

Honorable Chuck Hagel
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

October 27, 2014

Re: Moratorium on Department of Defense 1033 Program

Dear Secretary Hagel:

The undersigned national and local criminal justice, civil rights, human rights, individual liberty, faith-based, and immigrants' rights organizations are writing to request that the Department of Defense (DOD) impose a moratorium on the DOD 1033 program as the Administration conducts its examination of federal programs and funding that provide state and local law enforcement with military weapons and equipment. As confirmed by the White House on August 25, 2014, this review ordered by the President promises to determine if 1033 and similar programs and grants are operating as intended.¹

As you know, the unfortunate events in Ferguson, Missouri, in the aftermath of the August 9, 2014, shooting death of Michael Brown brought national attention to the issue of law enforcement militarization. As the nation watched Ferguson, we saw police respond to protestors with armored vehicles, assault rifles, and other military weapons and equipment. While we support smart policing strategies designed to keep our streets safe, the militarized response that we saw in Ferguson undermines police-community relations and puts everyone at risk. The country soon learned that such highly militarized responses were not limited to Ferguson. In fact, Special Weapons And Tactics (SWAT) teams have long been carrying out the so-called War on Drugs, though most often for low level drug offenses, in militarized fashion.²

Since the 1990s, the 1033 program has provided more than \$5 billion worth of surplus military equipment to state and local agencies at no cost to those agencies, yet at substantial cost to federal taxpayers. During a September 9, 2014, Senate hearing, we learned that one-third of the equipment being transferred through the program is new.³ Hearing witnesses also revealed a lack of communication and coordination between the Department of Defense and the other agencies providing funding to local agencies for military equipment.⁴ Ultimately, the hearing raised more questions than it provided answers.

¹ The White House, *Press Briefing by Press Secretary Josh Earnest*, 8/25/2014, available at <http://www.whitehouse.gov/the-press-office/2014/08/25/press-briefing-press-secretary-josh-earnest-8252014>.

² See ACLU, *War Comes Home: The Excessive Militarization of American Policing*, June 23, 2014, available at <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>.

³ Tim Devaney, *Senators blast DOD program that 'militarized police'*, THE HILL, Sept. 9, 2014.

⁴ Niraj Chokshi & Sarah Larimer, *Ferguson-style militarization goes on trial in the Senate*, WASH. POST, Sept. 9, 2014.

In recent months, we learned about other troubling aspects of the 1033 program. The Washington Post reported that our nation's schools are subject to militarized policing, with the 1033 program having equipped law enforcement agencies affiliated with at least 120 educational institutions.⁵ College campuses are not immune either, with at least 124 colleges possessing 1033 equipment, including grenade launchers.⁶ And the Associated Press reported that the government has used the 1033 program to benefit certain law enforcement agencies, even though they were under investigation by the Department of Justice for civil rights violations, and in some cases, subject to consent decrees.⁷ In one of the more egregious examples, the Department of Defense terminated Arizona's Maricopa County Sheriff's Office from the 1033 program for its failure to account for missing weapons.⁸

Additionally, several local law enforcement agencies seeking to return military weapons and equipment to the Department of Defense have been unable to do so. Some agencies have been trying to return equipment for years. One county sheriff's department in Washington State has been trying to return armored vehicles since 2004 with no success. Some agencies pursuing returns in the wake of the Ferguson troubles have found that they can get rid of unwanted weapons and equipment only if they transfer it to another local agency.⁹

These latest developments suggest that a moratorium on the 1033 program would allow the Department of Defense to take stock of the program more accurately as the Department committed to do at the September 9th Senate hearing.¹⁰ A halt on transfers would enable documenting of equipment transfers, both from the Department of Defense and among local law enforcement agencies, accounting of inventory, and otherwise assessing the scope and function of the program. A moratorium would provide greater room for solutions, rather than generate new concerns with a program that continues to operate without transparency and safeguards.

A moratorium on the 1033 program would not be unprecedented. The Defense Logistics Agency (DLA), the entity responsible for disposing of excess property received from the military services, instituted a moratorium on weapons transfers in May 2012. The 17 month moratorium was in response to reports of missing equipment and inappropriate weapons transfers.

⁵ Niraj Chokshi, *School police across the country receive excess military weapons and gear*, WASH. POST, Sept. 16, 2014.

⁶ Dan Bauman, *Campus police acquire military weapons*, N.Y. TIMES, Sept. 21, 2014.

⁷ Tami Abdollah & Eric Tucker, *Feds censure local police, yet give lethal weapons*, AP, Sept. 21, 2014.

⁸ Mike Sunnucks, *Feds: Lost weapons prompted termination of military equipment deal with Arpaio*, PHOENIX BUSINESS JOURNAL, Sept. 11, 2014.

⁹ Molly Redden, *Police want to get rid of their Pentagon-issued combat gear. Here's why they can't*. MOTHER JONES, Sept. 30, 2014.

¹⁰ See *Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies, Hearing Before the S. Comm. On Homeland Security and Governmental Affairs, 113th Cong. 5-6 (2014)* (statement of Hon. Alan F. Estevez, Principal Deputy Under Secretary of Defense for Acquisition, Logistics and Technology).

We urge you to impose a moratorium on the 1033 program while DOD is reviewing the program. A moratorium would allow for a proper assessment of a program that is fueling militarized policing and is in need of reform. We look forward to working with you, state and local law enforcement, and other stakeholders on solutions. Please contact Kanya Bennett, ACLU Legislative Counsel, with any questions or comments about our request.

Sincerely,

African American Ministers In Action
Alliance San Diego
American Civil Liberties Union
American Friends Service Committee
Americans for Immigrant Justice
Arab American Institute
Border Network for Human Rights
Campaign for Liberty
Center for Constitutional Rights
Church of Scientology National Affairs Office
Drug Policy Alliance
Friends Committee on National Legislation
Interfaith Center for Worker Justice
International Council of Community Churches
La Unión del Pueblo Entero
Lawyers Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Michigan United
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Action Network
National Center for Transgender Equality
National Council of Churches, USA
National Religious Campaign Against Torture
No More Deaths
Pastor & Associates
Pax Christi USA
Presbyterian Church (USA)
Rainbow PUSH Coalition
The Sentencing Project
Sikh American Legal Defense and Education Fund
Sisters of Mercy of the Americas – Institute Justice Team
Southern Border Communities Coalition
StoptheDrugWar.org

T'ruah: The Rabbinic Call for Human Rights
United Church of Christ, Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
Virginia Council of Churches
Washington Office on Latin America

cc: Alan Estevez, Principal Deputy Undersecretary of Defense
Acquisition, Technology, and Logistics
Senator Carl Levin, Chairman
U.S. Senate Armed Services Committee
Senator James Inhofe, Ranking Member
U.S. Senate Armed Services Committee
Representative Buck McKeon, Chairman
U.S. House of Representatives Armed Services Committee
Representative Adam Smith, Ranking Member
U.S. House of Representatives Armed Services Committee
Cecilia Muñoz, Assistant to the President and Director,
Domestic Policy Council
Roy Austin, Deputy Assistant to the President for Urban Affairs, Justice and Opportunity,
Domestic Policy Council
Shaun Donovan, Director,
Office of Management and Budget