

# Demilitarizing the Police and Ending “Qualified Immunity”

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*Before proposing solutions to demilitarize the police, decrease abuses by law enforcement, and increase accountability for law enforcement, it is imperative to understand how US law enforcement became an extension of the military.*

On May 25<sup>th</sup>, George Floyd was murdered by Officer Derek Chauvin. Nationwide protests quickly followed. Compared to other wealthy developed nations, the US has significantly [higher rates of killings](#) by law enforcement officers. Activists have called for a wide range of corrective measures. Two important reforms brought into the national dialog are demilitarizing the police and ending qualified immunity. Before proposing solutions to demilitarize the police, decrease abuses by law enforcement, and increase accountability for law enforcement, it is imperative to understand how US law enforcement became an extension of the military.

## A Brief History Of Police Militarization

The militarization of policing in the US can be traced back to its imperial expansion in the late 19<sup>th</sup> century and early 20<sup>th</sup> century. Julian Go published an [academic article](#) in the *American Journal of Sociology* that analyzes how police departments “borrowed tactics, techniques, and organizational templates from America’s imperial military-regime that [had been] developed to conquer and rule foreign populations.” To put it simply, policies of empire abroad shaped policing policies at home. After fighting the Spanish-American War of 1898, the US acquired Guam, Puerto Rico, and the Philippines. Around this time, the US also acquired Samoa, The Panama Canal Zone, and The Virgin Islands, while also temporarily occupying Cuba, Haiti, the Dominican Republic, and Nicaragua.

Administration of these new colonies and occupied territories was overseen by the Department of War (now dubiously named the Department of Defense). In 1901, Elihu Root, the head of the Department of War, instituted the Army Reorganization Act. In 1903, he established a General Staffs Corps with a Chief of Staff. These organizational changes centralized army administration, supply, and personal. Root also sought to professionalize the military by creating academies and schools, such as the Army War College. The US’s expanding imperial conquests also forced new innovations in military operations and tactics. One such innovation was the use of “open-order” tactics (the use of small mobile units, capable of deploying rapidly). These units were highly effective in the Philippine-American War.

In 1905, plans to militarize the US’s law enforcement became apparent. During the New

York Committee on Police Reform, former New York City Police Commissioner Ebstein stated that centralization was needed because “the police is a military body.” Other police reform advocates (proponents of militarizing the police) argued that the police were “an army of men” and that police chiefs were “the head of an army.” At a 1920 International Association of Chiefs of Police (IACP) meeting, Detroit’s Police Commissioner Inches argued that a “police captain or lieutenant should occupy exactly the same position in the public mind as that of a captain or lieutenant in the United States Army.” Advocates of police centralization directly referenced Elihu Root’s reforms. One police reform advocate argued that the police chief was “analogous to the position of Chief of Staff in the United States Army.”

In 1906, Chief Vollmer, a veteran of the Spanish-American War and the Philippine-American War, set up the first formal police training school in Berkeley. One of the required core competencies was military science. In 1912, Philadelphia’s police chief, Chief Robinson, stated that his patrolmen had been instructed in the “school of the soldier.” Robinson was referring to new manuals he had issued to patrolmen that closely resembled recently issued army manuals. Robinson bragged that his measures had “raised the efficiency of police to a point second to no city.” As these reforms spread throughout the country, police reformers applauded the “methods of training in use in West Point” being used in police schools. Police reformers also pushed for daily weapons training, where they encouraged target practice modeled after the army’s methods. Chief Vollmer also set up mobile police squads, modeled after the small mobile units that became popular during the Philippine-American War.

During this time, the federal government’s enactment of Prohibition-era policies (1920-1933) [paved the way](#) for these militaristic policing techniques to gain traction and popularity throughout the country. The sudden black market for alcohol led to a massive surge in organized crime and gang activity (a pattern that still continues to this day since Richard Nixon launched the War on Drugs in 1971). The spike in organized crime led to massive waves of violent crime and an increased number of police officers being killed. At the same time, large-scale unrest occurred in cities like Chicago. Groups of poor white people attacked emerging African-American communities after large numbers of African-Americans began migrating north in 1916. These racist attacks often escalated into riots. These race riots often pitted police officers against civilians.

During this era, Chief Vollmer’s militaristic innovations quickly spread across the country. In 1921, he was elected president of the aforementioned IACP. In 1934, Vollmer was awarded the Public Welfare Medal from the National Academy of Sciences.

Policing was further militarized in the 1960s in response to the Civil Rights movement. To respond to militant groups such as the Black Panthers, police departments began to utilize methods and tactics from the Vietnam War. Inspector Daryl Gates of the Los Angeles Police Department consulted with the US military to create police units that reflected the squads used in Vietnam. These law enforcement units became known as Special Weapons and Tactics (SWAT) teams. The first SWAT team was deployed in 1969, in Los Angeles, California, when police attempted to raid the Black Panthers’ headquarters.

Aggressive, militarized police tactics were used against violent and non-violent protesters alike. During Martin Luther King Jr’s famous march from Selma to Montgomery, the police attacked the peaceful protesters with clubs and tear gas. Violence against peaceful protesters as a form of social control and SWAT team raids against militant groups mirrored special forces operations in Vietnam. These tactics were similar to those utilized in the CIA’s [Phoenix Program](#) in Vietnam.

The 9/11 attacks added yet another layer of militarization to the US's police departments. In the immediate aftermath of 9/11, American law enforcement officers turned to Israeli security experts for advice. The Jewish Institute for National Security Affairs (JINSA) [claims to have trained](#) over 9,000 law enforcement officials in Israel through its Law Enforcement Exchange Program. JINSA is a pro-war think tank that does not reflect mainstream Jewish American opinion. [60%](#) of Jewish Americans supported the Iran Deal in 2015, and in 2018, [70%](#) of Jewish Americans disapproved of Trump's handling of the Iran Deal. JINSA is a neoconservative who's who of warmongers such as John Bolton, Dick Cheney, and Douglas Feith.

100 of 800 members of the Minneapolis Police Department were trained in Israel at a conference held in 2012. Officers were trained in anti-terror techniques. There are also allegations that US police officers were trained in [restraint techniques](#) by the Israelis. [According to Amnesty International](#), Israel's national police, military, and intelligence services trained police on "crowd control, use of force, and surveillance." The report confirmed that officers from Florida, New Jersey, Pennsylvania, California, Arizona, Connecticut, New York, Massachusetts, North Carolina, Georgia, Washington State, and the DC Capital police were trained by the Israelis. JINSA [recently deleted](#) their pages where they bragged about facilitating the training of 1,000s of American law enforcement officials by Israeli police, military, and intelligence. Amnesty International questioned the wisdom of US law enforcement training with Israeli military, police, and security forces that have carried out numerous human rights abuses including extrajudicial killings, ill treatment and torture, suppression of freedom of speech/association, and excessive use of force against police protesters.

#### Time To End Police Militarization

The militarization of the police has led to various tactics ranging from deadly chokeholds to disaster-prone no-knock raids. 2020 has had multiple high-profile cases of no-knock raids ending in tragedy.

The most prolific case being the March 13<sup>th</sup> shooting of [Breonna Taylor](#). Taylor was shot to death after officers performed a no-knock raid on her apartment. The no-knock raid frightened Taylor's boyfriend, Kenneth Walker, who shot at police after he thought the apartment was being invaded by armed robbers. The police were searching Taylor's residence in connection with an ongoing drug case. No drugs were found at the home. Walker was released from jail last month and all charges against him were [dropped](#). One day prior, on March 12<sup>th</sup>, [Duncan Lemp](#) was shot to death by police in a no-knock raid of his home. The raid was conducted at 4:30 AM. The officers claim that Lemp was not compliant with commands, but their own testimony states that he was unarmed. The family claims that Lemp was shot while asleep in his house.

Tragedy stemming from no-knock raids is not a new occurrence. One high-profile example of a no-knock raid going awry is the 2010 killing of seven-year-old [Aiyana Jones](#). She was shot in the neck after officers fired a flash-bang grenade into Jones' residence and entered her home. The gunman, Officer Weekley, claimed that Jones's grandmother grabbed for his gun. No fingerprints were found on Weekley's gun. The family's lawyer, Geoffrey Fieger, claims that Weekley fired his gun from outside of the house.

On June 6<sup>th</sup>, 2020, Senator Rand Paul introduced [S.3955](#), a bill that would prohibit no-knock

warrants (raids). Details of the bill are not available yet.

Ending no-knock raids is vital, but it is not the only solution. Legislation banning training [between military and law enforcement](#) should be enacted. In 2016, [Daniel Shaver](#) was killed by Officer Brailsford in a tense and overly confrontational SWAT team operation. Officer Brailsford issued a series of confusing and hostile orders that were difficult for the inebriated Shaver to understand. The confrontation ended with Shaver being shot dead after failing to crawl towards Brailsford in the specific manner the officer demanded of Shaver. There is no reason to have SWAT teams learning special operations forces style tactics used in hunter-killer style raids.

The use of chokeholds and other dangerous and excessive forms of restraint should also be prohibited. In 2014, [Eric Garner](#) was choked to death for the crime of selling loose cigarettes. It was later confirmed that Garner was not selling loose cigarettes that day, but he was tired of being harassed. Officer Pantaleo placed his hands on Garner, and when Garner pulled away, Pantaleo proceeded to place Garner [in a chokehold](#) and pull him to the ground. Several officers helped pin Garner down while he pleaded for Pantaleo to release his chokehold. After Garner lost consciousness, officers did nothing for seven minutes while waiting for an ambulance to arrive.

In the killing of [George Floyd](#), the case that sparked nationwide protests and riots, Floyd was killed under the weight of Officer Chauvin's knee-to-neck restraint. Officer Chauvin kept his knee on Floyd's neck for nearly nine minutes, three of which Floyd was unconscious for. In 2019, bodycam footage was released that showed the death of [Tony Timpa](#) under the weight of an officer pinning him to the ground for nearly 14 minutes. The video showed Timpa struggle to breathe as officers continued to restrain him. [Khari Illidge](#) was killed in 2013 after officers used extreme excessive force to restrain him. After officers tasered Illidge over 19 times, he was hogtied and a 385-pound officer knelt on his upper back until he went limp.

House Democrats recently introduced [H.R. 7120](#), the Justice in Policing Act of 2020. Section 363 of the bill would restrict funds to police departments if their officers use tactics that apply "pressure to the throat or windpipe, use maneuvers that restrict blood or oxygen flow to the brain, or carotid artery restraints which prevent or hinder breathing or reduce intake of air." This wording should prevent officers from performing both knee-to-neck restraint techniques as well as chokeholds. The bill's wording may also be applicable to cases such as Timpa's or Illidge's, where traditional chokeholds or neck pressure restraint techniques were not used, but their ability to intake oxygen was still stifled. Stronger wording may be necessary. Republicans are also working on a Senate bill that would [restrict chokeholds](#).

In addition to banning chokeholds and other techniques that prevent oxygen intake, a federal bill should be passed that bans US law enforcement from receiving training from the Israelis. In 2018, Durham, North Carolina became the first city [to ban](#) law enforcement from training with the Israeli military. US law enforcement officers should not be trained by a nation whose military and security forces carry out extensive abuses as documented by human rights organizations.

The aforementioned H.R. 7120 also includes a section of the bill that would scale down police militarization. [Section 365](#), the Stop Militarizing Law Enforcement Act, would amend Section 2576a of title 10 of United States Code to significantly limit the Department of Defense's ability to transfer military-grade weapons and equipment to police departments.

It would also encourage federal and state law enforcement to return some of their military equipment. This is a step in the right direction towards ending police militarization.

The pipeline from the Department of Defense (DOD) to police departments arose with the passage of Section 1208 of the National Defense Authorization Act for Fiscal Years 1990 and 1991. This allowed the DOD to transfer equipment and weapons to law enforcement. The pipeline of military weapons and equipment to law enforcement was greatly exacerbated by Section 1033 of the National Defense Authorization Act for Fiscal Year 1997, which amended Section 2576a of title 10 of the United States Code. Since 1990, “more than \$6,800,000,000 worth of weapons and equipment has been transferred to police organizations in all 50 States and four territories.” The transfer program, the 1033 Program, is run through the Law Enforcement Support Office, which is a division of the DLA Disposition Services. The DLA Disposition Services is a subordinate command of the Defense Logistics Agency, which is a part of the Department of Defense.

In August 2014, Senator Rand Paul correctly [noted](#) that the program “incentivized the militarization of local police precincts by using federal dollars to help municipal governments build what are essentially small armies.” [Studies have shown](#) that police militarization neither increases police safety nor reduces crime. Studies have [shown a correlation](#) between police departments that receive larger amounts of military weapons and equipment and increased rates of officer-involved shootings. There is also evidence that [public trust](#) of law enforcement decreases as police militarization increases. The 1033 Program should not just be amended or reformed, it should be abolished.

Ending the militarization of police departments should be coupled with increased investment in communities most heavily afflicted by poverty and mass incarceration. Senator Sanders is currently [crafting an amendment](#) to the National Defense Authorization Act of 2021 that would cut the defense budget by 10% and “reinvest that money in cities and towns that [have been] abandoned for far too long.” The amendment would cut \$74 billion from the \$740.5 billion military budget and redirect that money towards healthcare, education, and housing in communities “ravaged by poverty and mass incarceration.” [Surveys](#) found that Americans [support](#) defense cuts. Slashing Pentagon budgets to pay for infrastructure and social services is even [popular with Trump voters](#).

### The Case For Ending Qualified Immunity

Qualified immunity is a federal law that “is designed to allow government officials [to avoid the expense and disruption of going to trial](#).” The standard set by the Supreme Court “was specifically designed to avoid excessive disruption to government and to permit the resolution of many insubstantial claims on summary judgement.” Qualified immunity for law enforcement officials was [first established](#) by the Supreme Court in the 1967 case of *Pierson v. Ray*. The Supreme Court’s decision “justified qualified immunity as a means of protecting government defendants from financial burdens when acting in good faith in legally murky areas.” A [special report](#) by *Reuters* found that qualified immunity effectively acts as a shield that makes it difficult to hold police accountable when they are accused of using excessive force.

*Reuters* analyzed data from the three levels of federal courts: district, appellate, and the Supreme Court. [Reporters analyzed](#) “529 federal circuit court opinions published from 2005 through 2019 on appeals of cases in which cops accused of excessive force raised a qualified immunity defense.” *Reuters* also identified 121 petitions to the Supreme Court



involving cases that mentioned qualified immunity. 65 of these petitions were submitted by police and 56 of these cases were submitted by civilians. Petitions by officers asked the courts to grant them qualified immunity, while cases submitted by civilians sought to strip officers of qualified immunity. *Reuters's* analysis revealed that police officers were 3.5 times more likely than a civilian to have their case accepted. To summarize, the data “showed the appellate courts’ growing tendency, influenced by guidance from the Supreme Court, to grant police immunity.”

Cases where law enforcement were granted qualified immunity by appellate courts included a traffic stop that left a man brain-damaged after an officer [threw him](#) to the ground, and an incident where five officers fired 17 shots and killed a bicyclist that was 100 yards away, in a case of mistaken identity.

In another case, an officer was granted qualified immunity after slamming an unarmed man, James Browning, to the floor in his own home after he yelled at police. The judge found that the cop’s use of force was excessive, but had to rule in the officer’s favor “because of subtle differences with the earlier case Browning had considered as a possible ‘clearly established’ precedent.” The differences in the cases included what the suspect was yelling at police and the distance between the man and the officer. The judge also noted that the locations the incidents occurred in could be a factor (Target parking lot vs. a home). Difficulty establishing precedent for police misconduct is a reoccurring problem for plaintiffs that wish to get past the qualified immunity hurdle. Other examples of courts granting officers qualified immunity based on lack of clearly established precedent include differences between an officer unleashing a police dog on a motionless suspect, and an officer unleashing a police dog on a compliant suspect; and between shooting at a dog and hitting a child, and shooting at a truck and hitting a passenger.

To be clear, qualified immunity is only for civil cases not criminal cases. While criminal cases are prosecuted by the state, civil cases are brought by an individual or individuals (the plaintiff/plaintiffs). The plaintiff accuses another person or entity, the defendant, of failing to carry out a legal duty owed to the plaintiff. In civil cases about police brutality and wrongful killings, the plaintiff’s goal is usually to receive compensation for the harm that the defendant caused. Ending qualified immunity is not going to fix systemic problems with holding police accountable in criminal cases. There are multiple proposed solutions for improving criminal investigations and prosecutions of police killings: mandatory independent investigations of all police killings, establishing a permanent Special Prosecutor’s Office at the state level for cases of police violence, and using federal funds to finance independent investigations and prosecutions.

Although ending qualified immunity would not affect criminal cases, it could significantly lower cases of killings and brutality by law enforcement. There is an important caveat though. Compensation to victims must come out of the police department’s budget. If the [burden is offloaded](#) on the taxpayers, in the form of the cities’ self-insurance funds that are financed via property taxes and other fees, then there will be no financial incentive for police departments to change their tactics and interactions with the public. If law enforcement officials stop receiving special treatment, and if the settlements come out of the police departments’ budgets, then systemic change is bound to occur.

There is no reason to maintain a two-tiered civil justice system. This kind of favoritism breeds anti-law enforcement sentiment and creates a policing culture that lacks accountability. This justifiably stirs up civil unrest. Representative Justin Amash recently

introduced [H.R. 7085](#). The bill would end qualified immunity in the United States. The bill currently has 59 cosponsors.

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