

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 lawful-  
7 ness 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.