# Talking Points on the Recent FISA Legislation

The so-called “Protect America Act" allows for massive, untargeted collection of international communications without court order or meaningful oversight by either Congress or the courts. It contains virtually no protections for the U.S. end of the phone call or e-mail, leaving decisions about the collection, mining and use of Americans’ private communications up to this administration.

**The Act allows the Attorney General (AG) to issue program warrants for international calls without court review.** This new program grants the AG — not a court or independent body — the authority to issue year-long program warrants for surveillance of people reasonably believed to be outside of the United States. The secret intelligence court that has been overseeing such activities for the last thirty years is cut out of the process, leaving the executive branch unchecked.

**The Act has no protections for American phone calls and e-mails that are caught up in the dragnet.** The new program only requires that the surveillance be targeted at people overseas. While this will allow collection of foreign-to-foreign calls, it also allows the government to pick up all international communications where one party is in the United States, so long as no one particular person in the U.S. is being “targeted.” The law is silent on how to treat these American phone calls and e-mails — leaving the administration to decide how to collect, store, data-mine and use Americans’ private communications.

**The Act provides only a phony court review of secret procedures.** The AG is directed to submit to the intelligence court the procedures by which this new program will operate. However, the report to the court only need detail how the program is directed at people reasonably believed to be overseas — it does not require the AG to explain how it treats Americans’ calls or e-mails when they are intercepted. The court will have no information about how extensive the breach of American privacy is, nor will it have the authority to remedy it.

**The Act requires only meaningless reporting to Congress.** The new law requires the AG to report to the Intelligence and Judiciary Committees twice a year. But those reports will only contain information about activity in violation of the AG’s own secret guidelines about targeting foreigners overseas. Again, this ignores the impact that vast international collections will have on U.S. persons. The AG does not have to report on how many Americans’ calls it has tapped, incidentally picked up or how many Americans have become targets, even though the AG will now be allowed to rummage through all calls and e-mails coming into and out of the U.S.

**The Act has a sunset that may be of little value.** NACDL and its coalition partners will continue to work with Congress over the next six months to insert real protections into FISA for Americans who are going to be swept up in these new dragnets. However, the sunset will fall in the middle of the politically charged primary season, where it may be even harder to rein in intelligence activities already in progress than it is to resist expansion of those authorities in the first place. **Changes should be made immediately to bring FISA back in line with the Constitution.**

**Speaker Pelosi has already called for amendments to S. 1927.** Please support any amendments that make FISA constitutional again. We demand that judicial review of warrants by the Foreign Intelligence Surveillance Court be reinstated immediately and the standard required to show why a person is being targeted on U.S. soil be brought back to its original standard.

**For more information visit [www.nacdl.org/NSA](www.nacdl.org/NSA)**
**These materials are mainly a product of the ACLU**

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## WHAT Congress CAN DO NOW! (These are the points included in the Leave Behind)

When Congress returns from its recess, Members will undoubtedly try to fix the situation by introducing legislation that would amend the Protect America Act, S. 1927. Any legislative fix that is offered must do the following:

- Take the power for this program away from the Attorney General and put it before the Foreign Intelligence Surveillance Court that has overseen these activities for 30 years. Foreign Intelligence Surveillance Court review must not be only once a year, but regularly, to be meaningful.

- Orders should not be blank - without any description of who is targeted or what facilities will be used. Even if the orders do not specify certain people by name, they should be clear about what information they are seeking and how it will be obtained, and should never be just a dragnet over all international calls. The Fourth Amendment does not allow for "program warrants."

- Safeguards for U.S. calls should be written into the statute. While this program allows the collection of foreign to foreign calls, it also permits the government to scoop up calls and e-mails where an American is on one end. Legislation is useless if it is silent on how to treat these intercepts - it should be explicit about:

  1) Putting the burden on the government and telecommunication companies to sort out foreign to foreign calls, from those that have a person in the U.S. on one end.

  2) Requiring that communications with a U.S. person should not be kept unless, as required by FISA before, the U.S. person's communication is needed to avert immediate harm.

  3) Requiring the government to go back to the Foreign Intelligence Surveillance Court and get individualized orders BASED ON INDIVIDUALIZED SUSPICION when it knows that a certain person, account, or facility IS IN THE UNITED STATES OR IS A U.S. PERSON, ACCOUNT, OR FACILITY has contact with the US.

- Compliance with these statutory safeguards for U.S. information must be overseen by both the intelligence court and Congress through regular, detailed reporting, and the government should be subject to real consequences for breaking the rules.

- If these changes are not adopted, we ask that you allow S. 1927 to sunset.

Congress should also immediately hold hearings with experts and scholars about how, if at all, broad suspicion-less dragnets can be conducted constitutionally when they will necessarily pick up U.S. communications. Congress should also demand answers to its questions and subpoenas about surveillance activities over the past six years.