

United States Senate

WASHINGTON, DC 20510

December 4, 2017

The Honorable James Mattis
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Elaine Duke
Acting Secretary
U.S. Department of Homeland Security
2801 Nebraska Avenue, NW
Washington, DC 20016

Dear Secretary Mattis, Acting Secretary Duke, and Attorney General Sessions:

We are writing to address recent statements and actions by the administration regarding the Department of Defense (DOD) 1033 program, which transfers surplus military equipment to law enforcement agencies. We also request that oversight and accountability shortfalls identified by the Government Accountability Office (GAO) be quickly addressed in order ensure military weapons and other controlled equipment remain in the hands of appropriate law enforcement.

The DOD 1033 program has transferred more than \$6 billion of military equipment to law enforcement agencies since the beginnings of the program. Established by statute in 1997, the program allows the transfer of surplus military equipment to local, state, and federal law enforcement.¹

The program was the subject of January 2015 Executive Order (EO) 13688 by President Obama, which sought to establish critical improvements to the DOD 1033 program, as well as better coordination with grant programs run by both the Department of Homeland Security (DHS) and the Department of Justice (DOJ) that provide support to law enforcement.²

Public statements made by Attorney General Sessions on August 28, 2017 suggested that EO 13688 severely restricted the 1033 program, telling law enforcement groups that the Trump Administration will “ensure that you can get the lifesaving gear that you need to do your job.”³ That day, President Trump issued EO 13809, rescinding all of the recommendations made in EO 13688.⁴

¹ <http://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement.aspx>

² <https://www.gpo.gov/fdsys/pkg/DCPD-201500033/pdf/DCPD-201500033.pdf>

³ <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-63rd-biennial-conference-national-fraternal>

⁴ <https://www.gpo.gov/fdsys/pkg/FR-2017-08-31/pdf/2017-18679.pdf>

However, according to information from the Defense Logistics Agency (DLA) and an analysis by the nonprofit organization Project on Government Oversight,⁵ the administration's new policies will not significantly impact access to "life saving gear" because this type of equipment was never disallowed. Since the Obama EO rules were put into effect, transfers of surplus military equipment to law enforcement have actually continued at a steady rate. In fact, in 2016, more than \$400 million in surplus equipment was transferred, one of the highest levels ever.

These continued transfers through the 1033 program have included major equipment, such as helicopters and armored vehicles, and at least 250 Mine Resistant Ambush Protected Vehicles. Weapons transfers also continued with no change in the types allowed. Further analysis shows that only three types of equipment were ultimately disallowed by the Obama Administration's EO. These were bayonets, camouflage uniforms, and certain types of unarmed tracked vehicles.

Tanks, fully automatic weapons, 50 caliber ammunition, and certain other equipment were always, and correctly, excluded from the 1033 program by DOD. According to DLA, the Trump Administration EO will only result in two very specific types of additional equipment becoming available to law enforcement. For example, law enforcement may soon resume requesting bayonets.

So contrary to Attorney General Sessions' suggestion, EO 13809 will not significantly impact the amount and types of equipment available for transfer. However, EO 13809 does remove some key accountability and coordination measures established by EO 13688, which may result in problems and may create a situation where the 1033 program no longer conforms to its establishing statute.⁶

EO 13688 formed a federal agency Law Enforcement Working Group (the Working Group) to "provide specific recommendations to the President regarding actions that can be taken to improve the provision of Federal support for the acquisition of managed equipment by LEAs." Key to the Working Group's recommendations was input from non-governmental stakeholders, including law enforcement and civil rights organizations, as well as representatives of local law enforcement agencies.

EO 13809 disbanded the Working Group. There are currently no plans for any other similar coordination among federal agencies. Nor has the administration established a new, ongoing process to receive input from non-governmental organizations.

This lack of effective interagency coordination is inconsistent with the establishing statute for the 1033 program, which requires that the Secretary of Defense "shall carry out this section in consultation with the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate."⁷ DLA has said that it will, "continue to coordinate with DOJ as was done before the Permanent Working Group." However, as DOD testified in 2014, coordination prior to EO 13688 was considered inadequate.⁸

⁵ <http://www.pogo.org/blog/2017/10/senate-bill-would-improve-oversight-of-programs-that-give-military-equipment-to-police-LESO-1033.html>

⁶ <https://www.congress.gov/114/plaws/publ92/PLAW-114publ92.pdf>

⁷ <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title10/pdf/USCODE-2010-title10-subtitleA-partIV-chap153-sec2576a.pdf>

⁸ <https://www.hsgac.senate.gov/hearings/oversight-of-federal-programs-for-equipping-state-and-local-law-enforcement>

There continues to be a need for improved accountability with the 1033 program. For example, in July 2017 GAO reported major problems with the program's procedures to verify eligibility.⁹ During a test of the program, GAO was able to gain access to the 1033 program and obtain more than a million dollars of equipment using the identity of a fictitious federal agency.

Considering the impacts of EO 13809 on interagency coordination and the continued need for oversight over the 1033 program as it currently functions, we request that the administration take actions to:

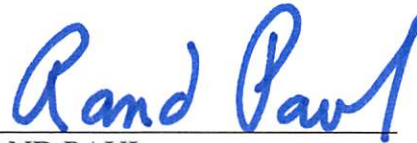
1. Reestablish a federal interagency working group to ensure adherence with the law, as well as ensure agency coordination and receive input from stakeholders such as local police agencies and civil rights organizations.
2. Ensure accountability, including strong measures to ensure eligibility of 1033 program participants and other issues identified by the GAO.
3. Review the lists of controlled and prohibited equipment to ensure that only appropriate military surplus is transferred, as well as to determine if any equipment useful for law enforcement has been inadvertently denied
4. Ensure that DLA continues to publish on its public website the details of the transfer of surplus military equipment to local, state, and federal law enforcement, which is already required by the *National Defense Authorization Act of 2016*.

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



BRIAN SCHATZ
United States Senator



RAND PAUL
United States Senator



RON WYDEN
United States Senator

⁹ <https://www.gao.gov/products/GAO-17-532>