

[H.A.S.C. No. 113-128]

**THE DEPARTMENT OF DEFENSE EXCESS
PROPERTY PROGRAM IN SUPPORT OF
U.S. LAW ENFORCEMENT AGENCIES:
AN OVERVIEW OF DOD AUTHORITIES,
ROLES, RESPONSIBILITIES, AND
IMPLEMENTATION OF SECTION 1033
OF THE 1997 NATIONAL DEFENSE
AUTHORIZATION ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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CONTENTS

CHRONOLOGICAL LIST OF HEARINGS

2014

	Page
HEARING:	
Thursday, November 13, 2014, The Department of Defense Excess Property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 National Defense Authorization Act	1
APPENDIX:	
Thursday, November 13, 2014	29

THURSDAY, NOVEMBER 13, 2014

THE DEPARTMENT OF DEFENSE EXCESS PROPERTY PROGRAM IN SUPPORT OF U.S. LAW ENFORCEMENT AGENCIES: AN OVERVIEW OF DOD AUTHORITIES, ROLES, RESPONSIBILITIES, AND IMPLEMENTATION OF SECTION 1033 OF THE 1997 NATIONAL DEFENSE AUTHORIZATION ACT

STATEMENTS PRESENTED BY MEMBERS OF CONGRESS

Heck, Hon. Joseph J., a Representative from Nevada, Chairman, Subcommittee on Oversight and Investigations	1
Tsongas, Hon. Niki, a Representative from Massachusetts, Ranking Member, Subcommittee on Oversight and Investigations	2

WITNESSES

Bueermann, Jim, President, Police Foundation	16
Estevez, Alan, Principal Deputy Under Secretary, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, U.S. Department of Defense	3
Harnitchek, VADM Mark D., USN, Director, Defense Logistics Agency	5
Lomax, Mark E., Executive Director, National Tactical Officers Association ...	18

APPENDIX

PREPARED STATEMENTS:

Bueermann, Jim	41
Estevez, Alan, joint with VADM Mark D. Harnitchek	33
Lomax, Mark E.	54

DOCUMENTS SUBMITTED FOR THE RECORD:

ACLU Written Statement on the 1033 program	73
Defense Logistics Agency Memorandum of Agreement with States	83
Major County Sheriffs' Association letter on the 1033 program	71

WITNESS RESPONSES TO QUESTIONS ASKED DURING THE HEARING:

[There were no Questions submitted during the hearing.]

QUESTIONS SUBMITTED BY MEMBERS POST HEARING:

Ms. Duckworth	101
Ms. Tsongas	101

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PROGRAM IN SUPPORT OF U.S. LAW ENFORCEMENT
AGENCIES: AN OVERVIEW OF DOD AUTHORITIES,
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HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC, Thursday, November 13, 2014.

The subcommittee met, pursuant to call, at 3:59 p.m., in room 2212, Rayburn House Office Building, Hon. Joseph J. Heck (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOSEPH J. HECK, A REPRESENTATIVE FROM NEVADA, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Dr. HECK. Subcommittee will come to order.

Before we begin, I would like to state upfront that I will not tolerate disturbances of these proceedings, including verbal disruptions, photography, standing, or holding of signs. Thank you all for your cooperation in this matter.

I welcome the members of the subcommittee. We just finished a conference meeting so we expect other members to be trickling in, as well as other Members of the House and our distinguished witnesses testifying before us this morning.

We meet to receive testimony from two panels of witnesses about the administration, oversight, and accountability mechanisms for the Department of Defense [DOD] program that provides excess property to selected State and local law enforcement agencies. The 1033 program, as it is commonly known, was authorized by Congress in 1997 and subsequently enacted into law. The program makes available a large variety of surplus Department of Defense materiel to law enforcement agencies. The Department reports that this program has saved the 4,000 participating law enforcement agencies over \$5 billion since the program's inception.

Personally, having worked in the past with the Las Vegas Metropolitan Police Department, I have personally witnessed the benefit and effectiveness of the 1033 program. I believe that law enforcement should have the tools to keep our communities safe. For the men and women who wear the badge, they need to have the tools they need to protect us and also protect their own lives. Nonetheless, I believe it is essential that agencies receiving materiel from the Department of Defense utilize it properly and efficiently.

Like other members, I look forward to learning how the Department administers the 1033 program. I am also interested in the details of the existing oversight mechanisms to ensure and enforce accountability and compliance by organizations that benefit from the 1033 program.

Please keep in mind that in light of the committee's jurisdiction, the purpose of this hearing and the witnesses we have before us today, I note that policing tactics and related topics are outside the scope of today's hearing.

I now turn to the ranking member of the subcommittee, the gentlelady from Massachusetts, Ms. Tsongas, for her opening remarks.

STATEMENT OF HON. NIKI TSONGAS, A REPRESENTATIVE FROM MASSACHUSETTS, RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Ms. TSONGAS. Thank you, Mr. Chairman.

And good afternoon, Vice Admiral Harnitchek and Mr. Estevez. Thank you both for taking the time to speak with this panel today. Additionally, I would like to thank Mr. Bueermann and Mr. Lomax from our second panel, who we will hear from later this afternoon.

Like many Americans, I was shocked at the recent events in Ferguson, Missouri. One of the most troubling aspects of these events were the scenes of police officers approaching peaceful protesters in armored vehicles and pointing assault rifles at United States citizens. I recognize that the majority of the equipment used in Ferguson was not obtained through a Department of Defense initiative, known as a 1033 program, meant to transfer surplus military equipment to State and local police departments and the subject of our hearing today. But in light of these and other disturbing events from around the country, it is our responsibility to review this Department of Defense program.

I have spoken with a number of Massachusetts police chiefs to get their sense of the program and have learned of instances and reports that provoke serious questions about the suitability of this program for local law enforcement efforts, but I have also learned of instances where it has been especially helpful, most notably during the Boston Marathon bombing.

During this review, I see several key questions that need to be addressed regarding the 1033 program. At the forefront, I am concerned about what equipment is being transferred. While the DOD may have surplus equipment, not all of that equipment is necessarily appropriate for every State and local police unit. Among other things, we need to reexamine how the DOD determines what equipment can and cannot be transferred; how does a particular police unit qualify to receive a particular piece of surplus equipment; what oversight responsibilities does DOD maintain for equipment provided through this program; who is responsible for training in the use of donated items; how are law enforcement agencies that receive such equipment held accountable.

Given the main questions, I thank you for being here, and I look forward to hearing your testimony.

Dr. HECK. Thank you.

I also want to inform the witnesses and the audience that we expect a vote series somewhere around 4:30 to 4:45, so we may need to break and then return.

Before recognizing our first panel, I note that some committee members who serve on other subcommittees may be present, therefore I ask unanimous consent that they be allowed to participate and ask questions during this hearing after all members of the subcommittee have had an opportunity to ask questions. Without objection, so ordered.

The committee has received a written statement conveyed by the Major County Sheriff's Association. I ask that this statement be entered into the hearing record.

Ms. TSONGAS. Without objection.

Dr. HECK. Without objection, so ordered.

[The information referred to can be found in the Appendix on page 71.]

Dr. HECK. Now I welcome our first panel of witnesses. Representing the Department of Defense, we have Mr. Alan Estevez, Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics; and Vice Admiral Mark Harnitchek, the Director of the Defense Logistics Agency.

Gentlemen, thank you for joining us today.

Mr. Estevez, you are recognized for your opening statement.

STATEMENT OF ALAN ESTEVEZ, PRINCIPAL DEPUTY UNDER SECRETARY, OFFICE OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS, U.S. DEPARTMENT OF DEFENSE

Mr. ESTEVEZ. Thank you. Mr. Chairman, Ranking Member Tsongas, members of the subcommittee when they come in, thank you for the opportunity to appear before you and discuss the Department's transfer of excess military property to law enforcement agencies. I appreciate the subcommittee's support for the Department and your continued interest in ensuring the success of our mission.

Our joint and written statement has more detail, and I ask that it be submitted for the record.

Dr. HECK. Without objection.

Mr. ESTEVEZ. The transfer of excess military property to law enforcement agencies is a congressionally authorized program designed to ensure good stewardship over taxpayer resources. The program has provided property that ranges from office equipment and supplies to equipment that augments local law enforcement capabilities and enhances first responders support during natural disasters.

Approximately 8,000 Federal and State law enforcement agencies actively participate in the program across 49 States and 3 U.S. territories. More than \$5.3 billion worth of property has been provided since 1990. The key element in both the structure and execution of the program is the State coordinator, who is appointed by the respective State governor. State coordinators approve local law enforcement agencies within their State to participate in the program and validate all requests for property.

Working through State coordinators, law enforcement agencies determine their need for different types of equipment and they determine how it is used. The Department of Defense does not have expertise in State and local law enforcement functions and cannot assess how equipment is used in the mission of individual law enforcement agencies.

During the 12-month period ending August 2014, law enforcement agencies received approximately 1.9 million pieces of excess equipment; 1.8 million pieces of noncontrolled or general property; and 78,000 pieces of controlled property, that is property that is more tactical in nature. Noncontrolled items range from file cabinets to medical kits, generators to tool sets. Examples of controlled property include small arms, night vision devices, high-mobility multipurpose-wheeled vehicles or Humvees, and mine-resistant ambush-protected vehicles, or MRAPs.

Law enforcement agencies currently possess approximately 460,000 pieces of controlled property that they have received over time. The Department does not provide tanks, grenade launchers, sniper rifles, crew-served weapons or uniforms, and a slew of other type of offensive equipment.

Property obtained through this program has been used extensively for protection of law enforcement officers and the public, as well as for disaster relief support. For example, during the height of Superstorm Sandy, New Jersey police drove two cargo trucks and three Humvees through water too deep for a commercial vehicle to save 64 people. In Texas, armored vehicles received through the program protected police officers during a standoff and a shoot-out with a gun.

The Department of Defense is participating in the administration's interagency review of Federal programs for equipping State and local law enforcement agencies to ensure that equipment provided is appropriate to their needs while enhancing the safety of law enforcement personnel and their communities. We will alter our procedures and propose any legislative changes we believe necessary that come as a result of that review.

Although the interagency review is not complete, the Department is already pursuing changes to strengthen the program. The Department will increase consultation with the Department of Justice and the Department of Homeland Security, and will notify both Justice and Homeland Security when a law enforcement agency has been suspended or terminated from the 1033 program.

The Department is also pursuing stronger implementation criteria with the States. We have informed State coordinators of the Department's intent to amend the memorandum of agreement [MOA] with each State coordinator to ensure law enforcement agencies have a training plan in place if they request assets, such as armored vehicles, that require specialized training.

In summary, the congressionally authorized 1033 program provides property that is excess to the needs of the Department for use by agencies in law enforcement, counterdrug, and counterterrorism activities. It enables first responders and others to ensure the public's safety and save lives.

The Department of Defense does not push equipment on any police force. State and local law enforcement agencies decide what

they need and access our excess equipment through their respective State coordinator. While administrating the program does not further the Department's mission, the program is a good use of taxpayer dollars and enables first responders and law enforcement. We are ready to work with Congress in a deliberate manner to review the program's scope and mission.

Thank you for the opportunity to discuss the Department's mission with this regard, and I look forward to answering your questions.

[The joint prepared statement of Mr. Estevez and Admiral Harnitchek can be found in the Appendix on page 33.]

Dr. HECK. Thank you. Thank you.

Admiral Harnitchek, you are now recognized for your opening statement.

**STATEMENT OF VADM MARK D. HARNITCHEK, USN,
DIRECTOR, DEFENSE LOGISTICS AGENCY**

Admiral HARNITCHEK. Mr. Chairman, Ranking Member Tsongas, distinguished members of the subcommittee, thank you for the opportunity to discuss section 1033 of the 1997 National Defense Authorization Act. Section 1033 allows the transfer of excess Department of Defense equipment to Federal and State law enforcement agencies in support of their law enforcement duties.

As the Director of the Defense Logistics Agency [DLA], I am responsible for the disposal of excess property received from the military services. The excess property inventory includes thousands of items ranging from air conditioners to watercraft. The property is first offered for reuse in the Department of Defense, then to other Federal agencies, and finally to State and local governments. Reutilization results in substantial savings for the taxpayers with over \$9 billion in property reused over the last 4 years.

DLA also executes the 1033 program through our Law Enforcement Support Office in Battle Creek, Michigan. Today, over 8,000 Federal and State law enforcement agencies in 49 States and 3 U.S. territories take part in the program. To participate in the program, States must develop a plan of operation which details how they will comply with program guidance, policies, and procedures. Each State must also appoint a State coordinator, who is the liaison between DLA and the State's law enforcement agencies. The State coordinator is responsible for approving program participation, requests for excess equipment, and providing the Law Enforcement Support Office with the justification of the intended use of the equipment.

Approximately 95 percent of the equipment provided to the law enforcement agencies are common items like office furniture, blankets, first-aid kits, computers, and cold-weather clothing. Weapons, aircraft, boats, and vehicles account for the remaining 5 percent of the transfers. Controlled property, such as aircraft, weapons, and vehicles, are on conditional loan, meaning that this equipment must be returned to the Department of Defense at the end of its useful life or if the law enforcement agency is terminated from the program. DLA maintains accountability over all conditionally loaned equipment and may recall this property at any time.

Over the past several years, significant improvements have been made to strengthen the program. In early 2012, DLA imposed a nationwide suspension, with the exception of New Hampshire, for noncompliance with weapons inventory accountability requirements. This was done to ensure mandatory inventories of all issued firearms were provided by the law enforcement agencies as required by the memorandum of agreements.

We also implemented a new inventory accounting system, replaced the program manager in Battle Creek, Michigan, increased the program staff by 30 percent, and added significant detail to the memorandums of agreements with the State. We also initiated a system of biannual performance compliance reviews, where 20 percent of a State's weapons are physically inventoried by my staff.

Finally, we increased the routine day-to-day focus on compliance and accountability. Currently, 2 States and 695 law enforcement agencies are suspended from the program. Additionally, 10 law enforcement agencies have been terminated since 2012.

DLA is also supporting the administration's interagency review. In the interim, we have engaged both the Department of Justice and the Department of Homeland Security, and implemented program changes to increase collaboration and oversight of the program. These changes include notifying the Department of Justice on all law enforcement agencies' applications for enrollment in the program; on all suspended law enforcement requests for inclusion back into the program; and on allocations of weapons, armored vehicles, and aircraft. We have also agreed to notify the Department of Justice and the Department of Homeland Security [DHS] when a law enforcement agency has been suspended or terminated from the 1033 program.

Last week, I met with the State coordinators at our annual Law Enforcement Support Office conference in Battle Creek, Michigan, and discussed the importance of their role in strengthening the program. Representatives from the Departments of Justice and Homeland Security also participated in the conference.

We also recently amended the memorandum of agreement with each State coordinator to require a training plan for an asset that requires specialized training, to include vehicles and aircraft. These initiatives expand our focus stepping beyond inventory accountability into further interagency coordination and oversight of the program.

Thank you for this opportunity to discuss the 1033 program, and I look forward to answering your questions.

[The joint prepared statement of Admiral Harnitchek and Mr. Estevez can be found in the Appendix on page 33.]

Dr. HECK. I thank you both for your opening comments.

And understanding that you are approaching this without having the expertise of civilian policing tactics, who makes the final decision as to whether or not a particular Department should receive a specific type of equipment? For instance, a small, three-person rural sheriff's office who puts in a request for an MRAP, is that the State coordinator or is it ultimately DOD or does it go through a process where either one can deny the equipment?

Admiral HARNITCHEK. Sir, generally, it is the State coordinator. So, for example, the State coordinator in Georgia, a guy named Mr.

Don Sherrod, tells me that he reviews every request for an armored vehicle and basically makes the judgment in that, does the mission of that police department require such a vehicle? Is that police department staffed to man and operate that vehicle? And then do they have the funding to sustain it? So we generally rely on the expertise of the State coordinators to make those decisions, but we also review them as well.

And I can tell you across the board these State coordinators take their duties very seriously, and in my view they run a pretty tight ship.

Dr. HECK. Do you know off the top of your head, has there ever been an instance where a request came through the State coordinating office but the DOD reviewer thought that it was not appropriate and denied the materiel?

Admiral HARNITCHEK. Yes, sir, there have. Generally it's—I remember we got one a couple months ago from a prison. And of course to be part of the program your primary duty has to be apprehension and basically regular law enforcement duties. And since their mission is corrections, we denied their request.

Dr. HECK. Okay. Mr. Estevez, in your comments you talked about requiring agencies to now have a training plan in place for equipment they may receive that requires specialized training. Who is actually responsible for training on, and sustainment of, the items donated under the program? I mean, if they get a specific military piece of equipment that may not be commercially available, how do they go out and get the training?

Mr. ESTEVEZ. So the States and the local law enforcement are required for sustainment of that material and they are required to develop their training curriculum for that material. And I will give credit to Admiral Harnitchek for requiring that they now come in with the training plan.

Most of what we provide, there are commercial versions of that, so we are not providing things like attack helicopters, jets, combat track vehicles. So things they are getting, even an MRAP, which is really just a truck, are things that there are commercial versions of that they can develop their training around.

Dr. HECK. Okay. And then, Admiral, you talked about some programs that have been terminated—

Admiral HARNITCHEK. Yes, sir.

Dr. HECK [continuing]. Some agencies that have been terminated from the program. Can you give us an example of what circumstances would result in an agency's termination?

Admiral HARNITCHEK. Of the 10, 4 of them were terminated at the request of the State coordinator. Basically, they weren't abiding by the rules of the road, so the State requested that we terminate them. Probably the most recent one was a sheriff's department in Arizona, and they were terminated over weapons accountability issues. We worked with them for quite some time and they just never quite got it. You are either accountable for your weapons or you are not, and if you choose not to be, you are out of the program.

Dr. HECK. Thank you.

I now yield to Ms. Tsongas.

Ms. TSONGAS. Thank you.

It is my understanding that the Defense Logistics Agency maintains a list of approved equipment that can be transferred under the 1033 provisions, and currently that that list contains many items that can be used as offensive weapons, such as bayonets and assault rifles. Can you tell me a little more about the process of determining what equipment is placed onto your list? Specifically, what are the criteria used to make that determination? Who is responsible for approving the list? And how often is the list updated? I know you have referenced some of what is on and what is not, but I am curious if there is sort of a template for figuring this out.

Admiral HARNITCHEK. Yes, ma'am. Basically, if it is a piece of military equipment that is used for military offensive capabilities, armored vehicles, Bradleys, tanks, attack helicopters, crew-served weapons, .50-caliber machine guns, none of those are authorized for transfer. So we work that in conjunction with the service that owns that equipment, the Army, the Marine Corps. But pretty much, if it is an offensive military capability that the Armed Forces would use, that is not available for transfer.

Ms. TSONGAS. So where do bayonets and assault rifles fall into that? Would you exclude that from that description?

Admiral HARNITCHEK. Yes, ma'am. Bayonets, actually, they don't stick them on the end of the rifles we give them. They put them in their go bags and in the trunks of their cars. They use them to cut belts. I mean, a bayonet is just a nice strong utility knife. They use it if they need to cut the windshield out of a car that has that membrane in between, so they will jam the bayonet in there, pull it down. They just basically use it as a knife.

Assault rifles would be an M16 or an M14, that is an infantryman's weapon, also applicable in our view and the view of the services and the police departments for law enforcement use. But in general, almost all of the police departments that I know convert automatic weapons to semiautomatic weapons because they really don't have a requirement for a fully automatic weapon.

Ms. TSONGAS. So as you are making this determination to create this list, is there a process for vetting it? What is that process? Is it somebody sitting in an office? What is the—

Admiral HARNITCHEK. It is a process that we work with the law enforcement agencies and we also work with the services. For example, we used to issue body armor and Kevlar helmets. The Army decided that wasn't appropriate for law enforcement use, so we took them off. Prior to 2008, we used to issue uniforms, but we decided it is not appropriate for law enforcement agencies to be wearing, you know, in-use current military uniforms, so we took them off the list. So it is actually an iterative process that goes on all the time.

Mr. ESTEVEZ. And if I could jump in there, Congresswoman, this is also one of the topics that we are having in the interagency review right now, is how can we strengthen the process by which we say this is available or not available and what is the view of—you know, we have been talking about this. This isn't settled, but, you know, looking for Justice and DHS' view on that, who are closer to law enforcement than we are.

Ms. TSONGAS. I would like to also just address the issue of the State coordinator. How are the responsibilities of those coordinators defined? How are they defined?

Admiral HARNITCHEK. Yes, ma'am. They are defined in a memorandum of agreement that DLA signs with each of the State coordinators. And it delineates in very specific details the duties and responsibilities of the Defense Logistics Agency, the Department of Defense, and then, in turn, the State coordinators.

Ms. TSONGAS. And is that a standard MOU [memorandum of understanding] across the country—

Admiral HARNITCHEK. Yes, ma'am.

Ms. TSONGAS [continuing]. Every State has signed the same?

Admiral HARNITCHEK. All 53.

Ms. TSONGAS. And as you confront terminating or suspending States, are there different standards for a termination or suspension, or are they virtually the same thing?

Admiral HARNITCHEK. They are pretty much the same thing.

Ms. TSONGAS. And how do you get back on? How do you reunite your relationship?

Admiral HARNITCHEK. You have to prove to the Defense Logistics Agency that you are worthy of participation in the program.

Ms. TSONGAS. And what would that worthiness entail?

Admiral HARNITCHEK. Worthiness would entail that you are aware of the rules and regulations of, for example, the State of Massachusetts, you know, the strictures in place by the memorandum of agreement. You have to have procedures in place locally to ensure that you can properly account for the weapons that we give you, that you are not asking for too much, you are asking for just the right amount.

And, again, it is not sort of a cosmic bar of compliance there, but there is some minimum level of compliance, and if you don't meet that, you are terminated from the program. And then to get back in you have to prove that you are ready to comply with the rules of the road of the LESO [Law Enforcement Support Office] program.

Ms. TSONGAS. Thank you.

Dr. HECK. Mr. Conaway.

Mr. CONAWAY. Thank you.

Gentlemen, thanks for being here. Appreciate it.

Admiral, would you give us a quick difference between a belt-fed weapon and a crew-served weapon? And do you give them—are belt-fed weapons on your list?

Admiral HARNITCHEK. No, they are not.

Mr. CONAWAY. Okay. Never mind, then.

The role—it is one thing to have equipment, but the tactics, techniques, and procedures that a particular police force would use—

Admiral HARNITCHEK. Right.

Mr. CONAWAY [continuing]. The more militaristic they act, is that driven from your end or from their own end?

Admiral HARNITCHEK. Sir, I think that is their end.

Mr. CONAWAY. So your team would not be necessarily involved in developing techniques and tactics—

Admiral HARNITCHEK. No, sir. No. With regards to rules of engagement, we leave that to the police departments.

Mr. CONAWAY. Okay.

Mr. ESTEVEZ. In fact, we think that would be a very bad idea, to have—

Mr. CONAWAY. Say again?

Mr. ESTEVEZ. We think that would be a bad idea, to have the military developing tactics for—

Mr. CONAWAY. Thank you. I think most of us here would agree with you.

On your inventory violations, how many weapons are missing overall?

Admiral HARNITCHEK. 421 as of yesterday.

Mr. CONAWAY. And those are all M16s, M4s?

Admiral HARNITCHEK. M16s, 1911, .45s, and M14s.

Mr. CONAWAY. So you said 464?

Admiral HARNITCHEK. I am sorry, 421.

Mr. CONAWAY. 421.

Admiral HARNITCHEK. Right.

Mr. CONAWAY. Okay. And you believe now that you have got better attention to detail in terms of—

Admiral HARNITCHEK. Oh, much better.

Mr. CONAWAY [continuing]. Inventory control?

Admiral HARNITCHEK. Since 2012. Right. We are pretty—

Mr. CONAWAY. Give me the stat again on how often you observe the inventory?

Admiral HARNITCHEK. We visit each State every other year and we physically inventory 20 percent of their weapons. So that is our eyes on their weapons.

Mr. CONAWAY. Okay. So 10 percent a year, per each State? You said every other year.

Admiral HARNITCHEK. Every other year we visit every State, and then when we visit a State we inventory 20 percent of their weapons.

Mr. CONAWAY. All right.

Mr. ESTEVEZ. And if I could jump in there, Congressman. They require an annual inventory by the States.

Admiral HARNITCHEK. Right.

Mr. ESTEVEZ. State certified.

Mr. CONAWAY. State coordinator is responsible for also observing it?

Mr. ESTEVEZ. Yes.

Admiral HARNITCHEK. Right.

Mr. ESTEVEZ. So annual inventory comes in.

Mr. CONAWAY. And since then, you have not seen the same kind of sloppiness, for lack of a better phrase? I am a CPA [certified public accountant], so I understand inventory.

Admiral HARNITCHEK. No. No sir.

Mr. CONAWAY. Same kind of issues that you had pre-2012?

Admiral HARNITCHEK. No. And, frankly, some of it was on our end. The system that we gave the States to account for the inventory was sort of a 1970s clunker. So the new system that we borrowed from the forestry department is much better in terms of ease of use. It allows pictures. So we are able to photograph every weapon.

Mr. CONAWAY. Okay. Have any of these weapons showed up in a crime?

Admiral HARNITCHEK. No, sir.

Mr. CONAWAY. You have got the serial numbers of all these weapons?

Admiral HARNITCHEK. We do. All 421 weapons are entered in NCIC [National Crime Information Center], so they are clearly out there.

Mr. CONAWAY. Ok. I appreciate that. I will yield back. Thank you.

Admiral HARNITCHEK. Yes, sir.

Dr. HECK. Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

In the—I guess my question gets back to what are we really talking about here with regard to the equipment. And if the goal is to prevent law enforcement from having certain kinds of equipment, wouldn't it be better to just give that direction or pass that at the State level with the State coordinator to ban that particular equipment if State citizens didn't want it in their State than to pass some broad restriction, either your level or through Congress?

Admiral HARNITCHEK. Yes, sir, absolutely. I mean, if the State of Texas, for example, decides that MRAPs are not appropriate for use in the State of Texas, the governor can give that direction to the State coordinator and we won't issue any MRAPs, for example, to Texas.

Mr. SCOTT. And they can do that right now?

Admiral HARNITCHEK. Yes, sir, absolutely.

Mr. SCOTT. Are you aware of any armored vehicles that have been misused?

Admiral HARNITCHEK. I am not. No, sir, I am not.

Mr. SCOTT. If an armored vehicle was misused in a State, the governor and local officials would have the ability to resolve that, wouldn't they?

Admiral HARNITCHEK. Yes, sir, absolutely.

Mr. ESTEVEZ. In fact—again, if I could jump in—I believe, just to be clear, I think there was an incident where someone was speeding with an armored vehicle, and I think that law enforcement got hammered by their State for doing that.

Mr. SCOTT. I mean, well, with that equipment comes a responsibility. Most people are aware of that. I mean, I certainly don't like—I will admit—I don't like seeing any of my police agencies in military style uniforms. I just, as an American, I prefer that they be in the sheriff's deputy uniform or State trooper or police.

But, you know, when we talk about these rifles, I mean, what people refer to as assault rifle in this country is mostly cosmetic when you get right down to it. I mean, I can buy a Browning .30-06 BAR, and it basically functions the same way. It is a semiautomatic rifle. I guess I do have one question in that should we convert the rifles from fully automatic to semiautomatic before they are ever transferred to the local law enforcement agencies.

Admiral HARNITCHEK. We could probably do that. I mean, it is an easy fix. The States normally do that now, but, I mean, just to ensure that no automatic weapons are given to States. It would come at some cost, obviously, but that—I mean, because we have

about 94,000 weapons out there. So it would be hard to refit all those.

Mr. SCOTT. Right. But a 1911 is not an automatic.

Admiral HARNITCHEK. No, it would be M16s and 14s.

Mr. ESTEVEZ. And, again, if I could jump in, Congressman, and I mentioned this in my opening comments and so did Congresswoman Tsongas, if you look at the images that brought us to this hearing, we didn't buy any of—none of those weapons that were in that came from the Department of Defense. So you can go out, police forces can certainly buy weapons that look like our weapons.

Mr. SCOTT. All right. I don't have any further questions right now, Mr. Chairman.

Dr. HECK. Thank you.

Mr. JOHNSON, you are recognized for 5 minutes.

Mr. JOHNSON. Thank you.

And both you gentlemen have read the legislation that I have filed, and it does not ban State and local governments from actually going out on the market and purchasing whatever equipment they can find out there on the market, including that kind which is distributed under the 1033 program. Is that correct?

Mr. ESTEVEZ. That is correct.

Mr. JOHNSON. And so we are not about banning, by this legislation, law enforcement agencies from having this equipment, but it is true that local and State law enforcement agencies and even Federal law enforcement agencies can acquire this equipment, surplus equipment, directly from the Department of Defense without having any civilian governing authority input into the process. Isn't that correct?

Mr. ESTEVEZ. That is not correct. The State coordinator of the State, the governor-appointed, a civilian authority State coordinator is the person who makes those decisions.

Mr. JOHNSON. All right. Well, let's look at it like this then. A State agency official then put in charge of this program by a governor can decide that it is okay for a local government law enforcement agency to acquire this equipment directly from the Department of Defense, correct?

Mr. ESTEVEZ. They put in their request through that State coordinator. That State coordinator follows through with the request.

Mr. JOHNSON. And that State coordinator has no legal requirement to confer with any State or local official about that law enforcement agency request, correct?

Mr. ESTEVEZ. He is appointed by the governor and that is his mission.

Mr. JOHNSON. Well, but he does not work for a county or a city government, correct?

Mr. ESTEVEZ. That is correct.

Mr. JOHNSON. So that State authority can make a decision for a local municipality or county government without any input from that local government authority, correct?

Mr. ESTEVEZ. The local government authority, the police authority of that local government is requesting the equipment.

Mr. JOHNSON. Yes. Let's take the Ferguson Police Department, for example. The Ferguson Police Department would be able to fill out the paperwork and send it in and request a piece of equipment,

let's say an armored vehicle, an MRAP, from the Department of Defense that has been declared surplus property. Isn't that theoretically a possibility?

Mr. ESTEVEZ. That is correct.

Mr. JOHNSON. And they could do it without the input from the local governing authority there in Ferguson, correct?

Mr. ESTEVEZ. Yes, I guess, that is correct.

Mr. JOHNSON. So you are bypassing your local governing authority—

Mr. ESTEVEZ. Congressman, from the Department of Defense's perspective, we are making excess equipment, taxpayer-procured equipment available.

Mr. JOHNSON. I understand that.

Mr. ESTEVEZ. I understand.

Mr. JOHNSON. I am looking at the process by which—

Mr. ESTEVEZ. But how the States want to manage that process is up to the States, not to the Department of Defense.

Mr. JOHNSON. Well, it is actually a Federal Government program that allows these State and local law enforcement agencies to acquire this military-grade weaponry without any input from the civilian governing authority.

Mr. ESTEVEZ. Okay.

Mr. JOHNSON. And that is the point that I am making. And I think that that is not good, when the citizens, through their local governing authorities, have not made a decision about whether or not they want this kind of equipment on their streets.

Now, with respect to the qualifications of a State coordinator, the Federal Government has no qualifications that it insists that these coordinators have. Is that correct?

Admiral HARNITCHEK. The States appoint those coordinators.

Mr. JOHNSON. And so there is no requirement that that individual, that State coordinator, be a law enforcement officer?

Admiral HARNITCHEK. Mr. Johnson, I am not sure. I can't speak for all 52, but—

Mr. JOHNSON. So it can—Do you know the qualifications of the Georgia coordinator that you named earlier?

Admiral HARNITCHEK. I believe Mr. Sherrod has experience in law enforcement.

Mr. JOHNSON. But it is not true that he has to have experience in law enforcement in order to be in that coordinator's position, correct?

Admiral HARNITCHEK. Sir, that is not a requirement by the government.

Mr. JOHNSON. So anybody could be appointed and there can just be a rubber stamp and run the requests through without paying any attention to it whatsoever, just signing their name?

Admiral HARNITCHEK. Sir, that could be, but that is not my experience with how the process works.

Mr. JOHNSON. All right. And then that kind of setup could yield to the local law enforcement agency a fully automatic weapon that you would assume that they would turn it into a semiautomatic weapon before they would place it in use, but there is no guarantee or requirement that the local law enforcement agency do so. Isn't that correct?

Admiral HARNITCHEK. That is correct. Sir, absolutely, you know, execution of the program is left to the State coordinators, and in my experience they are good public servants, they take their duties very seriously, and they run a pretty tight ship.

Mr. JOHNSON. Well, I tell you, in my State of Georgia—

Dr. HECK. Gentleman's time has expired. Gentleman's time has expired.

Mr. JOHNSON. Thank you.

Dr. HECK. Gentlemen, you have referenced quite a few times the MOA or MOU that is the template that is used for all 50 states. Is that a public document?

Admiral HARNITCHEK. Yes, sir.

Dr. HECK. Could we get a copy submitted for the record to the committee?

Admiral HARNITCHEK. Yes, sir.

[The information referred to can be found in the Appendix on page 83.]

Dr. HECK. And then, Ms. Tsongas, you had a follow-up?

Ms. TSONGAS. I would like to follow up on Mr. Johnson's questions. The roles and responsibilities of the State coordinator are defined where?

Admiral HARNITCHEK. They are defined in the memorandum of agreement.

Ms. TSONGAS. They are, okay.

Admiral HARNITCHEK. Yes, ma'am.

Ms. TSONGAS. So that would be something—thank you for submitting it for the record.

And I think Mr. Johnson has raised an interesting question, because I have heard it from my constituents as well, which is that they are unaware of these various programs—and we are here to focus on the 1033 program—until the unfortunate events. And the question they have is how do they know what kinds of surplus materials have been made available to a particular police department in a particular community? Is there a record of that?

Admiral HARNITCHEK. Yes, ma'am.

Ms. TSONGAS. Is there a Web site of that—

Admiral HARNITCHEK. Yes, ma'am.

Ms. TSONGAS [continuing]. So that it is transparent, there is great transparency as to which weapons are making their way to which police departments in the communities across this country?

Admiral HARNITCHEK. Yes, ma'am, there is.

Ms. TSONGAS. And where would that be?

Admiral HARNITCHEK. We have that in our database.

Ms. TSONGAS. In your database. Is that easily accessible by—

Admiral HARNITCHEK. Yes, ma'am.

Ms. TSONGAS. Do you have a Web site? What do you have?

Admiral HARNITCHEK. I am not sure what the Web site is, but that data is available for anybody that would like to see it.

Ms. TSONGAS. Could you submit to me—

Admiral HARNITCHEK. Sure.

Ms. TSONGAS [continuing]. Some reference point that I could convey to my constituents that says these kinds of materials have made their way. As I said, as I have talked to my various police departments, very few have taken advantage of the 1033 program.

That may not be the case with the Department of Justice or Homeland Security, but I do know that my constituents would like to know what it is that has been made available.

Admiral HARNITCHEK. Yes, ma'am.

Mr. ESTEVEZ. And I believe, Congresswoman, if my memory serves me, I think The Washington Post or New York Times, I want to give credit to the proper newspaper, did an assessment of that through a Freedom of Information Act request and published a pretty accurate list of what went where back in August when all this was breaking.

Ms. TSONGAS. One other follow-on question. I understand that if equipment is not used by a particular law enforcement agency within a year that it has to return it. Is that the case?

Admiral HARNITCHEK. Yes, ma'am.

Ms. TSONGAS. And I can sort of see that as a double-edged sword. It makes sense that if equipment is not going to go to any particular use that you might bring it back in and send it back out. But I can also see how this kind of policy would encourage police departments to use something unnecessarily. So can you just give me a sense of your reasoning behind this policy, and is it serving the intended purpose?

Admiral HARNITCHEK. Yes, ma'am. One of the things that we found, that we had a few police departments that were getting a lot of excess noncontrolled equipment and selling it for their own use, in other words, to augment their department's budgets. So the use within a year is sort of control, you know, buying everything they can possibly get their hands on.

With regard to controlled equipment, we have certain rules, so that is one weapon per police officer. If we are going to give out a Humvee, it is one vehicle for every three officers. So we expect that their weapons, they are issued to officers, they are in their records, the officers are taking those weapons on patrol with them. So it is actually to control sort of—"hoarding" is probably a strong term—but it is to prevent these law enforcement agencies from getting more than they actually need.

Mr. ESTEVEZ. And, again, just to reiterate, uncontrolled is file cabinets, medical gear, not things that we retain title to. So weapons, Humvees, MRAPs, helicopters, we retain—night vision devices, the Department of Defense retains title to and we can pull that back at any time.

Ms. TSONGAS. So what would the use of a Humvee entail to satisfy that requirement?

Admiral HARNITCHEK. They have to have it on their records, you know, it has to be maintained. Our folks will go out and look at it, talk to the law enforcement agency about how they use it, how they don't use it. So it is just good old-fashioned leadership and management.

Ms. TSONGAS. Has there ever been an instance in which a police department sold a Humvee?

Admiral HARNITCHEK. I don't know of one, but it wouldn't surprise me if there was. In other words, when there is that many vehicles out there, I don't know. We have had instances of law enforcement agencies selling weapons, and they are out of the program.

Mr. ESTEVEZ. That leads to suspension and termination.

Ms. TSONGAS. Thank you.

Dr. HECK. Gentlemen, I just want to follow up real quickly on a question Ms. Tsongas had to make sure that I am clear on it. When she refers to a Web site that is accessible, I want to know, we are not talking about a Web site that is on the Army network. What we are talking about is a publicly accessible Web site with a URL where somebody can go in and query their police agency and find out what they have received. That is available?

Admiral HARNITCHEK. That is not available, but we could probably make it available.

Dr. HECK. Okay. So you have it on your net where you can run a query for someone, but it is not publicly available?

Admiral HARNITCHEK. Yes, sir. It is not publicly available, but we have the data.

Dr. HECK. Okay. All right.

Well, gentlemen, I appreciate both of you being here this evening to present your view on the 1033 program. We will take a short recess while the first panel is excused and the second panel is seated.

[Recess.]

Dr. HECK. Hearing will come back to order.

I would like to welcome our second panel of witnesses. With us now we have Mr. Jim Bueermann, president of the Police Foundation, and Mr. Mark Lomax, executive director of the National Tactical Officers Association.

Gentlemen, thank you for joining us today. And, Mr. Bueermann, we will begin with you. You are recognized for your opening statement.

**STATEMENT OF JIM BUEERMANN, PRESIDENT, POLICE
FOUNDATION**

Mr. BUEERMANN. Mr. Chairman, distinguished members of this subcommittee, thank you for this opportunity to appear before you to discuss the very important topic of the Department of Defense's 1033 program.

My name is Jim Bueermann, and I am the president of the Washington DC-based Police Foundation. The Police Foundation, established in 1970 by the Ford Foundation, is America's oldest nonmembership, nonpartisan police research organization. Our mission is to advance democratic policing through innovation and science. We conduct rigorous scientific research, provide technical assistance, and conduct critical incident reviews that help the police become more effective and responsive to the communities they serve.

Prior to my work with the foundation, I was a police officer in Redlands, California, for 33 years, the last 3 years serving as the chief of police. I have extensive experience and expertise in advancing policing through science, innovation, and community policing.

During my career in Redlands, I directed the police department's use of the 1033 program to acquire surplus military equipment. This included M16 rifles, pickup trucks, utility vehicles, desks, tables, filing cabinets, and electronic office equipment. Since my retirement, the department has acquired a mine-resistant ambush-protected armored vehicle, otherwise known as an MRAP.

As have many Americans, I have been closely following the troubling events in Ferguson, Missouri. Among the many aspects of the national discussion regarding those events is the potential militarization of this country's civilian police forces. A focal point of this discussion is the DOD's 1033 program.

I believe most community policing experts will agree that 1033 equipment is not as problematic as the context and situation in which it is used. In fact, the 1033 program provides valuable equipment to law enforcement nationwide. But it needs to be closely examined to ensure appropriate surplus equipment is transferred in a thoughtful manner, with adequate guidelines in place. A law enforcement agency's transparent, accountable, and collaborative relationship with its community relates to the degree to which people agree with the police position on the appropriate context of the use of tactical equipment.

A principal function of the police is to respond to the public safety threats that face our communities. Adequate and updated equipment is a necessity to keep both officers and our citizens safe. For law enforcement leaders operating with highly constrained budgets, the 1033 program may be the only means by which they can acquire equipment they believe they need to enhance community safety. I believe it is important that the program be retained with appropriate transparency, accountability, and oversight guidelines incorporated. Completely eliminating it could have substantial impact on public safety and local budgets. The 1033 program ensures that taxpayers do not have to pay for resources twice, once for the military and another time if the police have to purchase the same equipment the military declares to be surplus.

While you review it, I urge you to consider the program's local public safety benefits. Based on my experience and familiarity with municipal government, contemporary policing, and the 1033 program, I propose the following changes to the program to ensure it continues to strike a balance between the needs of the police and community interests.

I recommend that pursuant to Federal legislation or regulation every State and local police agency that desires access to surplus military armored vehicles or tactical military equipment via the 1033 program should be required as part of the application process to provide proof to the DOD that, one, it has received public input regarding the possible acquisition of the equipment; two, it has obtained local governing body approval of the department's acquisition of the property, except in the case of elected sheriffs; three, it has implemented a publicly accessible policy governing the use of armored vehicles and tactical equipment; and four, it makes publicly available the number of times and context it utilized the acquired armored vehicles and certain types of tactical equipment.

In my opinion, these requirements would not be overly burdensome for the police because they already have to follow a similar procedure for expensive items they now purchase. In addition, this ensures that local communities have an opportunity to voice their support or opposition to the proposed acquisition, consider the police justification for the equipment, and have access to the number of times and the context the tactical equipment was used.

In addition, I believe the program needs to incorporate a training component for certain types of equipment. For example, that there should be some requirement that before a civilian police agency takes possession of an MRAP it must participate in a DOD training session on how to operate it and submit proof that the police driver is licensed to drive the vehicle. As I understand the process now, once an MRAP is cleared for release to a police civilian agency the DOD simply conveys the vehicle to the agency's representative with little or no training how to operate it. Simply handing the untrained officer the keys to a surplus MRAP is a recipe for potential problems.

In conclusion, I urge the committee members and Congress to implement the changes to the 1033 program I have outlined in my testimony. I believe they are fair and balanced. It is imperative the committee and Congress take a balanced view of Federal efforts to assist local law enforcement in controlling crime and disorder and doing so in a democratic manner. The notion of militarizing civilian police forces is problematic in this country and it should be addressed. However, it is important to remember that the police have a tough, dangerous job and need adequate resources to protect their communities and themselves. But in providing the police with these resources, we must never lose sight of the basic tenets of democratic, community-oriented policing that requires police transparency and accountability, public input, and the coproduction of public safety between the police and the communities they serve.

Thank you.

[The prepared statement of Mr. Bueermann can be found in the Appendix on page 41.]

Dr. HECK. Thank you.

Mr. Lomax, you are recognized for your opening statement.

**STATEMENT OF MARK E. LOMAX, EXECUTIVE DIRECTOR,
NATIONAL TACTICAL OFFICERS ASSOCIATION**

Mr. LOMAX. Thank you, Chairman.

I would like to thank Chairman Heck, Ranking Member Tsongas, and the esteemed members of the subcommittee to have the opportunity to speak to you today. Since its inception in 1983, the National Tactical Officers Association [NTOA] has served as a not-for-profit association representing law enforcement professionals and special operation assignments in local, State, and Federal law enforcement agencies.

The mission of the NTOA is to enhance the performance and professional status of law enforcement personnel by providing a credible and proven training resource, as well as a forum for the development of tactics and information exchange. The NTOA believes that those law enforcement officers that are asked to conduct the most difficult and dangerous missions deserve the appropriate level of training and equipment to ensure as much as possible their success and safety.

The Department of Defense 1033 program has supported that effort by providing much-needed rescue and emergency response equipment. The DOD 1033 program allows agencies to acquire the necessary equipment rapidly and at a considerable cost savings to the local taxpaying public. From developing a robust and capable

homeland security system to everyday patrolling, the 1033 program has benefitted law enforcement and the communities it serves.

For example, ever since the 1999 Columbine school shooting, law enforcement has recognized that minutes and even seconds count in an active shooter situation. Lives are at risk if immediate police actions do not occur quickly and effectively. No longer can police departments wait for specialized units to respond to active shooter incidents. Therefore, many agencies across the country have also added the patrol rifle to their general issue inventory for officers. Numerous surplus rifles have been acquired by agencies through the 1033 program to supplement this effort. This is often the first line of rescue in saving lives for victims in mass casualty response by police.

Moreover, after September 11, 2001, first responder agencies across the country willingly volunteered to collaborate with local Federal partners in domestic security. The 1033 program allowed local agencies to acquire necessary equipment to build out its homeland security capacity and to include heavy-duty high wheeled vehicles, forklifts, generators, and vehicles that improve operational capabilities and responder safety in disaster operations.

The threat that firearms pose to law enforcement officers and the public during violent, critical incidents has proven that armored rescue vehicles have become as essential as individually worn body armor or helmets in saving lives. The recent ambush murder of Pennsylvania State Police Corporal Byron Dickson and the shooting of Trooper Alex Douglass makes it real as to the weaponry—in this case, a .308-caliber rifle—criminals are using against our finest, the men and women of law enforcement. I trained Corporal Dickson, so I take this personal.

The 1033 program has provided the necessary equipment to protect our brave officers and provide security and effective response to our communities. The DOD's oversight of surplus equipment issued is adequate in the sense that an annual inventory is conducted at the State level and the recipient agencies are held accountable. The initial application and screening process that determines which agencies receive the equipment could be improved. It would be reasonable to have applying agencies demonstrate an articulated need based on current threat assessment matrices and that appropriate training and agency policies exist based on national standards prior to the receipt of such equipment.

Again, on behalf of the 40,000 law enforcement professionals that the NTOA represents, I thank you for this opportunity to speak to you today on these current issues and challenges, and look forward to answering any questions the subcommittee has. Thank you.

[The prepared statement of Mr. Lomax can be found in the Appendix on page 54.]

Dr. HECK. Thank you both for representing the law enforcement side of the 1033 program. I will pose this question to both of you since you both have had experience with receiving equipment through the 1033 program. How do you assess DOD's current oversight and accountability mechanisms that are in place for the program? Do you think it is too much? It is too little? It is just right? How easy is it to get the equipment? What is your opinion of the oversight and accountability programs?

Mr. BUEERMANN. Well, I think that, just listening to the Admiral, it certainly changed since I retired in the summer of 2011. And I can tell you in my 33 years that we were there we never had a visit from the DOD. So it sounds like they have changed their policy where they show up on site to do audits about firearms, which I think is a very thoughtful approach. Firearms have a tendency to go missing either through misappropriation or through the inadvertent destruction of those kinds, the 1033 weapons, when they are destroying evidence. I think that is appropriate for them to do.

I think most agencies, their interaction is really with the State coordinator, and that is probably the point that you should focus on if you want to really focus on this program.

Dr. HECK. Mr. Lomax.

Mr. LOMAX. Yes, I agree with Mr. Bueermann. I retired from the Pennsylvania State Police and our bureau emergency and special operations never acquired any 1033 equipment and currently does not have any 1033 equipment. But just speaking with law enforcements throughout the country, that there definitely is a need for some more oversight in this program, starting from the DOD side and all the way down to the State coordinator side. So I agree with Mr. Bueermann's assessment of that.

Dr. HECK. Mr. Bueermann, you mentioned in your statement the need for transparency in the program. And as we heard from the previous panel, while they may have data located on a server that is behind a firewall, there is no publicly available Web site where somebody can go to see what equipment has been put into their communities. Would either of you have concerns as law enforcement officers if that information was readily available, that your Department received so many rifles or so many armored vehicles or whatever equipment through the 1033 program, or would the Pennsylvania State Police have a similar concern if that information was made publicly available?

Mr. BUEERMANN. I would not, and I would like to point out that in some places it already is. I personally went to the State of California, went to the governor's Web site and looked under the Office of Emergency Services, and found not only the Excel spreadsheet that delineated all of the California equipment, but my recollection is there was also a spreadsheet that delineated all of the equipment nationwide, at least for that particular year. So I think it is out there.

This is one of the things I think this committee and Congress ought to seriously consider, is contracting or somehow funding an outside audit of the program and an evaluation, whether the program is achieving the goals and objectives that Congress intended when the program was created, that would also create a set of guidelines. Because I think there are questions here that an outside entity that doesn't have a dog in the fight probably ought to answer for you.

Mr. LOMAX. Yes. We have no concerns that providing that list to the public will jeopardize any operational issues or anything like that.

Dr. HECK. Great. I want to thank both of you. Obviously, law enforcement is an inherently dangerous occupation. As everybody is running away from the sounds of gunfire, you are the guys that are

running towards it. And we have seen our adversaries change, just like we have seen in the military. We have seen our adversaries, our criminals change their tactics, techniques, and procedures too over time. I remember, you can go as far back as 1966 when Charles Whitman climbed to the top of the UT [University of Texas] Austin, Texas, clock tower and took out 16 people with a high-powered rifle. And everybody responding, all they had were the old wheel guns and had to go and actually get hunting rifles from students on campus to try to mount a response. Or to the 1997 Hollywood bank robbery where the law enforcement agencies were severely outgunned.

So there has to be a balance, obviously, and I am glad that you gentlemen are here to present your side of the story on how we can achieve that balance.

Ms. Tsongas.

Ms. TSONGAS. Yes. Thank you both for being here. I think it is an important discussion we are having as we are trying to sort out what that balance might be. And one of the questions I have, and I saw it as I was having my conversations with the various police chiefs, a different point of view between police departments in major cities with their larger budgets as opposed to police departments in smaller towns where in many instances it was hard to imagine a need for some of the more concerning equipment.

So do you see appropriate line drawing between what should be made available to one kind of community or another given the larger resources, the ability to better train, even to articulate a use that is more appropriate? I would sort of welcome your views on that.

Mr. BUEERMANN. I think there needs to be more thoughtful discussion about that. There are certainly some agencies that are very, very small that have acquired some equipment, I think, that would raise a red flag. It doesn't mean that it is inappropriate, but I think somebody needs to ask that particular question, about whether that is justified.

I think it would be difficult to draw a line between urban centers and suburban centers, for instance, or even rural centers. I come from a part of southern California that has all of those rolled up into one, and the policing issues there, while they may be different, are unfortunately becoming a reality in places that are rural, suburban, and urban.

What I think I haven't heard discussed here, I think, as part of this discussion is the need for regionalizing certain assets. So that may be a regionalized tactical team, it may be a regionalized set of armored vehicles, or an MRAP. As opposed to every agency needs an MRAP, maybe there needs to be one in a regional sense.

I think not allowing smaller agencies, Watertown Police, for instance, found themselves right in the middle of a tremendously difficult situation for everybody there to handle. That is a small community in the outskirts of Boston. Obviously, I think, saying to Watertown that you shouldn't have access to these things is not a thoughtful approach. Whether they need their own is a whole 'nother discussion.

And that becomes difficult for the Federal Government to do. I think that is a more appropriate discussion to be had at either the

State or the local level, but that could be part of some guidelines that are implemented, that there needs to be some discussion about whether you have thought this through at the local level or is there just this funnel of equipment that goes from the Feds down to the locals.

Ms. TSONGAS. Thank you.

Mr. LOMAX.

Mr. LOMAX. Yes. With approximately 87 percent of all law enforcement agencies had less than 50 officers and 60, 70 percent of those are less than 25 officers, there is a financial component to tactical equipment that larger agencies may not see a problem, but as—over the years we are seeing most smaller agencies requiring more and more 1033 equipment.

I agree with Mr. Bueermann, and the National Tactical Officers Association developed standards for tactical teams years ago. And part of that is the multijurisdictional regional concept where we are not saying that you should not have access to a SWAT team, but maybe you don't need a, you know, a 12-person department with a SWAT team, but you can have a regional team or a multi-jurisdictional team. So that way the assets or the equipment can be shared and the personnel and training can be shared also.

So there is that divide, in a way, between the larger departments that have the financial capabilities, have full-time teams, and the smaller rural areas that may not have that advantage.

Ms. TSONGAS. I thank you for your testimony. Thank you for being here this evening.

Dr. HECK. Mr. Scott, you are recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

And one of the things I do hope we will stay on, you know, whether or not a community, if it is regional and/or multijurisdictional, that should be a decision for the local governments and for the States, not for us at the Federal level to make.

And, Mr. Lomax, you were in uniform for 27 years with the Pennsylvania State Police. Is that right?

Mr. LOMAX. That is correct, yes, sir.

Mr. SCOTT. Thank you for your service. That is a long, long time.

Mr. LOMAX. Thank you.

Mr. SCOTT. I want to—the question of automatic rifles, and when I say automatic I mean fully automatic rifles versus semiautomatic rifles, if we changed so that the rifles, before they were transferred to the States, were already converted back to the semiautomatic, would that have any type of detrimental impact on the local law enforcement agencies?

Mr. LOMAX. I don't think so, sir. I mean, those agencies that require an automatic weapon for whatever purpose can purchase that through the DOD and other sources. So I don't think, as far as this program, the DOD program, by converting them to semiautomatic would have a significant impact on law enforcement.

Mr. SCOTT. Do most of the men who carry an M4 or a similar rifle in a patrol car, are most of those rifles semiautomatic, or are they fully automatic rifles?

Mr. LOMAX. Most of them are semiautomatic, yes, sir.

Mr. SCOTT. That is my understanding from the officers that I know.

And I just—you know, one is I want to thank both of you for testifying. And I just hope we keep this based on the facts.

Mr. LOMAX. Yes, sir.

Mr. SCOTT. And if we keep it based on the facts, I think we can find that right balance.

Thank you for being here.

Mr. LOMAX. Thank you.

Dr. HECK. Ms. Gabbard.

Ms. GABBARD. Thank you very much, Mr. Chairman.

And thank you both for your service and sacrifice to keeping people safe.

Mr. Lomax, I understand that your organization has been compiling a national survey on SWAT operations and that you are expected to complete it by the end of this year. I think, as we have been looking at this, one of the major issues that I have found is that there is just not a lot of information available with regards to how our SWAT teams are deployed and exactly what tactics they are using.

And I am wondering if you can speak to how often military-grade weapons are used, weapons, both weapons and equipment such as flash-bangs, are used by our SWAT teams and under what circumstances.

Mr. LOMAX. Well, thank you for the opportunity to speak.

And, yes, the NTOA hired the International Association of Chiefs of Police and also the University of Chicago National Opinion Research Center to develop a SWAT survey. That was sent out about a month ago to over 800 agencies, small, large, east, west, sheriff's departments, police departments.

And one of the many reasons that the National Tactical Officer Association thought of this is just like what you said, Congresswoman, is that we did not have much information from the law enforcement side as far as how the equipment is being deployed, who is making those decisions, what is out there, and whether, you know, flash-bangs are being used or not.

So hopefully at the end of this survey, which should be done by beginning of January, we should have the rough statistics. We will be looking at exactly what you are asking, looking at—one of the biggest concerns, and we have been working with the ACLU [American Civil Liberties Union] and with others out there, it is not the equipment, and it is not the personnel—it is the decisionmaking, it is who decides to deploy it, where it is being deployed, whatever. It is that.

And so we were very fortunate, in developing our advisory panel that is leading this SWAT survey, to have other stakeholders outside of law enforcement to give us direction on what are the concerns out there. So part of that survey is decisionmaking and the leadership component and training component.

So we are definitely willing to provide that to the subcommittee once that information is done.

Ms. GABBARD. Thank you. I think that is going to be of interest and important as, collectively, we look at this discussion. There is a lot of talk that is going on about SWAT teams being deployed for nonviolent offenders or also being deployed in situations where it is, you know, the wrong address at the wrong house or the other

Mr. Smith as opposed to the correct Mr. Smith. And, obviously, of great concern when these tactics are being used in that way.

For both of you, I guess I know you touched on this a little bit earlier, but if you could just speak to any requirement that you already see of law enforcement agencies having to demonstrate proficiency on equipment requested prior to it being dispersed by the DOD.

Mr. BUEERMANN. I don't—

Ms. GABBARD. If any.

Mr. BUEERMANN. I don't think there is any.

Ms. GABBARD. Okay.

Mr. BUEERMANN. I mean, I have recently spoken with police chiefs about MRAPs specifically, because my former agency has one, and I can tell you that they handed them the keys and didn't have a good drive.

Ms. GABBARD. Got it.

Mr. LOMAX. Yes, and—

Mr. BUEERMANN. And that is problematic, you know. I—

Ms. GABBARD. Very problematic.

Mr. BUEERMANN. Right. And I don't think the agencies wanted that. I think that there was an understanding on the part of the military officials that were giving them that that that was off limits to them. I don't think that they were trying to not be helpful, but that is a specialized piece of equipment. It takes special driving, and it is a lot like a fire truck. And, in fact, that is who is driving them in my community right now when they take them out, because the police officers have not yet received training, so they have to get firefighters to drive those because they have training in that. And I think that doesn't quite make sense.

The other thing is that they probably know already how to use a lot of that equipment, but these specialized things are important.

Mr. LOMAX. I agree. And there is a lack of training with this program. And it is not the 95 percent; it is the 5 percent.

Mr. BUEERMANN. Right.

Mr. LOMAX. And so that is where, you know, there needs to be more training and accountability, for that 5 percent.

Ms. GABBARD. Got it. Thank you.

Thank you, Mr. Chairman. I yield back.

Dr. HECK. Mr. Johnson, you are recognized for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

I would ask that a paper written by the ACLU on the 1033 program for purposes of this hearing be submitted for the record, without objection, and also the ACLU report entitled "War Comes Home: The Excessive Militarization of American Policing." Both these documents for the record.

Dr. HECK. Without objection.

[The ACLU paper on the 1033 program can be found in the Appendix on page 73.]

[The ACLU "War Comes Home" report is retained in the subcommittee files and can be viewed upon request.]

Mr. JOHNSON. Thank you.

And, gentlemen, thank you all for being here today.

You both have read the legislation that I have proposed?

Mr. BUEERMANN. I have not.

Mr. LOMAX. Yes.

Mr. JOHNSON. And you agree that it does not call for a ban on the transfer of all firearms from under this program, it just—just for that which is 50-caliber or more.

Mr. LOMAX. Yes.

Mr. JOHNSON. And you are both familiar with that?

Mr. LOMAX. Yes.

Mr. JOHNSON. And—

Mr. BUEERMANN. I am not.

Mr. JOHNSON. Okay.

Mr. BUEERMANN. So I'll let—

Mr. JOHNSON. Well, would you think that that is an appropriate restriction on this program, to limit the amount, or to firepower of the weaponry to 50 calibers or below?

Mr. LOMAX. Yes, that is fine.

Mr. JOHNSON. That is reasonable?

Do you think so also, Mr. Bueermann?

Mr. BUEERMANN. That makes sense, yes.

Mr. JOHNSON. And, also, with respect to armored military vehicles, flash-bang grenades, drones, silencers, do either one of you have a reason that would justify the transfer of a silencer to civilian law enforcement? Is there a civilian law enforcement need for silencers?

Mr. LOMAX. In certain situations, in tactical situations, there are, but that is very limited.

Mr. JOHNSON. But under the current program, it is unlimited in terms of what agency can request and receive a silencer.

Mr. LOMAX. Yeah.

Mr. JOHNSON. And that should not be.

Mr. LOMAX. No.

Mr. JOHNSON. Don't you agree?

Mr. LOMAX. Yes, sir.

Mr. JOHNSON. You, Mr. Bueermann?

Mr. BUEERMANN. I think it depends. I think it is very hard to come up with a broad rule that applies to all law enforcement agencies. Law enforcement agencies in this country can buy silencers—

Mr. JOHNSON. Well, certainly. This legislation would not preclude a State or local law enforcement agency from going out and purchasing silencers. But the question is, should we be distributing them direct from the battlefield to the streets of our Nation?

And you believe that the transfer of silencers is something that could be—that should be restricted under the 1033 program?

Mr. BUEERMANN. Sir, as my testimony indicated, I think that the program needs to be reexamined, and there needs to be some thoughtful decision about just that question, whether or not certain kinds of equipment should or should not be put on that list. As the Admiral said, you can't get an F-16 off this program, you can't get an Apache helicopter.

Whoever makes that decision—

Mr. JOHNSON. Well, you should not be able to get an MRAP.

Mr. BUEERMANN. And that may be a decision that other people can, but as long as it is on that list and as long as it is part of

that program, I think you have to look at an individual agency's rationale for why they need—

Mr. JOHNSON. Well, and—

Mr. BUEERMANN [continuing]. That piece of equipment.

Mr. JOHNSON [continuing]. Certainly, when a local governing authority can take that issue up and decide whether or not citizens of that jurisdiction want to have that kind of equipment on the streets, then they can go out and spend the money and purchase it. Correct?

Mr. BUEERMANN. I completely agree that the local authorities—

Mr. JOHNSON. And so—

Mr. BUEERMANN [continuing]. Local elected officials should have that input.

Mr. JOHNSON. And so what we are talking about here is not limiting a law enforcement agency from having this kind of equipment. We are just simply talking about the transfer of it from the military or DOD to the local law enforcement agency. And I want to make sure that we all agree that that is a reasonable course of action to take.

And, you know, as far as flash-bang grenades are concerned, those require specialized training in terms of when, how, and where to use, correct?

Mr. LOMAX. Yes.

Mr. BUEERMANN. That is correct.

Mr. JOHNSON. And so, to ban the military from being able to transfer that kind of equipment directly to a State or local law enforcement agency or even to a State university law enforcement agency—I mean, we had the Kent State situation take place. Can you imagine what would have happened in 1970 if this program had been in existence and if the Kent State Police Department had all of this kind of weaponry that they could get under this program and then used it against the students? Can you all imagine what America would be like?

Mr. BUEERMANN. Absolutely.

Mr. JOHNSON. And so I think you must agree that we must have some limits on this 1033 program. And I look forward to working with you to fine-tune what we have put in place. But, you know, I think we really need to look seriously about this, and it is resulting in a militarization of our police forces.

And I thank the chairman for his indulgence.

Dr. HECK. Mr. Scott, you had a follow-up?

Mr. SCOTT. I just want to—when we talk about Humvees or MRAPs, we are talking about an up-armored heavy truck. But the weapons are removed from those vehicles before they are transferred to local law enforcement agencies, is my understanding. Correct?

Mr. BUEERMANN. That is correct.

Mr. LOMAX. Correct.

Mr. SCOTT. So it is an armored vehicle, not an armed vehicle.

Mr. BUEERMANN. Correct.

Mr. LOMAX. Yes.

Mr. SCOTT. And so, when our people see a picture of an MRAP in one of the fights that we are in now that has a belt-fed rifle on

top of it, that rifle is removed before it is ever transferred to any local law enforcement agency—

Mr. LOMAX. Correct. Yes.

Mr. SCOTT [continuing]. Here in the United States. And we don't allow belt-fed rifles through this transfer.

Mr. LOMAX. No, sir.

Mr. SCOTT. And do we allow 50-calibers?

Mr. LOMAX. Currently, I believe, yes. No.

Mr. BUEERMANN. I don't—I don't know. I don't know.

Mr. JOHNSON. I would—I would—if I might interject, I would say that, yeah, any caliber weapon is permissible under the 1033 program.

Mr. LOMAX. I believe the admiral mentioned that that caliber was not transferrable.

Mr. BUEERMANN. Right.

Mr. JOHNSON. That may be according to military policy, but in terms of law, legislation.

Mr. SCOTT. With respect to my friend and colleague from Georgia, when you talk about an MRAP with a 50-caliber, the picture, I think, that people get in their mind is a belt-fed, heavy weapon on top of that vehicle. And that is not what is being transferred to our law enforcement officers.

Mr. LOMAX. It is just—

Mr. SCOTT. It is the truck—

Mr. LOMAX. It is the vehicle.

Mr. SCOTT [continuing]. That is up-armored, but it is not an armed vehicle when it is transferred to our local law enforcement agencies.

Mr. LOMAX. That is correct.

Mr. SCOTT. I yield the remainder of my time.

Dr. HECK. And just as a point of clarification, on the prohibited list is nothing larger than a 762 at the current time. So a 50-caliber would not be transferrable.

Mr. LOMAX. Thank you.

Dr. HECK. Thank you.

Ms. Tsongas, a closing statement?

Ms. TSONGAS. Just to thank you both here. Between you and our previous panel, I think we have begun an important discussion around a lot of issues. And I appreciate very much your insights, given the world you come from and your experience in the law enforcement world. And I thank you for your service.

Mr. LOMAX. Thank you.

Mr. BUEERMANN. Thank you.

Dr. HECK. Likewise, I want to add my thanks for your taking the time to be here and presenting the law enforcement perspective on the 1033 program. A lot of good information and food for thought as we look to try to strike the balance in maintaining this program but preventing the overmilitarization of our local law enforcement.

I want to thank the ranking member, Ms. Tsongas, for requesting this hearing.

There being no further business, the hearing is adjourned.

[Whereupon, at 5:16 p.m., the subcommittee was adjourned.]

A P P E N D I X

NOVEMBER 13, 2014

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

NOVEMBER 13, 2014

HOLD UNTIL RELEASED BY THE
U.S. HOUSE OF REPRESENTATIVES

JOINT STATEMENT OF

MR. ALAN ESTEVEZ

PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
FOR ACQUISITION, LOGISTICS AND TECHNOLOGY

AND

VICE ADMIRAL MARK HARNITCHEK
DIRECTOR, DEFENSE LOGISTICS AGENCY

BEFORE THE

HOUSE ARMED SERVICES SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS

ON

OVERSIGHT OF FEDERAL PROGRAMS FOR EQUIPPING STATE AND LOCAL LAW
ENFORCEMENT AGENCIES

NOVEMBER 13, 2014

HOLD UNTIL RELEASED BY THE
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, Ranking Member Tsongas, Members of the Subcommittee, thank you for the opportunity to appear before you and discuss the Department's transfer of excess military property to law enforcement agencies. I appreciate the Subcommittee's support of the Department and your continued interest in ensuring the success of our mission.

Introduction

The transfer of excess military property to law enforcement agencies is a congressionally authorized program designed to ensure good stewardship over taxpayer resources. The program to transfer excess military property to law enforcement agencies has provided property that ranges from office equipment and supplies to equipment that augments local law enforcement capabilities and enhances first responder support during natural disasters.

Authorization for the Program

The Fiscal Year 1991 National Defense Authorization Act initially authorized DoD to transfer excess property to federal and state law enforcement agencies. The program provides property that is excess to the needs of the Department of Defense for use by agencies in law enforcement, counter-drug, and counter-terrorism activities. The Fiscal Year 1997 National Defense Authorization Act reauthorized this program in Section 1033, from which it gets its common name.

Following the tragic events of 9/11, there was increased congressional emphasis on the transfer of equipment to Federal, State, and local first responders in support of homeland security.

How the Program Works

Once a DoD Component no longer has a need for a piece of equipment or property, it is turned in to the Defense Logistics Agency (DLA) for disposition, which includes reutilization, transfer, donation, or sale. If the property is no longer needed inside the Department of Defense, law enforcement agencies, under this congressionally authorized special program, are entitled to review the excess property to determine whether it would augment their ability to accomplish their mission to aid and protect the public.

A key element in both the structure and execution of the program is the State Coordinator, who is appointed by their respective State Governor. State Coordinators approve

law enforcement agencies within their state to participate in the program. Once approved, law enforcement agencies can review excess property that is turned in for disposal. Law enforcement agencies submit automated requests for specific property along with a description of intended use for each requested item to their State Coordinator for review. The State Coordinator screens the request and subsequently submits electronically the approved requests to DLA. DLA conducts a basic review of requests based on the size of the requesting law enforcement agency (e.g., a requesting law enforcement agency of 10 officers would not receive a transfer of 20 M-16 rifles). Approximately 25% of law enforcement agency requests are denied either by DLA or the State Coordinator based on the size of the law enforcement agency or the justification for the request, or the State Coordinator's lack of confidence in the requesting law enforcement agency. DLA notifies the respective State Coordinator of any denials of law enforcement requests. Approved requests are visible to the State Coordinator and the requesting law enforcement agency via the automated information system. For approved requests, the law enforcement agency is responsible for all transportation, maintenance, and sustainment costs, as well as training its personnel in the proper use, maintenance, and repair of excess DoD property.

Types of Property Available

Greater awareness of the program by law enforcement has resulted in an increase of property transfers in recent years. Approximately 8,000 federal and state law enforcement agencies actively participate in the program across 49 states (all but Hawaii) and three U.S. territories. More than \$5.1 billion (acquisition value) worth of property has been provided since 1990.

There are two types of excess property transferred to law enforcement agencies through this program: non-controlled and controlled property.

Overall, approximately 96% of the property provided to law enforcement agencies has been non-controlled property. This is property without military attributes, such as commercial vehicles, office furniture and supplies, generators, tents, tarps, tool kits, first aid kits, blankets, safety glasses, hand-tools, vehicle maintenance equipment, storage containers, lockers, shelving, and forklifts.

Approximately 4% of the property provided has been controlled, i.e., military designed equipment on the Department of State Munitions Control List or Department of Commerce Control List, such as weapons, aircraft, watercraft, and tactical vehicles. Controlled property is loaned conditionally, and recipients must return the property to DoD for demilitarization at the end of its useful life. DLA maintains accountability over all conditionally loaned equipment and may recall this property at any time.

Certain types of property whose predominant purpose is for combat operations are restricted from transfer outside the DoD (e.g., tanks, fighter aircraft, Strykers, tracked vehicles, weapons greater than 7.62mm, grenade launchers, sniper rifles, crew-served weapons). These items are not provided to law enforcement agencies. Grenade launchers have not been issued to law enforcement agencies under this program since 1999.

Law enforcement agencies determine their need for types of equipment and how the equipment is used. The Department of Defense does not have expertise in state and local police force functions and cannot assess how equipment is used in the mission of an individual law enforcement agency. Property obtained through this program has been used extensively in both the protection of law enforcement officers and the public, as well as for first responder disaster relief support. For example, life-saving equipment obtained through this program was used by police departments in Rye, N.Y., during Hurricane Sandy in October 2012 and in southern Illinois after a tornado hit on November 18, 2013. During the height of Superstorm Sandy, Jersey Shore police drove two cargo trucks and three high mobility, multi-purpose wheeled vehicles (HMMWVs) through water too deep for commercial vehicles to save 64 people. Also during Sandy, police in New York used aircraft received through the program to fly rescue personnel and first responder supplies to remote areas. Indiana police used an excess Coast Guard watercraft in its operations to interdict a major drug trafficking ring along Lake Michigan. In Wisconsin, Green Bay police use donated computers for forensic investigations. During a 2013 flood in Louisiana, Livingston Parish police used six HMMWVs to rescue 137 people. In Texas, armored vehicles received through the program protected police officers during a standoff and shootout with a gang member.

During the 12-month period ending August 2014, law enforcement agencies received approximately 1.9 million pieces of excess equipment: 1.8 million pieces of non-controlled

property and 78,000 pieces of controlled property. The total number of pieces of controlled property currently in the possession of law enforcement agencies that have not been returned for demilitarization since the 1990s is approximately 460,000. Examples of this controlled property include: 92,442 small arms (representing 4% of items currently in possession of law enforcement agencies), 44,275 night vision devices (1.9% of items), 5,235 HMMWVs (0.2% of items), 617 mine resistant ambush protected vehicles (0.03% of items), and 616 aircraft (0.03% of items). To take one example, DLA provided to the Ferguson Police Department two HMMWVs, one generator, and one cargo trailer. Additionally, DLA provided to other St. Louis County Police Departments: 6 pistols, 12 rifles, 15 weapons sights, 1 explosive ordnance disposal robot, 3 helicopters, 7 HMMWVs, and 2 night vision devices.

Program Compliance

DLA conducts bi-annual program compliance reviews of the controlled property provided to each state. These reviews include inventory accountability and reconciliation, and spot checks on randomly selected law enforcement agencies. Non-compliant states are suspended for a minimum of 30 days, and may be terminated from the program. In Fiscal Year 2013, 21 states were temporarily suspended for inventory accountability and management control issues. In Fiscal Year 2014, six states were temporarily suspended for inventory accountability issues. Two states (North Carolina and Alabama) currently remain suspended for inventory accountability issues.

Interagency Review of Federal Programs

The Department is participating in the Administration's Interagency Review of Federal Programs for Equipping State and Local Law Enforcement Agencies to ensure that equipment provided is appropriate to their needs, while enhancing the safety of law enforcement personnel and their communities. We will increase information sharing and collaboration with departments and agencies with programs that provide equipment or funding for the purchase of equipment to State and local law enforcement agencies, alter our procedures, and propose any legislative changes we believe necessary that come as a result of that review or in response to any congressional changes.

Although the Administration's Interagency Review is not complete, the Department is pursuing the following changes to strengthen oversight of the program:

The Department will increase consultation with the Department of Justice (DoJ) and Department of Homeland Security (DHS). Additionally, the Department will notify both DoJ and DHS when a law enforcement agency has been suspended or terminated from the 1033 program. This would allow DoJ and DHS to factor this information into their decision-making process with regards to grant monies provided to these law enforcement agencies. DoJ and DHS, at our invitation, participated in our annual Law Enforcement Support Office conference to review 1033 program execution and address issues. This conference is a forum for the Department and State Coordinators to review federal supply classes in order to verify and validate the classes of equipment transferred under the 1033 program.

The Department is also pursuing stronger implementation criteria with the States. We have informed State Coordinators of the Department's intent to amend the memorandum of agreement with each State Coordinator to reflect a training plan with any request by a law enforcement agency for armored vehicles or assets requiring specialized training.

Conclusion

In summary, the congressionally authorized 1033 program provides property that is excess to the needs of the Department of Defense for use by agencies in law enforcement, counter-drug, and counter-terrorism activities. It enables first responders and others to ensure the public's safety and to save lives. It is also worth noting that we are not "pushing" equipment on any police force. Local law enforcement decides what it needs and accesses our excess equipment through their respective State Coordinators. Although Congress authorizes the transfer of excess equipment to law enforcement agencies, the program does not further the Department's mission; however, the program is a good use of taxpayer dollars, and further enables first responders and law enforcement. We are ready to work with Congress in a deliberate manner to review the program's scope and mission.

Thank you again for this opportunity to discuss the Department's transfer of excess military property to law enforcement agencies. I look forward to answering your questions.

Alan F. Estevez
Principal Deputy Under Secretary of Defense
for Acquisition, Technology and Logistics

Alan Estevez was confirmed by the Senate as the Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics in October 2013.

As the Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics, Mr. Estevez develops and implements strategies, policies, and programs that increase the Department's warfighting capabilities, management efficiency, and buying power in support of the Warfighter. Mr. Estevez supports the Under Secretary of Defense in all matters related to acquisition; logistics and materiel readiness; research and engineering; nuclear, chemical, and biological weapons; operational energy; installations and environment; and the defense industrial base.

Prior to his current appointment, Mr. Estevez held several key positions within the Office of the Secretary of Defense. From August 2011, when he was confirmed by the Senate, to October 2013, Mr. Estevez served as the Assistant Secretary of Defense for Logistics and Materiel Readiness. In this position, he was responsible for providing world class military logistics support to the men and women of the United States Armed Forces and managing a budget of over \$170 billion in logistics operations. He was the first career Federal official to hold this position. Mr. Estevez served as the Principal Deputy Assistant Secretary of Defense for Logistics and Materiel Readiness from November 2006 and performed the duties of the Assistant Secretary of Defense for Logistics and Materiel Readiness from April 2009 to August 2011.

From October 2002 to November 2006, Mr. Estevez was the Assistant Deputy Under Secretary of Defense for Supply Chain Integration and was responsible for developing global defense supply chain management and distribution policies. From 1981 to 2002, Mr. Estevez held positions of increasing responsibility within the Office of the Secretary of Defense, the Department of the Army, and the Military Traffic Management Command.

Over the course of his career, Mr. Estevez has received the DoD Distinguished Public Service Medal, the DoD Distinguished Civilian Service Medal, the 2011 Presidential Rank Distinguished Executive Award, the 2006 Presidential Rank Meritorious Executive Award, two Office of the Secretary of Defense Medals for Meritorious Civilian Service (2005 and 2009), and the 2005 Service to America Medal. He was inducted into the Senior Executive Service in October 2002.

Mr. Estevez is a graduate of Rutgers University in New Brunswick, New Jersey, where he earned a Bachelor of Arts degree in Political Science. He also holds a Master of Science degree in National Resource Strategy from the Industrial College of the Armed Forces (now the Eisenhower School) at the National Defense University, Washington, DC.



United States Navy Biography

Vice Admiral Mark D. Harnitchek Director, Defense Logistics Agency

Vice Adm. Harnitchek became director of the Defense Logistics Agency in November 2011. As such, he is responsible for providing the military services and other federal agencies with logistics, acquisition and technical services. These services include logistics information; materiel management; procurement, warehousing and distribution of spare parts, food, clothing, medical supplies and fuel; reutilization of surplus military materiel; and document automation and production.

Harnitchek received a Bachelor of Arts degree from Penn State University in 1977 and was commissioned through the Navy Reserve Officers Training Corps program. In 1987, he received a master's degree in management from the Naval Postgraduate School, Monterey, Calif.



Harnitchek has served in a variety of sea tours including two submarines, USS *Will Rogers* (SSBN 659) and USS *Buffalo* (SSN 715); two ships, USS *Holland* (AS 32) and USS *Proteus* (AS 19); and the aircraft carrier USS *Theodore Roosevelt* (CVN 71). His shore tours include Commander, Submarine Group 7, Yokosuka, Japan; the Navy Ships Parts Control Center, Naval Air Station Oceana, Va.; and the Chief of Naval Operations Staff.

Flag assignments include commanding officer, Naval Inventory Control Point; vice director for logistics, the Joint Staff; director, Strategy, Policy, Programs and Logistics, U.S. Transportation Command; director, U. S. Central Command Deployment and Distribution Operations Center in Operations *Iraqi* and *Enduring Freedom*; and deputy commander, United States Transportation Command.

Updated: 18 November 2011



Testimony of Chief Jim Bueermann (Ret.), Redlands, CA
President, Police Foundation, Washington, D.C.

Committee on Armed Services
Subcommittee on Oversight and Investigations
U.S. House of Representatives

Hearing on “The Department of Defense Excess Property Program
In Support of U.S. Law Enforcement Agencies: An Overview of DOD
Authorities, Roles, Responsibilities and Implementation of Section 1033
of the 1997 National Defense Authorization Act”

Thursday, November 13, 2014

Mr. Chairman, Ranking Member Tsongas and distinguished members of the Subcommittee, thank you for this opportunity to appear before you to discuss the very important topic of the Department of Defense’s Section 1033 program that provides surplus equipment to our civilian police forces.

Introduction

My name is Jim Bueermann and I am the president of the Police Foundation and the former Chief of Police for the City of Redlands, California. The Police Foundation, established in 1970 by the Ford Foundation, is America’s oldest non-membership, non-partisan police research organization. Our mission is to advance democratic policing through innovation and science. We conduct rigorous scientific research, provide technical assistance and conduct critical incident reviews that help the police across the country become more effective.

Determined to address the challenges of policing in an ever-changing world, the Police Foundation did much of the research that led to a questioning of the traditional model of professional law enforcement and toward a new view of policing – one emphasizing a community orientation – that is widely embraced today. Seminal foundation research on issues such as police patrol practices, women in policing, use of force by police, and the police response to domestic violence has transformed policing in profound ways. The foundation has been committed to disseminating science and evidence-based practices to the field as a means of advancing democratic policing. My testimony reflects these principles.

Prior to my work with the Foundation I served for a year as an Executive Fellow at the U.S. Department of Justice's National Institute of Justice where I worked to translate scientific evidence for police practitioners. Prior to that, I was a police officer in Redlands, California for 33 years – the last 13 years serving as the Chief of Police and Director of Housing, Recreation and Senior Services. I retired from the department in 2011. I have extensive experience and expertise in community policing. During my tenure as police chief, for example, the Redlands Police Department incorporated Redlands' recreation, housing and senior programs as part of its evidence based community policing and problem solving strategy that focused on risk and protective factors. In 2000, this policy was judged one of the 25 most innovative governmental programs in America by the "Innovations in American Government" program sponsored by Harvard's Kennedy School and the Ford Foundation.

The 1033 Program and Tactical Equipment for Law Enforcement

Like many Americans, I have been closely following the events in Ferguson, Missouri. Among the many aspects of the national discussion of Ferguson includes the "militarization" of this country's police forces. One focal point of this discussion has been the Department of Defense's "Section 1033 Program" that transfers surplus military equipment to local police departments, and I applaud this committee for holding today's hearing as part of its ongoing oversight efforts of this program.

I believe most community policing experts will agree that the equipment itself is not as problematic as the context and situation in which it is used. In fact, the 1033 Program and other federal programs provide valuable equipment to law enforcement nationwide – but they need to be closely examined to ensure appropriate surplus equipment is transferred in a thoughtful manner with adequate guidelines in place.

Few people would argue that the police need the means to keep themselves safe and apprehend or stop heavily armed and violent bank robbers, for example; most would not object to a police SWAT team using an armored vehicle to stop them. In contrast, the same SWAT team, using the same armored vehicle to "control" vocal, yet peaceful protestors would be considered highly offensive. It is context - not specific equipment or tactics – that is one of the most important variables in determining whether the use of military-style equipment in policing is appropriate or not. And a law enforcement agency's transparent, accountable and collaborative relationship with its community relates to the degree to which people agree with the police position on "appropriate context."

During my career in Redlands the police department used the Department of Defense's 1033 Program to acquire surplus equipment. This included several M16 rifles for the department's SWAT Team, pick-up trucks, utility vehicles, desks, tables and filing cabinets for our community policing stations and miscellaneous office equipment used by our recreation, housing and senior services units. Since my retirement, the department has acquired a Mine Resistant Ambush Protected armored vehicle (MRAP).

The 1033 Program ensures that our taxpayers do not have to pay for these resources twice. As you review this program and consider possible changes, I urge you to consider its benefits to taxpayers and law enforcement, especially given the challenging budget environment many state and local governments are experiencing. There has been substantial positive impact on public safety and officer safety from 1033 and other programs that provide surplus equipment to law enforcement. For example:

- Several weeks ago, the Cook County Illinois Sheriff's Department used armored vehicles to get officers to the scene and extract six children and two adults being held hostage after a home invasion. Two officers were shot during the 20-hour standoff, but the equipment prevented further injury to law enforcement and helped with the safe recovery of the hostages.
- Armored Personnel Carriers (APCs) and MRAPs have been used to affect snow and water rescues in Brunswick, Ohio. The high axle clearances these vehicles have afford rescuers the means by which to traverse deep snow or rushing water to get to stranded victims.
- The Las Vegas, Nevada Metropolitan Police Department receives 1033 Program Surplus Property. The majority of items, 75 percent to 80 percent are aircraft parts that are used to maintain the two surplus HH-1H rescue helicopters, which are used primarily for mountain rescues of injured hikers, hoist rescues of persons trapped during the flood season, lost persons and persons requiring medical help. They are also utilized to transport searchers and K-9 Teams to remote locations when searching for missing children. In June and July of 2014 alone, the LVMPD Air Support/Search and Rescue Section utilized rescue helicopters obtained through the 1033 Program 11 times during search and rescue missions in mountainous terrain. In addition, the department used boats obtained through the 1033 Program 6 times for diving/rescue missions at Lake Mead.
- The Pasadena, California police department used 1033 helicopter equipment to completely refurbish its own helicopters which provide air support services for not only Pasadena but the entire San Gabriel Valley in Los Angeles County.

Recommendations for the 1033 Program

The two primary drivers of the public perception and criticism of police "militarization" and the 1033 Program are local law enforcement's use of armored vehicles and tactical equipment/units. Based on my experience and familiarity with municipal government, community policing and the 1033 Program specifically, I proposes the following changes to the program to ensure it continues to strike a balance between the needs of the police and community interests.

I recommend that pursuant to federal legislation or regulation, every state and local police agency that desires access to surplus military armored vehicles or tactical equipment via DOD's 1033 Program should be required – as part of the application process – to provide proof to the DOD that:

- 1) it has received public input regarding the possible acquisition of the equipment;
- 2) it has obtained approval from its local governing body for the department's acquisition of the property (except in the case of elected sheriffs);
- 3) it has implemented a publically accessible policy governing the use of armored vehicles and tactical equipment and;
- 4) it makes publically available the number of times and context it utilizes the acquired armored vehicles and tactical equipment.

This requirement can be easily fulfilled by providing:

1. Minutes from a public hearing on the matter proving the community had an opportunity to express its opinion on the issue (for all state, county and local police agencies);
2. A resolution passed by the local elected governing body's approval of the application for local law enforcement agencies (or, in the case of state law enforcement, approval from the governor);
3. Written policies from the law enforcement agency that clearly outline the circumstances under which the surplus armored vehicles and tactical military equipment can be used, and;
4. Public availability of the aforementioned policies and the number of times and context the acquiring department utilized the surplus armored vehicles and tactical equipment. Allowances could be made for anti-terrorism cases or other highly sensitive investigations with the approval of the agency executive.

Because the 1033 property is conveyed to policing agencies "free of charge," there is frequently no local requirement that the policing agency obtain approval from the local governing body in the same way they would be required under local purchasing ordinances for the same equipment if they had to purchase it. The addition of military equipment, such as armored vehicles and tactical equipment, in police departments with little use for them can create budgetary and organizational pressure to use them. Policing leaders who acquire tactical military surplus equipment that is expensive to buy or maintain can feel pressure from city, county or state administrators, or elected officials, to justify the expenditures. This can result in "normalizing" their use in "routine" circumstances and contribute to the militarization of the police.

In my opinion, the requirements I have proposed would not be overly burdensome for the police because they already have to follow a similar procedure for expensive items they currently purchase. In addition, these policies would ensure that local communities have an opportunity to voice their support or opposition to the proposed acquisition, consider the police justification for the equipment and have access to the number of times and context the tactical equipment was used. This community input and law enforcement transparency and accountability is entirely consistent with a fundamental underpinning of community policing, which urges the police to "co-produce" public safety with the community they serve.

I believe it is important that the 1033 Program be retained, albeit with new transparency, accountability and oversight guidelines incorporated. Completely eliminating this program would have substantial impact on public safety and local budgets.

The job of police is to respond to the threats that face our communities each day and protect public safety. Adequate and updated equipment is a necessity to keep both officers and our citizens safe; the equipment needs shift when the safety landscape shifts. For law enforcement agencies with highly constrained budgets, the 1033 Program may be the only means by which they can acquire armored vehicles and tactical equipment or firearms. Unfortunately, there are occasions when these are needed by our civilian police forces. For example:

- In February 1997, two gunmen heavily armed with fully automatic assault rifles robbed a bank in the North Hollywood jurisdiction of the Los Angeles Police Department (LAPD). Patrol officers interrupted the robbery and the robbers immediately began firing at them. Several officers and

civilians were wounded. The officers were outgunned as they were armed only with their handguns and shotguns. When LAPD SWAT officers arrived, armed with assault rifles, the suspects were eventually shot. During the gun battle SWAT officers commandeered an armored truck to protect them while they rescued wounded civilians and officers. After this incident, many police departments, including LAPD, began arming their patrol officers with rifles to counter heavily armed suspects.

- The Los Angeles police recently used an armored “Bearcat” tactical vehicle to protect officers as they apprehended a heavily armed suspect who was firing a high powered rifle at them and had wounded an officer.
- In West Bloomfield, Michigan a suspect barricaded himself in a residential neighborhood and engaged in significant gunfire with law enforcement and ultimately ended up killed police officer Patrick O’Rourke. During the 20-hour standoff, law enforcement used their armored vehicle to safely evacuate neighborhood residents from the area.

Even though the police may periodically use military-like equipment, most would agree that “militarizing” civilian police agencies runs contrary to the American view of democratic policing. The ability of the police to fulfill their public function is dependent on public approval of their actions and confidence in them because community members believe the police treat them in a respectful, fair and equitable manner and use force only when absolutely necessary. Law enforcement agencies across the country strive to find a balance in providing needed tactical resources to police officers while maintaining and strengthening connections to the community and their legitimacy in the eyes of the communities they serve.

Conclusion

I urge the Committee to adopt the transparency and reporting changes to the 1033 Program I have outlined above, which I believe are fair and balanced.

I also urge the Committee to ensure that transfer of surplus military equipment is used to support evidence-based policing strategies and initiatives that law enforcement can use to better policing practices. This will enhance police legitimacy and leverage the taxpayer investment in public safety. It will also help the police better gauge whether they “really” need military surplus armored vehicles and tactical equipment.

Finally, I urge the Committee to support the creation of a national center for conducting critical incident reviews. This will help determine if the 1033 Program is having the kind of impact that Congress intended.

There is much truth to the adage that “those who cannot remember the past are condemned to repeat it.” Just as aviation and the medical profession have mechanisms to learn from mistakes or near misses, so too should American policing have an organized way to take “lessons learned” and make them “lessons applied.” And these lessons can be translated into meaningful changes in the way American policing operates and utilizes the 1033 Program. But this will only happen if there is the will to ensure that the knowledge gained from these tragedies is captured and disseminated in a manner that encourages new learning and sustainable change. One method of accomplishing this is through the use of critical incident

reviews of the type conducted by the Police Foundation after the Southern California “Christopher Dorner Incident” in 2013 (see www.incidentreviews.org). Critical reviews should be conducted after every policing incident in which a life is lost or substantial police use-of-force is used.

It is imperative that the Committee take a balanced view of federal efforts to assist local law enforcement in controlling crime and disorder and doing so in a democratic manner. The perceived “militarization” of the police is problematic in this country and it should be addressed. However, it is important to remember that the police have a tough, dangerous job and need adequate resources to protect their communities and themselves. But, in providing the police with these resources we must never lose sight of the basic tenets of democratic, community-oriented policing that require police transparency and accountability, public input and the co-production of public safety between the police and the communities they serve.

James R. Bueermann

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EXPERIENCE

- President, Police Foundation, Washington, DC September 2012 to present
- Senior Fellow, George Mason University, CEBCP, Fairfax, Virginia July 2011 to September 2012
- Executive Fellow, US DOJ, National Institute of Justice, Wash., DC July 2011 to September 2012
- Chief of Police & Director of Recreation and Senior Services
Redlands Police Department, Redlands, CA (retired) May 1998 to June 2011
- Police Officer, Detective, Sergeant, Lieutenant & Captain
Redlands Police Department, Redlands, CA December 1978 to May 1998

EDUCATION

- M.A.** University of Redlands, Management (1987)
- B.A.** California State College San Bernardino, Criminal Justice and Sociology (1980)
- A.A.** Crafton Hills College, Yucaipa, California (1977)
- Diploma** California Command College (1998)
- Diploma** FBI National Academy (1989)

CURRENT PROFESSIONAL APPOINTMENTS AND AFFILIATIONS

- Law Enforcement Futures Group member, Bureau of Justice Assistance US DOJ
Washington, D.C.
- Technical Review Team member, *Advancing Knowledge and Practice in Policing: A Longitudinal Platform for National Research*, National Institute of Justice US DOJ
Washington, D.C.
- The Center for Evidence-Based Crime Policy, Advisory Board member George Mason University
Manassas, VA
- Crime and Place Working Group member George Mason University
Manassas, VA
- Cambridge Police Executive Programme, International Advisory Board Cambridge University, UK
- National Alliance for Public Safety GIS Foundation (NAPSG), Board member Washington, D.C.
- Prisoner Reentry Institute, Advisory Committee member John Jay College of Criminal
Justice, New York, NY
- Leadership Academy, Advisory Committee member John Jay College of Criminal
Justice, New York, NY
- The Academy of Experimental Criminology, Honorary Fellow Elected 2007
- Former member, California Department of Corrections and Rehabilitation, Law Enforcement Advisory Board Sacramento, CA
- Fight Crime, Invest in Kids – California Advisory Committee Member Oakland, CA
- Chairman, Inland Regional Narcotics Enforcement Team (retired), San Bernardino, CA
- Los Angeles Area High Intensity Drug Traffic Area (LA-HIDTA) Executive Board member (retired) Los Angeles, CA
- International Association of Chiefs of Police (IACP), Police Executive Research Forum (PERF), National Organization of Black Law Enforcement Executives (NOBLE), Latino Peace Officers Association, World Future Society, Charter member of Police Futurists International, California Police Chiefs' Association, California Command College Associates, California Peace Officers' Association

DEPARTMENT & PERSONAL HONORS

- Two *Meritorious Service* Medals and numerous commendations from the Redlands Police Dept.
- Recognized as one of the 25 most innovative programs in America in the *Excellence in American Government* award program for the Redlands Police Department's *Risk Focused Policing*, Harvard Kennedy School of Government, The Ford Foundation & the Council for Excellence in American Government, Washington, D.C. (2000)
- National League of Cities *Excellence in Community Policing Award* for the Redlands Police Department's *Utilizing Volunteers in Community Policing Program* (1998)
- Admitted to the first class of the California State University College of Social and Behavioral Sciences *Hall of Fame* (February 2009)
- First inductee into the *Evidence-Based Policing Hall of Fame*, Center for Evidence Based Crime Policy, George Mason University (2009)
- The Academy of Experimental Criminology, Honorary Fellow, Elected 2007
- Commencement Speaker, Crafton Hills College, Yucaipa, CA. (May 2009)
- *Individual Award*, Citizen's Action for Peace (2008)
- *Husband and Wife Team of the Year*, Grayback District, Boy Scouts of America (2008)
- *Guadalupe Medal*, Catholic Church, Diocese of San Bernardino (2007)
- *Distinguished Alumnus Award*, Crafton Hills College (2006)
- *Hickson Medal*, Kiwanis Club of Redlands (2006)
- *Good Citizenship Medal*, Sons of the American Revolution (2006)
- *Distinguished Service Medal*, Northside Impact Committee (2004)
- *Leadership Award*, Decently and In Order Ministry, (2004)
- *Director's Award*, California Department of Corrections (2003)
- *Golden Touch Award*, for distinguished service to special needs youth, Boy scouts of America (2003)
- *Advanced Program Development Award*, California State School Resource Officers Association (2001)
- *Volunteer of the Year*, United Way of the East Valley (1997)

PROFESSIONAL PRESENTATIONS

Over the last eleven years, I have made many presentations to, and participated with, regional, state, national and international organizations and working groups from a wide breadth of disciplines on issues including, but not limited to, prisoner reentry, crime mapping, drug court practices, recreation strategies, housing approaches to control crime, healthy communities, community policing, leadership and organizational development, futures issues and advanced technology. Some of the organizations with which I have participated in policy discussion, formulation and made recommendations or presentations to, and the subjects of those presentations, include:

- Jerry Lee Symposium on Evidence-Based Crime Policy, Washington, D.C. (2013)
- National League of Cities Congressional Conference, Washington, D.C. (2013)
- Canadian Summit on Economics of Policing, Ottawa, Canada (2013)
- US DOJ, National Institute of Justice Annual Conference, Washington, D.C. (2012)
- Association of Scottish Superintendents, Annual Conference, Glasgow, Scotland (2009)
- International Conference on Evidence-Based Policing, Cambridge University, Cambridge, England, only U.S. police chief (2008)
- The Bi-national Symposium on the Impact of Global Terrorism on Police and Policing (one of only three U.S. police chiefs), Jerusalem, Israel (2007)
- Law Enforcement Exchange Program, Jewish Institute for National Affairs, Tel Aviv, Israel (2006)
- International Roundtable on Prisoner Reentry, London, England, only U.S. police chief (2005)
- Family Centered Community Policing, taught with Vice President Al Gore at Fisk University (Nashville, TN), Middle Tennessee University and University of California at Los Angeles

- The Family Reunion – a series of national policy summits sponsored by Vice President Al Gore and Vanderbilt University (on-stage presentations with the Vice President)
- U.S. Department of Justice, National Institute of Justice, the Office of Community Oriented Policing Services (COPS), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) 1998-2011
- Vice-President’s Council on Reinventing Government – community policing (1999-2000)
- National Democratic Platform Committee, St. Louis, MO. (2000)
- National Academies of Science – evidence based crime and policing policy
- The Campbell Collaboration – policing research and evidence based policing
- U.S. Conference of Mayors – national roundtable on prisoner reentry
- The Council of State Governments – prisoner reentry
- The Urban Institute – prisoner reentry
- Office of the U.S. Surgeon General – the role of the police in stopping the maltreatment of children
- National Center for Victims of Crime – parallel justice for victims of crime
- U.S. Department of Education, Major Cities School Police Chiefs – community policing
- National Drug Court Institute – the role of the police in drug courts
- The International Association of Police Chiefs (IACP) – reentry, community policing, Volunteers in Policing Service (VIPS) national Advisory Board member
- Police Executive Research Forum (PERF) – reentry, crime mapping
- The Police Foundation – community policing, crime mapping, prisoner reentry
- Israeli National Police – community policing, volunteers in policing
- Government of Bermuda – Risk Focused Policing
- Neighborhood Reinvestment Corporation – housing resources in crime control
- National Investigative Reporters Association
- The Health Forum – risk and protective factors and juvenile crime
- National Association of Police Planners – the future of policing in America
- The League of California Cities – community policing,
- California Parks and Recreation Society – recreation as a crime control strategy
- California Attorney General’s Office – community policing
- California Commission on Peace Officers Standards and Training (POST) – leadership in policing
- Western Regional Institute for Community Policing – community policing

PUBLICATIONS

- | | |
|---|-----------------|
| • “Being Smart on Crime with Evidence-based Policing,” NIJ Journal, US DOJ National Institute of Justice, Washington, D.C. | March
2012 |
| • “Transforming Community Policing for the 21st Century: Risk Focused Policing,” <u>NeighborWorks Journal</u> , the Neighborhood Reinvestment Corporation, Washington, D.C. | June
2000 |
| • “Knowledge Management in Policing,” COPS US DOJ publication series, Washington, D.C., with T. Dave Chavez, Jr. and Michael Pendleton | October
2005 |
| • The Educational Perspective of the Redlands Police Department, in “College Education and Policing,” <u>The Police Chief</u> , International Association of Chiefs of Police, with Louis Mayo, Ph.D. | August
2006 |
| • “Coming to Terms with Geographical information Systems,” <u>The Police Chief</u> , International Association of Chiefs of Police, secondary author with John Markovic and Kurt Smith | June
2006 |

**DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 113th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Committee on Armed Services in complying with the House rule. Please note that a copy of these statements, with appropriate redactions to protect the witness's personal privacy (including home address and phone number) will be made publicly available in electronic form not later than one day after the witness's appearance before the committee.

Witness name: James Bueermann

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented:

FISCAL YEAR 2014

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
20140108-160504-NJ	Bureau of Justice Assistance	\$ 10,000	Promoting Safety – City of Camden

FISCAL YEAR 2013

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
2013CKWXK002	Office of Community Oriented Policing Services	\$ 249,558	Community Policing & UAS Guidelines to Enhance Comm. Trust
2013DPBXK003	Bureau of Justice Assistance	\$ 299,872	Increasing Crime Analysis Capacity: Training for the

			Law Enforcement Executive Project
2013CKWXXK003	Office of Community Oriented Policing Services	\$ 49,996	Promoting Investigative Intelligence

FISCAL YEAR 2012

Federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
2012CKWXXK017	Office of Community Oriented Policing Services	\$ 226,652	An Assessment of Cost Reduction Strategies in a New Economy
2012IJCX0039	National Institute of Justice	\$ 397,344	Translating "Near Repeat" Theory into a Geospatial Police Strategy
2012IJCX0009	National Institute of Justice	\$ 341,469	Promoting Officer Integrity Through Early Engagements and Procedural Justice
SINLEC12CA039	RLE – State Bureau of Intern. Narcotics & Law Enforcement	\$499,995	Implementing the Liberia Mobile Training Teams Project for the Liberian National Police
2012AJBXK046	Bureau of Justice Assistance	\$61,000	Community Safety Initiative

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information: *NONE*

Number of contracts (including subcontracts) with the federal government:

Current fiscal year (2014): _____;
 Fiscal year 2013: _____;
 Fiscal year 2012: _____.

Federal agencies with which federal contracts are held:

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.):

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

Aggregate dollar value of federal contracts held:

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government:

Current fiscal year (2014): 1 _____;
Fiscal year 2013: 3 _____;
Fiscal year 2012: 5 _____.

Federal agencies with which federal grants are held: *Please see chart above.*

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.): *Please see chart above.*

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

Aggregate dollar value of federal grants held:

Current fiscal year (2014): \$10,000 _____;
Fiscal year 2013: \$ 599,426 _____;
Fiscal year 2012: \$ 1,526,460 _____.

Written Opening Statement of Mr. Mark Lomax; Executive Director of the National Tactical Officers Association before the Subcommittee on Oversight and Investigations of the House Armed Services Committee for the hearing on “The Department of Defense Excess property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 National Defense Authorization Act”

Nov. 13, 2014

My name is Mark Lomax and I serve as the Executive Director of the National Tactical Officers Association and on behalf of the more than 40,000 law enforcement professionals we represent, I would like to thank Chairman Heck, Ranking Member Tsongas and the esteemed Members of this Subcommittee to have the opportunity to speak with you today.

Since its inception in 1983, the National Tactical Officers Association has served as a not-for-profit association representing law enforcement professionals in special operations assignments in local, state and federal law enforcement agencies. The mission of the NTOA is to enhance the performance and professional status of law enforcement personnel by providing a credible and proven training resource as well as a forum for the development of tactics and information exchange.

The NTOA believes that those law enforcement officers that are asked to conduct the most difficult and dangerous missions, deserve the appropriate level of training and equipment to ensure, as much as possible, their success and safety. The Department of Defense 1033 Program has supported that effort by providing much needed rescue and emergency response equipment.

The DOD 1033 program allows agencies to acquire the necessary equipment rapidly and at considerable cost savings to the local tax paying public. From developing a robust and capable homeland security system to everyday patrolling, the 1033 program has benefited law enforcement and the communities it serves.

For example, ever since the 1999 Columbine school shooting, law enforcement has recognized that minutes and even seconds count in an active shooter situation. Lives are at risk if immediate police actions do not occurred quickly and effectively. No longer can police departments wait for specialized units to respond in active shooter incidents. Therefore, many agencies across the country have also added the patrol rifle to their general issue inventory for officers. Numerous surplus rifles have been acquired by agencies through the 1033 program to supplement this effort. This is often the first line of rescue and saving lives for victims in mass casualty response by police.

Moreover, after September 11, 2001, first responder agencies across the country willingly volunteered to collaborate with their federal partners in domestic security. The 1033 Program allowed local agencies to acquire necessary equipment to build out its homeland security capacity, to include heavy duty high wheeled vehicles, forklifts, generators and vehicles that improve operational capabilities and responder safety in disaster operations.

The threat that firearms pose to law enforcement officers and the public during violent critical incidents has proven that armored rescue vehicles have become as essential as individually worn body armor or helmets in saving lives. The recent ambush murder of Pennsylvania State Police Corporal Byron Dickson and shooting of Trooper Alex Douglass makes it real as to the weaponry, in this case a .308 caliber rifle, criminals are using against our finest, the men and women of law enforcement. I trained Corporal Dickson, its personal.

The 1033 program has provided the necessary equipment to protect our brave officers and provide security and effective response to our communities. Although the US has seen a steady decrease in overall crime over the last decade, local law enforcement agencies have also been challenged with increasing threats such as violent gang and extremist group activity, border security issues and active shooter scenarios in schools, businesses and other public venues.

Also adding to this shift, the 2004 and 2005 Atlantic hurricane seasons resulted in 15 named storms impacting the United States, most notably Hurricane Katrina. As a result, first responder agencies from around the country reassessed their role and responsibilities associated with natural disaster response operations, specifically rescue, evacuation, sheltering and security operations.

During the last decade, the US Federal Government, most notably through the Department of Homeland Security (DHS) has given direction and guidance to state and local governments, through such documents as the National Response Framework (NRF) and the National Incident Management System (NIMS), as to how those capabilities should be built out. In September, 2007, the DHS published the Target Capabilities List (TCL)¹, which as it relates to law enforcement, specifically outlines in the section titled *Emergency Public Safety and Security Response* (pp. 263-276, included as Attachment 1) what capabilities state and local law enforcement agencies should possess when responding to significant critical incidents. The TCL has since been cross-walked over to the new 31 Core Capabilities outlined in the National Preparedness Goal. Core Capability #10 "On-Scene Security and Protection" is defined as:

Ensure a safe and secure environment through law enforcement and related security and protection operations for people and communities located within affected areas and also for all traditional and atypical response personnel engaged in lifesaving and life-sustaining operations.

As law enforcement agencies across the country began building out these capabilities, a need was identified to standardize equipment, training, response plans and personnel credentialing to ensure uniformity in a multi-discipline, multi-jurisdictional unified response. In short, when affected agencies requested assistance during significant events, there was an expectation that like resources would be deployed to them consisting of the same capabilities for that discipline. The Resource Typing Library Tool (RTL)ⁱⁱ, provided by the Federal Emergency Management Agency (FEMA) and the National Integration Center (NIC) provides those typing definitions for all responder disciplines. The NTOA provided Subject Matter Experts for this effort. The RTL defines seven different types of law enforcement response teams:

1. Bomb Squad/Explosives Teams
2. Law Enforcement Aviation – Helicopters, Patrol and Surveillance
3. Law Enforcement Observation Aircraft – Fixed Wing
4. Law Enforcement Patrol Team
5. Mobile Field Force Law Enforcement (Attachment 2)
6. Public Safety Dive Team
7. SWAT/Tactical Teams (Attachment 3)

Within several of these resource definitions, it is recommended that teams include in their equipment inventory such items as night vision, ballistic vests and helmets, personal protection equipment (PPE) such as protective clothing and respirators (gas masks), both impact and ballistic shields, chemical agents, shoulder fired weapons, aircraft, vessels and armored rescue vehicles.

Much of the equipment described above already had a place in US law enforcement, as did the specialized teams using them. However, the factors previously mentioned have reframed the way that state and local law enforcement administrators view their role in local, regional, state and national response plans. Normally the acquisition of expensive capital items or the significant increase of personnel by local law enforcement agencies are factored in over multiple budget cycles. However, to build this advanced capability out nationwide, law enforcement agencies had to reprioritize their general funding budgets and access Department of Homeland Security (DHS) and Department of Justice (DOJ) grants. DHS/DOJ grants and the LESO 1033 program allowed agencies to acquire the necessary equipment rapidly and at considerable cost savings to the local tax paying public. In order for any law enforcement agency grant applicant to purchase such equipment, it typically must be identified with an item number from the Approved Equipment List (AEL)ⁱⁱⁱ. All of the items described above, with the exception of weapons, have an AEL number.

The 1033 Program has allowed local agencies to acquire heavy duty high wheeled vehicles, forklifts, generators and vehicles that improve operational capabilities and responder safety.

Examples:

Seminole County, FL– The Seminole County Sheriff's Office (SCSO) has acquired property through the 1033 Program. Initial acquisitions of equipment included two OH-58 Kiowa's and in 1999 a UH-1 Huey Helicopter. As a result, the SCSO was able to implement an aviation capability that did not exist prior to that. The use of those aircraft would provide approximately 9533 flight hours of airborne law enforcement and rescue missions to include; 1184 suspect apprehensions, 323 EMS patient transports and 8260 patrol assists between 1996 and 2009, when they were ultimately replaced with commercial aircraft.

Additionally, the SCSO has acquired numerous heavy-duty high-wheeled trucks and forklifts that were used extensively during the response operations of Hurricanes Charlie, Francis and Jeanne in 2004 and the floods of Tropical Storm Fay in 2007. Those vehicles were utilized to deliver sandbags, food, and water; patrol flooded residential areas and evacuate stranded residents. These heavy duty trucks were used as a means by which deputies with chainsaws were able to cut, drag, and clear extremely large trees that had blocked many roadways and access points well ahead of any other type of available public or county resource.

The 1033 Program also provided numerous sets of hand held night vision units, allowing patrol and specialized units to conduct surveillance operations in a much safer and more effective way. Surplus military generators have been used to power critical infrastructure post storm, such as shelters, fuel pumps, sanitation lift stations and traffic control lighting systems.

July 8, 1998, Deputy Sheriff Gene Gregory was killed in the line of duty and two more Deputy Sheriffs were shot during a 13 hour standoff with armed gunman. Over 300 rounds were exchanged. Deputies were rescued with use of handheld ballistic shields. The incident was the catalyst for acquiring two armored rescue vehicles and have been deployed in support of dozens of barricade and hostage incidents since. They have also been used extensively during community events as display items to educate the citizens of the county, and provide insight into the elevated capabilities of specialized teams and units during times of crisis.

Volusia County, FL – March 25, 2009, Officer El-Shami was shot at by a homicide suspect. Florida Region 5 SWAT responds when subject barricades himself in his home equipped with night vision, body armor, gas mask and numerous handguns and rifles (including a 50 caliber rifle). Two armored rescue vehicles were utilized to approach the structure, deploy chemical agents and tactical robots and negotiate from a P.A. system. (Attachment 4)

Colorado Springs, CO – 1995, The Colorado Springs Police Department (CSPD) acquired three surplus OH-58 Kiowa helicopters and created an Air Support Unit that was highly successful. In 2006, The CSPD took possession of a new DHS funded Mobile Command Post which was used extensively during the Waldo Canyon and Black Forest wild fires. In 2014, CSPD received seven unarmored Humvees from the 1033 program. These vehicles are used in the event of natural disasters such as floods, blizzards and wild fires.

Pittsburgh, PA – April 4, 2009 – Three Pittsburgh Police Bureau Officers were shot and killed responding to a domestic disturbance call. Another officer was shot and seriously injured attempting to assist the downed officers. During the ensuing barricade, the suspect, who was armed with an AK-47 assault rifle, exchanged gunfire with the police. Over 3,500 rounds of ammunition were fired. A DHS funded armored rescue vehicle was used to attempt to rescue an officer and was struck by over 200 rounds. (Attachment 5)

Boston, MA- 2013, the Boston PD and multiple other law enforcement agencies utilized armored rescue vehicles in the apprehension of the surviving suspect. Military grade thermal imaging was used to safely confirm the suspect's location during the arrest.

These examples demonstrate the necessity and application of emergency response equipment, heavy duty vehicles and armored rescue vehicles.

State and local law enforcement agencies have done a remarkable job of building out the seven team types mentioned above in the RTL. However, it is not uncommon for agencies to take receipt of such equipment and receive little or no training on how to utilize it, when to deploy it or equally as important, when not to deploy it. Prior to obtaining equipment from the 1033 Program, or purchasing commercially utilizing DHS grant money, agencies are not mandated to demonstrate training levels for the use of that equipment. It is incumbent upon that agency to obtain the necessary training based upon regulatory or voluntary compliance standards associated with such equipment.

Despite efforts made by the law enforcement profession to improve levels of training and standardization though, the equation will not be solved without collaboration from other stakeholders such as elected government officials at all levels, the media, community leaders and the public. It is incumbent upon every law enforcement agency to actively engage these groups in conversation and educate them on law enforcement responsibilities and limitations, as well as to familiarize them with the equipment they utilize and why.

In conclusion, the DOD's oversight of surplus equipment issued is adequate in the sense that an annual inventory is conducted at the state level and recipient agencies are held accountable. The initial application and screening process that determines which agencies receive equipment could be improved. It would reasonable to have applying agencies demonstrate an articulated need based on current threat assessment matrices and that

appropriate training and agency policies exist, based on national standards, prior to receipt of such equipment.

Again, on behalf of the 40,000 law enforcement professionals that the NTOA represents, I thank you for the opportunity to speak to you today on these current issues and challenges and look forward to answering any questions the Subcommittee has.

ⁱ Target Capabilities List - <http://www.fema.gov/pdf/government/training/tcl.pdf>

ⁱⁱ Resource Typing Library Tool - <https://rtlt.ptaccenter.org/Public/Combined?q=law+enforcement>

ⁱⁱⁱ DHS Grant Authorized Equipment List - <https://www.liis.dhs.gov/knowledgebase/authorized-equipment-list-ael>

MARK E. LOMAX, MBA, M.S.

QUALIFICATIONS*Law Enforcement ~ Non Profit Organizations ~ International Relations ~ Business Management*

Results-driven, internationally recognized law enforcement professional with a unique background in law enforcement, international client relations, and business management. Currently, Executive Director of an international nonprofit association. Recently, program manager for *United Nations Mission in Liberia*. Managed training programs for 20,000-member international non-profit association. Directed Master of Business Administration program at *Eastern University*. Twenty-seven (27) years of law enforcement experience with the *Pennsylvania State Police*. Hands-on experience managing budgets, strategic business planning, and team leadership. Strong communicator with ability to mediate groups and problem solve with precision.

PROFESSIONAL EXPERIENCE

NATIONAL TACTICAL OFFICERS ASSOCIATION (NTOA),
Doylestown, Pennsylvania 2011-Present

Executive Director

- Oversee international nonprofit association representing over 40,000 members of the law enforcement special operations community.
- Report to a Board of Directors and plan and direct the administrative, operational, and fiscal activities of nine (9) headquarters staff.
- Serve as representative of the association during conferences, committee meetings and coordinates efforts with other like organizations and government agencies.
- Principal liaison to the Department of Homeland Security-Office for Bombing Prevention, National Institutes of Justice and the Department of Defense.
- Participate in membership recruiting efforts and frequent public speaking engagements.
- Oversee multi-million dollar budget.

UNITED NATIONS MISSION IN LIBERIA (UNMIL), Monrovia, Liberia 2010-2011

Program Manager – Emergency Response Unit (ERU) and Police Support Unit (PSU)

- Provided administrative and operational consultation to the ERU, Liberia's special tactical unit, and the PSU, Liberia's crowd control/security unit in preparation for the National Presidential Election.
- Advised and consulted with the Inspector General of the Liberian National Police, the United Nations (UNMIL) Police Commissioner, the US Embassy, and the U.S. State Department's Bureau of International Narcotics and Law Enforcement.
- Oversaw the selection, vetting, and training of persons selected for the ERU and PSU in accordance with the US Leahy Law.
- Managed and directed the United Nations ERU and PSU police advisors/trainers, consisting of three (3) team leaders and twenty-four (24) police advisors/trainers, representing fourteen (14) countries.
- Conducted briefings to senior visiting officials of US and international governments,
- Facilitate the acquisition of several million dollars in equipment and uniforms for units.

PROFESSIONAL EXPERIENCE*(Continued)*

THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE (IACP),
Alexandria, Virginia 2009-2010

Manager, Center for Police Leadership and Training

- Managed \$1.5 million budget, directed training /leadership development programs, and provided international training consultation for organization with 20,000 members worldwide.
- Ran three-tiered training program for members covering tuition-based programs delivered onsite, a three-week executive leadership program, and newly launched distance learning program.
- Managed 40+ adjunct instructors.
- Consulted with and briefed international law enforcement executives and senior U.S. government officials on police training programs.
- Managed and directed e-learning program.
- Served as Staff Liaison to Civil Rights Committee and Diversity Coordinating Panel.
- Developed and introduced Association's first online digital training catalog.

EASTERN UNIVERSITY, St. Davids, Pennsylvania 2003-2009

Interim MBA Management Program Director (2008-2009)

- Managed 60+ adjunct faculty members and oversaw more than 200 MBA graduate students within School of Management Studies.
- Facilitated adjunct faculty hiring and scheduling.
- Advised and supported enrollment management by developing and implementing enrollment strategies.

Senior Affiliate Faculty (2003-2009)

- Developed course curriculum and instructed undergraduate and graduate courses in business management, healthcare management, organizational leadership, business ethics, strategic marketing, human resource supervision, research design, strategic planning, and general business courses.
- Served as a New Venture Project Advisor for MBA students, overseeing student entrepreneurial projects.

PENNSYLVANIA STATE POLICE, Hershey, Pennsylvania 1981-2008

Director, Bureau of Training and Education – Major (2006-2008)

- Directed Basic Training, Advanced/Regional Training, Employee Training, and Professional Development for more than 6,300 personnel.
- Directed Department's Community Services Program, Video Unit, Mounted Unit, & Ceremonial Unit.
- Coordinated construction of a \$7.6 million Police Driver Training Facility and construction of a \$500,000 state of the art police skills scenario training facility.
- Chaired committee to review and recommend recruiting, testing, and training procedures for troopers.

Commanding Officer – Captain (2003-2006)

- Led field operations of seven Stations and a Troop Headquarters operating in nine counties covering over 6,500 square miles.
- Commanded 296 personnel; worked with media, community, and state and federal organizations.

Administration Division Director– Captain (2002-2003)

- Managed administration division of the Bureau of Drug Law Enforcement, including human resources, budgeting, fleet management, acquisitions and inventory.
- Trained and monitored 145 undercover personnel; supervised a \$2 million forfeiture account.

Previous Experience from 1981 – 2002: Progressed through the ranks of Trooper to Lieutenant, specialized in undercover/covert operations.

PROFESSIONAL & VOLUNTEER ACTIVITIES

American Society of Association Executives, *Member* (2014 – present)
 Police Executive Research Forum (PERF), *Member* (2013 – present)
 Airborne Law Enforcement Association, *Member* (2013 – present)
 Association for Unmanned Vehicle Systems International, *Member* (2013 – present)
 New England Tactical Officers Association, *Member* (2013 – present)
 International Association of Bomb Technicians & Investigators, *Member* (2012 – present)
 California Association of Tactical Officers, *Member* (2012 – present)
 Pennsylvania Tactical Officers Association, *Member* (2012 – present)
 International Association of Emergency Managers, *Member* (2012 – present)
 The National Drug Court Institute, Law Enforcement Advisory Committee, *Member* (2010)
 National Institute of Justice, *Peer Reviewer* (2010 – present)
 The National Sheriffs' Association, *Member* (2010 – present)
 International Law Enforcement Educators and Trainers Association, *Member* (2010 – present)
 National Association of Field Training Officers, *Member* (2010 – present)
 Hispanic American Police Command Officers Association (HAPCOA) *Member* (2009 –present)
 Vidocq Society (VSM), *Member* (2007 – present)
 Mental Health Task Force of the Pennsylvania Commission for Justice Initiatives, *Co-Chair* (2006-2007)
 MADD, Pennsylvania/New Jersey Chapter, *Board Member* (2006-2007)
 Anti Violence Partnership of Philadelphia (AVP), *Elected Officer – President* (2005-2007)
 Lycoming County (PA) Criminal Justice Advisory Board, *Board Member* (2003-2006)
 North Central (PA) Counter-Terrorism Task Force, *Member* (2004 – 2006)
 Little League World Series Joint Security Task Force, *Member* (2003 – 2006)
 Delta Mu Delta National Business Administration Honors Society, *Member* (2002-Present)
 Pennsylvania Chief of Police Association, *Member* (2002-2004)
 International Association of Chiefs of Police (IACP), *Member* (2002-Present)
 IACP Children of Arrested Parents Focus Group, Member (2013 – present)
 IACP Children Exposed to Violence Advisory Working Group, Member (20013 – present)
 National SWAT Study Advisory Board, Member (2013 – present)
 National Association of Blacks in Criminal Justice, *Member* (2001-2004)
 Association of Certified Fraud Examiners, *Member* (2001-2003)
 American Society for Industrial Security, *Member* (2001-2003)
 FBI National Academy Associates, *Member* (2000-Present)
 Pennsylvania State Guardians, Inc., *Executive Director* (1998-2000) & *Member* (1982-2008)
 National Organization of Black Law Enforcement Executives (NOBLE) *Member* (1998 – present)
 Constitution/Bylaws Committee (2000-2002) & *Education and Training Committee* (2009-present)
 Pennsylvania Narcotics Officers Association, *Member* (1997-2004)
 Psi Chi National Psychology Honors Society, *Member* (1991-Present)
 National Black State Troopers Coalition, *Member* (1985-2008)

PRESENTATIONS

Key Note Speaker: 2013 Pennsylvania Tactical Officers Association Conference, Lancaster, PA (April 30, 2013).

Speaker: "2011 Liberia Riot – Lessons Learned" 2013 International Law Enforcement Forum Workshop, State College, PA (April 16, 2013).

Speaker/Presenter: "SWAT Standards", 9th Annual International Symposium for Best Police Practices, Dubai, UAE (April 10, 2013).

Keynote Speaker: "Leading Specialized Units," California Tactical Officers Association (CATO) 2012 Annual Conference, Santa Barbara, CA (November 26, 2012).

Speaker/Workshop Presenter: "Leadership in Police Organizations," National Organization of Black Law Enforcement Executives (NOBLE) 2010 Annual Conference, Baltimore, MD (July 11, 2010).

Speaker/Workshop Presenter: "The Impact of Stress on Law Enforcement & Their Families: Signs, Symptoms & Solutions," 2010 Crime Victims' Center of Chester County Sexual Assault & Domestic Violence Investigations Conference, Great Valley, PA (June 3, 2010).

Speaker/Workshop Presenter: "The International Association of Chiefs of Police Leadership Program," 2009 Annual Hispanic American Police Command Officers Association (HAPCOA) Conference, New Orleans, LA (November 17, 2009).

Speaker/Workshop Panelist: "NOBLE Youth: Catalyst of Change," 8th Annual National Organization of Black Law Enforcement Executives (NOBLE) Youth Leadership Conference, Norfolk, VA (July 26, 2009).

Panel Presentation: "The Next Generation of Co-op: Development, Facilitation and Implementation of Graduate Co-op Online." The 15th World Conference on Cooperative Education (WACE2007), Suntec, Singapore (June 29, 2007).

Speaker/Workshop Presenter: "Community Involvement," The 20th Annual Robert D. Lynch Student Leadership Development Institute, Altoona, PA (October 29, 2006).

PUBLICATIONS

Foreword, *Going Deep: Psychoemotional Stress & Psychoemotional Survival in an Undercover Police Career*, July 2009, Drs. Michael Asken & Frank Masur, MindSighting, Camp Hill, PA

Foreword, *The Excel 2007 Data & Statistics Cookbook, Second Edition*, September 2008, Larry Pace, TwoPaces LLC, Anderson, SC

Editorial Board, *The Journal of Police Emergency Response*

EDUCATION

DREXEL UNIVERSITY, Pennsylvania, *Master of Science in Higher Education*, 2007

- Capstone Project: *NineCee™: A Fiscal-Based Quantitative Decision-Making Model (2007)*
- Grant Recipient of the Drexel University Higher Education Research Fund to present Capstone Project at The World Association for Cooperative Education (WACE) conference in Suntec, Singapore (June 2007)

EASTERN UNIVERSITY, Pennsylvania, *Master of Business Administration, Management*, 2002

FBI NATIONAL ACADEMY, Virginia, **2000** (200th Session)

LASALLE UNIVERSITY, Pennsylvania, *Bachelor of Arts in Psychology*, 1991

**DISCLOSURE FORM FOR WITNESSES
CONCERNING FEDERAL CONTRACT AND GRANT INFORMATION**

INSTRUCTION TO WITNESSES: Rule 11, clause 2(g)(5), of the Rules of the U.S. House of Representatives for the 113th Congress requires nongovernmental witnesses appearing before House committees to include in their written statements a curriculum vitae and a disclosure of the amount and source of any federal contracts or grants (including subcontracts and subgrants) received during the current and two previous fiscal years either by the witness or by an entity represented by the witness. This form is intended to assist witnesses appearing before the House Committee on Armed Services in complying with the House rule. Please note that a copy of these statements, with appropriate redactions to protect the witness's personal privacy (including home address and phone number) will be made publicly available in electronic form not later than one day after the witness's appearance before the committee.

Witness name: Mark E. Lomax

Capacity in which appearing: (check one)

Individual

Representative

If appearing in a representative capacity, name of the company, association or other entity being represented: National Tactical Officers Association

FISCAL YEAR 2014

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2013

federal grant(s)/ contracts	federal agency	dollar value	subject(s) of contract or grant
None			

FISCAL YEAR 2012

Federal grant(s) / contracts	federal agency	dollar value	subject(s) of contract or grant
None			

Federal Contract Information: If you or the entity you represent before the Committee on Armed Services has contracts (including subcontracts) with the federal government, please provide the following information:

Number of contracts (including subcontracts) with the federal government: **NONE**

Current fiscal year (2014): _____;
 Fiscal year 2013: _____;
 Fiscal year 2012: _____.

Federal agencies with which federal contracts are held: **NONE**

Current fiscal year (2014): _____;
 Fiscal year 2013: _____;
 Fiscal year 2012: _____.

List of subjects of federal contract(s) (for example, ship construction, aircraft parts manufacturing, software design, force structure consultant, architecture & engineering services, etc.): **NONE**

Current fiscal year (2014): _____;
 Fiscal year 2013: _____;
 Fiscal year 2012: _____.

Aggregate dollar value of federal contracts held: **NONE**

Current fiscal year (2014): _____;
 Fiscal year 2013: _____;
 Fiscal year 2012: _____.

Federal Grant Information: If you or the entity you represent before the Committee on Armed Services has grants (including subgrants) with the federal government, please provide the following information:

Number of grants (including subgrants) with the federal government: **NONE**

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

Federal agencies with which federal grants are held: **NONE**

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

List of subjects of federal grants(s) (for example, materials research, sociological study, software design, etc.): **NONE**

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

Aggregate dollar value of federal grants held: **NONE**

Current fiscal year (2014): _____;
Fiscal year 2013: _____;
Fiscal year 2012: _____.

DOCUMENTS SUBMITTED FOR THE RECORD

NOVEMBER 13, 2014



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November 12th, 2014

The Honorable Buck McKeon
Chairman
House Armed Services Committee
2310 Rayburn House Office Building
Washington, DC 20515

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

Dear Chairman McKeon and Ranking Member Smith,

As President of the Major County Sheriffs' Association (MCSA), I write to you today on the 1033 program and its critical importance to law enforcement agencies, departments and officers across the Nation. Increased attention has been paid to this program over the last several months, particularly in the wake of specific events that have recently transpired in the town of Ferguson, Missouri.

As a career law enforcement professional, and on behalf of MCSA, I want to communicate the value of this program to you and the Committee. As you are aware, the 1033 program provides State and Local law enforcement agencies with a broad spectrum of controlled and uncontrolled equipment that the Department of Defense (DoD) no longer has a need to maintain, but that is proven to be useful for law enforcement and/or public safety purposes.

Recent scrutiny of the 1033 program has focused on a number of issues, particularly the types of equipment provided, as well as deployment doctrine and training protocols. In many ways, this scrutiny has led to some perceptions that have overshadowed reality.

In the vast majority of cases, equipment provided to law enforcement via 1033 authority is used for routine policing, day-to-day patrolling and basic administrative purposes. In fact, uncontrolled items such as boots, computers and filing cabinets comprise the most common types of materiel transferred from DoD inventory to State and Local law enforcement agencies. Additionally, most of the equipment utilized by State and Local law enforcement is for entirely defensive purposes, giving officers an added layer of ballistic protection or providing extra cover to citizens in harms' way. As an example, armored vehicles have been particularly useful in highly dangerous active shooter situations, often giving police and civilians a mobile "safe box" to evacuate an area of hostile fire.

Other assets are used for critical, time-sensitive operations. For example, surplus helicopters are used by law enforcement to conduct rescue operations and to search for both missing persons and wanted suspects. Some items, like power generators and first-aid kits, support disaster relief efforts or are used to treat the

sick and wounded. Whether discussing bulletproof vests or armored vehicles, 1033 items are regularly used to enhance officer safety and protect the public.

Finally, it should be noted that transferring equipment from DoD to U.S. law enforcement under 1033 extends the life of equipment already purchased once by the U.S. taxpayer. For any government agency – be it Federal, State or local – finding ways to reduce operating cost is paramount during an enduring period of tight finances and shrinking budgets.

As career law enforcement officers, we certainly understand the need for program oversight and accountability. We also need to ensure that training standards for certain types of equipment are appropriate and that deployment decisions are made by experienced law enforcement personnel.

However, based on our firsthand, operational experience, the 1033 program remains invaluable and law enforcement agencies across the Nation have made considerable use of 1033 assets to preserve the lives of officers and civilians alike – all while saving taxpayer dollars.

We hope that the overwhelmingly positive aspects of this important program, some of which are detailed here, are taken into strong consideration as the Committee explores this important set of issues. Should you or your staff have any questions or require additional information, please do not hesitate to contact me via the information provided in this document. We look forward to engaging with your Committee and the Congress on these matters ahead.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Alan Lyons". The signature is fluid and cursive, with a large initial "A" and "L".

President, Major County Sheriffs' Association
Sheriff-Coroner, Kern County (CA)



**Written Statement of the American Civil Liberties Union
Before the U.S. House Armed Services Committee,
Oversight & Investigations Subcommittee**

Hearing on

**“The Department of Defense Excess Property Program in
Support of U.S. Law Enforcement Agencies:
An Overview of DOD Authorities, Roles, Responsibilities, and
Implementation of Section 1033 of the
1997 National Defense Authorization Act”**

Thursday, November 13, 2014 at 4:00 p.m.

*Submitted by the
ACLU Washington Legislative Office*

For further information, contact Kanya Bennett, Legislative Counsel, at kbennett@aclu.org.

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

The American Civil Liberties Union (ACLU) commends the Oversight and Investigations Subcommittee of the U.S. House Armed Services Committee for holding this hearing on "The Department of Defense Excess Property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 National Defense Authorization Act." For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC, for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

Consistent with this mission, the ACLU is pleased to have this opportunity to submit a statement on the Department of Defense 1033 Program, which provides state and local law enforcement with military weapons and equipment. We are concerned that the 1033 Program, with other federal programs, has resulted in the militarization of American policing. Our concerns are shared in our recent report, *War Comes Home: The Excessive Militarization of American Policing*,¹ which is submitted with this statement. The report contains recommendations for Congress, which we continue to refine as we learn more about these federal programs and the military tactics and equipment recently used in Ferguson, Missouri.

Militarized Policing in Ferguson, Missouri

As the nation watched Ferguson, Missouri, in the aftermath of the death of Michael Brown, it saw a highly and dangerously militarized response by law enforcement. Media reports indicate that the Ferguson Police Department, in conjunction with other state and local agencies, responded to protests and demonstrations with "armored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated pellets and tear gas."² Protestors were denied the right to assemble and a curfew was instituted. Almost a dozen reporters were arrested while exercising their First Amendment rights and other journalists reported being harassed and physically removed by police.³

Veterans from the Iraq and Afghanistan wars expressed horror and shock that they, while on active duty overseas, were less heavily-armed and combative than the local police in Ferguson.⁴ Domestic and international media equated the images from Ferguson to familiar ones from combat zones in Iraq and Gaza. Law enforcement's response in Ferguson gave pause to many, and brought the issue of police militarization to national attention, especially in Washington, where President Obama said "[t]here is a big difference between our military and our local law enforcement, and we don't want those lines blurred."⁵

Congress responded to the use of military-style equipment, weapons, and tactics in Ferguson with Senator Claire McCaskill calling for immediate de-militarization of the situation in Ferguson and a federal hearing on militarized policing, which she convened on September 9, 2014.⁶ Senator Rand Paul described the need to differentiate a "police response and a military response."⁷ Numerous House Members from across the country and from both parties also expressed dismay at the scenes from the St. Louis suburb. Representative Emanuel Cleaver, representing Kansas City, Missouri, commented that recent events in the small town reminded him more of "Fallujah than Ferguson."⁸ In Southern California,

Representative Duncan Hunter, a military veteran and member of the House Armed Services Committee said, “[t]he idea that state and local police departments need tactical vehicles and MRAPs with gun turrets is excessive. Certain resources are designed and manufactured for a military mission—and it should stay that way.”⁹

Representatives Hank Johnson and Raúl Labrador have introduced legislation that responds directly to concerns of militarized policing. The legislation addresses the 1033 Program, which cities like Ferguson are using.¹⁰ In the past two years, the 1033 Program has provided St. Louis County law enforcement agencies, which include the Ferguson Police Department, with military-grade vehicles, military rifles, night vision equipment, an explosive ordinance robot, and more.¹¹ Senator Tom Coburn has also introduced the Senate version of the Stop Militarizing Law Enforcement Act, which not only addresses 1033, but Department of Justice and Department of Homeland Security grants that allow state and local law enforcement to purchase military weapons and equipment. The bill prohibits certain types of military weapons and equipment from being secured through 1033 and purchased with DHS and DOJ grants.¹²

Militarized Policing and the War on Drugs

Militarized policing is not limited to situations like those in Ferguson or emergency situations—like riots, barricade and hostage scenarios, and active shooter or sniper situations—that Special Weapons And Tactics (SWAT) were originally created for in the late 1960s.¹³ Rather, SWAT teams are now overwhelmingly used to serve search warrants in drug investigations, with the number of these teams having grown substantially over the past few decades. Dr. Peter Kraska has estimated that the number of SWAT teams in small towns grew from 20% in the 1980s to 80% in the mid-2000s, and that as of the late 1990s, almost 90% of larger cities had them. The number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s.¹⁴

Our June 2014 report, *War Comes Home: The Excessive Militarization of American Policing*, found that 79% of the incidents reviewed involved the use of a SWAT team to search a person’s home, and more than 60% of the cases involved searches for drugs. We also found that more often in drug investigations, violent tactics and equipment were used. The use of a SWAT team to execute a search warrant essentially amounts to the use of paramilitary tactics to conduct domestic criminal investigations in searches of people’s homes. This sentiment is shared by Dr. Kraska, who has concluded that “[SWAT teams have] changed from being a periphery and strictly reactive component of police departments to a proactive force actively engaged in fighting the drug war.”¹⁵

The ACLU report highlighted the story of Jose Guerena, a 26-year-old Iraq war veteran, who was shot 22 times and killed by a SWAT team while they were raiding neighborhood homes in search of drugs. Mr. Guerena was sleeping after having worked the graveyard shift at the Asarco Mission mine in Tucson, Arizona. At 9:30 a.m., his wife woke him because she heard strange noises and saw the outline of a man standing outside the window. Mr. Guerena asked his wife to take their 4-year-old son and hide in a closet. With the safety on, Mr. Guerena took his rifle and went to investigate. A SWAT team fired 71 shots at Mr. Guerena, with 22 entering his body. He died on his kitchen floor without medical attention. No drugs were found in the Guerenas’ home.¹⁶

Just as the War on Drugs has disproportionately impacted people and communities of color, we have found that the use of paramilitary weapons and tactics also primarily impacts people of color. Of the people impacted by SWAT deployments for warrants examined by the ACLU, at least 54% were

minorities. When data was examined by agency (and with local population taken into consideration), racial disparities in SWAT deployments were extreme. In every agency, African Americans were disproportionately more likely to be impacted by a SWAT raid than whites, sometimes substantially so. For example, in Allentown, Pennsylvania, African Americans were nearly 24 times more likely to be impacted by a SWAT raid than whites were, and in Huntington, West Virginia, African Americans were 37 times more likely. Further, in Ogden, Utah, African Americans were 40 times more likely to be impacted by a SWAT raid than whites were.¹⁷

The ACLU report also featured the story of Tarika Wilson, a 26-year-old African American mother who was shot and killed by SWAT officers while she was holding her infant son. Ms. Wilson was not the suspect. The SWAT team had been looking for Ms. Wilson's boyfriend on suspicion of drug dealing when they raided Ms. Wilson's rented house on the Southside of Lima, Ohio, the only city with a significant African-American population in a region of farmland.¹⁸ And in the majority African American city of Detroit, Aiyana Stanley-Jones – a 7-year-old African American child – was killed when a SWAT team threw a flash-bang grenade into the living room where she slept, then burst into the living room and fired a single shot that struck her.¹⁹

Military Equipment Used by State and Local Law Enforcement

The military-style equipment, weapons, and tactics being used to conduct ordinary law enforcement activities best demonstrate militarized policing in the United States. We should be concerned that the equipment, weapons, and tactics that can be acquired and used through the 1033 Program include:

- Armored Personnel Carriers (APCs), Mine Resistant Ambush Protected vehicles (MRAPs), and other military vehicles that were created to transport infantry and provide protection from shrapnel and small arms fire on the battlefield; it is estimated that over 800 MRAPs and other armored vehicles have been transferred through the Department of Defense's 1033 Program;²⁰
- Automatic weapons that are .50 caliber or greater and ammunition; through the 1033 Program, police have received magazines that carry 100 rounds of M-16 ammunition, which allow officers to fire continuously three times longer than usual;²¹
- Aircraft that are combat configured; since 2006, more than 500 military aircraft have been distributed through the 1033 Program;²²
- Flash-bang grenades and grenade launchers; Bloomington, Georgia, with a population of 2,713, received four grenade launchers through the 1033 Program, for example;²³ and
- Silencers, which soldiers use during raids and sniper attacks to muffle gunfire; police in 38 states have received silencers through the 1033 Program.²⁴

Federal Programs that Contribute to Militarized Policing

Federal programs providing equipment transfers and funding have contributed to the militarization of American policing. These programs include the Homeland Security Grant Program (HSGP) and its two main components, the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI),²⁵ and the Department of Justice (DOJ) Edward Byrne Memorial Justice

Assistance Grant (Byrne JAG) Program, but for the purposes of this hearing, we will focus on the Department of Defense 1033 Program.

Department of Defense 1033 Program

The 1033 Program, launched in the late 1980s during the height of the so-called “War on Drugs,” authorizes the Department of Defense to transfer military equipment to local law enforcement agencies.²⁶ Enacted as part of the 1989 National Defense Authorization Act, it initially authorized the transfer of equipment that was “suitable for use by such agencies in counterdrug activities.”²⁷ In 1996, Congress made the 1033 Program permanent and expanded the Program’s scope to require that preference be given to transfers made for the purpose of “counterdrug and counterterrorism activities.”²⁸ There are few limitations or requirements imposed on agencies that participate in the 1033 Program. In addition, equipment transferred under the 1033 Program is free to receiving agencies, and what is particularly troubling, is that 36% of the property recently transferred was brand new.²⁹

The Department of Defense operates the 1033 Program through the Defense Logistics Agency’s (DLA) Law Enforcement Support Office (LESO), whose motto is “from warfighter to crimefighter.” According to LESO, the Department of Defense has transferred \$5.1 billion worth of equipment through the 1033 Program.³⁰ Today, the 1033 Program includes more than 17,000 federal and state law enforcement agencies from all U.S. states and territories. The amount of military equipment being used by local and state police agencies has increased dramatically—the value of equipment transferred through the Program went from \$1 million in 1990 to \$324 million in 1995 and to nearly \$450 million in 2013.³¹

In recent months, we learned troubling details about 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.³² College campuses are the recipients of 1033 equipment, with at least 124 colleges possessing such equipment, including grenade launchers.³³ 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.³⁴ In September, the Department of Defense terminated Arizona’s Maricopa County Sheriff’s Office from the 1033 Program for its failure to account for missing weapons.³⁵

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.³⁶

Lack of Federal Oversight

The militarization of policing in the United States has occurred with almost no public and very little government oversight. The federal agencies implementing programs that provide state and local law enforcement with military weapons and equipment, and the Congressional committees charged with oversight of the agencies, have offered limited accounting of these programs.

Some oversight of the 1033 Program exists, with the Department of Defense Law Enforcement Support Office (LESO) state coordinators providing limited accountability. It appears these state coordinators rarely deny requests for equipment and cannot impose consequences for overly aggressive use of equipment. There appears to be no requirement that the Department of Defense make any certification to Congress regarding the performance or impact of the Program. In addition, agencies are permitted to transfer equipment obtained through the 1033 Program to other agencies. The ACLU uncovered numerous examples of state and local law enforcement agencies transferring equipment that they had obtained through the 1033 Program. There do not appear to be any limitations on or oversight of this practice.³⁷

The September 9th Senate oversight hearing, convened in response to the militarized incidents in Ferguson, provided insights into the 1033 Program. One-third of the equipment transferred through the Program is new equipment.³⁸ Twelve thousand bayonets have been given to state and local law enforcement through 1033, but the purpose for such distribution could not be determined.³⁹ 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.⁴⁰ Ultimately, however, the hearing raised more questions than it provided answers.

Recommendations for Congress

The federal government should rein in programs that incentivize local police to engage in excessively militarized tactics, especially in drug cases. The federal government holds the purse strings, and restricting the flow of federal funds and military-grade equipment into states and localities, and conditioning funds on the appropriate use of such equipment and training, would significantly reduce the overuse of hyper-aggressive tactics and military-grade tools in local communities.

Though this hearing and statement focus on the 1033 Program, we would like to share all of our current recommendations with respect to the militarization of state and local police. We will continue to refine these recommendations as we learn more about these federal programs and in light of the military tactics and equipment recently used in Ferguson:

- (1) Congress should impose a moratorium on the 1033 Program while DOD is reviewing the Program. Congress could include this moratorium in the final compromise FY15 National Defense Authorization Act. Recent concerns with the 1033 Program suggest that a moratorium would allow the Department of Defense to take stock of the Program more accurately. 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.
- (2) Congress should not expand the 1033 Program as proposed in the House passed FY15 National Defense Authorization Act in Sections 1072 and 1085. Section 1072 would expand the 1033 Program preferences, which are currently “counter-drug activities” and “counter-

terrorism activities,” to include “border security activities.” Section 1085 reiterates that expansion with a 1033 Program preference for agencies “that plan to use such eligible equipment primarily for the purpose of strengthening border security along the international border between the United States and Mexico.” Given the Administration’s current review of the 1033 Program and other federal resources that provide state and local law enforcement with military weapons and equipment, expansion of the 1033 Program should not be considered at this time. Present concerns with how militarized policing is being used to carry out the “War on Drugs” and border enforcement suggest the need for limiting the 1033 Program rather than expanding it.

- (3) Congress should impose strict limits on the 1033 Program, including prohibiting the transfer of automatic or semi-automatic rifles, APCs, or other military weapons and equipment not suitable for law enforcement purposes; eliminating the preference for “counter-drug” operations; and requiring the Secretary of Defense to submit an annual written certification that each agency participating in the 1033 Program has provided documentation accounting for all equipment transferred to the agency. The Secretary of Defense should be required to prohibit additional transfers to any agency for which the Secretary cannot provide such certification.
- (4) Congress should condition state and local law enforcement agencies’ receipt of federal funds on an agreement not to use the funds to purchase automatic or semi-automatic rifles, APCs, or other military weapons and equipment not suitable for law enforcement purposes. This condition should be applied to grants made through the Department of Homeland Security’s Homeland Security Grant Program, the Department of Justice’s Byrne JAG Program, and all other funding streams through which money is transferred from the federal government to state and local law enforcement agencies.
- (5) Congress should require state and local law enforcement to use Byrne JAG and Homeland Security Grant Program dollars to purchase body cameras for SWAT officers. Body cameras would create a public record of SWAT deployments and serve as a check against unnecessarily aggressive tactics. Body cameras can be distinguished from other privacy-invading cameras in public places because of their potential to serve as a check on police overreach. Any policy requiring SWAT officers to wear body cameras should incorporate rigorous safeguards regarding data retention, use, access, and disclosure.⁴¹ Body cameras cannot be the only check on militarized policing, and should be coupled with other reforms to federal programs.
- (6) Because militarized policing is being used to carry out the “War on Drugs,” Congress should investigate whether the Byrne JAG program is skewing police priorities, in particular toward increasing low-level drug arrests. In addition, Congress should encourage DOJ, and specifically BJA, to issue clear guidance to State Administering Agencies (SAAs) and local law enforcement agencies affirming that JAG priorities include eliminating unnecessary incarceration while promoting public safety and reducing unwarranted racial disparities in arrest rates. Congress should also require BJA to mandate that grantees and sub-grantees (agencies that receive funding directly from BJA and agencies that receive funding through an SAA, respectively) include the following data in their quarterly and annual reports:

- (a) Demographic data, specifically, race, age, gender, and ethnicity for all arrests reported. Race data should include the following categories: White, Black or African American, American Indian and Alaska Native, Asian, and Native Hawaiian and other Pacific Islander. Ethnicity data should indicate whether or not the arrestee was Hispanic/Latino;
- (b) The address/location of all arrests reported;
- (c) The total number of individuals who reside in the area over which the sub-grantee exercises jurisdiction, as well as the racial demographics of this population; and
- (d) Offense category for drug arrests, specifically, to differentiate drug sale or trafficking arrests from drug possession arrests. Type of drug should also be reported (e.g., X cocaine sale arrests or X marijuana possession arrests).
- (7) As militarized policing appears to be carried out in a racially biased way, Congress should pass the End Racial Profiling Act, which would require state or local governmental entities or state, local, or tribal law enforcement agencies that apply for grants under the Byrne JAG Program and the Cops on the Beat Program to certify that they maintain adequate policies and procedures for eliminating racial profiling and have eliminated any existing practices that permit or encourage racial profiling.

Conclusion

American policing has become excessively militarized through the use of weapons and tactics designed for the battlefield. Militarization unfairly impacts people of color and undermines individual liberties, and it has been allowed to happen in the absence of any meaningful public discussion or federal government oversight. The use of paramilitary weapons and tactics to conduct ordinary law enforcement—especially to wage the failed War on Drugs and most aggressively in communities of color—has no place in contemporary society. It is not too late to change course. Through greater transparency, more oversight, policies that encourage restraint, and limitations on federal incentives, we can foster a policing culture that honors its mission to protect and serve, not to wage war.

¹ ACLU, “War Comes Home: The Excessive Militarization of American Policing,” June 23, 2014, available at <https://www.aclu.org/sites/default/files/assets/us14-warcomeshome-report-web-rel1.pdf>.

² David Nakamura & Niraj Chokshi, *Obama orders review of military equipment supplied to police*, WASH. POST, Aug. 23, 2014, available at http://www.washingtonpost.com/politics/obama-orders-review-of-military-equipment-supplied-to-police/2014/08/23/6316b8aa-2b03-11e4-8593-da634b334390_story.html (last visited Nov. 6, 2014).

³ Brian Stetler, *6 more journalists arrested in Ferguson protests*, CNN, Aug. 19, 2014, available at <http://www.cnn.com/2014/08/19/us/ferguson-journalists-arrested/> (last visited Nov. 6, 2014).

⁴ Matthew Farwell, *What combat veterans see in Ferguson, Missouri*, VANITY FAIR, Aug. 16, 2014, available at <http://www.vanityfair.com/online/daily/2014/08/veterans-ferguson-matthew-farwell> (last visited Nov. 6, 2014).

⁵ Erin McPike & Jessica Ravitz, *Obama orders review of military equipment sales to police*, CNN, available at <http://www.cnn.com/2014/08/23/politics/military-equipment-police-review/> (last visited Nov. 6, 2014).

⁶ Ed O’Keefe, *McCaskill to chair Ferguson-themed hearing on militarization of police*, WASH. POST, Aug. 28, 2014, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2014/08/28/mccaskill-to-chair-ferguson-themed-hearing-on-militarization-of-police/> (last visited Nov. 6, 2014).

⁷ Rand Paul, *We must demilitarize the police*, TIME, Aug. 14, 2014, available at <http://time.com/3111474/rand-paul-ferguson-police/> (last visited Nov. 6, 2014).

⁸ Johnathan Topaz, *Emanuel Cleaver: Ferguson looks like Fallujah*, POLITICO, Aug. 19, 2014, available at <http://www.politico.com/story/2014/08/emanuel-cleaver-ferguson-reaction-110139.html> (last visited Nov. 6, 2014).

- ⁹ Chris Jennewein, *Rep. Hunter criticizes police use of battlefield equipment*, TIMES OF SAN DIEGO, Aug. 17, 2014, available at <http://timesofsandiego.com/politics/2014/08/17/rep-hunter-criticizes-police-use/> (last visited Nov. 6, 2014).
- ¹⁰ Stop Militarizing Law Enforcement Act, H.R. 5478, 113th Cong. (2014). The ACLU supports this legislation that responds to serious concerns with the Department of Defense 1033 Program, but believes that other reforms are needed as indicated in the Recommendations section of this statement.
- ¹¹ Taylor Wofford, *How America's police became an army*, NEWSWEEK, Aug. 13, 2014, available at <http://www.newsweek.com/how-americas-police-became-army-1033-program-264537> (last visited Nov. 6, 2014).
- ¹² Stop Militarizing Law Enforcement Act, S. 2904, 113th Cong. (2014).
- ¹³ Daryl Gates, *Chief: My Life in the LAPD* (New York: Bantam, 1992), p. 131. For an excellent summary of the creation and evolution of SWAT, see Radley Balko, *Rise of the Warrior Cop* (New York: PublicAffairs, 2013).
- ¹⁴ Peter Kraska, "Militarization and Policing—Its Relevance to 21st Century Police," *Policing* (2007) 1 (4) 1-13 (Jan. 1, 2007), p. 6.
- ¹⁵ *Id.* at 7.
- ¹⁶ *See supra*, note 1 at 17.
- ¹⁷ *See supra*, note 1 at 36-37.
- ¹⁸ *See supra*, note 1 at 5.
- ¹⁹ *See supra*, note 1 at 21.
- ²⁰ Matt Apuzzo, *War gear flows to police departments*, N.Y. TIMES, June 8, 2014, available at http://www.nytimes.com/2014/06/09/us/war-gear-flows-to-police-departments.html?_r=01 (last visited Nov. 6, 2014).
- ²¹ *Id.*
- ²² *Id.*
- ²³ *See supra*, note 11.
- ²⁴ *See supra*, note 20.
- ²⁵ U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, *Civil Rights/Civil Liberties Impact Assessment: DHS Support to the National Network of Fusion Centers*, 6 (March 1, 2013), available at https://www.dhs.gov/sites/default/files/publications/DHS%20Support%20to%20National%20Network_0.pdf (last visited Nov. 6, 2014).
- ²⁶ *See* 10 U.S.C. § 2576a.
- ²⁷ *See* National Law Enforcement and Corrections Technology Center, *Federal Property and Equipment Manual: Federal Sources of Personal Property for Law Enforcement*, 2 (Revised 2002), available at <http://info.publicintelligence.net/FederalPropertyManual.pdf> (last visited Nov. 6, 2014).
- ²⁸ *Id.* at 3.
- ²⁹ Defense Logistics Agency, "Fact Sheet: Responses on Excess Property Program for Representative Henry Johnson," sent in response to an inquiry from Representative Johnson requesting additional information on military-grade equipment to civilian police, Jan. 14, 2014.
- ³⁰ Defense Logistics Agency, Disposition Services, "Law Enforcement Support Office (LESO): Providing Support to America's Law Enforcement Community Since 1997," available at <https://www.dispositionservices.dla.mil/rtd03/leso>, Jan. 23, 2014 (last visited March 17, 2014). An attempt to visit this webpage was made on November 6, 2014, but it is no longer available; Defense Logistics Agency, Disposition Services, "About the 1033 Program: The Law Enforcement Support Office," available at <http://www.dispositionservices.dla.mil/leso/pages/default.aspx> (last visited Nov. 6, 2014).
- ³¹ *Id.*
- ³² Niraj Chokshi, *School police across the country receive excess military weapons and gear*, WASH. POST, Sept. 16, 2014, available at <http://www.washingtonpost.com/blogs/govbeat/wp/2014/09/16/school-police-across-the-country-receive-excess-military-weapons-and-gear/> (last visited Nov. 6, 2014).
- ³³ Dan Bauman, *Campus police acquire military weapons*, N.Y. TIMES, Sept. 21, 2014, available at <http://www.nytimes.com/2014/09/22/world/americas/campus-police-acquire-military-weapons.html> (last visited Nov. 6, 2014).

³⁴ Tami Abdollah & Eric Tucker, *Feds censure local police, yet give lethal weapons*, AP, Sept. 21, 2014, available at <http://bigstory.ap.org/article/911e03ab250d42f7b245f707576ac5d0/feds-censure-local-police-yet-give-lethal-weapons> (last visited Nov. 6, 2014).

³⁵ Mike Sunnucks, *Feds: Lost weapons prompted termination of military equipment deal with Arpaio*, PHOENIX BUSINESS JOURNAL, Sept. 11, 2014, available at <http://www.bizjournals.com/phoenix/news/2014/09/11/feds-lost-weapons-prompted-termination-of-military.html> (last visited Nov. 6, 2014).

³⁶ Molly Redden, *Police want to get rid of their Pentagon-issued combat gear. Here's why they can't*, MOTHER JONES, Sept. 30, 2014, available at <http://www.motherjones.com/politics/2014/09/police-departments-struggle-return-pentagon-military-surplus-gear> (last visited Nov. 6, 2014).

³⁷ See *supra*, note 1 at 30.

³⁸ Tim Devaney, *Senators blast DOD program that 'militarized police'*, THE HILL, Sept. 9, 2014, available at <http://thehill.com/regulation/217136-senators-blast-dod-program-to-militarize-police> (last visited Nov. 6, 2014).

³⁹ Bonnie Kristian, *Rand Paul: Obama should be able to figure out if police need bayonets*, THE WEEK, Sept. 10, 2014, available at <http://theweek.com/speedreads/index/267873/speedreads-rand-paul-obama-should-be-able-to-figure-out-if-police-need-bayonets> (last visited Nov. 6, 2014).

⁴⁰ Niraj Chokshi & Sarah Larimer, *Ferguson-style militarization goes on trial in the Senate*, WASH. POST, Sept. 9, 2014, available at <http://www.washingtonpost.com/blogs/govbeat/wp/2014/09/09/ferguson-style-militarization-goes-on-trial-in-the-senate/> (last visited Nov. 6, 2014).

⁴¹ Specific recommendations for how to implement such safeguards are set forth in an article by ACLU Senior Policy Analyst Jay Stanley, "Police Body-Mounted Cameras: With Right Policies in Place, a Win for All" (Oct. 2013), available at https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf (last visited Nov. 6, 2014).

Version- September, 2013

AGREEMENT BETWEEN
THE DEFENSE LOGISTICS AGENCY
AND
THE STATE OF _____

I. PURPOSE

This Memorandum of Agreement (MOA) is entered into between the Defense Logistics Agency (DLA) and the State of _____, to set forth the terms and conditions which will be binding on the parties with respect to excess Department of Defense (DOD) personal property which is transferred pursuant to 10 USC § 2576a and to promote the efficient and expeditious transfer of the property and to ensure accountability of the same.

II. AUTHORITY

The Secretary of Defense is authorized by 10 USC § 2576a to transfer to Federal and State Agencies, personal property that is excess to the needs of the DOD and that the Secretary determines is suitable to be used by such agencies in law enforcement activities, with emphasis on counter-drug/counter-terrorism activities, under such terms prescribed by the Secretary. The authorities granted to the Secretary of Defense have been delegated to the DLA in determining whether property is suitable for use by agencies in law enforcement activities. DLA defines law enforcement activities as activities performed by government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.

III. GENERAL TERMS AND CONDITIONS

A. The Defense Logistics Agency has final authority to determine the type, quantity, and location of excess DOD personal property suitable for law enforcement activities, if any, which will be transferred to the State or Territory.

B. This agreement creates no entitlement to the State to receive excess DOD personal property.

C. Property available under this agreement is for the current use of authorized program participants; it will not be requested nor issued for speculative use/possible future use with the exception of authorized Transitional Distribution Points (TDPs) which are required to utilize property within one year or schedule its return to the nearest DLA Disposition Services Site. The DLA Disposition Services Law Enforcement Support Office (LESO) will receive and review requests from State Coordinators wishing to operate as a Transitional

Version- September, 2013

Distribution Point (TDP). Approved States will receive an Authorization Letter from the DLA Disposition Services LESO.

D. Property will not be obtained for the purpose of sale, lease, loan, personal use, rent, exchange, barter, to secure a loan, or to otherwise supplement normal Law Enforcement Activity (LEA) or State/local governmental entities budgets. All requests for property will be based on bona fide law enforcement requirements. Under no circumstances will property be sold or otherwise transferred to non-U.S. persons or exported. Loaning to non-participants of the DLA LESO program is not authorized.

E. Requests for property solely for the purpose of cannibalization, and cannibalization of DoD property currently on an Law Enforcement Activity (LEA) inventory, must be submitted, in writing to DLA Disposition Services LESO for approval. The DLA Disposition Services LESO will consider cannibalization requests on a case by case basis.

F. The DLA Disposition Services LESO reserves the right to recall any and all property issued through the LESO Program.

G. The DLA Disposition Services LESO conditionally transfers excess DoD property to States/LEAs enrolled in the LESO Program. DLA Disposition Services LESO retains permanent title to property with Demilitarization (DEMIL) Codes of B, C, D, E, F, G and Q (with an Integrity Code of 3), property with these Demil codes is also known as controlled property. Once the State / LEA no longer has use for property in these DEMIL Codes the property must either be transferred to another LEA or returned to DLA Disposition Service for disposal.

H. The DLA Disposition Services LESO permanently passes title to property with DEMIL Codes of "A" and "Q" (with an Integrity Code of "6") to the State/LEA after one year from the initial transfer to the State/LEA property book from the DLA Disposition Services inventory.

1. Property with DEMIL Codes of "A" and "Q" (with Integrity Code of 6) will be systematically archived upon meeting the one year mark and will no longer be on the LEA inventory. Prior to this property being archived, the State and/or LEAs are still responsible for the accountability and physical control of the item (s).
2. Archived property is not subject to annual inventory requirements, and will not be inventoried during a DLA Disposition Services LESO Program Compliance Review (PCR).
3. The State and/or LEA may dispose or sell DEMIL "A" and "Q" (with Integrity Code of 6) items that have been archived from the property book, in accordance with applicable Federal, State and local laws.

Version- September, 2013

I. State and LEAs are not authorized to transfer or turn-in property issued under the LESO program without DLA Disposition Services LESO approval. Property will not physically move until the approval process is complete.

J. Property obtained under this MOA must be placed into use within one (1) year of receipt, unless the condition of the property renders it unusable, in which case the property can be returned to the nearest DLA Disposition Services Site. If property is not put into use by the LEA within one (1) year, the State/LEA must coordinate a transfer of property to another LEA or request a turn-in to return the property to the nearest DLA Disposition Services site.

IV. STATE COORDINATOR APPOINTMENT

A. Only Governor-appointed State Coordinators are authorized to enter into this Agreement, and operate the LESO Program at the State level on behalf of their respective State.

B. State Coordinator appointment letters must be updated within 60 days of any change of Governor or Coordinator. The DLA Disposition Services LESO Program manager may grant an extension to this requirement on a case-by-case basis.

C. Once appointed, the State Coordinator may choose to name and delegate all or a portion of their authority to authorized State Points of Contact (SPOC). Appointment letters from the State Coordinator, authorizing a SPOC(s) must be on file with the DLA Disposition Services LESO. SPOC(s) appointment letters must be updated within 30 days of any change of State Coordinator.

D. The DLA Disposition Services LESO Shall:

1. Maintain a current and accurate list of all State Coordinators and all SPOCs.
2. Provide a comprehensive overview of the LESO Program to all State Coordinators prior to or within thirty (30) days of their appointment as State Coordinator.
3. Ensure State Coordinators are trained in the use of the DLA Disposition Services Reutilization, Transfer and Donation (RTD) Website, the DLA Disposition Services LESO property accounting system, procedures to search for, identify, and request property, turn-in procedures, transfer procedures and inventory requirements.

E. The State Shall:

1. Ensure the DLA Disposition Services LESO has a current and accurate listing of the State Coordinator and State POC(s).
2. Ensure LEAs acknowledge the responsibilities inherent to LESO Program enrollment and adhere to the requirements outlined within the DLA Disposition Services LESO-approved, State Plan of Operation for their State.

Version- September, 2013

V. ENROLLMENT

A. For the purposes of this program, law enforcement activities are defined as Government agencies whose primary function is the enforcement of applicable Federal, State, local laws, and whose compensated officers have powers of arrest and apprehension.

B. The DLA Disposition Services Shall:

1. Establish and implement LESO Program eligibility criteria in accordance with 10 USC § 2576a, the DLA1 1111, and this MOA.
2. Receive and process applications for participation from LEAs in States currently enrolled in the LESO Program.

C. The State Shall:

1. Ensure only authorized LEA applications for LESO Program enrollment are submitted to the DLA Disposition Services LESO for approval.
2. Receive and approve/disapprove applications for participation by a LEA in the LESO Program. The State Coordinator will only certify LEAs that are government agencies whose primary function is the enforcement of applicable Federal, State, and local laws and whose compensated officers have the powers of arrest and apprehension.
3. Ensure agencies enrolled in the LESO Program update the agency account information annually. Annual update is defined as 365 days from initial date of enrollment and/or last update.
4. Provide a comprehensive overview of the LESO Program to all LEAs once they are approved for enrollment.

VI. ANNUAL INVENTORY REQUIREMENT

A. Per the DLA 1 1111 and the DLA MOA between DLA and the State, each State is required to conduct an annual inventory certification of controlled property.

B. The DLA Disposition Services Shall:

1. Receive and validate incoming certified inventories and reconcile inventories with the State Coordinator/SPOC.
2. Ensure LEAs provide serial numbers identified in annual inventory process for inclusion in the DLA Disposition Services property accounting system, for Aircraft, Watercraft, Tactical Vehicles and Weapons and other unique items, as required.

Version- September, 2013

3. Send confirmation, to each State Coordinator, when a State's inventory is reconciled in the DLA Disposition Services LESO property accounting system. This will serve as the State's confirmation that LESO Program controlled property within his/her State has been reconciled in the accountable record.

4. Suspend an entire State, or LEA, as a result of a State or LEA failure to properly conduct and/or certify and submit certified inventories, according to the aforementioned requirements.

C. The State Shall:

1. Ensure LEAs complete the annual physical inventory as required.

2. Ensure LEAs provide serial numbers identified in annual inventory process for inclusion in the DLA Disposition Services property accounting system, for Aircraft, Watercraft, Tactical Vehicles and Weapons and other unique items, as required.

3. Validate and certify the accountability of all controlled property received through the LESO Program annually with each LEA, by having them conduct and certify a physical inventory. State Coordinators must adhere to additional annual certification requirements as identified by the DLA Disposition Services LESO. All inventories and certification statements will be maintained on file indefinitely.

a. The DLA Disposition Services LESO requires each State Coordinator to submit certified inventories for their entire State by January 31st of each year. The Fiscal Year (FY) is defined as October 1 through September 30 of each year. This gives the LEAs three months to physically inventory LESO Program property in their possession, and submit their certified inventories to their State Coordinators.

b. In addition to the certified inventories, the DLA Disposition Services LESO requires photographs for all Aircraft, Watercraft and Tactical Vehicles, and Weapons received through the LESO Program.

(1) The DLA Disposition Services LESO requires front, side and data plate photos for Aircraft, Watercraft and Tactical Vehicles received through the LESO Program.

(2) The DLA Disposition Services LESO requires serial number photos for each weapon received through the LESO Program.

c. States that fail to submit the certified annual inventory by January 31st, may be suspended from operations within the LESO Program. Further failure to submit the certified annual inventory may result in a state termination.

Version- September, 2013

4. Validate the accountability of all High Profile (Aircraft, Watercraft, Tactical Vehicles and Weapons), High Awareness (Demilitarization required) property with each LEA following a domestic disaster within 60 days by having them conduct and certify a physical inventory. All inventories and certification statements will be maintained on file indefinitely.

5. Ensure LEAs are aware that High Profile Commodities (Aircraft, Watercraft, Tactical Vehicles and Weapons), High Awareness (Demilitarization required) property is subject to additional controls.

VII. PROGRAM COMPLIANCE REVIEWS

A. The DLA Disposition Services LESO shall conduct a Program Compliance Review (PCR) for each State that is enrolled in the LESO Program every two (2) years.

1. If a State and/or LEA fails a PCR, the DLA Disposition Services LESO will immediately suspend their operations, and will subsequently issue corrective actions (with suspense dates) to the State Coordinator, which will identify what is needed to rectify the identified deficiencies within his/her State and/or LEA.

2. If a State and/or LEA fails to correct identified deficiencies by the given suspense dates, the DLA Disposition Services LESO will move to terminate the LESO Program operations within the State and/or LEA.

B. The State Shall:

1. Support the DLA Disposition Services LESO PCR process by:

a. Coordinating the PCR daily events schedule, according to the list of LEAs selected for review provided by the DLA Disposition Services LESO. Forward completed PCR daily events schedule to the DLA Disposition Services LESO.

b. Contacting LEAs selected for PCR review via phone and/or email to ensure they are aware of the PCR schedule and prepared for review.

c. Receiving inventory selection from the DLA Disposition Services LESO. The LEA POCs shall gather the selected items in a central location, to ensure the DLA Disposition Services LESO can efficiently inventory the items.

d. Providing additional assistance to the DLA Disposition Services LESO as required, prior to and during the course of the PCR.

2. Conduct internal Program Compliance Reviews of LEAs participating in the LESO program in order to ensure accountability, program compliance and validate annual inventory submissions are accurate. The State Coordinator must ensure an internal PCR of at least 5% of LEAs that have a property book from the DLA LESO Program within

Version- September, 2013

his/her State is completed annually. Results of internal PCRs in terms of LEA non-compliance with terms and conditions of the LESO Program must be kept on-file at the State Coordinator's Office.

- a. The internal PCR will include, at minimum:
 - (1) A review of each selected LEA's LESO Program files.
 - (2) A review of the signed State Plan of Operation (SPO).
 - (3) A review of the LEA application and screeners letter.
 - (4) A physical inventory of LESO Program property at each selected LEA.
 - (5) A specific review of each selected LEA's files for the following: DD Form 1348-1A for each item currently on inventory, weapons documentation, transfer documents, turn-in documents, inventory adjustment documents, exception to policy letters (if any), approved cannibalization requests (if any), DRMS Form 103s, and other pertinent documentation as required.
- b. The State and/or LEA will bear all expenses related to the repossession and/or turn-in of LESO Program property to the nearest DLA Disposition Service site.

VIII. STATE PLAN OF OPERATION (SPO)

- A. The DLA Disposition Services LESO Shall:
 1. Identify, establish and issue minimum criteria to be included in the SPO.
 2. Receive and approve SPOs for each State on a bi-annual basis.
- B. The State Shall:
 1. Establish and submit to the DLA, a State Plan of Operation (SPO), developed in accordance with Federal and State law and conforming (at minimum) to the provisions of the DLAI 1111 and this MOA.
 - a. The SPO will include detailed organizational and operational authority including staffing, budget, facilities and equipment that the State believes is sufficient to manage the LESO Program within their State.
 - b. The SPO must address procedures for making determinations of LEA eligibility, allocation and equitable distribution of material, accountability and responsibility concerning excess DOD personal property, inventory requirements,

Version- September, 2013

training and education, State-level internal Program Compliance Reviews (PCR), and procedures for turn-in, transfer, and disposal.

2. Enter into written agreement with each LEA, via the DLA Disposition Services-approved State Plan of Operation, to ensure the LEA fully acknowledges the terms, conditions, and limitations applicable to property transferred pursuant to this agreement. The State Plan of Operation must be signed by the Chief Law Executive Officer, or signed designee, of the respective LEA and the current State Coordinator.
3. Request that the DLA Disposition Services LESO Suspend or terminate an LEA (s) from the LESO Program if an LEA fails to comply with any term of this MOA, the DLAI 1111, any Federal statute or regulation or the State Plan of Operation.
4. If operating as a TDP, create and implement a comprehensive TDP Plan of Operation, approved by the DLA Disposition Services LESO, to conduct operations in accordance with regulations of the LESO Program. Maintain TDP Authorization Letter and TDP Plan of Operation on file.

IX. REPORTING REQUIREMENTS FOR LOST, MISSING, STOLEN, DAMAGED OR DESTROYED LESO PROGRAM PROPERTY

- A. All property missing, lost, stolen, damaged, or destroyed must be reported to the DLA Disposition Services LESO.
 1. Excess DOD personal property with a Demilitarization Code of B C, D, E, F, G and Q (with an Integrity Code of 3) must be reported to the DLA Disposition Services LESO within twenty-four (24) hours.
 2. Excess DOD personal property with a Demilitarization Code of A, or Q (with an Integrity Code of 6) must be reported to the DLA Disposition Services LESO within seven (7) days.
 3. All reports are subject to the DLA Office of the Inspector General (OIG) inspection.
- B. The DLA Disposition Services LESO may grant extensions to the reporting requirements listed above, on a case by case basis.

X. AIRCRAFT AND WEAPONS

- A. Aircraft (fixed wing and rotary wing), may be transferred to the State for its use in law enforcement activities. The State Plan of Operation must ensure that all LEAs and all subsequent users are aware of and agree to provide all required controls and documentation in accordance with applicable laws and regulations for these items.

Additionally, the following conditions apply:

Version- September, 2013

Aircraft acquired *prior to* September 30, 1996, under the 1208 Program *were* considered “1208 Aircraft”. Public Law 104-201, Section 1033 (b) (1) repealed all Section 1208. Therefore, all aircraft and/or aircraft parts, are considered LESO Program aircraft and/or aircraft parts as of September 30, 1996. [As repealed by Pub. L. 104-201 Sec. 1033 (b) (1)]. Sale, trade or transfer of aircraft and/or aircraft parts (acquired prior to September 30, 1996) may be authorized by the DLA Disposition Services LESO, on a case by case basis. The DLA Disposition Services LESO reserves the right to approve or deny requests for sale, trade or transfer of all LESO Program aircraft and/or aircraft parts, regardless of when the aircraft was originally acquired.

B. LEAs no longer requiring LESO Program weapons must request authorization to transfer or return weapons. Transfers and turn-ins of weapons must be approved by the State Coordinator and the DLA Disposition Services LESO. Weapons will not physically move until the approval process is complete. Weapons that are issued must have a documented chain of custody, with the chain of custody including a signature of the receiving officer indicating that he/she has received the appropriate weapon(s) with the correct, specific serial number(s).

XI. RECORDS MANAGEMENT

A. DLA Disposition Services LESO, the State Coordinator and LEAs enrolled in the LESO Program, must maintain all records in accordance with the DLA Records Schedule. Records for property acquired through the LESO Program have retention controls based on the property’s Demilitarization (DEMIL) Codes. All documents concerning a property record must be retained.

1. Property records for items with DEMIL codes of A and Q (with a DEMIL Integrity code of 6) must be retained for two calendar years (CY) from approval date, and then may be destroyed.
2. Property records for items with DEMIL codes of B, C, D, E, F, G and Q (with a DEMIL Integrity code of 3) must be retained for 5 years or for the life span of the property, whichever is longer.
3. Environmental Property records must be retained for fifty years, regardless of DEMIL Code (Chemicals, batteries, Hazardous Material/Hazardous Waste).
4. LESO Program files must be segregated from all other records.
5. All property records must be filed, retained, and destroyed in accordance with DLA Records Schedule. These records include, but are not limited to the following: DRMS Form 103, DD Form 1348-1A, requests for transfer, turn-in, or disposal, approved Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) Forms 10 and 5, Certificate of Aircraft Registration (AC Form 8050-3), Aircraft Registration Application (AC 8050-1) and any other pertinent documentation and/or records associated with the LESO Program.

Version- September, 2013

XII. LESO PROGRAM ANNUAL TRAINING CONFERENCE

- A. 10 U.S.C. 380 provides that the Secretary of Defense, in cooperation with the U.S. Attorney General, shall conduct an annual briefing of law enforcement personnel of each state. The briefing will include information on training, technical support, equipment and facilities that are available to civilian law enforcement personnel from the Department of Defense.
- B. The DLA Disposition Services LESO shall organize and conduct an annual training conference pertaining to information, equipment, technical support and training available to LEAs via the LESO Program.
- C. The State shall ensure at least one representative, ie. the State Coordinator or SPOC (s) attend the DLA Disposition Services LESO Annual Training Conference.

XIII. PROPERTY ALLOCATION

- A. The DLA Disposition Services LESO Shall:
 1. Maintain an accessible website that will provide timely and accurate guidance, information, and links for all individuals who work or have an interest in the LESO Program.
 2. Upon receipt of a valid State/LEA request for property through the DLA Disposition Services RTD Website, ensure fair and equitable distribution of property to the greatest extent possible based on current State/LEA inventory and State/LEA justification for property. Generally no more than one of any item per officer will be allocated.
 3. The DLA Disposition Services LESO reserves the right to determine and/or adjust allocation limits.
 4. The DLA Disposition Services LESO reserves final authority on determining the approval and/or disapproval for requests of specific types and quantities of excess DoD property.
- B. The State Shall:
 1. Ensure LEAs submit appropriate justifications when requesting excess DoD property via the LESO Program, and will ensure LESO Program property will be used for law enforcement purposes only within his/her State.
 2. Access the DLA Disposition Services LESO Website on a weekly basis for timely and accurate guidance, information, and links concerning the LESO Program and ensure that all relevant information is passed on to participating LEAs.

Version- September, 2013

3. Encourage and assist LEAs in the use of electronic screening of property via the DLA Disposition Services RTD Web.
4. Upon receipt of a valid LEA/State request for property, submit requests that ensure fair and equitable distribution of property to the greatest extent possible based on current State/LEA inventory and State/LEA justification for property. Generally no more than one of any item per officer will be allocated.
5. Maintain access to the DLA Disposition Services RTD Website to approve/disapprove transfer, turn-in, and disposal requests from an LEA or to generate these requests at the State level and forward all approvals to the DLA Disposition Services LESO for action.
6. Assist the LEAs with enrollment, property request, transfer, turn-in, and disposal procedures.
7. Review property requests in the DLA Disposition Services RTD Website and property receipts and conduct monthly reconciliations of property records.
8. Access the DLA Disposition Services RTD Web at a minimum of once daily (Monday thru Friday) to process LEAs requests for excess DoD property.

XIV. PROGRAM SUSPENSION & TERMINATION

- A. The State is required to abide by the terms and conditions of the DLA MOA in order to maintain active status.
- B. The DLA Disposition Services LESO shall:
 1. Suspend States/LEAs in all situations relating to the suspected or actual abuse of LESO Program property or requirements, and/or repeated failure to meet the terms and conditions of the DLA Disposition Services LESO MOA. Suspension may lead to TERMINATION.
 2. The DLA Disposition Services LESO Program Manager has final discretion on reinstatement requests. Reinstatement to full participation from a suspension and/or termination is not automatic.
 3. Issue corrective action guidance to State Coordinator with suspense dates to rectify issues and/or discrepancies that caused suspension and/or termination.
 4. Require the State to submit results regarding all completed police investigations and/or reports regarding lost, missing, stolen and/or damage LESO Program property.

Version- September, 2013

5. Suspend or terminate a State from the LESO Program if a State and/or LEA fails to comply with any term of this MOA, the DLAI 1111, any Federal statute or regulation or the State Plan of Operation.

C. The State Shall:

1. In the event of a State and/or LEA termination, the State Coordinator will make every attempt to transfer the LESO Program property of the terminated State/LEA to an authorized State or LEA, as applicable, prior to requesting a turn-in of the property to the nearest DLA Disposition Services location.

a. In cases of a State termination, the State Coordinator will have 120-days to complete the transfer or turn-in of all LESO Program property in their State.

b. In cases relating to the termination of a State operating as a TDP, the State Coordinator will have 60-days to complete the transfer or turn-in of all LESO Program property in the TDP warehouse.

c. In cases relating to an LEA termination, the LEA will have 60 days to complete the transfer or turn-in of all LESO Program property in their possession.

2. Request that the DLA Disposition Services LESO suspend or terminate an LEA from the LESO Program if an LEA fails to comply with any term of this MOA, the DLAI 1111, any Federal statute or regulation, or the State Plan of Operation.

3. Request that DLA Disposition Services LESO suspend LEA (s) and/or LEA POC (s) from within their State, based upon their findings during internal program compliance reviews and/or spot checks at the State level.

4. Initiate corrective action to rectify suspensions and/or terminations placed upon the State for failure to meet the terms and conditions of the LESO Program.

5. Make contact (until resolved) with suspended LEA(s) within his/her State to ensure corrective actions are rectified by timeframe provided by the DLA Disposition Services LESO.

6. Require the LEAs to complete and submit results regarding all completed police investigations and/or reports regarding lost, missing, stolen and/or damage LESO Program property. The State must submit all documentation to the DLA Disposition Services LESO upon receipt.

7. Provide documentation to the DLA Disposition Services LESO when actionable items are rectified for the State and/or LEA (s).

8. Request reinstatement via the State Coordinator or SPOC(s) to full participation status at the conclusion of a suspension period.

Version- September, 2013

XV. COSTS & FEES

All costs associated with the transportation, turn-in, transfer, repair, maintenance, insurance, disposal, repossession or other expenses related to property obtained through the LESO Program, is the sole responsibility of the State and/or LEA.

XVI. NOTICES

Any notices, communications or correspondence related to this agreement shall be provided by the United States Postal Service, express service, or facsimile to the cognizant DLA office. The DLA Disposition Services LESO, may, from time to time, propose modifications or amendments to the provisions of this MOA. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State Coordinator to conform changes affecting their operations.

XVII. ANTI-DISCRIMINATION

A. By signing this MOA or accepting excess DOD personal property under this MOA, the State pledges that it and each LEA agrees to comply with applicable provisions of the following national policies prohibiting discrimination:

1. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) as implemented by DOD regulations 32 CR Part 195.
2. On the basis of age, in the Age Discrimination Act of 1975 (42 USC 6101, et seq) as implemented by Department of Health and Human Services regulations in 45 CFR Part 90.
3. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, P.L. 93-516 (29 U.S.C. 794), as implemented by Department of Justice regulations in 28 CFR Part 41 and DOD regulations at 32 CFR Part 56.

B. These elements are considered the minimum essential ingredients for establishment of a satisfactory business agreement between the State and the DOD.

XVIII. INDEMNIFICATION CLAUSE

A. To the extent permitted by law, the State Coordinator/LEA shall indemnify and hold the U.S. Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, cost, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to property and injuries, illness or disabilities to, or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including states, local and interstate bodies, in any manner caused by or contributed to by the State/LEA, its agents, servants, employees, or any

Version- September, 2013

person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of, used by, or subject to the control of the State/LEA, its agents, servants, or employees after the property has been removed from U.S. Government control. The State will maintain or assure that the LEA maintains adequate insurance to cover damages or injuries to persons or property relating to the use of the property. Self-insurance by the State/LEA is considered acceptable. The U.S. Government assumes no liability for damages or injuries to any person(s) or property arising from the use of the property.

XIX. TERMINATION

A. This MOA may be terminated by either party, provided the other party receives thirty (30) days notice, in writing, or as otherwise stipulated by Public Law.

B. The undersigned State Coordinator hereby agrees to comply with all provisions set forth herein and acknowledges that any violation of the terms and conditions of this MOA may be grounds for immediate termination and possible legal consequences, to include pursuit of criminal prosecution if so warranted.

XX. IN WITNESS THEREOF, the parties hereto have executed this agreement as of the last date written below.

Type/Print State Coordinator Name

State Coordinator Signature

Date (MM/DD/YYYY)

Type/Print DLA Disposition Services J-4 Director

DLA Disposition Services J-4 Director Signature

Date (MM/DD/YYYY)



**DEFENSE LOGISTICS AGENCY
DISPOSITION SERVICES
74 WASHINGTON AVENUE NORTH
BATTLE CREEK, MICHIGAN 49037-3092**

J-4

November 7, 2014

MEMORANDUM FOR THE LESO PROGRAM STATE COORDINATOR

SUBJECT: DLA Memorandum of Agreement (MOA), 1033 Program changes

This memorandum amends the State's responsibilities within the existing MOA between DLA and _____. This amendment is effective immediately.
(Insert state name)

The State will adhere to the following program changes.

1. With all requests for Tactical Vehicles, Aircraft and Weapons, the State and/or LEAs must certify that they have a training plan which covers the use of the requested equipment. Requests without this documentation will not be approved.
2. The Demilitarization Code of "Q" with Integrity Code of "6" has been considered to be Commerce Control List items (cannot be exported) and is considered controlled property by the Department of Defense and DLA. This replaces any language of the current MOA that refers to property with a DEMIL code of Q6 .

Mr. Carlos S. Torres, Law Enforcement Support Office Branch Chief, DLA Disposition Services, J-413, is available to assist you as needed. Mr. Torres may be reached at (269) 961-4285, or via e-mail at Carlos.S.Torres@dla.mil.

State of: _____

State Coordinator (*Print*) _____

State Coordinator (*Signature*) _____

Date: _____

QUESTIONS SUBMITTED BY MEMBERS POST HEARING

NOVEMBER 13, 2014

QUESTIONS SUBMITTED BY MS. TSONGAS

Ms. TSONGAS. You stated in response to a question from Chairman Heck that four agencies were most recently terminated from the 1033 program, including one sheriff's department in Arizona which was terminated for weapons accountability issues. When a law enforcement agency is terminated from the 1033 program, what efforts are made to recover the DOD equipment that was provided to the law enforcement agency through the 1033 program? How successful are those efforts, and how does DLA account for or make record of those items that cannot be recovered?

Admiral HARNITCHEK. When a law enforcement agency (LEA) is terminated from the program, the LEA must turn in all controlled property to the Defense Logistics Agency (DLA) within 60 days from the date of termination or, subject to the approval of DLA and the State Coordinator, transfer the property to another LEA within the State that has a valid requirement for the property. The Memorandum of Agreement, which is signed between DLA and each State (section XIV Part C1) specifies the responsibilities of the State and State Coordinator upon the termination of an LEA. With the exception of items previously reported missing, which may have led to the termination, DLA's efforts recovering controlled property from terminated LEAs have been successful. For example, State Coordinators, in an effort to ensure their State remains in good standing with the Defense Logistics Agency, have obtained State Police escorts to assist in recovering Department of Defense property if necessary.

QUESTIONS SUBMITTED BY MS. DUCKWORTH

Ms. DUCKWORTH. What constitutes non-compliance under the 1033 program? How does the Defense Logistics Agency (DLA) identify instances of non-compliance? If found to be non-compliant, what corrective actions do states need to take in order to become compliant again? What actions result in a permanent suspension?

Mr. ESTEVEZ and Admiral HARNITCHEK. Non-compliance is defined as a violation of the terms of the Memorandum of Agreement (MOA) between the Defense Logistics Agency (DLA) and each State Coordinator. DLA identifies instances of non-compliance through Program Compliance Reviews (PCRs), which entail a physical inspection of at least 20 percent of the weapons and 10 percent of the general property for each state participating in the program on a biannual basis. Additionally, non-compliance can be determined through the Annual Inventory and Compliance Reviews required by the MOA to be performed by the State Coordinator. DLA also reserves the right to suspend a law enforcement agency (LEA) for any reason, suspect or actual.

If non-compliance by an LEA is identified during a PCR, the LEA is suspended. If an LEA cannot account for a piece of high visibility property such as a weapon, aircraft, or tactical/armored vehicle, the entire state is suspended for a minimum of 30 days. Additionally, if the State Coordinator fails to complete an Annual Inventory as required by the MOA, the entire State is suspended. In order for an LEA or State to be reinstated, it must submit a signed memorandum that documents: (1) the events leading to the situation that resulted in the suspension; and (2) an acceptable corrective action plan that details how the LEA plans to mitigate further risk associated with the non-compliance, or (3) the State completes the annual inventory requirements.

Grounds for a permanent suspension (referred to by DLA as termination) include failure by states and/or LEAs to comply with program requirements or to correct identified discrepancies after a suspension. Since 2012, 11 LEAs have had their participation terminated, including: (1) five requested by the State Coordinator (Arizona); (2) four as the result of missing weapons (Arizona, Georgia, West Virginia, and Minnesota); and (3) two agencies disbanded (Arizona/Ohio).

Ms. DUCKWORTH. Currently, what are the training requirements that law enforcement agencies must adhere to when receiving equipment under the 1033 program? Who establishes those standards and who ensures that the relevant police departments are actually trained according to standard?

Mr. ESTEVEZ and Admiral HARNITCHEK. The states are responsible for training on the use and sustainment of items. The Department of Defense does not have expertise in state and local police force functions and cannot assess how equipment is used in the mission of an individual law enforcement agency (LEA).

In November 2014, the Defense Logistics Agency (DLA) amended the Memoranda of Agreement with each of the States requiring the State Coordinator and/or LEAs to certify that they have a training plan in place that covers use of equipment and to provide training plan documentation when making requests for Tactical Vehicles, Aircraft and/or Weapons. Additionally, DLA has modified its compliance review procedures to ensure verification that LEAs have and can provide copies of the required training plans.

