

The 1033 Program, Police Militarization, and the War on Drugs



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The war on drugs has been a primary driver of the police militarization that has contributed to the police killings of Breonna Taylor, Aiyana Stanley-Jones, and so many others. As detailed below, the history of police militarization is inextricably linked to federal drug policy, and much of the funding for police militarization has come from programs created, in part, to enforce drug prohibition. To address police killings and violence, we must end the war on drugs and prevent law enforcement and policymakers from using drug use and sales as a pretext for equipping and training police-like armies.

The History of Military-Law Enforcement Cooperation

The Military Cooperation with Civilian Law Enforcement Agencies Act of 1981 officially allowed U.S. army cooperation with domestic and foreign law enforcement agencies,¹ including “nearly unlimited sharing of drug interdiction intelligence, training, tactics, technology, and weaponry between the Pentagon and federal, state, and local police departments.”² This represented one of many pieces of legislation and war-on-drug tactics that presidential administrations have used to facilitate a militaristic approach to combating drug use and sales.³ Although the U.S. military had unofficially been dispensing surplus materials to civilian organizations since the end of World War II, the war on drugs formalized, facilitated, and encouraged the practice.⁴ As detailed by Radley Balko in *Overkill: The Rise of Paramilitary Police Raids in America*, the drug war has long enabled police militarization:

- In 1986, President Reagan’s National Security Decision Directive 221 allowed for even more cooperation between the military and local, state, and federal law enforcement, on the basis that drugs represented a threat to “national security.”⁵
- In 1988, Congress ordered the National Guard to assist states in their drug

enforcement efforts.⁶ To this day, National Guard troops assist in large-scale anti-drug operations in every state.⁷

- This set the groundwork for the 1994 joint Department of Defense and Department of Justice memorandum of understanding that authorized the transfer of surplus military equipment to federal, state, and local law enforcement agencies.⁸
- In 1997, the National Defense Authorization Act (NDAA) established the 1033 program, which facilitates the free transfer of surplus military equipment to law enforcement agencies to assist, in part, with counter-drug activities.⁹
- In the meantime, the Violent Crime Control and Law Enforcement Act of 1994, commonly known as the 1994 Crime Bill, had increased federal offenses and sentences for drug law violations, made funding available for state and local drug enforcement task force efforts, and authorized funding for 100,000 new police officers.
- The Edward Byrne Memorial Justice Assistance Grant (JAG) program – which merged several funding and grant programs – was created through the Consolidated Appropriations Act of 2005 and allocates federal criminal justice funding to state and local jurisdictions, primarily law enforcement agencies.¹⁰ Each year, JAG allocates over \$250 million to states, territories, and to local units of government.¹¹ The largest proportion of funding – over 25 percent – supports the formation of drug, gang, and other task force operations.¹²
- In 2009, Section 1122 was added to the 1994 National Defense Authorization Act. The 1122 Program enables state and local governments to purchase items used to

support their counterdrug, homeland security, and emergency response operations at a discounted rate.¹³

- In 2015, President Obama issued Executive Order 13688 prohibiting the transfer of weaponized aircraft, vessels and vehicles, .50-caliber firearms and ammunition, bayonets, camouflage uniforms, and grenade launchers.¹⁴ The Law Enforcement Support Office recalled these items, and all were returned to the federal government. In 2017, President Trump revoked the Obama executive order allowing for the transfer of these items to resume.¹⁵

While not the only link between the war on drugs and police militarization, one program stands out for its contribution to police militarization: the 1033 program. 1033 invisibly inflates police budgets because the military and federal government offset the costs of local law enforcement agencies. The 1033 program, provides military equipment, 36 percent of which is brand new, to law enforcement agencies (LEAs) free of cost.¹⁶ Through 1033, \$293 million worth of property was transferred in FY 2019.¹⁷

The 1033 Program

History of the program

The 1033 program, which is key in enabling and encouraging the militarization of LEAs, directly arose out of the war on drugs.¹⁸ Starting in 1981, the Reagan administration worked to undermine the 1878 Posse Comitatus Act, which outlawed military-law enforcement cooperation.¹⁹ This effort was wholly informed by the militarized approach to enforcing drug prohibition. 1997's National Defense Authorization Act (NDAA) established the 1033 program to facilitate and streamline procurement of military equipment, granting law enforcement agencies permanent authority to acquire property for law enforcement purposes "associated with counter-drug and counter-terrorism activities."²⁰ The 1033 program has enabled the expansion of drug war enforcement to the Department of Defense, specifying a role for – not just law enforcement but – the military in monitoring and punishing drug use, sales, and activity.²¹

Scope of the program

These equipment transfers through the 1033 program have reached nearly all parts of the U.S, have cost billions of dollars, and have led to an increase in police violence. Items received through the program commonly include equipment like night vision goggles, rifles, pistols, forced entry tools, unmanned vehicles, land mine resistant vehicles, and helicopters.²² A study analyzing an eight-year period from 2006 to 2013 found that 80 percent of all U.S. counties received military equipment transfers through the 1033 program. Often, jurisdictions in small towns receive

equipment for which they have no rational use.²³ \$7.4 billion worth of equipment has been transferred to law enforcement agencies through the 1033 program since its establishment.²⁴ Research shows that receiving more equipment transfers through the 1033 program increases the number of civilians killed by police, suggesting that police militarization – and the 1033 program, in particular – has been one of the drivers of police violence.²⁵

The connection between the 1033 program and violent drug raids

The kind of equipment acquired through the 1033 program and other federal funding and grant programs enables and encourages a type of policing that is particularly violent. Police use military equipment from the 1033 program, like battering rams, specialized firearms and large caliber weapons, grenade launchers, and armored vehicles, during day-to-day operations and especially in conducting (Special Weapons and Tactics) SWAT raids.

Across the U.S., law enforcement agencies conduct over 40,000 SWAT raids per year, or 120 raids per day.²⁶ In most cases, there is no particularized threat of violence.²⁷ Research shows that police are more likely to use force and violence in drug raids as opposed to other types of SWAT raids; and, the majority of SWAT deployments – between 60 and 80 percent – are carried out as part of drug investigations where there have been no formal charges or convictions.²⁸ Black and Latinx people make up 13 and 18.5 percent of the U.S. population, respectively, but 61 percent of people directly impacted by SWAT raids are Black or Latinx, despite the fact that people of all races use and sell drugs at similar rates.²⁹ Having military equipment available for use during SWAT raids makes police more likely to use the equipment, thus proactively escalating the potential for aggression and harm.³⁰ Enabled by the 1033 program, these SWAT raids result in emotional distress and trauma, bodily injury, and sometimes, death.

Militarization enabled by the 1033 program is unnecessary and harmful

The 1033 programs encourage and escalate police militarization with little question as to its appropriateness. The Department of Defense even admits that "[it] does not have expertise in police functions and cannot assess how equipment is used in the mission of an individual [LEA]."³¹ While the 1033 program has not been the only cause of police militarization and violence, it is a key pillar of a broader apparatus of drug war policing, surveillance, and violence. Ending military-law enforcement cooperation is an important step in ending the drug war and police violence.

Recommendations for Ending the Military-to-Law Enforcement Supply Chain and Federal Funding for Drug War Policing

These resources funneled into local, state, and federal police are not being used to create meaningful or lasting solutions to social issues but rather are being used to violently raid homes, destroy property, enact psychological warfare, and threaten, harm, and kill people. The drug war helped create the conditions that have militarized the police and given them a much greater capacity for harm and violence. Militarized responses to drug use prioritize violent enforcement, criminalization, and punishment over community safety, health, and dignity. Instead, we should:

- Repeal exceptions to the Posse Comitatus Act that allow for drug interdiction and military cooperation with state and local law enforcement for the purposes of drug enforcement (i.e., end the federal provision of equipment and supplies, technical assistance, training, and information to law enforcement agencies).
- Eradicate the 1033 and 1122 programs and all other federal programs that facilitate the transfer of military equipment to state, local, and tribal law enforcement.
- Recall all equipment that has been distributed through the 1033 and 1122 programs.

- Until such programs are eradicated, pass state and local laws to prohibit jurisdictions from accepting equipment through the 1033 program.
- Until such programs are eradicated, require local, state, and federal law enforcement agencies to release a yearly, public report on quantity and types of equipment received through the 1033 and 1122 programs.
- Pass state and federal laws to prohibit the use of SWAT or tactical teams and the use of military-style equipment in the execution of search warrants where there is no particularized threat of violence.
- Require local, state, and federal law enforcement agencies to release a yearly, public report on allocation and use of federal criminal justice acquisitions and grants.
- Divert federal grants and funding from law enforcement and the criminal legal system, and reprioritize it for housing, healthcare, education, harm reduction services, and evidence-based treatment.

¹ Department of Defense Authorization Act of 1982, Pub. L. No. 97-86, § 905, 95 Stat. 1099, 1114-16 (1981) (codified as amended at 10 U.S.C. § 371-380 (1994)).

² Radley Balko, "Overkill: The Rise of Police Military Raids in America," CATO, 2006, https://www.cato.org/sites/cato.org/files/pubs/pdf/balko_whitepaper_2006.pdf.

³ *Ibid.*

⁴ Johnson and Hansen, "Law Enforcement Agencies' Participation in the Military Surplus Equipment Program."

⁵ U.S. White House. *National Security Decision Directive 221: Narcotics and National Security*. Washington, D.C.: U.S. White House, April 8, 1986, <https://www.hsdl.org/?view&did=463177>.

⁶ Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988).

⁷ Nadine Wiley De Moura, "National Guard Counterdrug Program celebrates 30 years," U.S. Army, August 21, 2019, https://www.army.mil/article/226032/national_guard_counterdrug_program_celebrates_30_years.

⁸ U.S. Department of Defense and Department of Justice. "Memorandum of Understanding between Department of Defense and Department of Justice on Operations Other Than War and Law Enforcement." April 20, 1994. <http://www.namebase.net:82/foia/mou01.html>

⁹ Defense Logistics Agency, "1033 Program FAQs," <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/ProgramFAQs.aspx>, (accessed July 27, 2020).

¹⁰ Alexia Cooper, "Justice Assistance Grant Program, 2016," Bureau of Justice Statistics, September 29, 2016, <https://www.bjs.gov/content/pub/pdf/jagp16.pdf>.

¹¹ Bureau of Justice Assistance, "Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet," U.S. Department of Justice, March 2021, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jag-fact-sheet-5-2020.pdf>.

¹² National Criminal Justice Association, "Data on How States Invest Byrne JAG," Accessed September 11, 2020. <https://www.ncja.org/data-on-how-states-invest-byrne-jag>.

¹³ Defense Logistics Agency, "1122 Program," <https://www.dla.mil/Customersupport/Federal/1122.aspx>, (accessed July 28, 2020).

¹⁴ "Executive Order 13688 of January 16, 2015 — Federal Support for Local Law Enforcement Equipment Acquisition," *Code of Federal Regulations*, title 3 (2015): 261-264.

<https://www.govinfo.gov/content/pkg/CFR-2016-title3-vol1/pdf/CFR-2016-title3-vol1.pdf>.

¹⁵ Defense Logistics Agency. "1033 Program FAQs."

¹⁶ Helen Jaccard, "The Wars Come Home: Police Militarization in the United States of America." *Peace and Freedom* 74, no. 2 (Fall, 2014): 6-7, 22.

¹⁷ Defense Logistics Agency, “Law Enforcement Support Office,” <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement.aspx>, (accessed July 27, 2020).

¹⁸ Steven M. Radil, Raymond J. Dezzani, and Lanny D. McAden, “Geographies of U.S. Police Militarization and the Role of the 1033 Program.” *Professional Geographer* 69, no. 2 (05, 2017): 203-213.

¹⁹ Matthew Carlton Hammond, “The Posse Comitatus Act: A Principle in Need of Renewal,” *Washington University Law Review* 75, no. 2 (1997): 953-984.

²⁰ Defense Logistics Agency, “1033 Program FAQs.”

²¹ Steven M. Radil, Raymond J. Dezzani, and Lanny D. McAden. “Geographies of U.S. Police Militarization and the Role of the 1033 Program.”

²² Defense Logistics Agency, “LESO Public Information,” <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/PublicInformation/> (accessed April 14, 2021).

²³ Emma O'Rourke-Friel, “BRING OUT THE BEARCAT! REPRIORITIZING THE TRANSFER OF DOD PROPERTY UNDER THE 1033 PROGRAM,” *Public Contract Law Journal* 48, no. 1 (2018): 147-164.

²⁴ Defense Logistics Agency, “1033 Program FAQs.”

²⁵ Casey Delehanty et al. “Militarization and police violence: The case of the 1033 program.” *Research & Politics* 4, no. 2 (2017).

²⁶ “Policy Priorities for the 114th Congress,” CATO, 2015, <https://www.cato.org/sites/cato.org/files/pubs/pdf/policy-priorities-white-paper-114th-congress-update.pdf>.

²⁷ “War Comes Home: The Excessive Militarization of American Policing,” ACLU, June 2014, <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Peter B. Kraska. “Militarization and Policing—Its Relevance to 21st Century Police.” *Policing* 1, no. 4 (2007): 501–513.

³¹ 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 Before the H. Committee on Oversight and Investigations, 113 Cong. 3 (2014) (statement of Alan Estevez, Principal Deputy Under Secretary, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, U.S. Dept. of Defense).