

AMENDMENT NO. _____ Calendar No. _____

Purpose: To authorize the Attorney General to deny the transfer of firearms to known or suspected terrorists.

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

H. R. 2578

Making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2016, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. COLLINS (for herself, Ms. HEITKAMP, Ms. AYOTTE, Mr. HEINRICH, Mr. FLAKE, Mr. Kaine, Mr. GRAHAM, and Mr. KING) to the amendment (No. 4685) proposed by Mr. SHELBY

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . DISCRETIONARY AUTHORITY TO DENY TRANS-**

3 **FERS OF FIREARMS OR EXPLOSIVES TO TER-**

4 **RORISTS.**

5 (a) AUTHORITY.—

6 (1) IN GENERAL.—On and after the date of en-

7 actment of this Act, in accordance with the proce-

8 dures under this section, and without regard to sec-

9 tion 842, 843, section 922(g) or (n), or section 923

1 of title 18, United States Code, the Attorney Gen-
2 eral may deny the transfer of a firearm, not later
3 than 3 business days after a licensee under chapter
4 44 of title 18, United States Code, contacts the na-
5 tional instant criminal background check system es-
6 tablished under section 103 of Public Law 103–159
7 (18 U.S.C. 922 note), deny the transfer of an explo-
8 sive, or deny the issuance of a Federal firearms or
9 explosives license or permit, if either of the following
10 are met:

11 (A) NO FLY LIST.—The Attorney General
12 determines that transferee or applicant—

13 (i) based on the totality of the cir-
14 cumstances, represents a threat to public
15 safety based on a reasonable suspicion that
16 the transferee or applicant is engaged, or
17 has been engaged, in conduct constituting,
18 in preparation of, in aid of, or related to
19 terrorism, or providing material support or
20 resources therefor; and

21 (ii) based on credible information,
22 poses—

23 (I) a threat of committing an act
24 of international terrorism or domestic
25 terrorism with respect to an aircraft

1 (including a threat of piracy, or a
2 threat to airline, passenger, or civil
3 aviation security);

4 (II) a threat of committing an
5 act of domestic terrorism with respect
6 to the homeland;

7 (III) a threat of committing an
8 act of international terrorism against
9 any United States Government facility
10 abroad and associated or supporting
11 personnel, including United States
12 embassies, consulates and missions,
13 military installations, United States
14 ships, United States aircraft, or other
15 auxiliary craft owned or leased by the
16 United States Government; or

17 (IV) a threat of engaging in or
18 conducting a violent act of terrorism
19 and who is operationally capable of
20 doing so.

21 (B) SELECTEE LIST.—The Attorney Gen-
22 eral determines that transferee or applicant
23 meets the standard for inclusion on the Selectee
24 List, which is the subset list of the Terrorist
25 Screening Database, maintained by the Ter-

1 rorist Screening Center of the Federal Bureau
2 of Investigation, of individuals who are selected
3 for enhanced security screening when attempt-
4 ing to board a United States commercial air-
5 craft or fly into, out of, or over United States
6 airspace, based on the standard to be on such
7 Selectee List on June 16, 2016.

8 (2) NICS.—Solely for purposes of sections
9 922(t) (1), (2), (5), and (6) of title 18, United
10 States Code, and section 103(g) of Public Law 103–
11 159 (18 U.S.C. 922 note), a denial by the Attorney
12 General under paragraph (1) shall be treated as
13 equivalent to a determination that receipt of a fire-
14 arm would violate subsection (g) or (n) of section
15 922 of title 18, United States Code. During the 3-
16 business-day period beginning when a licensee under
17 chapter 44 of title 18, United States Code, contacts
18 the national instant criminal background check sys-
19 tem established under section 103 of Public Law
20 103–159 (18 U.S.C. 922 note), and notwithstanding
21 section 922(t)(2) of title 18, United States Code, the
22 Attorney General may delay assigning a unique iden-
23 tification number to a transfer of a firearm in order
24 to determine whether the transferee or applicant
25 meets the requirements under paragraph (1).

1 (b) NOTIFICATION OF PROSPECTIVE FIREARM
2 TRANSFERS TO KNOWN OR SUSPECTED TERRORIST.—

3 The Attorney General and Federal, State, and local law
4 enforcement shall be immediately notified, as appropriate,
5 of any request to transfer a firearm or explosive to a per-
6 son who is, or with in the previous 5 years was, identified
7 in the Terrorist Screening Database maintained by the
8 Terrorist Screening Center of the Federal Bureau of In-
9 vestigation.

10 (c) PETITION FOR REVIEW.—

11 (1) IN GENERAL.—An individual who is a cit-
12 izen or lawful permanent resident of the United
13 States who seeks to challenge a denial by the Attor-
14 ney General under subsection (a)(1) may file a peti-
15 tion for review and any claims related to that peti-
16 tion in the United States Court of Appeals for the
17 District of Columbia Circuit or in the court of ap-
18 peals of the United States for the judicial circuit in
19 which the individual resides.

20 (2) DEADLINES FOR FILING.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (B), a petition for review under
23 paragraph (1), and any claims related to that
24 petition, shall be filed not later than 60 days

1 after the petitioner receives actual notice of the
2 denial by the Attorney General.

3 (B) EXCEPTION.—The court of appeals in
4 which a petition for review is to be filed under
5 paragraph (1) may allow the petition to be filed
6 after the deadline specified in subparagraph (A)
7 only if there are reasonable grounds for not fil-
8 ing by that deadline.

9 (3) AUTHORITY OF COURTS OF APPEALS.—The
10 court of appeals in which a petition for review is
11 filed under paragraph (1)—

12 (A) shall have—

13 (i) jurisdiction to decide all relevant
14 questions of law and fact; and

15 (ii) exclusive jurisdiction to affirm,
16 amend, modify, or set aside any part of the
17 denial of the Attorney General that is the
18 subject of the petition for review; and

19 (B) may order the Attorney General to
20 conduct further proceedings.

21 (4) EXCLUSIVE JURISDICTION.—

22 (A) IN GENERAL.—No district court of the
23 United States shall have jurisdiction to consider
24 any claim related to or arising out of facts and
25 circumstances that could have been included in

1 a petition filed under paragraph (1), including
2 any constitutional claim.

3 (B) LAWFULNESS AND CONSTITU-
4 TIONALITY.—No district court of the United
5 States or court of appeals of the United States
6 shall have jurisdiction to consider the lawfulness
7 or constitutionality of this section except
8 pursuant to a petition for review under section.

9 (C) NONCITIZENS.—No district court of
10 the United States or court of appeals of the
11 United States shall have jurisdiction to hear
12 any claim by an individual who is not a citizen
13 or lawful permanent resident of the United
14 States related to or arising out a denial by the
15 Attorney General under subsection (a)(1).

16 (d) REQUIREMENT FOR AN ADMINISTRATIVE
17 RECORD AND PROCEDURES FOR JUDICIAL REVIEW.—
18 Notwithstanding any other provision of law, the following
19 procedures shall apply with respect to a petition for review
20 filed in a court of appeals under subsection (c):

21 (1) The United States shall file with the court
22 an administrative record, which shall consist of—

23 (A) the information the Attorney General
24 relied upon in denying the transfer or applica-
25 tion;

1 (B) any information the petitioner has sub-
2 mitted pursuant to any administrative process;

3 (C) any information determined relevant
4 by the United States; and

5 (D) any information that is exculpatory.

6 (2)(A) The petitioner may file with the court
7 any information determined relevant by the peti-
8 tioner.

9 (B) With leave of the court, the United States
10 may supplement the administrative record with addi-
11 tional information.

12 (3) All information in the administrative record
13 that is not classified and is not otherwise privileged
14 or subject to statutory protections shall be provided
15 to the petitioner.

16 (4) No discovery shall be permitted, unless the
17 court shall determine extraordinary circumstances
18 requires discovery in the interests of justice.

19 (5) Sensitive security information contained in
20 the administrative record may only be provided pur-
21 suant to a protective order.

22 (6)(A) The administrative record may include
23 classified information, which the United States shall
24 submit to the court in camera and ex parte.

1 (B) The United States shall notify the peti-
2 tioner if the administrative record filed under para-
3 graph (1) contains classified information.

4 (C) The court may enter an order, after notice
5 and a hearing, allowing disclosure to the petitioner,
6 counsel for the petitioner, or both, of—

7 (i) an unclassified summary of some or all
8 classified information in the administrative
9 record;

10 (ii) a statement admitting relevant facts
11 that some or all classified information in the
12 administrative record would tend to prove;

13 (iii) some or all classified information, if
14 counsel for the petitioner possess the appro-
15 priate security clearance; or

16 (iv) any combination thereof.

17 (D)(i) If the court enters an order under sub-
18 paragraph (C) providing for the disclosure of classi-
19 fied information and the United States files with the
20 court an affidavit of the Attorney General objecting
21 to the disclosure, the court shall order that the clas-
22 sified information not be disclosed.

23 (ii) If classified information is not disclosed
24 under clause (i), the court shall enter such an order
25 as the interests of justice require, which may include

1 an order quashing the denial by the Attorney Gen-
2 eral under subsection (a)(1).

3 (iii) An order under subparagraph (C) or clause
4 (ii) of this subparagraph shall be subject to review
5 pursuant to section 1254 of title 28, United States
6 Code.

7 (iv) An order under clause (ii) shall be adminis-
8 tratively stayed for 7 days.

9 (v) The functions and duties of the Attorney
10 General under this subparagraph—

11 (I) may be exercised by the Deputy Attor-
12 ney General, the Associate Attorney General, or
13 by an Assistant Attorney General designated by
14 the Attorney General for such purpose; and

15 (II) may not be delegated to any other offi-
16 cial.

17 (E) Any information disclosed under subpara-
18 graph (C) shall be subject to an appropriate protec-
19 tive order.

20 (7) Any classified information, sensitive security
21 information, law enforcement sensitive information,
22 or information that is otherwise privileged or subject
23 to statutory protections, that is part of the adminis-
24 trative record, or cited by the court or the parties,
25 shall be treated by the court and the parties con-

1 sistent with the provisions of this subsection, and
2 shall be sealed and preserved in the records of the
3 court to be made available in the event of further
4 proceedings. In no event shall such information be
5 released as part of the public record.

6 (8) The court shall award reasonable attorney
7 fees to a petitioner who is a prevailing party in an
8 action under this section.

9 (9) After the expiration of the time to seek fur-
10 ther review, or the conclusion of further proceedings,
11 the court shall return the administrative record, in-
12 cluding any and all copies, to the United States. All
13 privileged information or other information in the
14 possession of counsel for the petitioner that was pro-
15 vided by the United States under a protective order
16 shall be returned to the United States, or the coun-
17 sel for the petitioner shall certify its destruction, in-
18 cluding any and all copies.

19 (e) SCOPE OF REVIEW.—The court of appeals shall
20 quash any denial by the Attorney General under sub-
21 section (a)(1), unless the United States demonstrates, on
22 a de novo review of fact and law—

23 (1) that—

24 (A) based on the totality of the cir-
25 cumstances, the transferee or applicant rep-

1 resents a threat to public safety based on a rea-
2 sonable suspicion that the transferee or appli-
3 cant is engaged, or has been engaged, in con-
4 duct constituting, in preparation of, in aid of,
5 or related to terrorism, or providing material
6 support or resources therefor; and

7 (B) based on credible information, the
8 transferee or applicant poses—

9 (i) a threat of committing an act of
10 international terrorism or domestic ter-
11 rorism with respect to an aircraft (includ-
12 ing a threat of piracy, or a threat to air-
13 line, passenger, or civil aviation security);

14 (ii) a threat of committing an act of
15 domestic terrorism with respect to the
16 homeland;

17 (iii) a threat of committing an act of
18 international terrorism against any United
19 States Government facility abroad and as-
20 sociated or supporting personnel, including
21 United States embassies, consulates and
22 missions, military installations, United
23 States ships, United States aircraft, or
24 other auxiliary craft owned or leased by
25 the United States Government; or

1 (iv) a threat of engaging in or con-
2 ducting a violent act of terrorism and who
3 is operationally capable of doing so; or

4 (2) that the standard has been met for includ-
5 ing the transferee or applicant on the Selectee List,
6 which is the subset list of the Terrorist Screening
7 Database, maintained by the Terrorist Screening
8 Center of the Federal Bureau of Investigation, of in-
9 dividuals who are selected for enhanced security
10 screening when attempting to board a United States
11 commercial aircraft or fly into, out of, or over
12 United States airspace, based on the standard to be
13 on such Selectee List on June 16, 2016.

14 (f) EFFECT OF QUASHING.—If the court of appeals
15 quashes a denial by the Attorney General under subsection
16 (e), notwithstanding any other provision of law, the Attor-
17 ney General shall—

18 (1) for a denial of the transfer of a firearm,
19 cause a unique identifier to issue pursuant to section
20 922(t)(2) of title 18, United States Code, not later
21 than 3 days after the issuance of the order under
22 subsection (e); and

23 (2) for a denial of a license or permit, expedi-
24 tiously issue a license or permit under chapter 40 or
25 44 of title 18, United States Code, as applicable.

1 (g) SUPREME COURT REVIEW.—A decision by a
2 court of appeals under this section may be reviewed by
3 the Supreme Court under section 1254 of title 28, United
4 States Code.

5 (h) EXCLUSIVE REMEDY.—The judicial review under
6 a petition for review filed under subsection (c) shall be
7 the sole and exclusive remedy for a claim by an individual
8 who challenges a denial under subsection (a)(1).

9 (i) EXPEDITED CONSIDERATION.—

10 (1) COURTS.—Not later than 14 days after the
11 date on which a petition is filed challenging a denial
12 under subsection (a)(1), a court of appeals shall de-
13 termine whether to quash the denial, unless the peti-
14 tioner consents to a longer period.

15 (2) OF QUASHING.—If the court of appeals
16 quashes a denial by the Attorney General under sub-
17 section (e), a petitioner may submit the order quash-
18 ing the denial to the Department of Homeland Secu-
19 rity for expedited review, as appropriate.

20 (j) TRANSPARENCY.—Not later than 60 days after
21 the date of the enactment of this Act, and quarterly there-
22 after—

23 (1) the Attorney General shall submit to the
24 Committee on the Judiciary and the Select Com-
25 mittee on Intelligence of the Senate and the Com-

1 (B) a description of the actions taken and
2 final determinations made by the Department
3 of Homeland Security with regard to submis-
4 sions described in subparagraph (A)(ii) respect-
5 ing the status of individuals on the No Fly List
6 or Selectee List, including the length of time
7 taken to reach a final determination.

8 (k) DEFINITIONS.—In this section:

9 (1) CLASSIFIED INFORMATION.—The term
10 “classified information” has the meaning given that
11 term in section 1(a) of the Classified Information
12 Procedures Act (18 U.S.C. App.).

13 (2) DOMESTIC TERRORISM.—The term “domes-
14 tic terrorism” has the meaning given that term in
15 section 2331(5) of title 18, United States Code.

16 (3) INTERNATIONAL TERRORISM.—The term
17 “international terrorism” has the meaning given
18 that term in section 2331(1) of title 18, United
19 States Code.

20 (4) MILITARY INSTALLATION.—The term “mili-
21 tary installation” has the meaning given that term
22 in section 2801(c)(4) of title 10, United States
23 Code.

24 (5) NATIONAL SECURITY.—The term “national
25 security” has the meaning given that term in section

1 219 of the Immigration and Nationality Act (8
2 U.S.C. 1189).

3 (6) SENSITIVE SECURITY INFORMATION.—The
4 term “sensitive security information” has the mean-
5 ing given that term by sections 114(r) and 40119 of
6 title 49, United States Code, and the regulations
7 and orders issued pursuant to those sections.

8 (l) RULE OF CONSTRUCTION.—Nothing in this sec-
9 tion shall be construed to authorize the Attorney General
10 to modify the length of period before a firearm may be
11 transferred under section 922(t) of title 18, United States
12 Code.