



September 13, 2017

U.S. Senate
Washington, DC 20510

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH
FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

FAIZ SHAKIR
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH
FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

**Re: ACLU Urges YES vote to Amendment #872 to NDAA FY18 to
Demilitarize Law Enforcement**

Dear Senator:

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. With more than two 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, gender identity, sexual orientation, disability, or national origin.

We write to urge you to vote YES on Amendment #872 offered to H.R. 2810, the National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) by Senators Rand Paul (R-KY), Brian Schatz (D-HI), and Ron Wyden (D-OR) that would limit the transfers of certain military weapons and equipment from war zones to law enforcement and communities. Under this amendment, the Department of Defense (DOD) 1033 program, Department of Homeland Security (DHS) Preparedness grant funds, and Department of Justice (DOJ) Edward Byrne Memorial Justice Assistance grant funds would be subject to greater restrictions and oversight given their role in militarizing law enforcement.

Since the 1990s, the DOD 1033 program has provided more than \$6 billion worth of surplus military weapons and equipment to over 8,000 law enforcement agencies at the federal, state, and local levels.¹ The program has provided thousands of military-grade weapons and vehicles or "controlled" items, including mine resistant ambush protected vehicles (MRAPs), drones, and

¹ Stephen Carlson, GAO Report Details Sting Operation that Defrauded DOD Surplus Program for Police, UPI, July 25, 2017, <https://www.upi.com/GAO-report-details-sting-operation-that-defrauded-DOD-surplus-program-for-police/8241501003711/>.

grenades to law enforcement.² DHS and DOJ grants also allow for the purchase of military weapons and equipment by law enforcement.³

Over the years, the DOD program has been plagued by numerous problems, including the misuse and loss of military weapons, which has resulted in a program moratorium, as well the suspension of individual police departments from the program.⁴ Most recently, in July 2017, the Government Accountability Office (GAO) issued a troubling critique of the program after GAO posed as a fictitious law enforcement agency and was able to procure \$1.2 million in military weapons and equipment, including night-vision goggles, rifles, and pipe bomb equipment.⁵

Despite the GAO findings, on August 28, 2017, an executive order was issued that eliminated the oversight that was put in place in 2015 for the DOD 1033 program and the other federal outlets providing military weapons to law enforcement.⁶ The 2015 oversight followed the militarized response in Ferguson, Missouri in 2014 where protestors were met 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.”⁷ The country learned that the line between law enforcement and military was routinely blurred, not just during protests, but in routine policing, including the execution of search warrants for low level drug offenses.⁸ Almost 60% of constituents say that local police use of military weapons, drones, and armored vehicles “goes too far.”⁹

We are also troubled by efforts in the U.S. House to expand the 1033 program as it considered NDAA FY18. Here, the U.S. House adopted an amendment offered by Representative Ted Poe (R-TX) that would give federal and state agencies engaged in southern border security 1033 priority over other law enforcement agencies when requesting drones, night-vision goggles, and Humvees.¹⁰ The Poe amendment should not be included in the final NDAA FY18.

² David Eads, Tyler Fisher, Jessica Pupovac & Arezou Rezvani, MRAPs and Bayonets: What We Know About the Pentagon’s 1033 Program, NPR, Sept. 2, 2014, <http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program>.

³ Alicia Parlapiano, The Flow of Money and Equipment to Local Police, NYT, Dec. 1, 2014, <https://www.nytimes.com/interactive/2014/08/23/us/flow-of-money-and-equipment-to-local-police.html>.

⁴ Jordan Fabian, Obama Bans Some Transfers of Military Hardware to Police, The Hill, May 18, 2015, <http://thehill.com/homenews/administration/242346-obama-limiting-military-hardware-to-police-departments>.

⁵ Eli Hager, How Fake Cops Got \$1.2 Million in Real Weapons, The Marshall Project, July 21, 2017, <https://www.themarshallproject.org/2017/07/21/how-fake-cops-got-1-2-million-in-real-weapons#.TpqAlHiLE>.

⁶ Presidential Executive Order on Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources, Aug. 28, 2017, <https://www.whitehouse.gov/the-press-office/2017/08/28/presidential-executive-order-restoring-state-tribal-and-local-law>.

⁷ David Nakamura & Niraj Chokshi, Obama Orders Review of Military Equipment Supplied to Police,” Wash. Post, Aug. 23, 2014, http://www.washingtonpost.com/politics/obama-orders-review-of-military-equipment-supplied-to-police/2014/08/23/6316b8aa-2b03-11e4-8593-da634b334390_story.html.

⁸ See ACLU, War Comes Home: The Excessive Militarization of American Policing, June 2014, https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf.

⁹ Emily Ekins, 58 Percent Say Police Departments Using Drones, Military Weapons Goes Too Far, 60 Percent of Tea Partiers Agree, Reason, Dec. 17, 2013, <http://reason.com/poll/2013/12/17/56-percent-say-police-departments-usin2>.

¹⁰ See FY18 NDAA Floor Action, <https://armedservices.house.gov/fy18-ndaa-floor-action> & Billy G. Garrett, Building Safe Communities Does Not Require Weapons of War, June 15, 2017, <http://thehill.com/blogs/congress-blog/homeland-security/283335-building-safe-communities-does-not-require-weapons-of>.

Therefore, Amendment #872 is an appropriate response to these concerns with law enforcement militarization and would do three things:

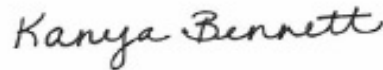
1. Prohibit the use of federal resources for the transfer or purchase of military weapons and equipment that are inappropriate for policing, including grenades, mine-resistant ambush-protected vehicles (MRAPs), and drones.
2. Ensure law enforcement is accountable for the military weapons and equipment that it does obtain with inventory and other checks.
3. Require much needed oversight and transparency of the federal programs providing military weapons and equipment to law enforcement with public accounting and reporting mechanisms.

Accordingly, we urge you to vote FOR Paul Amendment #872 when it comes before you.

Please contact Kanya Bennett at (202) 715-0808 or kbennett@aclu.org with any questions.



Faiz Shakir
National Political Director



Kanya Bennett
Legislative Counsel