

RICHARD J. DURBIN, ILLINOIS, CHAIR

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
ALEX PADILLA, CALIFORNIA
JON OSSOFF, GEORGIA

CHARLES E. GRASSLEY, IOWA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
TOM COTTON, ARKANSAS
JOHN KENNEDY, LOUISIANA
THOM TILLIS, NORTH CAROLINA
MARSHA BLACKBURN, TENNESSEE

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 21, 2022

VIA ELECTRONIC TRANSMISSION

President Joseph R. Biden Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC, 20500,

Mr. President:

According to recent news reports, the White House is working with the Department of Justice on an executive order (hereinafter, “EO”) that would impose various police reforms and criminal-justice reforms on federal law enforcement, and possibly on state and local law enforcement, without Congress passing police reform or criminal justice reform legislation.¹ Specifically, according to screenshots² of a draft of such EO, the Administration would unilaterally impose the following new policies on law enforcement: restrictions to the 1033 program, expanding pattern and practice authority, planned expansion of 18 U.S.C § 242 prosecutions, and conditioning state and local law enforcement grants.

We understand the screenshots of this draft order to be authentic and we read it with the understanding that the Administration would be implementing police reform efforts Congress cannot agree on. To put it simply, this appears to be an attempt to defund the police through increased federal prosecutions, stripping them of necessary lifesaving equipment, and conditioning essential grants for local law-enforcement agencies.

First, it is a myth that the program known as “the 1033 program”³ militarizes the police. This program helps state and local police departments obtain necessary life-saving tools including safety equipment, personal protective equipment, and even communications systems. Yet the EO proposes to reduce the 1033 program by eliminating the transfer of the most basic of equipment and tools our state and local police officers need to keep us safe. The “banned” list in the 1033 program is based on knee-jerk reactions to ban equipment based on aesthetics, not on its actual

¹ Nathaniel Blake, THE FEDERALIST, “Leaked Biden Plan Would House Violent Men In Women’s Prison Cells” (Jan. 5, 2022), at <https://thefederalist.com/2022/01/05/leaked-biden-plan-would-house-violent-men-in-womens-prison-cells/>.

² THE FEDERALIST, “DOJ HHS Exec Order Dec 2021,” at <https://www.scribd.com/document/551048117/DOJ-HHS-Exec-Order-Dec-2021> (hereinafter, “EO”).

³ The “1033 program” is known as such because it derives from Section 1033 of the National Defense Authorization Act for Fiscal Year 1997.

function. The EO would eliminate the transfer of “any vehicles, including all tracked and armored vehicles...” Armored vehicles do not mean “armed” but rather a vehicle that can protect against heavy fire. Heroic police officers have proven time and time again the use of these vehicles save lives.

For example, in Arkansas, the Fort Smith SWAT team credited their armored vehicle to saving both civilians and police officers in a deadly shootout that had already killed one officer. The assailant had pinned down other officers who were unable to enter the active-shooter situation without the armored vehicle.⁴ In Wisconsin, a suspect opened fire in a neighborhood—endangering citizens throughout the area. Officers were able to use their armored vehicle to evacuate innocents from the kill zone and safely set up for negotiations. Negotiators convinced the suspects to surrender without loss of life.⁵ Given the alarming rise in violence, including homicides and carjackings, the federal government should be looking for any and all reasonable ways to help state and local law enforcement keep our communities safe rather than making their jobs harder.

The EO would also ban the transfer of stun and flashbang grenades. These items might sound dangerous and perhaps militaristic because they include the nomenclature “grenade,” but they are not. They are non-lethal life-saving tools designed to minimize otherwise-lethal encounters between police and criminal suspects. Restrictions on such non-deadly use-of-force options for officers would make no sense, and we should not force officers to only have a single use-of-force option, namely firearms, in tense hard-to-read situations. Escalating dangerous situations would increase the risk of loss of life for both officers and civilians and could increase the number of officers walking away from the job.

Such potential restrictions on the 1033 program would come at a time when law enforcement needs our support more than ever. We have spoken about the unprecedented 30-percent spike in murders that began in the summer of 2020. It continues to this day. In 2021, police officers recorded the highest number of on-duty deaths on record. According to the Fraternal Order of Police, 63 officers were murdered and 346 officers were shot.⁶ They also reported ambush-style attacks on law enforcement officers spiked 115 percent in 2021.⁷ Police officers will face a grim reality if this EO is enacted and their lifesaving equipment is restricted from them. Violent crime will continue to skyrocket when police officers are unable to stop these crimes and save innocent lives. We cannot understand why any elected official would want to stop law enforcement from safely doing their jobs other than to be able to tell their base of voters they are defunding the police.

The EO also refers to 18 U.S.C § 242, the statute pertaining to deprivation of rights under color of law, as an “obstacle” to lasting reform. It discusses “assessing the steps necessary” to enhance

⁴ Brett Rains, 40/29 News, “Police say armored vehicle helped save lives last week” (Aug. 17, 2016), <https://www.4029tv.com/article/police-say-armored-vehicle-helped-save-lives-last-week/4960124#>.

⁵ Dan Marcou, Police1, “Why cops need armored vehicles: 13 times BearCats saved lives” (Dec. 8, 2015), <https://www.police1.com/police-products/vehicles/specialty/articles/why-cops-need-armored-vehicles-13-times-bearcats-saved-lives-3T2NDd4omcl6bEMk/>.

⁶ Matthew Brown, FRATERNAL ORDER OF POLICE, “Officers Shot & Killed” (Jan. 3, 2022) *at* <https://fop.net/2022/01/fop-monthly-update-officers-shot-and-killed-6/>.

⁷ *Id.*

the Department of Justice's ability to prosecute cases of the deprivation of rights under color of law.⁸ Make no mistake, an abuse of power used in furtherance of a crime should be punished, but states are well equipped to prosecute these cases on their own and have successfully done so. Statutes already exist at the state level to hold anyone who commits a deprivation of rights under color of law accountable. Expanding Section 242 and overstepping federal authority to prosecute officers for state-level offenses may chill law enforcement and hamper the already struggling recruiting efforts departments across the country are facing.

Lastly, the EO's section on grant-making authority, after laying out requirements for federal law enforcement, states "the Attorney General and the Secretary of Homeland Security shall also use all tools at their disposal to promote adoption of the provisions of this executive order."⁹ This section is extremely concerning. It clearly lays out the groundwork for the Attorney General to strip power from the states and force them to comply with conditions on grants. Grants such as Byrne JAG and COPS are essential for police departments across the country and are used for important purposes such as hiring and recruiting and mental health. We cannot and should not burden state and local grants with conditions that are not reasonably related to the purposes of those grants, often making it impossible for departments to obtain them. The federal government should not be hamstringing them into conditions that Congress has not passed into law. The federal government should also be looking for ways to help departments who otherwise would not be able to apply for funding to have access and opportunity to these invaluable grants. Putting grant-making authority into the hands of the Attorney General and imposing arduous conditions on grant applications is the essence of defunding the police, hindering the success of our officers before they can even begin.

The examples above only begin to discuss the serious problems with the EO, which we understand also contemplates housing biologically male prisoners with female prisoners.

These hard-left policies are extremely ill-advised, dangerous to Americans, and would only further demoralize law enforcement. Along with the alarming rise in violence against officers, police departments continue to report low morale among officers that is directly related to the dangerous "defund the police" rhetoric. This is careless rhetoric that has lasting consequences to the men and women who risk their lives every day to keep our communities safe, and the EO's policies are simply an extension of that rhetoric.

We are baffled as to why this Administration would want to implement this EO, which is tantamount to defunding the police. You stated in the past as both a candidate and as President he has no intention of defunding the police. Yet this executive order threatens to move our country backwards towards crippling police budgets, skyrocketing crime, and deteriorating morale among our officers.

The EO attempts to legislate significant issues that should require debate and consensus from Congress as well as our law enforcement community. You should reconsider the troubling provisions and provide next steps if there are plans for a formal introduction.

⁸ EO at 3.

⁹ EO at 16.

Sincerely,



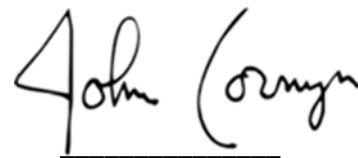
Charles E. Grassley
Ranking Member
Committee on the Judiciary



Senator Tim Scott
United States Senator



Lindsey o. Graham
United States Senator
Committee on the Judiciary



John Cornyn
United States Senator
Committee on the Judiciary



Ted Cruz
United States Senator
Committee on the Judiciary



Josh Hawley
United States Senator
Committee on the Judiciary



Marsha Blackburn
United States Senator
Committee on the Judiciary