S. persons located abroad. The causes vary, including insufficient due diligence, incorrect analysis, misunderstandings of targeting rules, and typos.

Letter from NSA Inspector General George Ellard to Representative Silvestre Reyes (Nov. 30, 2009); Letter from NSA Inspector General George Ellard to Representative Silvestre Reyes (Nov. 19, 2010); Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2012 - Nov. 30, 2012, at 28-29, 33, 36; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2012 - May 31, 2013, at 32-34, 38-39; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2013 - Nov. 30, 2013, at 30-31, 35; DOJ Quarterly Report to the FISC Concerning Compliance Matters under Sec. 702 of the FISA, Dec. 1, 2013 - Feb. 28, 2014, at 53; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2013 - May 31, 2014, at 29, 32, 35, 39; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2014 - Nov. 30, 2014, at 32, 35, 39, 42-43; [REDACTED], FISA Ct. Aug. 26, 2014, at 28 n.27; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2014 - May 31, 2015, at 38; DOJ Quarterly Report to the FISC Concerning Compliance Matters under Sec. 702 of the FISA, Dec. 1, 2014 - Feb. 28, 2015, at 56; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2015 - Nov. 30, 2015, at 46; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2015 - May 31, 2016, at 34-35, 47; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2016 - Nov. 30, 2016, at 40-41; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2016 - May 31, 2017, at 37-39; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2017 - Nov. 30, 2017, at 40, 42, 44-46, 48; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1 2017 - May 31, 2018, at 40, 43, 45-47; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June. 1 2018 - Nov. 30, 2018, at 49-50; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2018 - May 31, 2019, at 47-50; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2019 - Nov. 30, 2019, at 47-49, 56.

"The [FISC] is troubled that the government's revelations regarding NSA's acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program." – FISC Judge John D. Bates, Oct. 2011

[REDACTED], FISA Ct. Oct. 3, 2011, at 16 n.14.

Nov. 2011 | NSA agrees to new minimization rules to address the problem and protect Americans' privacy.

[REDACTED], FISA Ct. Nov. 30, 2011.

2012 – 2016 | NSA commits "widespread," systemic violations of minimization rules it had agreed to in 2011. FISC describes this as "significant noncompliance" and a "very serious Fourth Amendment issue," and accuses the government of an "institutional 'lack of candor'" for delaying full disclosure of the violations.

[REDACTED], FISA Ct. April. 26, 2017, at 14-30, 78-83.

2011 – 2015 | For at least 4 years, NSA intentionally retains and uses Sec. 702 data it was required to purge. FISC implies the government lacked candor in failing to disclose the retention for so long.

[REDACTED], FISA Ct. Nov. 6, 2015, at 55-77; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2015 - Nov. 30, 2015, at 38-41; [REDACTED], FISA Ct. April. 26, 2017, at 70-72.

"Perhaps more disturbing and disappointing than the NSA's failure to purge this information for more than four years, was the government's failure to convey to the Court explicitly during that time that the NSA was continuing to retain this information... Candor is fundamental to this Court's effective operation[.]" – FISC Judge Thomas F. Hogan, Nov. 2015

[REDACTED], FISA Ct. Nov. 6, 2015, at 58-59.

2016 and 2017 | FBI analyst queries Sec. 702 data in a baseless investigation of two men appearing to be "of Middle Eastern descent."

Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2019 - May 31, 2020, at 61.

March 2017 | FBI runs an unlawful query of 70,000 identifiers, including many Americans.

[REDACTED], FISA Ct. Oct. 18, 2018, at 68-69; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2017 - Nov. 30, 2017, at 55-56.

Dec. 2017 | FBI runs unlawful queries of 6,800 social security numbers.

[REDACTED], FISA Ct. Oct. 18, 2018, at 69; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2017 - May 31, 2018, at 60.

2018 | FBI analysts run unlawful queries on their own names, potential sources, and a family member suspected of having an affair.

Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2017 - May 31, 2018, at 57-60; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2018 - Nov. 30, 2018, at 59-62.

July – Aug. 2018 | An FBI analyst runs over 100,000 unlawful queries.

Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2018 - Nov. 30, 2018, at 60.

Oct. 2018 | FISC rules that the FBI's querying practices don't comply with the Fourth Amendment because of the extent of the FBI's querying violations.

[REDACTED], FISA Ct. Oct. 18, 2018, at 80-92.

2018 – at least 2021 | FBI comprehensively violates a new, extremely narrow requirement to obtain a court order for certain queries on Americans in criminal investigations.

[REDACTED], FISA Ct Dec. 6, 2019, at 69-72; [REDACTED], FISA Ct Nov. 18, 2020, at 42-44; Statistical Transparency Report, CY2020, Office of the Director of National Intelligence, at 21 (Fig. 9); Statistical Transparency Report, CY2021, Office of the Director of National Intelligence, at 22 (Fig. 10).

Oct. 2018 – at least Nov. 2020 | FBI "unjustifiably disregard[s]" an order from the FISC to report and justify each time the FBI decided to indefinitely keep certain Sec. 702 data.

[REDACTED], FISA Ct Dec. 6, 2019, at 44-45; [REDACTED], FISA Ct Nov. 18, 2020, at 54-56.

"It should be unnecessary to state that government officials are not free to decide for themselves whether or to what extent they should comply with Court orders." – FISC Judge James E. Boasberg, Dec. 2019

[REDACTED], FISA Ct Dec. 6, 2019, at 45.

2019 | FBI unlawfully queries Americans on the basis of holding certain public offices or giving campaign donations.

Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Reporting Period June 1, 2019 – Nov. 30, 2019 at 58 n.84.

2019 | FBI commits "widespread violations" of querying rules, including queries on crime victims, potential sources, job candidates, current or prospective state or local employees, people visiting FBI facilities for repairs, college students participating in the FBI's Collegiate Academy, and civilians seeking to participate in the FBI's Citizens Academy program for community leaders.

[REDACTED], FISA Ct Dec. 6, 2019, at 65-69; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2019 - Nov. 30, 2019, at 58-61; [REDACTED], FISA Ct Nov. 18, 2020, at 39-41.

Before Feb. 2019 | NSA "unilaterally decide[s]" to violate a rule for conducting upstream collection.

[REDACTED], FISA Ct Dec. 6, 2019, at 13.

Aug. 2019 | FBI runs a batch query on 16,000 people, including Americans, only 7 of whom actually meet the legal querying standard.

[REDACTED], FISA Ct Dec. 6, 2019, at 67-68; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period June 1, 2019 - Nov. 30, 2019, at 57 n.82.

2019 | FBI unlawfully queries "multiple current and former U.S. Government officials, journalists, and political commentators."

Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2018 - May 31, 2019, at 60-61.

2020 | FBI unlawfully queries the name of a U.S. congressman and a local political party.

Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2019 - May 31, 2020, at 58 & 58 n.92.

2020 | FBI again commits numerous violations of querying rules, including running queries on current and potential sources, former job applicants, prospective FBI employees, and people offering tips.

[REDACTED], FISA Ct Nov. 18, 2020, at 39-41; Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of FISA, Reporting Period Dec. 1, 2019 - May 31, 2020, at 57-59.

2020 | FBI runs as many as 1.3 million queries on Americans.

Statistical Transparency Report, CY2021, Office of the Director of National Intelligence, at 21 (Fig. 9).

2021 | FBI runs as many as 3.4 million queries on Americans.

Statistical Transparency Report, CY2021, Office of the Director of National Intelligence, at 21 (Fig. 9).