

September 5, 2017

The Honorable Mac Thornberry
Chair, House Armed Services Committee
2208 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member, House Armed Services Committee
2264 Rayburn House Office Building
Washington, DC 20515

The Honorable Bob Goodlatte
Chair, House Committee on the Judiciary
2309 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers Jr.
Ranking Member, House Judiciary Committee
2426 Rayburn House Office Building
Washington, DC 20515

The Honorable Trey Gowdy
Chair, House Oversight and Government Reform
Committee
2418 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member, House Oversight and Government
Reform Committee
2163 Rayburn House Office Building
Washington, DC 20515

RE: Defense Department 1033 Program and the militarization of police

Dear Chairmen and Ranking Members:

We are a broad coalition of civil liberties, civil rights, and government accountability groups deeply disturbed by the Trump administration's revocation of President Obama's 2015 Executive Order 13688 and its ensuing recommendations, which placed critical limits on federal programs that provide military equipment to law enforcement agencies. We have numerous questions and concerns about the future of military-grade weapons in our communities, on our streets, and in our schools. The 2015 reforms included training, record keeping, and oversight measures for better accountability and transparency, and to ensure that taxpayer dollars were not spent in a wasteful or harmful manner. We ask you to exercise your oversight responsibilities to ensure that, if military equipment is provided to law enforcement, such equipment is not overused and misused. **We urge you to use your leadership in the U.S. House of Representatives to call for a moratorium on the U.S. Department of Defense's 1033 program—the largest and most prominent federal program providing police departments with military equipment—until Congress holds hearings to provide the public with important assurances and to consider various legislative proposals about this issue.**

We have long been engaged in a dialogue with the federal government on the issue of federal, state, local, and tribal law enforcement agencies' (LEAs) use of military equipment and tactics since the troubling militarized response from local police departments to the protests in Ferguson, Missouri. This engagement included regular stakeholder meetings—of law enforcement, advocates, and government officials—with the interagency working group on federal equipment. Despite numerous requests, no meetings were convened this year. We have also met with and heard from communities—most often communities of color—directly impacted by the use of military equipment and tactics by law enforcement. These communities have lost loved ones, fought the acquisition of military equipment for school police, and had their First Amendment rights chilled by officers wielding military weapons on their streets. Finally, we have met with law enforcement leaders who care about their relationships with the communities they serve. What we have learned is this: when the federal government provides police with unfettered access to military equipment, it threatens fundamental constitutional rights, undermines public trust in our government, and is an enormous waste of taxpayer dollars.

We are dismayed that, after years of advocacy and dialogue, we are once again returning to an era in which federal agencies will operate these programs virtually unchecked. This issue is even more pressing given today's political climate—against a backdrop of increased protests nationwide and President Trump's inexplicable speech encouraging law enforcement to be "rough." After the 2015 reforms, LEAs continued to have wide access to and persistently used military equipment and tactics, but allegedly with increased oversight and accountability. Yet, just last month, the Government Accountability Office (GAO) released an alarming report about the failures of the Department of Defense 1033 program. The GAO created a fictitious LEA and obtained over 100 items—some potentially lethal—valued at \$1.2 million. The report recommended a number of changes to improve oversight, management, and control over the 1033 program, which transfers hundreds of millions of dollars of taxpayer-funded military equipment to LEAs nationwide. We are stunned that, in the wake of this report, the Trump administration has determined the best course of action is to remove all oversight over this, and similar, federal programs.

We are troubled by Attorney General Sessions' mischaracterization of the nature and scope of the 2015 reforms. The 2015 reforms did not—as Attorney General Sessions claimed—focus on "superficial concerns" or limit access to "lifesaving gear." Following those reforms, most military equipment and weapons continued to be available to LEAs. For some equipment (i.e., "controlled equipment"), LEAs were asked to describe how the equipment would be used and to verify that officers would be appropriately trained. In other words, the 2015 reforms provided critical oversight and accountability, which the public expects of all federal government programs.

Indeed, the 2015 reforms did not restrict access to most equipment used by law enforcement in first responder and rescue operations (including the Kevlar vests mentioned by Attorney General Sessions). The reforms banned a short list of military equipment—notably, the transfer of bayonets, grenade launchers, and other military weapons and vehicles—that would not be needed for narrow circumstances in which imminent risk of death or serious bodily harm exist, such as an exceptional search and rescue operation or active shooter.

Unfettered access to military equipment enables, and arguably encourages, escalated, military-style tactics and excessive, and oftentimes fatal, use of force in our streets and, alarmingly, in public schools. Moreover, law enforcement's use of military equipment disproportionately impacts communities of color, which is particularly unacceptable in the wake of Charlottesville. Therefore, such federal programs—to the extent they provide military equipment or facilitate its acquisition—must be subject to necessary limits and additional oversight due to their corrosive impact on constitutional and community policing and exacerbation of racial tension in this country. We urge you to suspend the controversial 1033 program until Congress and the public understand—through Congressional hearings—what steps the federal government is taking to provide oversight and accountability of these programs. For more information, please contact Madhu Grewal at mgrewal@constitutionproject.org or (202) 580-6939.

Sincerely,

cc: Members of the House of Representatives Armed Services Committee
Members of the House of Representatives Committee on the Judiciary
Members of the House of Representatives Oversight and Government Reform Committee

Members of the Senate Armed Services Committee
Members of the Senate Committee on the Judiciary
Members of the Senate Homeland Security and Governmental Affairs Committee