

## United States Senate

January 15, 2021

The Honorable Joseph R. Biden, Jr.  
President-elect of the United States  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear President-Elect Biden,

As you advocate for sensible law enforcement reforms, I urge you to prioritize the demilitarization of law enforcement, including changes to the surplus military equipment transfer program—known as the “1033 program.” Militarized law enforcement increases the prevalence of police violence without making our communities safer. Now is the moment to adopt a new model of defense support to law enforcement that strengthens community policing and all first responder agencies, while finally eliminating the transfer of weapons of war. By design, this should include support to nonprofits engaged in disaster response and other humanitarian organizations that are not eligible to receive surplus defense equipment under current law.

The 1033 program was established in the fiscal year (FY) 1997 National Defense Authorization Act (NDAA). Since its inception, the U.S. military has transferred weapons of war—including rifles, armored vehicles, and aircraft—to law enforcement agencies that are responsible for keeping peace in our communities.<sup>1</sup> The program gained notoriety and scrutiny after the police deployed military-style equipment in Ferguson, Missouri, in 2014, starting an effort to reform the program.<sup>2</sup> However, since Ferguson, law enforcement agencies across the country have continued to receive equipment including “494 mine-resistant vehicles, at least 800 pieces of body armor, more than 6,500 rifles, and at least 76 aircraft.”<sup>3</sup>

Many types of equipment transferred under the 1033 program have contributed to an increasingly militarized law enforcement, which has in turn led to more prevalent police violence. According to a *Research and Politics* study, there is “a positive and statistically significant relationship between 1033 transfers and fatalities from officer-involved shootings across all models.”<sup>4</sup> In fact, militarized law enforcement does not create safer communities. A 2018 study found that “militarized policing fails to enhance officer safety or reduce local crime,” suggesting that “the often-cited trade-off between public safety and civil liberties is a false choice.”<sup>5</sup>

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

<sup>2</sup> Taylor Wofford, “How America’s Police Became an Army: The 1033 Program,” *Newsweek*, 13 Aug. 2014, <https://www.newsweek.com/how-americas-police-became-army-1033-program-264537>.

<sup>3</sup> John Templeton, “Police Departments Have Received Hundreds Of Millions Of Dollars In Military Equipment Since Ferguson,” *Buzzfeed News*, 4 June 2020, <https://www.buzzfeednews.com/article/johntemplon/police-departments-military-gear-1033-program>.

<sup>4</sup> Casey Delehanty, Jack Mewhirter, Ryan Welch, Jason Wilks, “Militarization and police violence: The case of the 1033 program,” *Research and Politics*, April-June 2017, <https://journals.sagepub.com/doi/pdf/10.1177/2053168017712885>.

<sup>5</sup> Jonathan Mummolo, “Militarization fails to enhance police safety or reduce crime but may harm police reputation,” *PNAS*, 11 Sept. 2018, <https://www.pnas.org/content/pnas/115/37/9181.full.pdf>.

In addition, the militarization of law enforcement creates a culture and a mindset contrary to the mission of the police—to protect and serve. Militarization blurs the purpose of law enforcement with the purpose of the military—to fight foreign adversaries.<sup>6</sup> A 2018 policy study by R Street notes that another reason for an increase in violence by a militarized law enforcement is that when law enforcement has access to military equipment, they are more likely to use it, rather than other more appropriate and traditional law enforcement tools.<sup>7</sup> In other words, “military gear often takes the place of more appropriate tools for policing and undermines the job of an officer.”<sup>8</sup>

Since Ferguson, there have been a number of efforts to reform the 1033 program. In January 2015, President Barack Obama issued Executive Order (EO) 13688, which established critical improvements to the 1033 program, as well as better coordination between other federal grant programs that may be used for similar equipment.<sup>9</sup> As a result of EO13688, a limited number of equipment was prohibited—e.g. tracked armored vehicles, bayonets, grenade launchers, large caliber weapons and ammunition—and a permanent interagency working group was established.<sup>10</sup> In addition, the FY 2016 NDAA established a publically accessible website to display transfers of equipment.<sup>11</sup> However, in 2017, the Trump Administration rescinded EO13688, disbanding some of the critical oversight and transparency reforms to the 1033 program.<sup>12</sup>

Last year, the Congress enacted bipartisan reforms to the 1033 program in the FY 2021 NDAA. These include new transfer limitations on bayonets, grenades, weaponized track combat vehicles, and weaponized drones. These reforms also include requirements that law enforcement agencies that receive 1033 equipment must certify that their police officers received annual training on respect for the rights of citizens under the Constitution and de-escalation of force.

However, these modifications to the program are just a first step. A new administration can, through executive action, restore the previous EO and push for more transparency through the Department of Defense. In addition, your administration can push the Congress to enact further reforms to the 1033 program in a future NDAA or a broad police reform package. These reforms should transform the current model to further limit certain types of military equipment from being transferred, restore previously established accountability and transparency measures, and increase support to eligible nonprofits and humanitarian organizations that would benefit from

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<sup>6</sup> Arthur Rizer, Emily Mooney, “The Evolution of Modern Use-of-Force Policies and the Need for Professionalism in Policing,” *Federalist Society Review*, 21 May 2020, <https://fedsoc.org/commentary/publications/the-evolution-of-modern-use-of-force-policies-and-the-need-for-professionalism-in-policing>.

<sup>7</sup> Arthur Rizer, “Equip Police More Like Batman and Less Like G.I. Joe,” R Street, March 2018, <https://www.rstreet.org/wp-content/uploads/2018/04/Corrected-137-1.pdf>.

<sup>8</sup> Ibid.

<sup>9</sup> “Executive Order 13688—Federal Support for Local Law Enforcement Equipment Acquisition,” 16 Jan. 2015, <https://www.govinfo.gov/content/pkg/DCPD-201500033/pdf/DCPD-201500033.pdf>.

<sup>10</sup> “Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition,” May 2015, [https://bja.ojp.gov/sites/g/files/xyckuh186/files/publications/LEEWG\\_Report\\_Final.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/publications/LEEWG_Report_Final.pdf).

<sup>11</sup> LESO Public Information: <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/PublicInformation/>.

<sup>12</sup> “Presidential Executive Order on Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources,” 28 Aug. 2017, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-restoring-state-tribal-local-law-enforcements-access-life-saving-equipment-resources/>.

surplus military equipment that reduce administrative and operating expenses, such as office equipment, non-combat vehicles, and other appropriate transfers.

Specifically, these reforms should include:

- 1) Limiting the transfer of weapons of war under the 1033 program, including armor-piercing firearms and ammunition, grenade launchers, explosives, tear gas; and items in the Federal Supply Class of banned items;
- 2) Prohibiting the use of transferred equipment against First Amendment-protected activities, such as the right peaceably to assemble and to petition the government for redress of grievances;
- 3) Requiring recipients of equipment to certify that the equipment is not surplus to their needs, and require the return of surplus equipment;
- 4) Increasing transparency and accountability for equipment transfers, including a comprehensive accounting of all transferred property, as well as the creation and maintenance of a regularly updated website that displays all the property transferred under the 1033 program and which law enforcement agencies have received the property; and
- 5) Reestablishing the Interagency Law Enforcement Working Group for military equipment transfers; and
- 6) Adding humanitarian and social service nonprofits as allowable recipients of transferred property, giving them access to non-lethal equipment—e.g. first aid kits, emergency gear, etc.—to fit their missions.

Most of these reforms are supported by a broad coalition of organizations, including FreedomWorks, American Conservative Union, NAACP, Association of Prosecuting Attorneys, VoteVets, American Bar Association, and Demand Progress. Ending police militarization is an important part of the broader police reform conversation. Reforms to the 1033 program will help to rebuild trust between communities and the police, while at the same time providing nonprofit organizations with additional resources.

Thank you for your attention to this issue. My team and I look forward to continued discussions as you and your team pursue a police reform agenda.

Sincerely,



Brian Schatz  
U.S. SENATOR