Submission to the Local Law Enforcement Equipment Working Group

by the Omega Research Foundation, Manchester, UK

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For all inquiries contact:

The Omega Research Foundation

E: info@omegaresearchfoundation.org
W: www.omegaresearchfoundation.org/contact
Submission in response to: Executive Order dated January 16, 2015
re: Federal Support for Local Law Enforcement Equipment Acquisition
by The Omega Research Foundation
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The following submission by the Omega Research Foundation responds to Executive Order (January 16, 2015) re: Federal Support for Local Law Enforcement Equipment Acquisition. We address a number of issues including: the militarisation of local law enforcement agencies (LEAs), appropriateness of equipment acquired / offered for acquisition, training requirements, and the need for independent oversight, transparency and accountability. Recommendations have been provided in each section.

The Omega Research Foundation (Omega) is a UK-based non-profit, non-governmental organisation founded in 1990 to research the use and international transfer of military, security and policing (MSP) equipment, and this equipment's impact on human rights. Over the last 25 years, we have developed unique expertise and resources to examine the manufacture of, global trade in, and use of, equipment that can be used to commit torture or other inhuman or degrading treatment or punishment, and other serious human rights violations. We have provided research support to numerous other organisations, national governments, and intergovernmental bodies, including Amnesty International, Oxfam, the UN Subcommittee for the Prevention of Torture (SPT), the UN Special Rapporteur on Torture, the European Committee for the Prevention of Torture (CPT) and a number of National Preventive Mechanisms (NPMs).

In drafting the recommendations below, Omega has also been informed by its experience working alongside international monitors on LEA use of force; monitoring and evaluating the implementation and operation of European Council Regulation 1236/2005 “concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment” (Regulation 1236/2005); and previous work with the United States’ Bureau of Industry and Security (BIS) on strengthening crime control license requirements under the EAR. For further information about our work, please visit our website at www.omegaresearchfoundation.org or contact us on info@omegaresearchfoundation.org.

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Disclaimer
The contents of this publication are the sole responsibility of the Omega Research Foundation and can in no way be taken to reflect the views of the European Commission.
1. **Policy**

1.1. *The ‘Militarisation’ of Policing*

Transfers of military and military-style equipment to law enforcement agencies (LEAs) raises a number of issues. The ‘militarisation’ of police forces through the provision of excess equipment (including through the 1033 programme) can encourage or incentivise the use of military tactics unsuitable for use by LEAs and as a result facilitate excessive use of force. This can erode public trust in organisations mandated to “protect” and “serve” local communities.

Furthermore, certain military equipment is, by its very nature, not suitable for use in law enforcement (see Section 1.2 below) and as such, prior to the continued transfer of “excess” equipment, *Omega recommends* that the Federal government mandate an independent review of what equipment is appropriate for LEAs and what equipment should only be deployed by military forces.

*Omega recommends* that Federal, State and local government should act to ensure LEAs do not become militarised. When emergencies occur additional support could be provided on a case-by-case basis by separate agencies such as the National Guard.

1.2 **Equipment-specific concerns**

   a. **Small arms and light weapons (SALW)**

   Fully automatic firearms are not suitable for use in law enforcement situations where every shot needs to be accounted for and justified under international human rights norms and standards in order to avoid excessive or arbitrary force.

   *Omega recommends* a prohibition on the transfer of fully automatic firearms of any description to LEAs.

   Semi-automatic weapons may be suitable for some limited law enforcement operations. However, their use should be strictly controlled and subject to monitoring and evaluation. They should only be issued to officers who have undertaken rigorous training and regular requalification in their operation and appropriate use.

   *Omega recommends* a prohibition on the transfer of semi-automatic to LEAs which do not have the capacity to fully train a specialised team of officers in their use.

   Large calibre weapons, such as .50 weapons, are not suitable for routine law enforcement operations. Their use should be strictly limited to the rare occasions where their use can fulfil the strict test of proportionality and necessity. They should only be issued to officers who have undertaken rigorous training and regular requalification in their operation and appropriate use.

   *Omega recommends* a prohibition on the transfer of large calibre weapons to LEAs which do not have the capacity to fully train a specialised team of officers in their use.

   b. **Ammunition**

   Certain types of ammunition used by military forces are inappropriate for use by LEAs. LEAs should not be issued with ammunition such as Full Metal Jacket (FMJ) rounds that are likely to pass at high velocity through the intended target, as these increase the chances of uninvolved bystanders being seriously injured or killed if unintentionally struck. LEAs should only be issued with ammunition which, on impact, deposits a high amount of energy (such as Hollow Point bullets) as this lowers the risk of the bullet passing through the body of the target and impacting uninvolved bystanders.
**Omega recommends** a prohibition on the transfer to LEAs of full metal jacketed ammunition, and any other high velocity ammunition inappropriate for use in law enforcement.

c. **Bayonets and combat knives**  
A bayonet is a bladed weapon (such as a knife or sword) designed to be secured on top of, underneath, or in, the muzzle of a small arm for use in one-to-one close combat. Combat knives are designed to be used by the military for hand-to-hand or close combat fighting. A number of local agencies received bayonets and/or combat knives under the 1033 programme. Designated to cause lethal injuries, such weapons have no legitimate law enforcement use.  

**Omega recommends** a prohibition on the transfer of bayonets and combat knives to LEAs.

d. **Explosive devices**  
Explosive devices such as hand grenades, phosphorous grenades and other toxic smoke grenades used in military activities have no legitimate law enforcement use.  

**Omega recommends** a prohibition on the transfer to LEAs of all explosive devices suitable only for military use.

e. **Riot control agents (RCAs)**  
RCAs (commonly known as tear gases / pepper sprays) are widely issued to police and correctional officers as a personal protection device, often in the form of handheld sprays. Whilst smaller handheld sprays and certain grenades/canisters can have a legitimate law enforcement use (when used in compliance with international human rights standards), a number of other weapons are available to military forces which have no legitimate law enforcement use.

Wide area dispersal systems i.e. those which disperse a large amount of irritant over a wide area and/or extended distance, such as foggiers and multiple munition launchers (such as the multi-tube Venom system), etc. are indiscriminate, non-targetable and potentially hazardous due to the large amount of irritant they disperse; they therefore have no legitimate law enforcement role and should not be transferred to LEAs. CR, which is reportedly six times more irritant than CS gas and 30 times more irritant than CN, is a potent skin irritant and should not be used by LEAs.

**Omega recommends** a prohibition on the transfer of wide area RCA dispersal systems and all devices containing CR to LEAs.

f. **Kinetic impact munitions**  
The Modular Crowd Control Munition (MCCM) is a “non-lethal” variant of the Claymore mine. It contains 600 32-calibre rubber balls and on detonation has an effective range of 5 to 15 metres with 60-degree coverage. It is indiscriminate and non-targetable and therefore has no legitimate law enforcement role.  

**Omega recommends** a prohibition on MCCMs being transferred to LEAs.

g. **Vehicles**  
Vehicles adapted for military use may be useful in some law enforcement situations for example armoured vehicles can prove necessary and useful in bomb threat situations. However, such vehicles are not appropriate for routine use by LEAs.
Heavily armoured and / or armed vehicles such as those with fitted automatic weapons, cupolas, turrets, or automatic weapon stations, and/or with automatic chemical irritant delivery systems have no legitimate role with LEAs.

**Omega recommends** a prohibition on the day-to-day or routine use by LEAs of any vehicle adapted for military use. **Omega further recommends** a complete prohibition on the transfer to LEAs of any armed vehicles including those with cupolas, turrets, automatic weapons stations, and/or those fitted with automatic weapons or automatic chemical irritant delivery systems.

**h. Restraints**

Body worn electric shock equipment, often referred to as stun cuffs, stun sleeves, or stun belts, are designed to deliver an electric shock to the wearer when activated by remote control. They are used to enforce compliance through the fear of pain or, if activated, to enforce compliance through pain. Their use has been internationally condemned by United Nations and European torture prevention monitors and the European Commission has imposed an import and export ban on this equipment under EC Regulation 1236/2005 which condemns the devices as having "no practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment"; thus enabling a de facto EU-wide ban on their use.

**Omega recommends** a complete prohibition on the transfer to LEAs of body worn electric shock equipment. Furthermore that the US take effective legislative, administrative, judicial or other measures to prevent the manufacture, trade, and use of body worn electric shock devices.

**i. Long range acoustic devices (LRAD)**

Long range acoustic devices produce high volume sounds at various frequencies, with limited ability to target the sound to a particular area. Whilst they can function as a loudhailer, and are often promoted as such, they can also produce a high pitched alert function, designed to cause discomfort, negatively affecting targets and causing behaviour change. There are concerns surrounding the use and transfer of this equipment. These include: a lack of systematic independent research into the medical implications of the devices; and the fact that these devices are not yet covered under current US export control regimes. As such, they are not subject to any oversight mechanism concerning international trade or indeed, Federal excess equipment transfers.

**Omega recommends** that the US include such acoustic devices on the Commerce Control List (CCL) and restrict their export for crime control reasons. The US should suspend the use and transfer of acoustic devices with an alert or other function whose medical and other effects are not fully known, pending: (a) inclusion on the CCL; (b) a rigorous and independent inquiry into their use by appropriate medical, legal, police and other experts based on international human rights standards; and (c) the development of specific guidelines for use based on the results of independent scientific study.

**1.3 Training**

Omega commends the President for recognising that training is necessary to ensure “the appropriate use of controlled equipment”, and that such training should include elements “on the protection of civil rights and civil liberties.”

**Omega recommends** that training on the use of equipment be based on the terms set out under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials ensuring that: (a) all incidences of the use of equipment are proportionate, legal, accountable and necessary; (b) provisions are made for a graduated use of force; and (c) all law enforcement officials authorised to use controlled or specialist equipment are
selected using appropriate screening procedures, are subject to adequate training and testing regimes and are required to re-qualify on a regular basis.

**Omega further recommends** that specific human rights based guidelines for use are developed for each equipment type; are independently reviewed, and based on the results of independent scientific study.

Where incidents of misuse or misapplication of equipment occurs, all LEAs must be held accountable. **Omega recommends** that all such incidents be analysed and reported and effective and dissuasive penalties for any wrongdoing enforced. Reporting and review procedures should be set up in accordance with provisions set out under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. All reports and penalties should be made publicly available.

### 2. Law Enforcement Equipment Working Group / Mission and Function

#### 2.1 Independent Oversight

The Executive Order recommends a system that appears closed to independent oversight, due to:
- (a) members of the Working Group are selected from government departments only;
- (b) review of and authorisation for LEA’s requests for or acquisition of controlled equipment is permitted by local civilian government only; and
- (c) there are no measures in place for groups external to military or law enforcement agencies to review what equipment is appropriate for use in law enforcement.

Independent oversight is essential to secure and maintain public trust and highlight shortcomings in internal policies and practice. **Omega recommends** that:

- The Working Group is supported by a group of independent legal advisors specialising in, *inter alia*, the protection of human rights and fundamental freedoms and the use of force.
- Review of, and authorisation for, transfers of controlled equipment to LEAs be preceded by public debate taking into account necessity, appropriateness, and public support.
- The Federal government mandate an independent review of what equipment is appropriate for LEAs and what equipment should only be deployed by military forces.

#### 2.2 Accountability / Transparency

Any system should be open, accountable, and transparent. A lack of transparency and accountability can result in, *inter alia*: (a) the proliferation of equipment inappropriate for use by LEAs; (b) the proliferation of equipment in types and quantities inappropriate to the size of an LEA; (c) inappropriate use of equipment acquired by LEAs; (d) weakening of public trust in LEAs; (e) unauthorised diversion of equipment.

To this end **Omega recommends** that the following information be collated and made publicly available in an easily accessible and searchable format:

- All equipment available for transfer
- All equipment transfer requests by LEAs
- All actual transfers of equipment to LEAs
- All denied transfer requests including reasons for denial
- All acquired equipment subsequently returned by LEAs including reasons for return
- All incidents of misuse or misapplication of equipment, including resulting penalties enforced

**Omega further recommends** that:
- Controls are put in place to ensure equipment acquisitioned under this system is not transferred, diverted, or exported to unauthorised actors.