



August 4, 2015

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch:

In follow up to the meeting held by the Law Enforcement Equipment Working Group on July 8, 2015, we write to you today on behalf of the National Sheriffs' Association (NSA), the Major County Sheriffs' Association (MCSA), and the Western States Sheriffs' Association (WSSA) to offer our comments and suggestions for the ongoing discussion on military surplus for state and local law enforcement. While we applaud the willingness of the Law Enforcement Equipment Working Group to engage stakeholders, most recently on July 8, 2015, many of our concerns have yet to be adequately addressed. The sheriffs continue to believe that, without significant revision, the Recommendations regarding Executive Order 13688 as issued will hinder the ability of many agencies to enhance the public safety.

Law enforcement agencies use federal equipment transfer and grant programs to obtain critical equipment that they otherwise would not be able to afford. The onerous nature of many of the Recommendations will limit participation by many law enforcement agencies and, ultimately, communities will suffer when their agencies are left without cost-effective ways of obtaining critical equipment. That same critical equipment will be too costly for the Federal government to store long-term, likely resulting in the forced disposal of expensive and critical equipment.

We appreciate the Working Group's recognition that the Office of Sheriff is that of an independent elected official, thus the approval requirement in the Recommendations is unnecessary. The requirement to give notification to local governing bodies is certainly more in line with the relationships of sheriffs and their local commissions. We believe, however, that this is just a first step in revising the current Recommendations to ensure that state and local law enforcement agencies continue to have access to military surplus equipment.

NSA, MCSA, and WSSA previously submitted its Comments to the Working Group with a comprehensive list of recommendations. These Comments included:

1. Reform should be data-driven, not based on perception. The Working Group should create a data development strategy using the resources that stakeholder organizations already have in place for obtaining the requisite data.
2. Transition periods need to be implemented in order to allow law enforcement agencies to perform their duties to the fullest extent while working to comply with any new training and policy requirements.
3. A process for complaints of alleged infractions with the Deputy Attorney General and the FBI Director as final arbiters needs to be in place. One member of the Permanent Working Groups should be required to have law enforcement experience. The Working Group should also fall under the Federal Advisory Committee Act or equivalent open meeting statutes.
4. The reporting requirements and the application process should be uniform across all of the different transfer and grant programs.
5. If warranted, military surplus and grant program policy changes should be considered by Congress, not via Executive Order from the Executive Branch.
6. The Working Group needs to address each of the financial issues, training questions, and definitional shortcomings prior to altering the program.

Furthermore, in the July 8th meeting, the topic of audits and related requirements was of great interest to everyone at the table. As an accountability measure, we recommend that the Federal government use existing audit practices to track the equipment through Federal transfer and grant programs. This would include annually scheduled audits of the equipment held by state and local law enforcement agencies performed by Department of Justice and/or Department of Homeland Security personnel. Failure of either Department to perform an annual audit for any reason should not, however, negatively impact a state or local law enforcement agency. Furthermore, without a substantiated violation of program requirements, state and local agencies should not be burdened with additional audits.

The Working Group also expressed its intention for the new Rules to apply to all future reporting, documentation, and training standards to any categorized controlled equipment in the inventory of the Sheriff, regardless of the source of its funding. This is not only inconsistent with local government prerogatives but a vast overreach of authority over local law enforcement entities. The Executive Branch's rulemaking authority is given to it by Congress; Congress only has the authority to make laws that are "necessary and proper" to carry out the enumerated powers.¹ Not included in the Enumeration clause is the authority to regulate State and local government property. Furthermore, the statutes authorizing federal agencies to make grants to State and local law enforcement agencies do just that: authorize grants. According to 31 USC § 6304, grant agreements are used when "substantial involvement is *not* (emphasis added) expected between" the federal agency and the State and local law enforcement agencies.² Cooperative agreements, outlined in 31 USC § 6305, are used when "substantial involvement *is* (emphasis added) expected."³ The NSA, MCSA, and WSSA believe that the Working Group's current recommendations constitute "substantial involvement" and, thus, are not allowed under the statutes governing the applicable grants. There is no other federal grant to law enforcement or

¹ U.S. CONST. art. 1 § 8.

² 31 USC § 6304(2).

³ 31 USC § 6305(2).

equipment purchase program that has such stringent and unrelated oversight requirements. To do so violates the cornerstone of local police oversight managed by local civilian and political authorities. We believe this applies a burden of oversight far in excess of the Department's prerogatives and does so at the expense of local governing principles.

Attached you will find a summary of cases where equipment from this program was used to save lives, recover property, protect innocent people and train officers and deputies. Of importance in these, and the multitude of other instances, is that there is not one report where deputies or officers violated the community's privacy, inflicted excess force or acted inappropriately. To the contrary, these reflects an overwhelming national support for continuing these programs in the vane they currently operate. To suggest communities in this country feel local law enforcement is "militarized" is an unfair and politically motivated ruse by a small minority. We urge you to evaluate the unintended consequences of these new rules, and develop a more inclusive dialog that establishes a realistic schedule to initiate any new rules. We must use valid data from today's environment to develop viable rules for tomorrow's scenarios.

In conclusion, we look forward to continuing the dialogue regarding the Recommendations of the Law Enforcement Equipment Working Group. We welcome working together and serving as a resource for the Department on military surplus equipment as well as other issues.

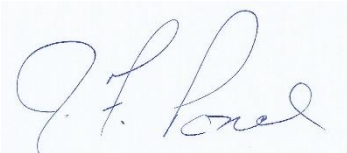
Sincerely,



Jonathan F. Thompson, Executive Director
National Sheriffs' Association



Michael J. Bouchard, Sheriff, Oakland County (MI)
Vice President – Government Affairs, Major County Sheriffs' Association



James Pond, Executive Director
Western States Sheriffs' Association