

STOPPING POLICE MILITARIZATION

Congress should

- stop transfers to local law enforcement agencies of any military equipment listed on either the Department of State Munitions Control List or the Department of Commerce Control List—military weaponry designated as "controlled property"—and repossess all currently distributed controlled property;
- failing that, ensure that any currently and subsequently distributed controlled property is subject to extensive reporting requirements and randomized audits;
- mandate that the use of controlled property against misdemeanors or "Part II index crimes" (as described in the Uniform Crime Reports)—that is, nonviolent, less serious crimes, including drug use, possession, and cultivation—requires a secondary report listing the articulable reasons for believing the specific situation posed a particular threat; and
- require that law enforcement agencies with a track record of using extreme force against Part II index crimes, including drug possession and use, be subject to further investigation, oversight, and controlled property repossession.

Starting in the early 1990s, the Department of Defense began to transfer to local law enforcement agencies (LEAs) property that was “excess to the needs of the Department,” including armored vehicles and small arms, to be used by LEAs in counterdrug activities. In 1997, the “1033” program was created as part of the National Defense Authorization Act, which expanded the permitted uses to broadly include “law enforcement activities.” The program has grown considerably. In 1990, the department transferred \$1 million worth of gear. Between 2015 and 2017, \$775 million worth of military tech, weaponry, and vehicles were transferred to LEAs.

The bulk of the gear is not dangerous—including office furniture, computers, and personal protective equipment. But the program also transfers high-

powered military gear—so-called controlled property—that has few justified uses in domestic law enforcement. Congress should end the profligate transfer of such excessive military gear and repossess the gear that has already been transferred. However, if the program can't be ended, Congress should ensure that LEAs use controlled property rarely, responsibly, and with maximum transparency.

Controlled property includes such things as armored vehicles and troop carriers, high-caliber firearms, and grenade launchers. Such items can feasibly improve officer safety because officers who approach a crime scene in an armored carrier might be slightly safer than those using other modes of transportation. Yet easy access to militarized gear can also encourage officers to perform their jobs in more dangerous ways, to both themselves and the suspect. Breaking down a door with a battering ram in the early morning hours can cause occupants—who often don't know the assailants are police—to reach for a gun or other form of protection. This happened in 2020, in the notorious killing of Breonna Taylor by plainclothes police in Louisville, Kentucky, who broke down the door allegedly without sufficiently announcing themselves as police. Taylor's boyfriend armed himself and fired a shot, possibly hitting an officer in the leg. Officers returned fire and killed Breonna Taylor, an emergency room technician, in the crossfire. Had they served the warrant in daylight hours by knocking on the door, Taylor would be alive today. Such violent law enforcement practices are facilitated by the 1033 program.

During a period of significant decline in violent crime, the number of violent SWAT (special weapons and tactics) raids has skyrocketed. In 1980, when the violent crime rate was approximately 50 percent higher than it is now, there were on average 3 SWAT raids per day nationwide; now there are about 120. Shockingly, the vast majority of those SWAT raids are undertaken merely to execute search warrants, 60 percent of the time for drugs. According to a 2014 study by the American Civil Liberties Union, only 7 percent of SWAT deployments were for hostage situations or barricaded shooters, the original purpose for creating SWAT teams. In short, each day, local police are violently raiding homes approximately 120 times, mostly for nonviolent offenses. In the process, they destroy property, often kill pets, sometimes injure or kill innocent people, and generally create an unhealthy atmosphere of fear and distrust.

These raids occur in large part because federal transfers have given LEAs the necessary equipment and because they have little to no accountability for misusing that equipment. Ending police abuse of controlled property will require seemingly drastic steps to ensure that LEAs do not persist in believing that "if we have it, we might as well use it." A federal fix to this problem must focus on both stopping the transfer of controlled property and repossessing the property already distributed.

According to a *USA Today* analysis, currently over 1,100 mine-resistant ambush-protected (MRAP) vehicles are in the hands of LEAs, almost double the number distributed in 2014—the year of the unrest in Ferguson, Missouri—as well as hundreds of grenade launchers and tens of thousands of high-powered assault rifles. Overall, approximately 500,000 pieces of controlled property are in the hands of local law enforcement. No serious attempt at reforming police militarization can commence until that gear is removed from LEAs' possession and its distribution is reassessed. Surely Watertown, Connecticut (population 22,514), does not need an MRAP vehicle, for example, nor does Bloomington, Georgia (population 2,713), need four grenade launchers. Since 2014, 31 MRAP and other armored military vehicles have been distributed to law enforcement agencies serving counties with fewer than 10,000 people.

If Congress decides to continue distributing controlled property and to leave distributed property in the possession of LEAs, however, it has a duty to ensure that the equipment is used responsibly and justifiably. After all, a rarely used armored troop carrier gathering dust in a police department parking lot should be viewed as a good thing—it speaks to a safe and well-policed community. Rather than “if we have it, we might as well use it,” LEAs should be encouraged to adopt a “we have it and hope we never use it” philosophy.

By requiring extensive reporting on the use of distributed controlled property, Congress can help ensure that SWAT teams are used rarely and only in exceptional circumstances. Reporting requirements should include when the equipment was used, which suspected crimes or crowd-control situations it was used against, whether shots were fired, whether suspects allegedly brandished a weapon, whether any person or animal was killed or injured in the process, whether forced entry was used, whether a warrant was served under either no-knock or knock-and-announce circumstances, whether any children or elderly individuals were on the premises, whether the possible presence of children or the elderly was investigated, and a copy of the warrant (if used) explaining the probable cause for the action. Moreover, audits of LEA compliance should be periodically and randomly carried out. Consistently non-compliant LEAs should be immediately stripped of their property.

Finally, using SWAT teams to address nonviolent crimes, such as drug use, possession, and distribution, should be strongly discouraged. Nonviolent crimes—generally described as “Part II index crimes” in the Federal Bureau of Investigation’s Uniform Crime Reports—almost never deserve a violent response. Exceptional circumstances—such as a suspected drug producer with an arsenal and a history of violent crime—might justify a militarized response, but such a justification should never be presumed. LEAs should be required to report specific and particularized facts that necessitate the use of controlled

property to address a nonviolent crime. Consistent violation of these requirements should result in investigation, discipline, and property repossession.

In May 2015, the Obama administration’s Law Enforcement Equipment Working Group issued recommendations on the 1033 program that later became an executive order. Many of those new policies were generally similar to those in this chapter: establishing a list of prohibited property that cannot be acquired by LEAs (e.g., tracked, armored, and manned vehicles; bayonets; grenade launchers; and large-caliber weapons and ammunition); establishing a list of controlled property that LEAs can acquire if they provide additional information, certifications, and assurances (e.g., wheeled armored or tactical vehicles, specialized firearms and ammunition, explosives and pyrotechnics, and riot equipment); and increasing federal oversight and compliance. President Trump rescinded that order in August 2017.

Yet even during its short life, President Obama’s executive order was ineffective in curbing LEAs’ acquisition of military gear. The military gear that was restricted composed less than a half of a percent of all controlled equipment. The restrictions were also highly specific. The restriction on tracked, armored, and manned vehicles, for example, applied only to vehicles that were all three; thus, an armored, manned, but untracked vehicle wasn’t restricted. Of the approximately 1,300 military vehicles distributed to LEAs at the time of the executive order, only 126 were recalled. During that same period, another 400 vehicles were newly distributed to local police.

President Obama’s executive order came at a time when—shortly after the unrest in Ferguson in response to a police officer shooting Michael Brown—citizens became aware of our overmilitarized police. Nevertheless, a tiny adjustment was apparently the best that he could do. With enough fortitude, the Biden administration or another future president could unequivocally stop the transfer of all controlled property tomorrow, but the next administration could rescind the policy as easily as it was passed. That’s why Congress should take up the task of ending or significantly reforming the 1033 program. America’s police forces have become too militarized, and it will take strong and unapologetic action from Congress to fully fix the problem.

Suggested Readings

- American Civil Liberties Union. *War Comes Home*. New York: American Civil Liberties Union Foundation, 2014.
- Balko, Radley. *Rise of the Warrior Cop: The Militarization of America’s Police Forces*. New York: PublicAffairs, 2021.
- Burrus, Trevor. “How to Start Demilitarizing the Police.” *The Hill*, June 17, 2020.
- Friedman, Barry. *Unwarranted: Policing without Permission*. New York: Farrar, Straus, and Giroux, 2017.

—Prepared by Trevor Burrus