



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

*Office of Enforcement
Programs and Services*

www.atf.gov

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Police Executive Research Forum
1120 Connecticut Ave. NW, Suite 930
Washington, DC 20036

Dear Chief Adrian Diaz:

This letter is in response to your inquiry to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on behalf of the Police Executive Research Forum. You inquired whether law enforcement officers granted Deferred Action for Childhood Arrivals (DACA) by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), may lawfully possess firearms in performance of their official duties with a government law enforcement agency.

Pursuant to the Gun Control Act (GCA), it is unlawful for any person who is an alien illegally or unlawfully in the United States to possess in or affecting commerce any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. 18 U.S.C. § 922(g)(5)(A). The federal DACA process does not provide lawful status to an alien, therefore, individuals granted DACA generally are prohibited from receiving or possessing firearms or ammunition under § 922(g)(5)(A).

Limited exceptions apply to firearms disabilities contained in 18 U.S.C. § 922(g), including an exception for firearms and ammunition issued for the use of any federal, state, or local department or agency. *See* 18 U.S.C. § 925(a)(1). With regard to the lawfulness of DACA recipients possessing firearms and ammunition under the GCA, it is ATF's position that DACA recipients can possess duty firearms and ammunition as part of their official law enforcement officer duties. Specifically:

- DACA recipients who are certified law enforcement officers may, in compliance with federal law, possess firearms and ammunition issued to them by their employing government agency/department for official use in performing their official duties. DACA recipients may also possess firearms and ammunition seized as evidence or for forfeiture if the possession is in connection with their official duties.

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- If the firearms policy of a government law enforcement agency/department requires its law enforcement officers to possess a firearm (and ammunition for that firearm) at all times, DACA recipients employed as law enforcement officers may possess firearms and ammunition issued to them by their employing agency/department whether on or off duty.
- If the firearms policy of a government law enforcement agency/department does not contain a requirement to possess a duty firearm or ammunition at all times, DACA recipients employed as law enforcement officers may only possess and carry agency/department-issued firearms and ammunition while on duty and must relinquish possession at the end of each duty period/shift.
- A DACA recipient employed as a law enforcement officer must comply with all provisions of the firearms policy of their law enforcement agency/department while possessing officially issued firearms and ammunition. Possession of firearms or ammunition in any manner inconsistent with the officer's official duties fall outside the scope of official use, and therefore violate federal law.
- DACA recipients accepted into and currently enrolled in a law enforcement academy operated by a government entity may possess firearms and ammunition issued by the government agency/department for purposes of such training. Possession of firearms and ammunition outside of the academy, the official training period/shift, or in any manner inconsistent with official training purposes, violates federal law.
- Law enforcement officer status alone (e.g., a peace officer certification) does not qualify a DACA recipient for the exemption discussed above. Rather, the exception applies only to a law enforcement officer employed by a government agency/department possessing the firearms or ammunition for official duties with that employing agency/department. *See* 18 U.S.C. §925(a)(1).

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- The law enforcement exception does not apply to security officers employed by private entities.

We hope this information proves helpful in responding to your department's inquiry. Please let me know if we can be of further assistance.

Sincerely yours,

Matthew P. Varisco
Assistant Director
Office of Enforcement Programs and Services