



Homeland Security

July 24, 2024

Policy Statement # 045-06, *Revision 01*

MEMORANDUM FOR AGENCY AND OFFICE HEADS

FROM: Alejandro N. Mayorkas
Secretary

A handwritten signature in blue ink, reading "AN Mayorkas", written over the printed name and title.

SUBJECT: **DHS Policy Related to Compliance with the Lautenberg Amendment to the Gun Control Act of 1968 and Allegations of Unlawful or Unjustified Violence by DHS Employees with Access to Firearms****PURPOSE**

Pursuant to the Secretary's authority under Title 6, United States Code (U.S.C.) § 112, this policy articulates Department-wide standards and guidelines related to implementation of Title 18 U.S.C. § 922(g)(9), the "Lautenberg Amendment." All DHS Agencies and Offices that employ individuals who, in the course of their official duties for the Department, are in a position to ship, transport, possess, and/or receive firearms or ammunition (hereafter "Agencies") are directed to implement this guidance through Agency-specific policy, procedure, and training.

This Memorandum supersedes the Memorandum from Acting Deputy Secretary Russell C. Deyo, *Required Reporting of Off-Duty Contact with Law Enforcement Personnel and the Suspension and/or Revocation of Authority to Carry a Firearm or other Weapon and Perform Law Enforcement Duties* (January 10, 2017).¹

POLICY

This policy requires that Agencies shall, at a minimum:

- I. *Ensure that Notification Requirements for DHS Employees with Access to Firearms Include All Reportable Contact with any Law Enforcement Officer/Agency or Judicial Personnel*

To ensure employee behavior is consistent with the Department's mission, responsibilities, and values, the Department requires all employees with "access to firearms" to report to their supervisor all "reportable contact" with a law enforcement officer/agency, as these terms are

¹ This policy applies to firearms and ammunition that a DHS employee may access as part of the employee's duties with the Department, including personal firearms approved for duty use. Individuals who are convicted in any court of a misdemeanor crime of domestic violence who ship, transport, possess, or receive any firearm or ammunition in their personal capacity may be in violation of federal criminal law.

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defined in Appendix A.

DHS employees with access to firearms must report all reportable contact to their supervisor immediately (as defined by their Agency) or within 48 hours, whichever is shorter.

II. Require Quarterly Advisement to DHS Employees with Access to Firearms of their Duties Regarding Notification of Reportable Contact with any Law Enforcement Officer/Agency and/or Judicial Personnel, the Lautenberg Amendment Prohibitions on the Carriage of Firearms, and Certification Requirements

As part of the Department's strong stance against crimes of domestic violence, DHS requires that all employees with access to firearms receive a quarterly verbal advisement of their duty to notify management of all reportable contact with a law enforcement officer/agency, or the judiciary, to include any action prior to a conviction for misdemeanor crimes of domestic violence or issuance of Court Orders (as defined in Appendix A), as well as notification of the Lautenberg Amendment's prohibitions related to firearms. DHS also requires all employees with access to firearms to complete, on an annual basis, Lautenberg Amendment certifications confirming no conviction of a misdemeanor crime of domestic violence, as defined in Appendix A.

III. Require that Notification of Lautenberg Amendment Convictions Result in the Immediate Suspension and Subsequent Revocation of Authority to Access Firearms or Perform Law Enforcement Duties

The Lautenberg Amendment states that anyone convicted of a misdemeanor crime of domestic violence may not possess a firearm or ammunition. DHS employees convicted of such crimes, including pleas of no contest or sentences of probation before judgment, are not authorized to access firearms or perform law enforcement functions. When an Agency is initially notified of a potentially qualifying conviction, it is required to suspend the employee's authority to access weapons and, if applicable, to perform law enforcement duties within 24 hours of such notification. Once the Agency is able to confirm the existence of a qualifying conviction, in consultation with the Agency's legal counsel, the authority to access weapons and, if applicable, to perform law enforcement duties must be revoked. Subsequently, Agencies will pursue reassignment from a law enforcement position (if applicable), an adverse action for failure to meet a condition of employment, or an adverse action based on the underlying misconduct.

IV. Mandate Suspension of Authority to Access Firearms or other Weapons and to Perform Law Enforcement Duties Following Reportable Contact Involving Allegations of Domestic Violence or Otherwise Unlawful or Unjustified Violence by a DHS Employee

Agencies shall immediately suspend an employee's authority to access government-issued or otherwise authorized weapon(s) and, if applicable, to perform law enforcement duties upon notification of (1) the employee's contact with a law enforcement officer/agency where the allegation contains a component of unlawful or unjustified violence by the employee; or (2) the

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issuance of a Court Order against the employee related to an allegation of domestic violence or based on some other form of alleged violent behavior or the employee's ability to possess a firearm.

Agencies shall provide verbal notice to the employee at the time of suspension, with formal written documentation of the suspension of these authorities within five (5) business days after the date of verbal notification. Agencies are encouraged to include the following elements in written documentation: (1) the reason(s) for the suspension; (2) a description of the nexus between his/her conduct (performance or condition) and the threat to the safety of the employee or others (if applicable); (3) any limitations on the performance of duties; and (4) the duration (or anticipated duration) of the suspension. This policy coincides with Agency obligations to report all allegations of criminal misconduct and all allegations of serious, noncriminal conduct in accordance with DHS Management Directive 0810.1.²

- For all circumstances requiring the formal reporting of misconduct in accordance with DHS Management Directive 0810.1, further assessments pertaining to the suspension of an employee's authority to access government-issued or otherwise authorized weapon(s) and, if applicable, to perform law enforcement duties, will be coordinated with the appropriate DHS internal investigative entity (Office of Inspector General and/or the Agency's Office of Professional Responsibility, or equivalent).
- For all circumstances that do not require the formal reporting of misconduct in accordance with DHS Management Directive 0810.1, Agencies will develop procedures to determine if continued suspension of an employee's authority to access government-issued or otherwise authorized weapon(s) and, if applicable, to perform law enforcement duties, is warranted. This will include an assessment of the facts and circumstances conducted by leadership (not less than a second line supervisor) to determine whether continued suspension is warranted. In conducting such assessments, Agency managers will consider both the law enforcement contact, action, or order issued and the conduct of the employee involved. Even if a state or local court or law enforcement agency declines to take action, a review by managers may reveal that the employee's conduct is inconsistent with the continued authority to access a firearm or other weapon(s) or perform federal law enforcement duties.

In all situations where an Agency suspends or revokes an employee's authority to access a firearm, DHS requires that Agencies immediately take custody of any government-issued firearms or other weapons and, where applicable, rescind, in writing, any previous authorizations to utilize a personally owned firearm in the performance of the employee's duties.

V. Require that DHS Employees with Access to Firearms Promptly Report the Issuance of Protective Orders, Temporary Restraining Orders, or any Other Court Order Restricting

² DHS Management Directive 0810.1, *The Office of the Inspector General*, June 10, 2004.

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the Employee's Contact with Another Individual or Ability to Possess a Firearm

Consistent with DHS's law enforcement mission, the Department requires all employees with access to firearms to report to their supervisor any Court Orders restricting their contact with another individual or their ability to possess a firearm. Notification is required to be made within 48 hours of the employee becoming aware of the Court Order restricting the employee's contact with another individual or ability to possess a firearm. Upon notification of the issuance of a Court Order, Agencies must implement a process by which supervisors make an initial determination of the appropriate course of action, in consultation with its leadership, counsel, the Agency's Office of Professional Responsibility (or equivalent), and Office of Employee and Labor Relations (or equivalent) as appropriate.

VI. Take Prompt Remedial Action for Failure to Report Law Enforcement and Judicial Contact

In accordance with this directive, upon being made aware of a reportable contact that was not reported by a DHS employee with access to firearms, as required by this policy, Agencies will review the situation, the factors underlying the failure to report, and take appropriate actions based on the information received, including discipline for misconduct as appropriate and in a manner consistent with laws and regulations. Agency policies will include penalties for a failure to report reportable contact.

VII. Mandate Annual Reporting of All Suspensions, Revocations, or Reinstatements of DHS Employees' Authority to Access Firearms and/or Perform Law Enforcement Duties

To promote greater transparency and accountability, DHS mandates that Agencies track and report to the Deputy Assistant Secretary for Law Enforcement Policy the number of their employees who have had their authority to access firearms, or law enforcement authorities as applicable, suspended or revoked following reportable contact with a law enforcement officer/agency or the issuance of a Court Order, and those who have subsequently had their authorities reinstated following internal agency review and assessment.

VIII. Require Annual Training for all Department Supervisors of Law Enforcement Officers on Federal Law, Regulations, and Department Policy Regarding the Suspension or Revocation of an Officer's Law Enforcement Authorities

As part of the Department's effort to establish sound policy and consistent practice regarding the suspension or revocation of a law enforcement officer's authorities, annual training will be provided to these employees' supervisors regarding the decision-making process associated with this policy.

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IX. Require Annual Domestic Violence Awareness Training for all Department Employees with Access to Firearms

As part of the Department's strong stand against crimes of domestic violence, annual training will be provided to all Department employees with access to firearms regarding these crimes to reinforce Department values and assist in preventing domestic violence.

CONCLUSION

Within 60 days of the issuance of this policy, Agencies shall conduct a review of their compliance with this policy and its provisions. Each Agency shall also consult with its privacy office to ensure the collection of the information in section VIII is done in accordance with federal law and DHS policy and ensure that responsibilities under labor relations statutes and union agreements are fulfilled, as applicable.

All questions regarding the scope and implementation of this policy should be directed to the Deputy Assistant Secretary for Law Enforcement Policy, Office of Strategy, Policy, and Plans.

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APPENDIX A

For the purposes of this policy, the following terms have the definitions set forth below:

Convicted of a Misdemeanor Crime of Domestic Violence: A DHS employee who has been found guilty under federal, state, or tribal law of a crime defined by 18 U.S.C. § 921(a)(33). Convictions include no contest pleas and sentences of probation.

Court Order: Protective orders, temporary restraining orders, or any other court order as described in 18 U.S.C. § 922(g)(8).³

Government-Authorized Personally Owned Weapon: A firearm or other weapon that is not government-owned but is authorized by the government for use by a law enforcement officer in performance of their official duties.⁴

Government-Owned Weapon: A firearm or other weapon owned by the government and assigned to or being stored or handled by a DHS employee for use in performance of their official duties.

Agency: For the purposes of this policy, the term “Agency” refers to the Department’s Agencies and Offices that employ individuals who, in the course of their official duties for the Department, are in a position to ship, transport, possess, and/or receive firearms or ammunition.

³ a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

⁴ Nothing in this policy shall be construed as interfering with the right of employees to carry privately owned firearms for personal use as private citizens. Employees are expected to comply with all applicable federal, state, and local laws when exercising this right.

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DHS Law Enforcement Officer: A position occupied by a DHS employee authorized by statute to enforce the laws of the United States, carry firearms, and make criminal arrests in the performance of their assigned duties.

DHS Employee with Access to Firearms: For the purpose of this policy, an employee with access to firearms is any DHS employee whose employment with the Department puts them in a position to ship, transport, possess, and/or receive firearms or ammunition, whether or not they have law enforcement duties or authorities. These employees may include, but are not limited to, DHS law enforcement officers, trainers/instructors, armorers, those participating in ceremonial carriage, those with access to firearms or ammunition collected as evidence, etc.

Lautenberg Amendment: Specifically refers to 18 U.S.C. § 922(g)(9), which prohibits anyone who has been convicted in any court of a misdemeanor crime of domestic violence from shipping, transporting, possessing, or receiving any firearm or ammunition.

Reportable Contact: All instances where a DHS employee with Access to Firearms, whether acting in an official capacity (i.e., “on-duty”) or not, is questioned, interviewed, detained, or arrested as a subject of an enforcement action or investigation by a DHS or external law enforcement agency to determine if the DHS employee was a party to an alleged violation of law. Reportable contact includes contact with a law enforcement officer/agency or the judiciary, convictions for misdemeanor crimes of domestic violence, and the issuance of any protective order, temporary restraining order, or other court order restricting a DHS employee’s contact with another individual. Reportable contact excludes instances when a DHS employee is contacted for civil violations or traffic violations where there was no allegation of violence, threat of violence, or where the civil or traffic violation did not include the possession or use of alcohol or drugs.

Suspend Law Enforcement Authorities: An affirmative management action, in writing and pursuant to any procedures which have been or may be established, which temporarily removes a law enforcement officer's authority to perform law enforcement duties and carry a government-issued firearm or other weapon, as well as the authority granted through their law enforcement position to carry a personally-owned or off-duty weapon as a result of alleged misconduct (including self-reported misconduct) or disciplinary action. The action results in the law enforcement officer’s surrender of all DHS-issued firearms or other weapons, badges, and credentials, and temporary removal of the authorization to perform law enforcement duties and carry a firearm in the performance of the officer’s official duties, to include the authorization of home-to-work privileges.

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Revoke Law Enforcement Authorities: An affirmative management action, in writing and pursuant to any procedures which have been or may be established, which permanently terminates a law enforcement officer's authority to perform law enforcement duties and carry a government-issued firearm or other weapon, as well as any authority previously granted through their law enforcement position to carry a personally-owned firearm while on duty. This action results in the law enforcement officer's surrender of all DHS-issued firearms or other weapons, badges, and credentials, and termination of the authorization to carry a firearm in the performance of the officer's official duties, to include the authorization of home-to-work privileges. In accordance with law, regulation, and policy, a permanent revocation of firearm credentials may be grounds for reduction in grade, reassignment, or removal.