

HAMMERS AND NAILS:
1033 PROGRAM REFORMS TO HALT POLICE MILITARIZATION

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INTRODUCTION

The protests following the shooting of Michael Brown in Ferguson, Missouri in early 2014 brought the issue of the militarization of police into the spotlight.¹ Although the deployment of police officers was an expected response to the unrest, many people instead saw soldiers, equipped with body armor, military-grade weaponry, and armored vehicles.² This shocking display of military hardware by local law enforcement was met with rare bipartisan opposition in Congress, with Congressman John Lewis stating, “This is not China or Russia or the Congo. This is America,” and Senator Rand Paul writing, “Washington has incentivized the militarization of local police precincts by using federal dollars to help municipal governments build what are essentially small armies.”³

Partially responsible for the creation of these “small armies” used to quell civil unrest, is the 1033 Program, a Department of Defense program that takes excess military hardware and transfers it to law enforcement agencies.⁴ With the reaction of local law enforcement to

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¹ Jeffrey A. Endebak, *More Bank For Their Buck: How Federal Dollars Are Militarizing American Law Enforcement*, 47 J. Marshall L. Rev. 1479, 1479 (2014).

² *Id.* at 1480-81.

³ Richard Walker, *US Police Go Military With 1033 Program*, DEUTSCHE WELLE, Aug. 15, 2014, at 1.

⁴ *Id.*; National Defense Authorization Act For Fiscal Year 1997, Pub. L. No. 104-201, § 1033, 110 Stat. 2422, 2639-40 (1996) [hereafter “§1033”]; Daniel H. Else, CONG. RSCH. SERV., R43701, *The “1033 Program,” Department of Defense Support to Law Enforcement*, app. A, at 5 (2014).

the George Floyd protests across the United States six years after the events of Ferguson, it is clear that little has changed.

This article explores the 1033 Program's history, navigating its establishment, original purpose, and evolution. This article then examines the Program's current structure, including how the Program operates and the parties involved. Next, the article considers the 1033 Program's effect of militarizing local law enforcement and how this damages trust and encourages conflict between local law enforcement and the public. Finally, three recommendations are suggested to improve oversight and administration of the 1033 Program.

Overall, this article proposes that the language of the National Defense Authorization Act should be amended to institute management controls to reduce fraud, waste, and abuse in the Program, requiring regular reporting and a "control list." This article further argues that the Program should require acquisition of military equipment to be overseen by an elected Board instead of an appointed State Coordinator to aid in transparency, impartiality, and administration. Lastly, the 1033 Program should establish a disciplinary review process for violations that can result not only in departmental penalties but civil and criminal penalties for individuals who have been found to have engaged in theft or fraud.

We decided to give local law enforcement hammers; we cannot feign surprise when they treat the public as nails.

BACKGROUND

I. THE 1033 PROGRAM

A. *Overview*

The 1033 Program has its origins in the enactment of the National Defense Authorization Act (NDAA), Fiscal Year 1989, which integrated the Department of Defense (DOD) as a key player in the "War on Drugs."⁵ DOD was assigned the task of detecting and monitoring illegal drug production and trafficking and soon became "the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States" and the integrator of an effective system of command, control,

⁵ ELSE, *supra* note 4, at 1; WALKER, *supra* note 3, at 2.

communications, and intelligence assets dedicated to drug interdiction.⁶ The Act also made “available any equipment, base facility, or research facility of the Department of Defense to any Federal, State, or local law enforcement official for law enforcement purposes.”⁷

Under Section 1208 of the NDAA for Fiscal Years 1990 and 1991, the DOD was authorized to directly transfer to federal and state agencies equipment that was excess to the needs of the Department and suitable for use in counter-drug activities.⁸ The Secretary of Defense could transfer defense equipment, including small arms and ammunition, from existing defense stocks as “donations” to receiving agencies.⁹ Although this Act would have originally expired on September 30, 1992, the termination date was extended to September 30, 1997, by the enactment of Section 1044 of the NDAA for Fiscal Year 1993.¹⁰

In the NDAA for Fiscal Year 1997, the House proposed making the provision permanent, expanding eligibility for property transfers to all law enforcement while retaining a priority for counter-narcotics activities.¹¹ The Senate, after conference, added an amendment giving priority not only to counter-narcotic but also counter-terrorism activities.¹² Although the counter-terrorism provision has been in effect since 1997, it was not significantly utilized until the terrorist attacks on September 11, 2001. After 9/11, the amount of military equipment being transferred under the 1033 Program rose drastically.¹³ The 1033 Program has no congressional reporting requirements.¹⁴

⁶ ELSE, *supra* note 4, at 1.

⁷ *Id.*

⁸ *Id.*; see Aaron Sean Poynton, *Military & Civilian Resources: Doing More With Less*, DOMESTIC PREPAREDNESS, Sept. 10, 2014, at 1, <https://www.domesticpreparedness.com/preparedness/military-civilian-resources-doing-more-with-less/>.

⁹ ELSE, *supra* note 4, at 6.

¹⁰ *Id.* at 2.

¹¹ See Christopher Ingraham, *The Pentagon Gave Nearly Half A Billion Dollars of Military Gear to Local Law Enforcement Last Year*, WASH. POST, Aug. 14, 2014, <https://www.washingtonpost.com/news/wonk/wp/2014/08/14/the-pentagon-gave-nearly-half-a-billion-dollars-of-military-gear-to-local-law-enforcement-last-year/>; see §1033; ELSE, *supra* note 4, at 2.

¹² See §1033; ELSE, *supra* note 4, at 2.

¹³ EXEC. OFF. OF THE PRESIDENT, *Review: Federal Support for Local Law Enforcement Equipment Acquisition* 1, 2-3 (2014); see Kara Dansky, *The Real Reason Ferguson Has Military Weapons*, CNN, Aug. 19, 2014, http://www.cnn.com/2014/08/19/opinion/dansky-militarization-police/?hpt=OB_articlefooter&iref=obinsite; see also Paulina Firozi, *Police Forces Pick Up Surplus Military Supplies*, USA TODAY, Jun. 17, 2014, <http://www.usatoday.com/story/news/nation/2014/06/15/local-law-enforcement-agencies-surplus-military-equipment/10286485/>.

¹⁴ See § 1033.

Under the current structure of the 1033 Program, the Defense Logistics Agency (DLA), an agency of the DOD, has final authority to determine what kind and quantity of military equipment is transferable for use by local law enforcement agencies through its Law Enforcement Support Office (LESO).¹⁵ The LESO is the organization in charge of administering the program and it is the primary point of contact for State officials participating in the program.¹⁶ The Governor of a state that wishes to participate in the Program must sign a Memorandum of Agreement (MOA) with the DLA, agreeing to follow DLA policy in the administration of the program and appoint a State Program Coordinator, whose duty is to “keep property accountability records, investigate any alleged misuse of property, and, in certain cases, report violations of the MOA to DLA.”¹⁷ Local Law enforcement agencies that want to take part in the 1033 Program must submit an application to the LESO through their respective State Program Coordinator and then, after approval, appoint officials from their agencies to visit their local DLA Disposition Services Site (DSS).¹⁸ At the DSS, appointed officials from local law enforcement agencies examine what property is available and then place requests for the items their departments would like to acquire.¹⁹ Once the request forms are completed, they are sent to the state program coordinator for review, and, if approved, the LESO will make the final determination as to whether to transfer the equipment.²⁰

Equipment is classified as one of four categories: general equipment, miscellaneous equipment, heavy equipment, and controlled equipment.²¹ General equipment includes items such as office furniture and exercise equipment but can include general law enforcement supplies such as handcuffs and riot shields.²² Miscellaneous property includes anything from first aid kits to computers, maintenance supplies, and bedding.²³ Heavy equipment includes items such as cranes; however, some heavy equipment can also qualify as “controlled

¹⁵ ELSE, *supra* note 4, at 2.

¹⁶ *See id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *See* EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 7.

²² ELSE, *supra* note 4, at 2.

²³ *Id.*

equipment,” like various watercraft and aircraft.²⁴ Controlled equipment (items listed on the State Department’s Munitions List or Commerce Department’s Commerce Control List) includes items such as military-grade firearms, certain armored vehicles, and explosives.²⁵ Although the majority of items transferred to local law enforcement agencies are non-controlled, as of 2014 there were an estimated 460,000 pieces of controlled property distributed to local law enforcement throughout the United States.²⁶ No training is required for law enforcement to receive or use controlled equipment.²⁷

Eleven thousand law enforcement agencies are registered with LESO for the 1033 Program, eight thousand of which are currently using property provided through the Program.²⁸ All participating agencies, along with the state program coordinator, are responsible for ensuring property distributed through the Program is accounted for.²⁹ Although all property must be accounted for during the first year it is on lease from the DLA, title of most property is then transferred from the DOD to the local agency, which removes it from the inventory of items that require accounting.³⁰ Title for items possessing “significant military capabilities,” however, never transfer to local law enforcement agencies and they cannot be released to the general public for sale or donation.³¹ Instead, the items are considered “on loan” for the duration of their time in local law enforcement possession and are legally required to be returned to a DLA DSS when no longer needed.³²

To help determine when equipment is needed, the DLA requires that local law enforcement must use items possessing significant military capabilities within one year of receiving them from DLA or else return them to a DSS.³³ Although this may seem like a positive mea-

²⁴ EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 7-8.

²⁵ *Id.* at 2.

²⁶ *See id.* at 8.

²⁷ *See id.* at 2, 4 (explaining that training to receive weapons, including military-style weapons, has not been institutionalized).

²⁸ ELSE, *supra* note 4, at 8; WALKER, *supra* note 3, at 8; Daniel Rivero & Jorge Rivas, *Fusion Investigates: How Did America’s Police Departments Lose Loads of Military-Issued Weapons?*, SPLINTER, Aug. 25, 2014, <http://fusion.net/story/6371/fusion-investigates-how-did-americas-police-departments-lose-loads-of-military-issued-weapons/>.

²⁹ ELSE, *supra* note 4, at 4.

³⁰ *Id.* at 3-4.

³¹ *Id.* at 3.

³² *Id.*

³³ EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 7.

sure, ensuring that local law enforcement agencies do not have a plethora of military equipment they do not need, ironically this requirement has the opposite effect. Because local law enforcement agencies are required to “use or lose” these items, this procedure incentivizes many local agencies to find uses for the items regardless of if they are appropriate for the task at hand simply so they will not have to return the equipment to the DLA.³⁴

B. *Oversight of the Program*

Oversight of the 1033 Program relies primarily on the state coordinator.³⁵ The state coordinator has the authority to suspend an agency if it is determined they have abused the program, and LESO may suspend the participation of an entire state if it cannot account for the property entrusted to it.³⁶ Every two years, the DLA conducts a Program Compliance Review (PCR) for each state registered with the Program, as a way to further discourage fraud and abuse.³⁷ During the PCR, DLA officials will review a certain percentage of the state’s controlled and non-controlled equipment, randomly selecting a few specific local law enforcement agencies to be the subject of greater scrutiny.³⁸ If equipment cannot be accounted for and the state coordinator and appropriate law enforcement agency fail to rectify the discrepancies by the assigned suspension date, then the state or agency may be subject to suspension or termination from the Program.³⁹ Although there are mechanisms in place to prevent fraud and abuse in the Program, these methods prove ineffective.

In 2003, a DOD audit declared 1033 Program records unreliable after finding incorrect or inadequate documentation in about three-quarters of the transactions analyzed.⁴⁰ In 2005, the Government Accountability Office (GAO) found that the Pentagon “does not have

³⁴ See Bethany J. Peak, *Militarization of School Police: One Route On the School-to-Prison Pipeline*, 68 Ark. L. Rev. 195, 202 (2015) (explaining officers feel pressure to continuously justify the need for advanced equipment).

³⁵ See ELSE, *supra* note 4, at 3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 8.

³⁹ *Id.*

⁴⁰ Dennis Wagner, *Pinal Sheriff's Office Stockpiles, Prepares To Sell Military Equipment*, AZCENTRAL, May 19, 2012, <http://www.azcentral.com/news/politics/articles/2012/05/04/20120504pinal-county-surplus-military-equipment.html#ixzz3t0TjHApr>.

management controls in place” to deal with waste and abuse in the Program, and investigators identified “hundreds of millions of dollars in reported lost, damaged, or stolen excess property.”⁴¹ As of 2014:

[T]wo states (NC, AL) and 134 additional LEAs [were] suspended from participation in the Program.⁴² [From 2009-2014], eleven agencies have had their participation terminated, including: 1) five requested by the State Coordinator (AZ) 2) four as the result of missing weapons (AZ, GA, WV and MN), and 3) two agencies disbanded (AZ/OH).⁴³

Considering that \$2.7 billion out of the total \$5.1 billion transferred during the existence of the 1033 Program was transferred after 2009, the potential for fraud, waste, and abuse is cause for concern.⁴⁴

C. *Reform Attempts of the Program*

Following the events in Ferguson, there were a series of attempts to reform the 1033 Program from Democratic Congressman Hank Johnson, Republican Senator Rand Paul, and President Obama, but permanent reform was never realized.⁴⁵ The Obama Administration had some success in curtailing the transfer of military weapons to local law enforcement in 2015, resulting in the return of 126 armored vehicles, 138 grenade launchers, and 1,623 bayonets, but the Trump Administration reversed that policy in 2017.⁴⁶ As such, the 1033 Program remains in dire need of reform.

The Obama Administration’s 2014 review of the 1033 Program recommended that agencies do the following:

⁴¹ *Id.*

⁴² EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 8.

⁴³ *Id.*

⁴⁴ *Id.* at 7.

⁴⁵ See Daniela Guzman, *From Warfighter to Crimefighter – The US 1033 Program and the Risk of Corruption and Misuse Of Public Funds*, ACFCS, Aug. 29, 2014, <https://www.acfcs.org/from-warfighter-to-crimefighter-the-us-1033-program-and-the-risk-of-corruption-and-misuse-of-funds/>; WALKER, *supra* note 3, at 1; Hank Johnson, *Rep. Johnson’s Amendments to Defense Spending Bill Passed By HASC*, H.R., May 1, 2015, <http://hankjohnson.house.gov/press-release/rep-johnson’s-amendments-defense-spending-bill-passed-hasc>; see EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 6.

⁴⁶ Catie Edmonson, *Lawmakers Begin Bipartisan Push to Cut Off Police Access to Military-Style Gear*, N.Y. TIMES, Jun. 1, 2020, <https://www.nytimes.com/2020/06/01/us/politics/police-military-gear.html>.

Develop a consistent list of controlled property allowable for acquisition by LEAs (Law Enforcement Agencies), require local civilian (non-police) review of and authorization for LEAs to request or acquire controlled equipment. Mandate that LEAs which participate in federal equipment programs receive necessary training and have policies in place that address appropriate use and employment of controlled equipment, as well as protection of civil rights and civil liberties. Agencies should identify existing training opportunities and help LEAs avail themselves of those opportunities, including those offered by the Federal Law Enforcement Training Center (FLETC) and the International Association of Law Enforcement Standards and Training. Require after-action analysis reports for significant incidents involving federally provided or federally-funded equipment. Develop a database that includes information about controlled equipment purchased or acquired through Federal programs.⁴⁷

The recommendations to create civilian review of authorization for law enforcement to receive controlled equipment, develop a list of controlled equipment, issue reports for incidents involving federally provided equipment, and develop a database to keep track of information about controlled equipment are those most similar to the recommendations outlined in section III. However, the recommendations presented below are more ambitious, turning “civilian review” into civilian partnership, and *ex-post facto* reports of incidents into active investigations.

D. *The Militarization of Police*

Jose Guerena was an Iraq Campaign veteran who lived with his wife and sons in Tucson, Arizona.⁴⁸ On May 5, 2011, Guerena’s wife saw armed men outside their home and alerted Guerena, who told her to hide with their son as he armed himself and prepared to defend his family.⁴⁹ Seconds later, the Pima County SWAT (Special Weapons and Tactics) Team forced its way through the door and fired seventy-one rounds into the home, hitting Guerena twenty-three times.⁵⁰ Law enforcement prevented paramedics from getting into the home for

⁴⁷ EXEC. OFF. OF THE PRESIDENT, *supra* note 13, at 6.

⁴⁸ ENDEBAK, *supra* note 1, at 1483.

⁴⁹ *Id.* at 1483-84.

⁵⁰ *Id.* at 1484.

over an hour, by which time Guerraena had bled to death.⁵¹ Guerraena's rifle was never fired at the officers and still had its safety engaged when he died. Using flashbang grenades as well as deadly force, the SWAT team was executing a search warrant for marijuana.⁵²

SWAT teams provide a prime example of how arming and treating law enforcement officers as soldiers affect officer behavior. After the State of Maryland required law enforcement to track their deployment of SWAT teams, a report found that "Maryland alone deployed a SWAT team an average of four-and-one-half times per day in 2014 and that over ninety-three percent of those deployments were for the execution of a search warrant."⁵³ Approximately 60 percent of those deployments were for non-violent crimes.⁵⁴

A SWAT team commander explained his department's policy during a barricade situation: "ask the suspect to surrender one time. If the suspect refuses, he orders in the SWAT team, which will then attempt to flush the suspect out with tear gas or flash-bang grenades."⁵⁵ De-escalation techniques, such as negotiation, were rejected by police who indicated they were unwilling to "hang around for hours and beg."⁵⁶ A police chief described this as a part of the "mentality change[]" that occurs when officers are transitioned to SWAT.⁵⁷ "I remember a guy I was good friends with; it just completely changed him. The us-versus-them mentality takes over."⁵⁸

The more local law enforcement officers are equipped with military equipment, the more this us-versus-them mentality will infect the nation. "The objectives of police and the military are completely different, and, as such, the tools used to accomplish both necessarily differ."⁵⁹ Although local law enforcement's purpose is to protect, "as one member of the armed forces stated, '[t]o put it bluntly, . . . military training is aimed at killing people and breaking things.'"⁶⁰

⁵¹ *Id.*

⁵² *Id.*

⁵³ Cadman R. Kiker III, *From Mayberry to Ferguson: The Militarization of American Policing Equipment, Culture, and Mission*, 71 Wash. & Lee L. Rev. Online 282, 288 (2015).

⁵⁴ *Id.*; see DANKY, *supra* note 13, at 2.

⁵⁵ *Id.*; PEAK, *supra* note 34, at 205.

⁵⁶ PEAK, *supra* note 34, at 204.

⁵⁷ *Id.* at 206

⁵⁸ *Id.*

⁵⁹ *Id.* at 205.

⁶⁰ *Id.*

When police organizations train officers to act and think like soldiers they alienate them from the community which they are supposed to be a part of. Soldiers at war operate under a code of domination, not service. Thus, all actions (or perceived offenses) by civilians must be handled by domination—by force and control. Stated boldly, no longer do police officers operate as officers of the law; they act as the law itself . . .⁶¹

President Donald Trump has recently indicated his support for this strategy of “domination,” advocating law enforcement and military use overwhelming force to quell protests.⁶²

Supporters of the 1033 Program argue that the equipment is necessary to save lives in the event of an emergency; however, evidence from studies on the effect that militarized law enforcement has in schools suggests that militarized environments exacerbate matters.⁶³ Indeed, “along with the psychological impact, much research indicates that schools with police officers and metal detectors have more frequent disciplinary incidents than those without.”⁶⁴ This raises concerns in the case of the Compton Unified School District in California, where, because of the disciplinary problems at the school, the district authorized law enforcement officers to carry assault rifles on campus.⁶⁵ Similarly, while “drug raids can be extremely dangerous for both law enforcement and innocent civilians. . . danger is sometimes ‘instigated not by an existing high-risk situation but one generated by the police themselves.’”⁶⁶

Liberally equipping local law enforcement with military supplies under the 1033 Program “creates a symbolic hierarchy, with police on top and members of the public at the bottom.”⁶⁷ Although we want the public to respect law enforcement, this militaristic model of policing “destroys the very fabric of social life, trust.”⁶⁸ Consequently,

⁶¹ *Id.* at 207.

⁶² Jordyn Phelps & Ben Gittleston, *Trump Praises ‘Overwhelming Force’ and ‘Domination’ In DC Morning After Peaceful Protest Broken Up For A Photo Op*, ABC NEWS, Jun. 3, 2020, <https://abcnews.go.com/Politics/trump-praises-overwhelming-force-domination-dc-morning-peaceful/story?id=71018509>.

⁶³ See POYNTON, *supra* note 8; PEAK, *supra* note 34, at 196-97.

⁶⁴ PEAK, *supra* note 34, at 197.

⁶⁵ *Id.* at 196.

⁶⁶ *Id.* at 204.

⁶⁷ *Id.* at 206.

⁶⁸ *Id.*

“[a]s local police become more military-like, the more community members resist their presence. With community resistance, police cannot effectively protect anyone.”⁶⁹

Breonna Taylor was a 26-year-old emergency room technician in Louisville, Kentucky.⁷⁰ On March 13, 2020, Louisville police conducting a drug raid used a battering ram to force their way into her home.⁷¹ Thinking that their apartment was being broken into, Breonna Taylor’s boyfriend, Kenneth Walker, a licensed gun-owner, grabbed his gun and shot at the intruders.⁷² Louisville police returned fire, shooting at least 20 rounds into the home.⁷³ At least eight of those rounds hit Breonna Taylor, killing her.⁷⁴ The Police did not find any drugs; the person the police were investigating, Jamarcus Glover, was already in custody at the time of the raid.⁷⁵ It is disputed whether the police announced their presence before conducting the raid.⁷⁶

We must remember that there is no distinction between police and civilians; police are civilian law enforcement. President Obama remarked that “there is a big difference between our military and our local law enforcement, and we don’t want those lines blurred . . . [t]hat would be contrary to our traditions.”⁷⁷ It is in the hope of preserving those traditions that the following reforms to the 1033 Program are recommended.

⁶⁹ *Id.* at 208.

⁷⁰ Minyvonne Burke, *Breonna Taylor Shooting: What We Know About Kentucky Woman’s Death*, NBC NEWS, May 15, 2020, <https://www.nbcnews.com/news/us-news/breonna-taylor-police-shooting-what-we-know-about-kentucky-woman-n1207841>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ BURKE, *supra* note 70, at 2.

⁷⁷ ENDEBAK, *supra* note 1, at 1482.

ANALYSIS

I. RECOMMENDED REFORMS

A. *Amend the National Defense Authorization Act to Institute Management Controls to Reduce Fraud, Waste, and Abuse in the 1033 Program*

This first recommendation addresses two distinct but important features of the 1033 Program: oversight and administration. Communication and transparency are essential to accountability, and the 1033 Program shows a disturbing lack of both. The 1033 Program has no regular Congressional reporting requirements.⁷⁸ Without regular reporting, Congress cannot provide sufficient oversight. Further, the Pentagon lacks the proper management tools for the administration of the Program.⁷⁹ The failure to adequately review the 1033 Program and implement proper tools for its administration has produced a host of startling consequences. Small rural towns have received millions of dollars of military equipment that is excessive in light of the threats they face or their manpower, such as when a one-man police department received thirteen assault weapons.⁸⁰ Similarly, many local law enforcement agencies have received equipment for which they have no use, as was the case when a department received night vision equipment for a helicopter it did not possess.⁸¹

1. Amend the National Defense Authorization Act to Include Mandatory Reporting

As the scenes of Ferguson played on televisions across the country, many, from families sitting at their dinner table to legislators on the Hill, were shocked. This surprise manifested itself in angry statements criticizing both the police response to civil unrest and the “criminal acts” of the protesters, which led to congressional hearings to discover just where these new militarized police came from. This is

⁷⁸ See § 1033.

⁷⁹ WAGNER, *supra* note 40, at 3.

⁸⁰ See Steven Nelson, *Pentagon Rethinks Giving MRAPs, Bayonets to Police*, U.S. NEWS & WORLD REP., Sep. 9, 2014, <https://www.usnews.com/news/articles/2014/09/09/pentagon-will-rethink-giving-mraps-bayonets-to-police-official-says>.

⁸¹ See GUZMAN, *supra* note 45, at 2.

somewhat concerning considering the 1033 Program only exists under an Act that Congress itself passed more than twenty years ago. It appears Congress did not let its ignorance of what the 1033 Program did, or the possible consequences of the Program, stop it from continuing to approve the national Program even though the effects of it would primarily be felt by local communities.

Because the NDAA requires no regular congressional reporting on the 1033 Program and there is not significant lobbying activity tied to the Program, few congress members outside of those that sat on the Armed Service Committees appeared to have been aware of what the Program was or how massive it had become.⁸² This needs to change. The following italicized language should be added to the text of Section 1033 of NDAA for Fiscal Year 1997:

SEC. 1033. TRANSFER OF EXCESS PERSONAL PROPERTY TO SUPPORT LAW ENFORCEMENT ACTIVITIES. . . .

§ 2576a. Excess personal property: sale or donation for law enforcement activities

(2) The Secretary shall carry out this section in consultation with the Attorney General and the Director of National Drug Control Policy, *with biannual reporting of the program to the House and Senate Armed Services and Judiciary Committees.*⁸³

This modest change in the text of the Statute will require biannual reporting on the 1033 Program to be set before the House and Senate Armed Services and Judiciary committees, giving two influential committees in each chamber of Congress more insight as to the workings of the Program and thus providing them the opportunity to undertake more oversight.

These two committees were specifically chosen because of their jurisdiction. Armed Services has jurisdiction over general defense policy including organization and reform of the Department of Defense (including consideration of each NDAA), counter-drug programs, and technology transfer and export controls.⁸⁴ Judiciary has

⁸² Jennifer Bendery, Ryan Grim, & Zach Carter, *Why Congress Is Reluctant To Stop The Military Toys Flowing To Local Cops*, HUFF. POST, Aug. 18, 2014, http://www.huffingtonpost.com/2014/08/18/police-militarization-congress_n_5688357.html.

⁸³ § 1033 (italicized language added).

⁸⁴ *Committee History and Committee Jurisdiction*, U.S. SENATE COMMITTEE ON ARMED SERVICES, <http://www.armed-services.senate.gov/about/history> (last visited Oct. 17, 2020).

jurisdiction over the administration of justice, administrative bodies, and law enforcement agencies.⁸⁵ Given that the 1033 Program is carried out through DOD pursuant to the NDDA and it sends equipment to law enforcement agencies, these two committees would be best suited for the task of providing oversight to the 1033 Program.

Further, a representative from the DOD's Office of Inspector General (OIG) should attend and participate in the reporting sessions to Congress to keep OIG informed as to the challenges the Program poses. The reporting should include information such as the monetary value of equipment transferred to local law enforcement agencies, with a breakdown of said value by "type" of equipment (for example, "controlled" vs. "general"). Reporting should also include the number of items transferred to local law enforcement agencies, likewise with a breakdown by type of item. Reports should be made on missing or stolen items leased to local law enforcement agencies, with a breakdown by type. Another report should identify the number of local law enforcement agencies suspended or terminated from the 1033 Program and briefly detail the most common reasons for suspensions and terminations. The number of investigations and civil and criminal actions taken in response to fraud, waste, and abuse of 1033 equipment should also be reported.

Congress should be informed of the primary concerns raised by law enforcement and the public in State Coordinator Board hearings (*see* III, sub-header B for proposed "State Coordinator Boards") as well, with advisory notes from State Coordinator Boards as to their experience with the Program in their respective states. Information on the average value, number of items, and type of equipment given to cities and towns of varying sizes should also be made available in reports, with the same document also detailing the average size of law enforcement agencies in different sized cities. The Committees would be free to request any additional information they deem necessary to perform their oversight function. The burden of collection and consolidation of this material will be primarily on the State Coordination Boards, which will consolidate data so that the Committees will have two datasets: one to assess the 1033 Program on a national level, and one based on the personal experience of individual states with the 1033 Program.

⁸⁵ *Id.*

2. Adopt a “Control List” to Help Determine Which Local Law Enforcement Agencies are Eligible to Receive Equipment Under the 1033 Program

Although the DLA, as an agency of the DOD, has primary responsibility for the Program, the DOD itself is often unaware of the issues within the program unless there is fraud, waste, or abuse so extreme it is flagged for DOD OIG investigation.⁸⁶ To help reduce this reactive and inefficient approach, the DOD should direct DLA to adopt a “control list” that will operate as a more effective management tool to keep track of what kind of and how much defense equipment is distributed through the 1033 Program to different law enforcement agencies. The DLA can model this control list on those that already exist in other areas, such as the Commerce Control list under the Export Administrative Regulations and the Munitions Control list under the International Traffic in Arms Regulations of the Arms Export Control Act.⁸⁷ The Munitions Control list, for example, is used to discriminate between specialized military equipment and more mundane items.

The control list should establish limits as to how much of what type of equipment an agency is authorized to receive and should determine these limits based on a host of factors including the size of the law enforcement agency, the population of the jurisdiction said agency serves, and if an agency has any personnel trained to use the equipment. Drug-related crime trends and the threat-assessment that the locality faces from terrorism should also be taken into consideration. Although the control list should be “the rule,” DLA should retain ultimate authority and discretion to approve requests that clearly articulate strong arguments for why an agency should be granted an exception.

Amending the NDAA to require congressional reporting and establishment of a control list by the DLA to guide it in distributing defense supplies under the 1033 Program will address many of the oversight issues facing the Program. The first step to making sure a program runs smoothly is to make sure there is adequate communication between all the relevant participants. Congress needs to amend

⁸⁶ See RIVERO & RIVAS, *supra* note 28, at 1-2.

⁸⁷ Export Administration Act of 1979, Pub. L. 96-72, 93 Stat. 503 (1979); Arms Export Control Act, Pub. L. 94-329, 90 Stat. 729 (1976).

the NDAA to require regular congressional reporting of the 1033 Program to help ensure that it and the American people are making a conscious decision to send military hardware into local communities and give that decision the consideration it deserves. Further, the DLA should develop a “control list” for the 1033 Program to create a more efficient method of distributing 1033 Program equipment. This stems from the common-sense point that, in the context of distributing military equipment to local law enforcement, “there needs to be a renewed focus on the concepts of necessity and proportionality.”⁸⁸

B. *Require Acquisition of Military Equipment under 1033 to be Overseen by Popularly-Elected Boards instead of Appointed State Coordinators*

The most significant reform to the 1033 Program recommended here is to replace the Governor-appointed state coordinator with a popularly elected State Coordination Board. In a time of distrust between the public and law enforcement, we must include the public in programs such as the 1033 Program that affect their daily lives at a fundamental level. The state coordinator plays a critical role in the 1033 Program, acting as the middle-man for DLA, LESO, and local law enforcement, not only to review and approve application requests, but also to ensure law enforcement compliance with the Program.⁸⁹ Filling this position by executive appointment presents many issues, ranging from fundamental issues of legitimacy and transparency to more practical issues such as impartiality and autonomy.

Under this reform, the creation of a State Coordination Board would be a consequence of the Governor of a state signing the MOA with DLA. There would be no purpose for a Board if a state did not intend to participate in the 1033 Program. The Board can then be constructed in one of two ways: with state-wide elected Board Members and a Governor-appointed Chair who could only vote in the instance of a tie between Board Members; or with Board Members elected by districts, which could mirror Congressional districts.

The first option allows the Governor of a state to maintain some influence in the decisions of the Board through the Chairperson and

⁸⁸ McKay Smith, *Occupy Wall Street and the U.S. Army's 82nd Airborne Division: A Hypothetical Examination of the Slippery Slope of Military Intervention During Civil Disturbance*, 22 Geo. Mason U. C.R.L.J. 298, 332 (2012).

⁸⁹ See ELSE, *supra* note 4, at 3.

allows every citizen of a state to vote for each Board position. The second option is meant to allow for greater diversity in perspectives, as the first option may result in a “lopsided” Board. For example, in Washington State, approximately 3.98 million people, representing 52.3 percent of Washington State’s 7.6 million people, live in the Seattle metropolitan area, which tends to vote Democratic.⁹⁰ This means that, in state-wide elections, Democrats usually win.⁹¹ Washington State has not elected a Republican Governor since 1985.⁹² In contrast, the Washington State House congressional delegation normally consists of six to seven Democrats and three to four Republicans.⁹³ With this in mind, it is easy to see that a Board in which every seat is filled through state-wide election could become dominated by a group of citizens holding a certain ideology instead of it being representative of the different perspectives taken on law enforcement policing throughout the entire state. Although each state will have to choose for itself which model to adopt, either would improve on the current issues presented by the current process.

Although the primary duties of the Board would be the same as those for the State Coordinator, the nature of this body would provide the opportunity to build accountability and transparency. The Board will regularly deliberate and hold hearings where law enforcement departments cannot only submit applications, but make their case for why their requests should be approved, allowing the Boards to hear from the affected communities before making a determination. Although this process may very well be unnecessary and impractical for items such as furniture and clothing, this process should be mandatory for requests of controlled equipment. After deciding, the Board would then issue a short explanation as to why a certain request was approved or denied. Although parties may seek reconsideration of the Board’s decision, its conclusion should be final.

1. Legitimacy

An executive-appointed official acting as State Coordinator gives local law enforcement agencies access to military equipment without having to go through their local governing body. Proponents of the

⁹⁰ 270twin, <https://www.270twin.com/states/Washington>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

1033 Program see this as a virtue, as they say it is often the smaller agencies that benefit from the Program as larger agencies tend to have larger budgets provided by their city to buy their equipment.⁹⁴ However, in bypassing their city or county, a police department also manages to bypass democracy, allowing them to bring military weapons and equipment into a community without said community's input.

Democracy breeds legitimacy. Although the people of a state do elect their Governor, it is quite a different matter for an appointee of the Governor to allow police with armored vehicles and automatic weapons in their neighborhoods. One cannot properly call police "local law enforcement" if their locality does not have a voice as to how to control them.

This was the issue in San Diego when a school district's police department received a Mine Resistant Ambush Protected Vehicle (MRAP) from the 1033 Program.⁹⁵ After receiving the six-wheel eighteen-ton MRAP, the school district hoped to use it as a rescue vehicle in the event of a campus shooting or similar emergency.⁹⁶ The arrival of the MRAP, however, was not met with enthusiasm. "Some members of our community are not comfortable with the district having this vehicle," said Superintendent Cindy Marten.⁹⁷ Although the Department tried to assuage concerns, emphasizing that the MRAP is an armored, not armed vehicle, and the District offered to paint the MRAP to make it look less menacing, the community felt so uncomfortable with the presence of an armored personnel carrier being used in their schools that the Department decided to return it to DLA.⁹⁸ If a community was uncomfortable with a school district's acquisition of an armored vehicle without community input, one can imagine how uncomfortable it was for those who heard that their school district's police received grenade launchers and combat fatigues.⁹⁹

Samuel Adams once wrote, "[e]ven when there is a necessity of the military power, within a land . . . a wise and prudent people will

⁹⁴ See Becky Bruce, *Fraternal Order of Police Defends 'Militarization'*, KSL, Sept. 2, 2014, <http://www.ksl.com/?nid=370&sid=31391932>; FIROZI, *supra* note 13, at 1.

⁹⁵ *San Diego School Police To Return 18-Ton Military Vehicle*, KPBS, Sept. 19, 2014, <http://www.kpbs.org/news/2014/sep/18/san-diego-school-police-return-18-ton-military-veh/>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Dylan Scott, *School Districts Are Receiving Free Military Gear From The Pentagon*, TPM, Sept. 15 2014, <http://talkingpointsmemo.com/dc/school-districts-1033-program-military-equipment>.

always have a watchful and jealous eye over it.”¹⁰⁰ Although a State Coordination Board would not fully address the concerns of citizens, these Board members being popularly elected and thus directly accountable to them would go a long way to inject legitimacy and accountability into the heart of the 1033 Program.

2. Autonomy and Impartiality

Although the DLA retains ultimate authority as to what kind and what quantity of military equipment is available to local law enforcement, the DLA and LESO rely heavily on the state coordinator to “police” the use of the equipment once it is transferred into the hands of law enforcement.¹⁰¹ A state coordinator’s compliance duties consist of ensuring that the Program is used properly by law enforcement agencies, keeping property records, investigating any alleged misuse of property, and, in certain cases, reporting violations of the MOA to DLA.¹⁰² In many ways this job can be thought of as similar to that of Inspector General of an agency. The State Coordinator, like an Inspector General, is appointed by an executive to work with agencies, yet their role is to be a watchdog of those agencies, helping them achieve their optimal performance by eliminating fraud, waste, and abuse.¹⁰³ When a Governor or her appointed state coordinator is not objective in their assessment of law enforcement agency’s use of the 1033 Program, however, the result can be waste and, in some instances, corruption.¹⁰⁴

In the case of Pinal County, severe violations of the 1033 Program occurred when local law enforcement agencies sold equipment procured through the Program to inject money into their budgets.¹⁰⁵ Further, the agencies gave away equipment to non-law enforcement agencies in acts that could be classified as anything from charity to bribery.¹⁰⁶ The question of how such abuse could occur has a simple answer: “The Pinal County sheriff employee responsible for acquiring

¹⁰⁰ POYNTON, *supra* note 8, at 1.

¹⁰¹ *See id.*; *see ELSE, supra* note 4, at 2-3.

¹⁰² ELSE, *supra* note 4, at 3.

¹⁰³ *Id.* at 3.

¹⁰⁴ *See, id.*

¹⁰⁵ *See* GUZMAN, *supra* note 45, at 1; Dennis Wagner, *Police in combat gear stir criticism*, AZCENTRAL, Aug. 20, 2014, <http://www.azcentral.com/story/news/local/arizona/2014/08/20/police-combat-gear-stir-criticism/14324639/>.

¹⁰⁶ GUZMAN, *supra* note 45, at 1.

military surplus [equipment] helps oversee the program in Arizona, authorizing his requisitions along with those of other agencies statewide.”¹⁰⁷ The Governor appointed an employee of a law enforcement agency as state coordinator and the employee used his position to hoard 1033 Program equipment for his specific agency.¹⁰⁸ This behavior is not only unethical, but it prevented other departments from acquiring 1033 equipment that they may have needed.¹⁰⁹ An elected State Coordination Board would virtually eliminate this issue.

A popularly elected Board would erect a barrier between coordinators and the law enforcement agencies they are supposed to police. Although law enforcement knowledge is undeniably a benefit in a state coordinator position, this “insider” knowledge could also bias the coordinator and make it more difficult for him to objectively evaluate and hold his fellow law enforcement officers accountable. Further, a state coordinator being appointed by a Governor allows executives to play politics with the position, appointing someone sympathetic or overly-critical of law enforcement to make a political statement. This is thought to be the situation that occurred in Pinal County.¹¹⁰

The opportunity for Governors to play politics with the position of state coordinator highlights the autonomy issue. Unlike an Inspector General, there is no legislative “check” on the Governor’s appointment power under 1033.¹¹¹ Because the Board’s members would be elected, they would not have to worry about aligning their views on law enforcement policing with the Governor’s and thus would have considerably more independence. Because Board members’ positions would be secure so long as they keep their fingers on the pulse of their constituents, they could engage in a meaningful assessment of law enforcement agencies without fear of retaliation.

This second recommended reform focuses on the structure of the 1033 Program, incorporating the idea of civilian review suggested by the Obama Administration and expanding it into civilian participation.¹¹² As a result of militarized police forces, tensions between local

¹⁰⁷ WAGNER, *supra* note 40, at 1.

¹⁰⁸ *Id.* at 2.

¹⁰⁹ *Id.* at 1.

¹¹⁰ *Id.*

¹¹¹ Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101 (1978) (showing an Inspector General is customarily appointed by the President with confirmation by the Senate).

¹¹² *See EXEC. OFF. OF THE PRESIDENT, supra* note 13, at 6.

law enforcement and the public are at an all-time high. It is necessary to rebuild the trust between local law enforcement and the public for them to see one another as partners once again. Replacing an appointed State Coordinator with a popularly-elected State Coordination Board would let the people not only be heard but also fundamentally participate in the 1033 Program process. This allows states to balance the values and concerns of the public with the needs of law enforcement. Because cooperation between law enforcement and State Coordination Boards is the only way the Program could function, it will remind them of their interdependence. This will help cultivate respect while at the same time minimizing the feeling of marginalization and powerlessness felt by many communities. An elected Coordination Board also serves to improve impartiality so that Board members can objectively evaluate the need and performance of law enforcement agencies under the 1033 Program. Lastly, a State Coordination Board speaks to the democratic values of our Nation. When a decision involves bringing military hardware into peoples' communities, it is only just that they get some say in the matter.

B. *Establish a Comprehensive Disciplinary Review Process for Violations of the 1033 Program*

As of 2014, 184 state and local law enforcement agencies had been suspended from the 1033 Program for losing weapons and failing to comply with Program requirements.¹¹³ Despite the equipment misplaced by law enforcement agencies including M14 and M16 assault rifles, .45 caliber handguns, and multiple Humvees, the most common and severe punishment for such carelessness is simply a temporary suspension from the Program.¹¹⁴ “We don’t know where these weapons are going, whether they are really lost, or whether there is corruption involved,” said Tim Lynch, director of the CATO Institute’s project on criminal justice.¹¹⁵ “More troubling yet is the possibility that some of the missing weapons are actually being sold on the black market,” Lynch said.¹¹⁶ “That uncertainty is very unsettling.”¹¹⁷

¹¹³ Megan Cassidy, *MCSO Missing Nine Weapons From Pentagon’s 1033 Program*, AZCENTRAL, Aug. 27, 2014, <http://www.azcentral.com/story/news/local/phoenix/2014/08/26/mcso-weapons-pentagon-suspension-1033/14659089/>.

¹¹⁴ *Id.*; RIVERO & RIVAS, *supra* note 28, at 2.

¹¹⁵ RIVERO & RIVAS, *supra* note 28, at 2.

¹¹⁶ *Id.*

When the Maricopa County Sheriff's office lost nine firearms issued to it under the 1033 Program, Sheriff Arpaio did not seem that concerned.¹¹⁸ Suspension did not mean that the department had to return the weapons it had, rather it simply could not collect more.¹¹⁹ Besides, "his agency can now afford their own firepower."¹²⁰ In 2013, the Office purchased 400 Smith Wesson AR-15s and a .50-caliber machine gun.¹²¹ "I think we were [suspended] a couple of years ago, but we don't care," Arpaio said.¹²² "We got our own."¹²³ The arsenal Arpaio was able to amass through the 1033 Program included a Hummer, a tank, 90 M-16 rifles, 116 .45-caliber pistols, 34 M-14 rifles, and three helicopters.¹²⁴ Arpaio was unable to account for eight .45-caliber pistols and one M-16 rifle.¹²⁵ Since his election in 1993, over 20 weapons provided to Arpaio's department through the 1033 Program have vanished.¹²⁶ This demonstrates an incentive issue in the 1033 Program. Specifically, if individuals know that they will not be held personally accountable for losing the property, there is little incentive for them to care.

As mentioned above, state coordinators must report violations of the 1033 Program to the DLA.¹²⁷ Violations, depending on severity, can result in an agency's suspension or even termination under the 1033 Program.¹²⁸ These penalties are insufficient to incentivize agencies to properly use and track inventory of military equipment. Once a piece of controlled equipment is misused or misplaced, an investigation should be automatically triggered. If, as a result of the investigation, it is concluded that wrongdoing occurred, a disciplinary proceeding should follow for the individuals involved, to include the possibility of civil and criminal penalties. If no particular individual is found responsible for the mismanagement of 1033 equipment, the department should be penalized with a monetary penalty, and its fail-

¹¹⁷ *Id.*

¹¹⁸ *See id.*; CASSIDY, *supra* note 113, at 2.

¹¹⁹ CASSIDY, *supra* note 113, at 2.

¹²⁰ *Id.*

¹²¹ *Id.* at 2.

¹²² *Id.*

¹²³ *Id.* at 1.

¹²⁴ *Id.*

¹²⁵ CASSIDY, *supra* note 113, at 1.

¹²⁶ *Id.*

¹²⁷ ELSE, *supra* note 4, at 3-4.

¹²⁸ *Id.*

ure should be noted by the State Coordination Board. The Board, in turn, will have the authority to weigh the number of violations and the egregiousness of the violations to determine whether an agency should be permitted to participate in the Program.

Although LESO will retain final authority as to whether to transfer equipment to an agency, one must remember that an application for the equipment must be submitted through the state coordinator to receive LESO approval. Because, under these reforms, State Coordination Boards will replace the role of appointed state coordinators, a State Coordination Board can effectively decide that an agency may no longer participate in the Program by refusing to submit further applications for equipment.

Although there are many instances where law enforcement agencies make good-faith efforts to properly track and inventory all their equipment, even innocent mistakes can have severe consequences. The best-case scenario for a law enforcement agency misplacing military-grade weapons is that some individual or entity not authorized to receive such, now has military-grade weapons. The worst-case scenario is blatant abuse and corruption within the 1033 Program.

William Kelcy, the former Chief of the Rising Star Police Department, was indicted in February 2014 for theft of government property.¹²⁹ “Kelcy obtained more than \$4 million worth of property and equipment from the 1033 Program while he was police chief, and fraudulently gave away, sold, bartered, or disposed of high-value military surplus equipment.”¹³⁰ The investigation was not conducted at the local level at the time the equipment was determined to be missing, but over a year later by the Office of the Inspector General of the DOD, and assisted by the Texas Department of Public Safety.¹³¹ Kelcy’s case never went to trial, as he died shortly after being indicted.¹³²

The chance that an individual will be held personally accountable for abuse of the 1033 Program is rare. To catch abuse from an offending department, first, the state coordinator would have to select the offending department, out of all departments in the state participating

¹²⁹ GUZMAN, *supra* note 45, at 2.

¹³⁰ *Id.*

¹³¹ *Id.*; See RIVERO & RIVAS, *supra* note 28, at 2.

¹³² Bud Kennedy, *Some Military Gear Given to Police Winds Up In the Wrong Hands*, FORT WORTH STAR-TELEGRAM, Aug. 28, 2014, <https://www.star-telegram.com/opinion/bud-kennedy/article3871152.html>.

in the 1033 Program, for an audit.¹³³ If the state coordinator discovered any discrepancies, he or she would then report them to the DLA. Once the DLA is informed, it would have to select the department for closer scrutiny, but this time from a list of all departments in the country that were missing 1033 property.¹³⁴ Then, instead of suspending or terminating the agency from the Program, the DLA would have to refer the matter to the OIG of DOD for investigation.¹³⁵ The OIG would then have to spend time and resources to launch an investigation to determine if wrongdoing occurred.¹³⁶ If at the end of that process, it is determined that there is insufficient evidence to build a strong enough case, the matter would likely be dropped.¹³⁷ Because of this, individuals who abuse the 1033 Program have little reason to fear that their negligent and sometimes criminal behavior will result in actual consequences. An automatic investigation triggered by the loss of controlled equipment, with the possibility of a full disciplinary proceeding and civil and criminal penalties, would help incentivize agencies to care more about losing controlled equipment.

Part of trusting law enforcement with military equipment given to them through the 1033 Program is trusting that they will be held accountable if they utilize the equipment in a way that is inappropriate or violates the law. The steps necessary to investigate abuse of the 1033 Program effectively insulate law enforcement officers and agencies from civil and criminal punishment. All MOA should include a provision that any law enforcement agency participating in the 1033 Program shall conduct an automatic investigation once a controlled item is found to be missing and, if an individual is found responsible for the misconduct, charges should appropriately follow. If an individual is not found responsible, the agency, as a whole, should bear responsibility for the mismanagement of 1033 property. These changes will help assure the public that law enforcement is being held accountable and save the DOD the time and resources that would otherwise be required to conduct the investigations itself. Because criminal charges could be brought, officers would have an incentive to be responsible for 1033 property; because agencies would not wish to

¹³³ See § 1033.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

be liable for the loss of 1033 equipment, it will incentivize them to carefully police their officers.

CONCLUSION

While acknowledging the need to equip law enforcement sufficiently so that they may protect themselves and their communities, we must not forget that the consequence of treating someone like a soldier is that they will respond in kind. There are consequences to instilling a martial mentality into the minds of our law enforcement officers and far too often those consequences have names. Even accepting the premise that military equipment may be, in some instances, helpful to local law enforcement, we must remember that “America is not at war with the American people.”¹³⁸ What is recommended here is not the abolition of the 1033 Program, but fundamental reform to the Program’s structure, administration, and disciplinary process.

Fixing the 1033 Program will not fix the United States’ policing problem. It does not account for bias and prejudice. It does not address that the qualified immunity law enforcement officers enjoy from civil rights suits has been expanded to the point that it operates as blanket immunity or the power that police unions hold in our political system. It does not address that our system asks the prosecutors who work with and rely upon local law enforcement to then turn around and charge officers who commit criminal conduct, nor it does not address that many local judges and prosecutors are elected and our society awards candidates for office who are “tough on crime.” Finally, it does not ensure that more names will not follow those of Jose Guerena in Tucson, Michael Brown in Ferguson, Cameron Tillman in Terrebonne Parish, Tamir Rice in Cleveland, Eric Garner in New York City, Philando Castile in Saint Paul, George Floyd in Minneapolis, Breonna Taylor in Louisville, and Manuel Ellis in Tacoma.

What these reforms will do is create a system of accountability that will lessen the militarization of local law enforcement. What they will demand is a decrease in the number of names that will inevitably follow as this country continues the slow and painful process of realizing our ideals for law enforcement—ideals of returning police to their role as peace officers, rather than soldiers in a warzone. Firm, but

¹³⁸ SMITH, *supra* note 88, at 332.

respectful; trusted, but accountable; powerful, but just. In this way, Americans will be able to feel confident that their law enforcement officers will stand ready to “serve and protect with valor.”¹³⁹

Subsequent Developments

In the wake of nationwide protests following the killing of George Floyd in Minneapolis, Minnesota by a law enforcement officer, some lawmakers are making a push to limit the transfer of military-grade equipment through the 1033 Program.¹⁴⁰ Some have indicated that they intend to shut down the Program in its entirety.¹⁴¹ House Representative Ruben Gallego of Arizona, a former Marine, commented “[a]s a combat veteran and proud Marine, very little of my equipment or training was relevant to policing Phoenix or other American communities . . . [o]ur neighborhoods aren’t war zones.”¹⁴²

¹³⁹ *Carved on These Walls*, NATIONAL LAW ENFORCEMENT OFFICERS MEMORIAL FUND (2015), <http://www.nleomf.org/memorial/>.

¹⁴⁰ EDMONSON, *supra* note 46, at 2.

¹⁴¹ *Id.*

¹⁴² *Id.*