

February 5, 2020

Dear President Biden

On January 26, your administration announced an initial slate of executive actions to address racial inequity. Absent among them were actions addressing discriminatory policing in Black and Brown communities. The use of military equipment by federal, state and local law enforcement perpetuates a pattern of over-policing in communities of color with weapons of war. We the undersigned civil and human rights organizations write to urge you to advance this pledge, and go beyond a promise to reinstate the Obama-era executive order 13688 to prohibit the transfer of controlled military weapons through the Department of Defense (DOD) 1033 program by instead placing a full moratorium on the program and signal your support for Congress to end the program altogether.

Programs like 1033 and 1122 which allow military equipment transfers to federal, state, and local law enforcement agencies have long been under scrutiny. The 1033 Program has resulted in the transfer of approximately \$7.4 billion worth of surplus military equipment to state, local, and tribal law enforcement agencies since its creation in 1990.¹ These programs have equipped law enforcement agencies with military-grade equipment such as armored vehicles, military-style assault rifles, and explosives, and has funded the creation of special tactical teams for drug investigations. It has paved the way for militarized police responses to largely peaceful protests against police violence, like we witnessed this past summer in response to nationwide protest over the police killings of George Floyd and Breonna Taylor.

Images of police around the country encountering protesters of all ages with military equipment and violence are abundant. Over just an 11-day period in the summer of 2020, Amnesty International documented 125 incidents of police violence against protestors in 40 states and the District of Columbia.² The heavy-handed, violent and militarized response stood in stark contrast to the small number of Capitol police officers left to face off against violent and armed white supremacist groups who stormed the Capitol on January 6. This contrast was so stark that it can lead to the conclusion that militarized and violent policing responses are reserved for people who take to the streets in defense of Black lives. Coupled with the fact that the presence of over \$1,000 in equipment through the 1033 Program has been shown to increase the number of police killings in communities illustrates that these programs exacerbate racialized police violence.³ In addition, two studies released in the summer of 2020 show that the transfer of military equipment has not served to reduce crime or increase officer safety.⁴ The only logical conclusion to be drawn is that the transfer of military grade equipment to civilian law enforcement agencies must be ended.

Moreover, the 1033 Program has been notoriously mismanaged. A 2017 federal government oversight report found that the program could not prevent fraudulent applications from acquiring weapons of war from the program.⁵ As described in the 2014 American Civil Liberties Union report, the militarization of policing is a pervasive issue that stems from several areas of federal funding. In addition to the DOD 1033

¹ Brian Barrett, "The Pentagon's Hand-Me-Downs Helped Militarize Police. Here's How," Wired. June 2, 2020, <https://www.wired.com/story/pentagon-hand-me-downs-militarize-police-1033-program/>

² Incidents of Police Violence, Violence Against Protestors for Black Lives, Amnesty International, July 2020, <https://www.amnestyusa.org/protest-map/>

³ Chris Joyner, Nick Thieme, "Police Killings More Likely in Agencies That Get Military Gear Data Says Shows," Atlanta Journal Constitution. October 8, 2020, <https://www.ajc.com/news/police-killings-more-likely-in-agencies-that-get-military-gear-data-shows/MBPQ2ZE3XFHR5NIO37BKONOCGI/>.

⁴ Bill Hutchinson, "Providing Police does not reduce crime or protect Officers: Studies, Law Enforcement Say the Equipment Helps Small Cash Strapped Agencies" ABC News, December 8, 2020, <https://abcnews.go.com/US/providing-police-military-gear-reduce-crime-protect-officers/story?id=74518923>

⁵ U.S. Government Accountability Office, *DOD Excess Property Enhanced Controls Needed for Access to Excess Controlled Property*, July 2017, <https://www.gao.gov/assets/690/685916.pdf>

program, several Department of Homeland Security (DHS) [Federal Emergency Management Act \(FEMA\) grant](#) programs (especially the State Homeland Security Program and the Urban Area Security Initiative) to the tune of \$24.3 billion, exacerbate local and state special weapons and tactics (SWAT) raids overuse by providing billions of federal dollars to localities with little visibility or transparency into the way DHS FEMA grants are accounted for.⁶ These FEMA grant programs must prohibit the purchase of military weapons and should be restricted to using non-heavy grade military equipment. FEMA grant programs should also have greater disclosure and transparency requirements for recipients.

Proponents of the program will raise the rare scenario where a particular piece of military equipment was necessary to make a critical rescue, but decisions in reforming policing should not be made on the basis of one-off extreme situations. The approach must be holistic, one that recognizes that when military equipment is provided to civilian law enforcement agencies, those agencies will use them on civilian populations in ways that can exacerbate the exact type of violence that has led to the largest civil rights movement in US history. Others will try to refocus attention on the mundane items that get transferred through the program, such as microwaves, laptops and desk chairs. This line of reasoning is a red herring—all non-military grade equipment should be decoupled from items such as armored vehicles, bayonets and rocket launchers. As the administration considers executive action, we encourage you to take bold action to address the transfer of military equipment to civilian law enforcement agencies.

The Administration should issue an executive order placing a moratorium on the transfer of military weapons, vehicles and surveillance tools and technologies through the DOD 1033 Program and reinstate the Law Enforcement Permanent Working Group (PWG) work to continue dialogue among federal agencies providing military excess non-military equipment and establish a new program for the transfer of that equipment to nonprofits and state and local governments. The reestablished PWG should also establish a process to recall military equipment that is currently located with civilian law enforcement agencies, including surveillance tools and technologies. Finally, based on the reasons presented above, we firmly believe programs that transfer military equipment to Federal, state and local law enforcement should come to an end, and urge the Administration to signal support for Congress to take action to draw the 1033 program to a close.

If you have any questions about the issues raised in this letter, please do not hesitate to reach out to Jumana Musa of the National Association of Criminal Defense Lawyers at jmusa@nacdl.org, Aamra Ahmad of the American Civil Liberties Union at aahmad@aclu.org, Kristina Roth of Amnesty International at kr Roth@aiusa.org, Maritza Perez of Drug Policy Alliance at mperez@drugpolicy.org.

Sincerely,

National Association of Criminal Defense Lawyers
American Civil Liberties Union
Amnesty International USA
Drug Policy Alliance
Human Rights First

⁶War Comes Home: The Excessive Militarization of American Policing, American Civil Liberties Union, June 2014, <https://www.aclu.org/issues/criminal-law-reform/reforming-police/war-comes-home?redirect=militarization>