Chairman Poe, members of the committee, thanks for inviting me to testify today. The ACLU believes the widespread domestic use of unmanned aerial vehicles or drones will raise significant new privacy issues which cannot be adequately addressed by existing law. Our recent report on the issue is available here in hard copy and online.

Drones share some characteristics with manned aerial surveillance, such as planes and helicopters, but we believe the privacy invasion they represent is substantially greater in both scope and volume. Manned aircraft are expensive to purchase, operate and maintain. This expense has always imposed a natural limit on the government’s aerial surveillance capacity. Drones’ low cost and flexibility erode that natural limit. Small, hovering platforms can explore hidden spaces or peer in windows, and large static blimps enable continuous, long-term monitoring – all for much less than the cost of a helicopter or plane.

Ongoing improvements in computing technology exacerbate these privacy issues. High powered, night vision cameras and see-through imaging provide more and better detail. Imagine technology similar to the naked body scanners we are all familiar with from our airports attached to a drone. Through technologies like face recognition, improved analytics and wireless internet, it is possible to track specific individuals with multiple drones. Drones and license plate scanning could be used to track cars for traffic enforcement.

While drones certainly have beneficial uses – for search and rescue missions, firefighting, dangerous police tactical operations – these technological realities point to significant possible harms if left unchecked. With the use of video cameras we have seen ongoing problems with voyeurism and racial profiling by operators. There is also the real danger that people will change how they act in public – whether at a protest rally or just sunning themselves in their backyard – if there is a persistent danger of monitoring.

The use of this technology is poised to explode. Legislation passed in February requires integration of drones into the federal airspace by December 2015. But this legislation says nothing about privacy or securing the rights of individuals who are the subject of drone surveillance.

Current law has not yet caught up to new technology. The Supreme Court has authorized aerial searches and photography of private property. The recent case US v. Jones may eventually be extended to create protections against ongoing and unlimited automated tracking but no cases have yet been decided around drone use. There are no federal or state statutory protections.
As the entity that regulates the skies, the federal government is in the best position to create rules for the use of drones by law enforcement. The ACLU recommends that these rules be based on four key principles:

First, no mass surveillance. No one should be spied upon unless the government believes that person has committed a crime. Drone use over private property should only happen with a search warrant based on probable cause – the same standard used to search someone’s house or business. It might be permissible to monitor individuals in public at a lower standard – perhaps reasonable suspicion – but the key is to prevent mass, suspicionless searches of the general population, including for intelligence gathering. Exceptions to this rule should be limited to emergencies connected to life and safety or narrowly drawn administrative exceptions in order to prevent pretextual use of drones.

Second, information collected by drones for one purpose – to combat a fire or perform a search and rescue – should not be used for another purpose such as general law enforcement or enforcing administrative laws. Information collected by drones should also be kept securely and destroyed promptly once it is no longer needed.

Third, drones should not carry weapons. Weapons developed on the battlefield in Iraq and Afghanistan have no place inside the US. There is a consensus forming on this issue. In fact the Heritage Foundation and the International Association of Chiefs of Police both support sharp limits on weaponized drones.

Finally, oversight is crucial. Communities, not just law enforcement, must play a central role in deciding whether to purchase drones. Like any new technology, drone use must be monitored to make sure it’s a wise investment that works. Forums like this one are a crucial first step in that oversight.

Drones should only be used if subject to a powerful framework that regulates their use in order to avoid abuse and invasions of privacy. The ACLU is eager to work with all the members of this committee in order to create a robust and appropriate framework for drone use. Thank you.