

# THE RUTHERFORD INSTITUTE

Post Office Box 7482  
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD  
Founder and President

TELEPHONE 434 / 978 - 3888  
FACSIMILE 434/ 978 - 1789  
www.rutherford.org

April 19, 2017

The Honorable Jeff Sessions  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-001

**Re: Law Enforcement and Civil Rights / Equipping Police with Military Weapons**

Dear Mr. Attorney General:

Not long after you urged the National Association of Attorneys General to “help police departments get better, not diminish their effectiveness,” you indicated that the Justice Department would “pull back” on investigating police abuses.<sup>1</sup>

This promise became a reality when you revealed that the Justice Department plans to review and rethink consent decrees it has worked out with over a dozen state and local police departments with histories of violating the constitutional rights of citizens.<sup>2</sup> This retreat from enforcement of our country’s civil rights laws comes in tandem with efforts to increase the flow of military-grade weaponry to state and local law enforcement, dramatically increasing the ability of police to impose force upon the communities they are meant to serve and protect.<sup>3</sup>

The Trump Administration has made it clear, as stated on the White House website, that “[o]ur country needs . . . more community engagement, and more effective policing.”<sup>4</sup> However, these goals cannot be achieved if the Justice Department reneges on its commitment to ensure that state and local police abide by the Constitution, while encouraging the further transformation

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<sup>1</sup> Jefferson Morley, “Sessions Giving Free Reign to Police Departments Destroying Years of Work by Obama to Reform Violent Practices,” *AlterNet* (April 4, 2017), <http://www.alternet.org/news-amp-politics/jeff-sessions-war-good-policing>.

<sup>2</sup> Sheryl Gay Stolberg and Eric Lichtblau, “Sweeping Federal Review Could Affect Consent Decrees Nationwide,” *New York Times* (April 3, 2017), <https://www.nytimes.com/2017/04/03/us/justice-department-jeff-sessions-baltimore-police.html?>

<sup>3</sup> Seth Kershner, “Trump and GOP Want to Make It Even Easier for Police to Get Military Gear,” *In These Times* (March 16, 2017), <http://inthesetimes.com/article/19976/trump-GOP-police-militarization>.

<sup>4</sup> <https://www.whitehouse.gov/law-enforcement-community>.

of local law enforcement into extensions of the military through the distribution of battlefield-appropriate equipment. This militarization of America's police forces flies in the face of everything the Founding Fathers warned against, including their clear disapproval of a standing army.

### Police Misconduct Is Widespread and Systemic, Justifying Continued Federal Involvement

While you have voiced the belief that federal oversight of local police unfairly impugns officers by focusing on "the individual misdeeds of bad actors,"<sup>5</sup> the facts do not bear out your claim that police civil rights violations are isolated or anecdotal.

Indeed, police abuse of authority and power is not limited to a few areas of the country, but occurs regularly throughout the United States. For example:

- Andrew Lee Scott was shot to death by a police officer inside his apartment as he opened his door in response to a "knock and talk" police conducted at 1:30 a.m. The officer was one of team investigating a speeding incident who did not announce that they were police officers and had no reason to suspect Scott of any wrongdoing.<sup>6</sup>
- Levar Edward Jones was shot by a South Carolina police officer during a routine traffic stop over a seatbelt violation as he was in the process of reaching for his license and registration. The trooper justified his shooting of the unarmed man by insisting that Jones reached for his license "aggressively."<sup>7</sup>
- Francisco Serna, a 73-year old grandfather with early-stage dementia was shot and killed by police for refusing to remove his hand from his pocket. Police were investigating an uncorroborated report that Serna had a gun, but it turned out he was holding a crucifix and made no aggressive movements before he was gunned down.<sup>8</sup>
- Nandi Cain, Jr., was thrown to the ground, choked and punched over a dozen times by a police officer after the officer stopped Cain for jaywalking. Cain made no aggressive moves toward the officer, and had even removed his jacket to show the officer he had no weapon.<sup>9</sup>
- Thomas Smith, a 65-year old with Parkinson's Disease, called 911 because of a medical problem, but instead was raided by a SWAT team. Smith was thrown to the ground and

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<sup>5</sup>Sheryl Gay Stolberg and Eric Lichtblau, "Sweeping Federal Review Could Affect Consent Decrees Nationwide," *New York Times* (April 3, 2017), <https://www.nytimes.com/2017/04/03/us/justice-department-jeff-sessions-baltimore-police.html?>

<sup>6</sup> *Young v. Borders*, 850 F.3d 1274 (11th Cir. 2017).

<sup>7</sup> "Dash cam captures SC trooper shooting unarmed man during traffic stop," *My Fox 8* (Sept. 25, 2014), <http://myfox8.com/2014/09/25/dash-cam-captures-sc-trooper-shooting-unarmed-man-during-traffic-dtop/>

<sup>8</sup> J. Weston Phippen, "Why Did California Police Shoot a Grandfather Holding a Crucifix?," *The Atlantic* (Dec. 15, 2016), <https://www.theatlantic.com/news/archive/2016/12/francisco-serna-police-shooting/510701/>.

<sup>9</sup> Cleve R. Woodson, Jr., "Video shows and officer slamming, then pummeling a black man accused of jaywalking," *The Washington Post* (April 12, 2017), [https://www.washingtonpost.com/news/post-nation/wp/2017/04/12/video-shows-an-officer-slamming-then-pummeling-a-black-man-accused-of-jaywalking/?utm\\_term=.b94b7c751b33](https://www.washingtonpost.com/news/post-nation/wp/2017/04/12/video-shows-an-officer-slamming-then-pummeling-a-black-man-accused-of-jaywalking/?utm_term=.b94b7c751b33).

placed in handcuffs because his condition prevented him from following police instructions.<sup>10</sup>

- John Wrana, a 95-year old World War II veteran, died after being shot multiple times by a police officer with a Mossberg shotgun during a raid at Wrana's room at an assisted living center. Police responded to a report that Wrana was armed with a knife, which was actually a shoehorn, and five officers could not subdue Wrana even though he used a walker to get around.<sup>11</sup>
- A 10-year old boy was subdued by two police officers using a taser because the child became unruly at the day care center he attended.<sup>12</sup>
- A Missouri police officer has been charged with assaulting a 77-year old woman and causing her to suffer a heart attack. The woman was guilty of no crime, but was involved in a civil suit with one of the officer's relatives.<sup>13</sup>
- Police in South Dakota subject persons, some as young as 3-years old, to forced catheterization in order to obtain urine samples. Persons are handcuffed, have hoods placed around their heads and their legs shackled as part of the procedure.<sup>14</sup>
- Charles Kinsey, a behavioral therapist, was shot by police as he lay on the ground with his arms raised while trying to help an autistic patient who had wandered away from his group home. The officer who shot Kinsey was reportedly told that neither Kinsey nor the patient had a weapon.<sup>15</sup>
- Frank Arnal Baker was mauled by a police dog and kicked by an officer as he was innocently walking back to his home. Baker, who according to police was not complying with their orders, spent two weeks in the hospital with fractured ribs and collapsed lungs and needed skin grafts for the dog-bite injuries.<sup>16</sup>

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<sup>10</sup> Carlos Miller, "Wisconsin SWAT Team Attacks 65-Year-old Man with Parkinson's Disease After he Called for Help," *PINAC Be the Media*, (April 12, 2017), <http://photographyisnotacrime.com/2017/04/12/wisconsin-swat-team-attacks-65-year-old-man-parkinsons-disease-called-help/>.

<sup>11</sup> John Kass, "WWII vet's death a textbook case of excessive force, but no hashtag for him," *Chicago Tribune* (Jan. 10, 2015), <http://www.chicagotribune.com/news/columnists/kass/ct-john-wrana-textbook-police-force-case-kass-0111-20150111-column.html>.

<sup>12</sup> Lindsay Goldwert, "Indiana cops taser 10-year-old at day care," *Daily News* (April 1, 2010), <http://www.nydailynews.com/news/indiana-cops-taser-10-year-old-day-care-article-1.168155>.

<sup>13</sup> Jack Burns, "Sheriff Arrested for Assaulting 77yo Woman, Using Stingray to Spy on Judge—Still Sheriff," *The Free Thought Project.com* (April 7, 2017), <http://thefreethoughtproject.com/missouri-sheriff-arrested-several-felony-charges/>.

<sup>14</sup> Mark Walker, "Hooded, handcuffed and 'violated': South Dakota's use of forced catheterization," *USA Today* (April 7, 2017), <https://www.usatoday.com/story/news/crime/2017/04/07/hooded-handcuffed-and-violated-south-dakotas-use-forced-catheterization/100000158/>.

<sup>15</sup> Mark Berman, "Florida police officer charged for shooting unarmed man with arms raised," *The Washington Post* (April 12, 2017), [https://www.washingtonpost.com/news/post-nation/wp/2017/04/12/florida-police-officer-charged-for-shooting-unarmed-man-who-had-arms-raised/?utm\\_term=.baaf6723b158](https://www.washingtonpost.com/news/post-nation/wp/2017/04/12/florida-police-officer-charged-for-shooting-unarmed-man-who-had-arms-raised/?utm_term=.baaf6723b158)

<sup>16</sup> Tad Vezner, "St. Paul police misconduct case settled for largest amount ever," *Twin Cities Pioneer Press.com* (March 27, 2017), <http://www.twincities.com/2017/03/27/st-paul-man-kicked-by-cop-bitten-by-k-9-settles-with-city-for-2m/>.

Clearly, far from being isolated or anecdotal, the incidents of police misconduct have become so prevalent as to jeopardize the integrity of all of the nation's law enforcement agencies. In fact, the Justice Department's own investigation of the Baltimore Police Department found a "pattern and practice" of unlawful stops, searches and arrests, excessive force, retaliation against protected expression, and discrimination against African Americans.<sup>17</sup> The City of Chicago Police Department was similarly found to have engaged in a pattern and practice of unconstitutional use of force, including deadly force, that was attributable to systemic deficiencies in training structures and police accountability systems.<sup>18</sup>

These and other investigations indicate that police misconduct, especially when it comes to violations of Americans' constitutional rights, is widespread, deep-rooted and will require strong and ongoing oversight by the federal government if "law and order" in its truest sense is to be restored to the nation's law enforcement agencies. As former Seattle police chief Norm Stamper recognizes, "Policing is broken... It has evolved as a paramilitary, bureaucratic, organizational arrangement that distances police officers from the communities they've been sworn to protect and serve. When we have shooting after shooting after shooting that most people would define as at least questionable, it's time to look, not just at a few bad apples, but the barrel. And I'm convinced that it is the barrel that is rotted."<sup>19</sup>

If the Justice Department does not stand by its commitment to enforcing civil rights laws against local police departments and holding them accountable to correcting these problems, the Trump Administration's stated goals of enhancing the effectiveness of policing and community engagement cannot be achieved.

### The Justice Department Must Vigorously Enforce Consent Decrees Curbing Police Abuses

In order for communities plagued by systemic police misconduct and abuse of authority to thrive, there must be effective and constitutional policing.<sup>20</sup> Indeed, the Justice Department has an essential role in ensuring that citizens' civil rights are protected from police abuses, not only because the letter of federal law forbids local law enforcement agencies from engaging in a

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<sup>17</sup> U.S. Dept. of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department: Executive Summary*, at 1 (August 10, 2016), <https://www.justice.gov/crt/file/883371/download>.

<sup>18</sup> U.S. Dept. of Justice, Civil Rights Division, *Investigation of the Chicago Police Department*, at 1 (Jan. 13, 2017), <https://www.justice.gov/crt/case-document/file/925771/download>.

<sup>19</sup> "Former Police Chief Has A Plan For 'How To Fix America's Police,'" *NPR* (Jul. 10, 2016), <http://www.npr.org/2016/07/10/485460453/former-police-chief-has-a-plan-for-how-to-fix-americas-police>.

<sup>20</sup> Ben Mathis-Lilley, "Judge Rejects Jeff Sessions' Bid to Back Out of Baltimore Civil Rights Deal in Quite Spicy Fashion," *Slate* (April 7, 2017), [http://www.slate.com/blogs/the\\_slatest/2017/04/07/judge\\_rejects\\_trump\\_administration\\_in\\_baltimore\\_police\\_consent\\_decree\\_case.html](http://www.slate.com/blogs/the_slatest/2017/04/07/judge_rejects_trump_administration_in_baltimore_police_consent_decree_case.html).

“pattern and practice” of violating the constitutional rights of citizens,<sup>21</sup> but also because states and localities are ill-equipped, due to limited resources and self-interest, to do so themselves.<sup>22</sup>

Consent decrees in which the Justice Department and local governments pledge to work together have been effective in providing constitutional policing. For example, after the racially-charged riots in Los Angeles in 1992, a consent decree between that city and the federal government resulted in increased public safety and better policing.<sup>23</sup> As such, local governments and their citizens welcome the federal assistance in achieving reform and do not view consent agreements as unwarranted intrusions on their authority.<sup>24</sup> These agreements must not be abandoned by the Justice Department. Doing so would only jeopardize the lives and civil rights of the citizens of cities plagued by police misconduct.

### The Flow of Military-Grade Weapons to Police Must Cease

Additionally, the federal government’s continued distribution of surplus military weapons to state and local law enforcement threatens the fundamental rights of all American citizens to live in safe communities.<sup>25</sup> Throughout his campaign and since taking office, President Trump has consistently stressed that the primary mission of his administration is the safety and security of the American people.<sup>26</sup> While the administration has focused its energy and resources thus far on perceived threats posed by radical terrorists and illegal immigrants, American citizens face a far more immediate danger from police departments trained in battlefield tactics and armed with military-grade weaponry.

Under federal programs begun in the 1980’s, state and local law enforcement agencies have obtained, at little or no cost, military equipment such as armed helicopters, grenade launchers, and armored vehicles that have turned those agencies from civil forces that protect and serve citizens into para-military forces occupying their communities.<sup>27</sup> Although the “1033 Program,” under which surplus military armaments are obtained from the federal government by

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<sup>21</sup> 42 U.S.C. § 14141.

<sup>22</sup> Jefferson Morley, “Sessions Giving Free Reign to Police Departments Destroying Years of Work by Obama to Reform Violent Practices,” *Alternet* (April 4, 2017), <http://www.alternet.org/news-amp-politics/jeff-sessions-war-good-policing>.

<sup>23</sup> Jefferson Morley, “Sessions Giving Free Reign to Police Departments Destroying Years of Work by Obama to Reform Violent Practices,” *Alternet* (April 4, 2017), <http://www.alternet.org/news-amp-politics/jeff-sessions-war-good-policing>.

<sup>24</sup> Sheryl Gay Stolberg and Eric Lichtblau, “Sweeping Federal Review Could Affect Consent Decrees Nationwide,” *New York Times* (April 3, 2017), <https://www.nytimes.com/2017/04/03/us/justice-department-jeff-sessions-baltimore-police.html?>

<sup>25</sup> <https://www.whitehouse.gov/law-enforcement-community>.

<sup>26</sup> Mark Hensch, “Trump: ‘My responsibility is to keep’ Americans safe,” *The Hill* (Feb. 3, 2017), <http://thehill.com/homenews/administration/317890-trump-my-responsibility-is-to-keep-americans-safe>.

<sup>27</sup> Taylor Wofford, “How America’s Police Became an Army: The 1033 Program,” *Newsweek* (Aug. 13, 2014), <http://www.newsweek.com/how-americas-police-became-army-1033-program-264537>.

police departments, was limited by President Obama in a 2015 executive order, the transfer of equipment and the militarization of police departments continues.<sup>28</sup>

The militarization of civilian law enforcement over the past three decades cannot be denied. Since the 1033 Program was launched, it has grown dramatically, with some 8,000 police agencies in all 50 states and four territories participating. From 1997 through 2014, the federal government transferred \$5.1 billion worth of property to state and local police agencies.<sup>29</sup> Even with the limits put in place by President Obama, equipment transfers to police departments in 2015 totaled \$518 million and increased to \$544 million in 2016.<sup>30</sup> Military equipment sent to local police in big cities and small towns alike includes high-powered weapons, assault vehicles, drones, tactical gear, body armor, weapon scopes, infrared imaging systems and night-vision goggles.

Despite the overwhelming force already possessed by police, reports indicate an effort by some in law enforcement to secure a rescission of the meager limits President Obama imposed on the 1033 Program. Legislation has also been introduced in Congress, the Protecting Lives Using Surplus Equipment (PLUS) Act, which would overturn restrictions currently in place.<sup>31</sup> This movement to increase the military might of local police comes even though the long-term trends show that violent crime nationwide is decreasing.

#### Provision of Military-Grade Equipment Is Unnecessary and Dangerous to Communities

While local police departments often argue that military equipment is essential to a fully-functioning police force, the reality is that violent crime nationwide is near a 40-year low.<sup>32</sup> Most of this equipment is not only largely unnecessary but is completely incongruous with the security needs of smaller communities.

Moreover, whether or not the use of such sophisticated and overblown militarized equipment is actually needed for routine policing tasks, many local police departments still feel compelled to put it to use. The widespread misuse of military equipment by law enforcement is a growing and well-documented problem that has resulted in the deaths of innocent people, nonviolent offenders, and police officers. A perfect example of this is the tendency on the part of many communities to employ heavily armed SWAT teams to carry out routine police procedures such as the service of search warrants. Consequently, SWAT team raids of American homes,

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<sup>28</sup> Seth Kershner, "Trump and GOP Want to Make It Even Easier for Police to Get Military Gear," *In These Times* (March 16, 2017), <http://inthesetimes.com/article/19976/trump-GOP-police-militarization>.

<sup>29</sup> [https://en.wikipedia.org/wiki/1033\\_program](https://en.wikipedia.org/wiki/1033_program).

<sup>30</sup> Seth Kershner, "Trump and GOP Want to Make It Even Easier for Police to Get Military Gear," *In These Times* (March 16, 2017), <http://inthesetimes.com/article/19976/trump-GOP-police-militarization>.

<sup>31</sup> *Id.*

<sup>32</sup> Lori Robertson, "Dueling Claims on Crime Trend," *FactCheck.org* (July 13, 2016), <http://www.factcheck.org/2016/07/dueling-claims-on-crime-trend/>.

which once numbered a few thousand per year in the 1980s, now occur over 80,000 times per year.<sup>33</sup>

### Police Use of Military Equipment Leads to Fear and Distrust of Law Enforcement

Allowing local police to dress, act, and be armed like military units also is detrimental to the public perception that we are living in a free society, as opposed to a police state controlled by a military junta. An American police force is not supposed to be a branch of the armed forces, but is instead meant to be a peacekeeper that protects and serves the public. By contrast, military units are meant to wage war and defeat enemies, a task which is accomplished by instilling fear through aggression and by displaying overwhelming force.<sup>34</sup>

To our detriment, local police—clad in jackboots, helmets and shields and wielding batons, stun guns and assault rifles—have come to resemble occupying forces in our cities and towns. If the federal government continues to support the further militarization of civil law enforcement agencies through the 1033 Program and other transfers of military-grade equipment to those agencies, it risks devolving the nation even further toward a police state that imperils the liberty and safety of the people.

If the federal government persists in its pursuit of policies that ignore systemic problems within local law enforcement agencies at the expense of the safety and constitutional rights of the American people, we will all suffer.

I urge you and the Justice Department to align your priorities with that of the Constitution and, in so doing, not only protect the civil rights of citizens against abuse of power by state and local law enforcement but also “help police departments get better” by holding them fully accountable to the rule of law.

Yours in freedom,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

John W. Whitehead  
President

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<sup>33</sup> John Payne, “When SWAT Raids Are Routine,” *The American Conservative* (Dec. 15, 2016), <http://www.theamericanconservative.com/articles/when-swat-raids-are-routine/>.

<sup>34</sup> Abigail R. Hall, “Police to Trump: ‘Help Us Continue to Militarize’,” *The Orange County Register* (Jan.13, 2017), <http://www.ocregister.com/articles/killings-741088-abigail-wake.html>.