

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To authorize the Attorney General to deny the transfer of firearms and explosives and Federal firearms and explosives licenses and permits 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, EXPLOSIVES, AND FIRE-**
- 4               **ARMS AND EXPLOSIVES LICENSES AND PER-**
- 5               **MITTS TO TERRORISTS.**
- 6       (a) AUTHORITY.—
- 7               (1) IN GENERAL.—On and after the date of en-
- 8       actment of this Act, in accordance with the proce-

1       dures under this section, and without regard to sec-  
2       tion 842, 843, section 922(g) or (n), or section 923  
3       of title 18, United States Code, the Attorney Gen-  
4       eral may deny the transfer of a firearm, not later  
5       than 3 business days after a licensee under chapter  
6       44 of title 18, United States Code, contacts the na-  
7       tional instant criminal background check system es-  
8       tablished under section 103 of Public Law 103–159  
9       (18 U.S.C. 922 note), deny the transfer of an explo-  
10      sive, or deny the issuance of a Federal firearms or  
11      explosives license or permit, if either of the following  
12      are met:

13               (A) NO FLY LIST.—The Attorney General  
14      determines that the transferee or applicant—

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

23                   (ii) based on credible information,  
24      poses—

1 (I) a threat of committing an act  
2 of international terrorism or domestic  
3 terrorism with respect to an aircraft  
4 (including a threat of piracy, or a  
5 threat to airline, passenger, or civil  
6 aviation security);

7 (II) a threat of committing an  
8 act of domestic terrorism with respect  
9 to the homeland;

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

20 (IV) a threat of engaging in or  
21 conducting a violent act of terrorism  
22 and is operationally capable of doing  
23 so.

1 (B) SELECTEE LIST.—The Attorney Gen-  
2 eral determines that the transferee or appli-  
3 cant—

4 (i) based on the totality of the cir-  
5 cumstances, represents a threat to public  
6 safety based on a reasonable suspicion that  
7 the transferee or applicant is engaged, or  
8 has been engaged, in conduct constituting,  
9 in preparation of, in aid of, or related to  
10 terrorism, or providing material support or  
11 resources therefor; and

12 (ii) based on credible information,  
13 is—

14 (I) a member of a terrorist orga-  
15 nization (including a foreign terrorist  
16 organization designated pursuant to a  
17 statute or Executive Order); and

18 (II) associated with terrorist ac-  
19 tivity, unless information exists that  
20 demonstrates that the application of  
21 secondary screening to such individual  
22 is not necessary.

23 (2) NICS.—Solely for purposes of sections  
24 922(t) (1), (2), (5), and (6) of title 18, United  
25 States Code, and section 103(g) of Public Law 103–

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

16      (b) NOTIFICATION OF PROSPECTIVE FIREARMS AND  
17      EXPLOSIVES TRANSFERS TO KNOWN OR SUSPECTED  
18      TERRORIST.—The Attorney General and Federal, State,  
19      and local law enforcement shall be immediately notified,  
20      as appropriate, of any request to transfer a firearm or ex-  
21      plosive to a person who is, or with in the previous 5 years  
22      was, identified in the Terrorist Screening Database main-  
23      tained by the Terrorist Screening Center of the Federal  
24      Bureau of Investigation.

25      (c) REVIEW OF DENIAL.—

1           (1) REMEDIAL PROCEDURES AND PETITION  
2       FOR REVIEW.—

3           (A) IN GENERAL.—An individual who is a  
4       citizen or lawful permanent resident of the  
5       United States who seeks to challenge a denial  
6       by the Attorney General under subsection  
7       (a)(1) may—

8           (i) pursue the remedial procedures  
9       under section 103(g) of Public Law 103–  
10      159 (18 U.S.C. 922 note); or

11          (ii) file a petition for review and any  
12      claims related to that petition in the  
13      United States District Court for the Dis-  
14      trict of Columbia or in the district court of  
15      the United States for the judicial district  
16      in which the individual resides.

17          (B) EXHAUSTION NOT REQUIRED.—A peti-  
18      tioner is not required to exhaust the remedial  
19      procedures authorized under clause (i) of sub-  
20      paragraph (A) before filing a petition for review  
21      under clause (ii) of subparagraph (A).

22          (C) PROCEDURES.—Notwithstanding any  
23      other provision of law, the Attorney General  
24      may promulgate regulations governing pro-  
25      ceedings under subparagraph (A)(i) to prevent

1 the unauthorized disclosure of information that  
2 reasonably could be expected to result in dam-  
3 age to national security or ongoing law enforce-  
4 ment operations.

5 (2) DEADLINES FOR FILING.—

6 (A) IN GENERAL.—Except as provided in  
7 subparagraph (B), a petition for review under  
8 paragraph (1)(A)(ii), and any claims related to  
9 that petition, shall be filed not later than the  
10 earlier of—

11 (i) 1 year after the petitioner receives  
12 actual notice of the reason for the denial  
13 by the Attorney General; or

14 (ii) 5 years after the petitioner re-  
15 ceives notice of the denial by the Attorney  
16 General.

17 (B) EXCEPTION.—The district court in  
18 which a petition for review is to be filed under  
19 paragraph (1)(A)(ii) may allow the petition to  
20 be filed after the deadline specified in subpara-  
21 graph (A) only if there is good cause for not fil-  
22 ing by that deadline.

23 (3) AUTHORITY OF DISTRICT COURTS.—The  
24 district court in which a petition for review is filed  
25 under paragraph (1)(A)(ii)—

1 (A) shall have—

2 (i) jurisdiction to decide all relevant  
3 questions of law and fact; and

4 (ii) exclusive jurisdiction to affirm,  
5 amend, modify, or set aside any part of the  
6 denial of the Attorney General that is the  
7 subject of the petition for review; and

8 (B) may order the Attorney General to  
9 conduct further proceedings.

10 (4) EXCLUSIVE JURISDICTION.—

11 (A) IN GENERAL.—No district court of the  
12 United States or court of appeals of the United  
13 States shall have jurisdiction to consider the  
14 lawfulness or constitutionality of this section ex-  
15 cept pursuant to a petition for review under  
16 subsection (c)(1)(A)(ii).

17 (B) NONCITIZENS.—No district court of  
18 the United States or court of appeals of the  
19 United States shall have jurisdiction to hear  
20 any claim by an individual who is not a citizen  
21 or lawful permanent resident of the United  
22 States related to or arising out a denial by the  
23 Attorney General under subsection (a)(1).

24 (d) REQUIREMENT FOR AN ADMINISTRATIVE  
25 RECORD AND PROCEDURES FOR JUDICIAL REVIEW.—



1 Notwithstanding any other provision of law, the following  
2 procedures shall apply with respect to a petition for review  
3 filed in a district court under subsection (c)(1)(A)(ii):

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

6 (A) the information the Attorney General  
7 relied upon in denying the transfer or applica-  
8 tion;

9 (B) a summary of known material mitiga-  
10 tion information;

11 (C) any information the petitioner has sub-  
12 mitted pursuant to any administrative process;  
13 and

14 (D) any information determined relevant  
15 by the United States.

16 (2)(A) The petitioner may file with the court  
17 any information determined relevant by the peti-  
18 tioner.

19 (B) With leave of the court, the United States  
20 may supplement the administrative record with addi-  
21 tional information.

22 (3) All information in the administrative record  
23 that is not classified and is not otherwise privileged  
24 or subject to statutory protections shall be provided  
25 to the petitioner.

1           (4) No discovery shall be permitted, unless the  
2       court shall determine extraordinary circumstances  
3       requires discovery in the interests of justice.

4           (5) Sensitive security information contained in  
5       the administrative record may only be provided to  
6       petitioners counsel, pursuant to a protective order.

7           (6)(A) The administrative record may include  
8       classified information, which the United States shall  
9       submit to the court in camera and ex parte. The  
10      court shall review all classified information in cam-  
11      era and ex parte unless it enters an order under  
12      paragraph (C).

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

16          (C) The court is authorized to determine the  
17      extent to which cleared counsel shall be permitted to  
18      access classified information necessary to protect the  
19      due process rights of a petitioner and enter an ap-  
20      propriate order.

21          (D)(i) If the court enters an order under sub-  
22      paragraph (C) providing for the disclosure of infor-  
23      mation and the United States files with the court an  
24      affidavit of the Attorney General objecting to the

1 disclosure, the court shall order that the information  
2 not be disclosed.

3 (ii) If information is not disclosed under clause  
4 (i), the court shall enter such an order as the inter-  
5 ests of justice require, which may include an order  
6 quashing the denial by the Attorney General under  
7 subsection (a)(1).

8 (iii) An order under subparagraph (C) or clause  
9 (ii) of this subparagraph shall be subject to review  
10 by a court of appeals pursuant to section 1292 of  
11 title 28, United States Code.

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

14 (v) The functions and duties of the Attorney  
15 General under this subparagraph—

16 (I) may be exercised by the Deputy Attor-  
17 ney General, the Associate Attorney General, or  
18 by an Assistant Attorney General designated by  
19 the Attorney General for such purpose; and

20 (II) may not be delegated to any other offi-  
21 cial.

22 (E) Any information disclosed under subpara-  
23 graph (C) shall be subject to an appropriate protec-  
24 tive order.

1           (7)(A) The administrative record may include  
2           information obtained or derived from an order issued  
3           under the Foreign Intelligence Surveillance Act of  
4           1978 (50 U.S.C. 1801 et seq.), without regard to  
5           subsections (c), (e), (f), (g), and (h) of section 106  
6           (50 U.S.C. 1806), subsections (d), (f), (g), (h), and  
7           (i) of section 305 (50 U.S.C. 1825), subsections (c),  
8           (e), (f), (g), and (h) of section 405 (50 U.S.C.  
9           1845), and section 706 (50 U.S.C. 1881e) of that  
10          Act. If the United States intends to use such infor-  
11          mation against an aggrieved person (as defined in  
12          section 101, 301, or 401 of the Foreign Intelligence  
13          Surveillance Act of 1978 (50 U.S.C. 1801, 1821,  
14          and 1841)), it shall provide in camera and ex parte  
15          notice to the court concerning such use.

16          (B) If the court receives a notice under sub-  
17          paragraph (A), the court shall review, in camera and  
18          ex parte, the order described in that subparagraph  
19          and any other materials that may be submitted by  
20          the United States.

21          (C) If the court determines that the order de-  
22          scribed in subparagraph (A) was not lawfully au-  
23          thorized, or the information was not obtained in con-  
24          formity with the order, it shall exclude such informa-

1       tion from consideration as part of the administrative  
2       record.

3           (8) Any classified information, sensitive security  
4       information, law enforcement sensitive information,  
5       or information that is otherwise privileged or subject  
6       to statutory protections, that is part of the adminis-  
7       trative record, or cited by the court or the parties,  
8       shall be treated by the court and the parties con-  
9       sistent with the provisions of this subsection, and  
10      shall be sealed and preserved in the records of the  
11      court to be made available in the event of further  
12      proceedings. In no event shall such information be  
13      released as part of the public record.

14           (9) The court shall award reasonable attorney  
15      fees to a petitioner who is a prevailing party in an  
16      action under this section.

17           (10) After the expiration of the time to seek  
18      further review, or the conclusion of further pro-  
19      ceedings, the court shall return the administrative  
20      record, including any and all copies, to the United  
21      States. All privileged information or other informa-  
22      tion in the possession of counsel for the petitioner  
23      that was provided by the United States under a pro-  
24      tective order shall be returned to the United States,

1 or the counsel for the petitioner shall certify its de-  
2 struction, including any and all copies.

3 (e) SCOPE OF REVIEW.—The district court shall  
4 quash any denial by the Attorney General under sub-  
5 section (a)(1), unless the United States demonstrates,  
6 based on the administrative record, on a de novo review  
7 of fact and law—

8 (1) that the transferee or applicant—

9 (A) based on the totality of the cir-  
10 cumstances, represents a threat to public safety  
11 based on a reasonable suspicion that the trans-  
12 feree or applicant is engaged, or has been en-  
13 gaged, in conduct constituting, in preparation  
14 of, in aid of, or related to terrorism, or pro-  
15 viding material support or resources therefor;  
16 and

17 (B) based on credible information, poses—

18 (i) a threat of committing an act of  
19 international terrorism or domestic ter-  
20 rorism with respect to an aircraft (includ-  
21 ing a threat of piracy, or a threat to air-  
22 line, passenger, or civil aviation security);

23 (ii) a threat of committing an act of  
24 domestic terrorism with respect to the  
25 homeland;

1 (iii) a threat of committing an act of  
2 international terrorism against any United  
3 States Government facility abroad and as-  
4 sociated or supporting personnel, including  
5 United States embassies, consulates and  
6 missions, military installations, United  
7 States ships, United States aircraft, or  
8 other auxiliary craft owned or leased by  
9 the United States Government; or

10 (iv) a threat of engaging in or con-  
11 ducting a violent act of terrorism and is  
12 operationally capable of doing so; or

13 (2) that the transferee or applicant—

14 (A) based on the totality of the cir-  
15 cumstances, represents a threat to public safety  
16 based on a reasonable suspicion that the trans-  
17 feree or applicant is engaged, or has been en-  
18 gaged, in conduct constituting, in preparation  
19 of, in aid of, or related to terrorism, or pro-  
20 viding material support or resources therefor;  
21 and

22 (B) based on credible information—

23 (i) is a member of a terrorist organi-  
24 zation (including a foreign terrorist organi-

1                    zation designated pursuant to a statute or  
2                    Executive Order; and

3                    (ii) is associated with terrorist activ-  
4                    ity, unless information exists that dem-  
5                    onstrates that the application of secondary  
6                    screening to such individual is not nec-  
7                    essary.

8            (f) EFFECT OF QUASHING.—If the district court  
9 quashes a denial by the Attorney General under subsection  
10 (e), notwithstanding any other provision of law, the Attor-  
11 ney General shall—

12            (1) for a denial of the transfer of a firearm,  
13            cause a unique identifier to issue pursuant to section  
14            922(t)(2) of title 18, United States Code, not later  
15            than 3 days after the issuance of the order under  
16            subsection (e); and

17            (2) for a denial of a license or permit, expedi-  
18            tiously issue a license or permit under chapter 40 or  
19            44 of title 18, United States Code, as applicable.

20            (g) REVIEW OF DECISION OF DISTRICT COURT.—A  
21 final decision of a district court under this section shall  
22 be subject to review by a court of appeals in accordance  
23 with section 1291 of title 28, United States Code.

24            (h) EXCLUSIVE REMEDIES.—The remedial proce-  
25 dures and a petition for review authorized under sub-



1 section (c)(1)(A) shall be the sole and exclusive remedies  
2 for a claim by an individual who challenges a denial under  
3 subsection (a)(1).

4 (i) EXPEDITED CONSIDERATION.—

5 (1) COURTS.—Not later than 14 days after the  
6 date on which a petition is filed challenging a denial  
7 under subsection (a)(1), a district court shall deter-  
8 mine whether to quash the denial, unless the peti-  
9 tioner consents to a longer period.

10 (2) OF QUASHING.—If the district court  
11 quashes a denial by the Attorney General under sub-  
12 section (e), a petitioner may submit the order quash-  
13 ing the denial to the Department of Homeland Secu-  
14 rity for expedited review, as appropriate.

15 (j) TRANSPARENCY.—Not later than 60 days after  
16 the date of enactment of this Act, and quarterly there-  
17 after—

18 (1) the Attorney General shall submit to the  
19 Committee on the Judiciary and the Select Com-  
20 mittee on Intelligence of the Senate and the Com-  
21 mittee on the Judiciary and the Permanent Select  
22 Committee on Intelligence of the House of Rep-  
23 resentatives a report providing—

24 (A) the number of individuals denied a  
25 firearm or explosives transfer or a license or

1 permit under subsection (a)(1) during the re-  
2 porting period;

3 (B) the number of petitions for review filed  
4 under subsection (c)(1)(A)(ii); and

5 (C) the number of instances in which a  
6 district court quashed a denial by the Attorney  
7 General under subsection (e); and

8 (2) the Secretary of Homeland Security shall  
9 submit to the Committee on Homeland Security and  
10 Governmental Affairs, the Select Committee on In-  
11 telligence, and the Committee on the Judiciary of  
12 the Senate and the Committee on Homeland Secu-  
13 rity, the Permanent Select Committee on Intel-  
14 ligence, and the Committee on the Judiciary of the  
15 House of Representatives a report providing—

16 (A) the number individuals—

17 (i) with respect to whom a district  
18 court quashed a denial by the Attorney  
19 General under subsection (e); and

20 (ii) who submitted the order quashing  
21 the denial to the Department of Homeland  
22 Security under subsection (i)(2); and

23 (B) a description of the actions taken and  
24 final determinations made by the Department  
25 of Homeland Security with regard to submis-

1           sions described in subparagraph (A)(ii) respect-  
2           ing the status of individuals on the No Fly List  
3           or Selectee List, including the length of time  
4           taken to reach a final determination.

5       (k) DEFINITIONS.—In this section:

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

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

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

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

21          (5) NATIONAL SECURITY.—The term “national  
22          security” has the meaning given that term in section  
23          219 of the Immigration and Nationality Act (8  
24          U.S.C. 1189).

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

6           (7) TERRORIST ACTIVITY.—The term “terrorist  
7           activity” has the meaning given that term in section  
8           212(a)(3)(B) of the Immigration and Nationality  
9           Act (8 U.S.C. 1182(a)(3)(B)).

10          (l) RULE OF CONSTRUCTION.—Nothing in this sec-  
11          tion shall be construed to—

12               (1) except as set forth in this section, authorize  
13               the Attorney General to modify the length of period  
14               before a firearm may be transferred under section  
15               922(t) of title 18, United States Code; or

16               (2) apply to any claim other than a claim chal-  
17               lenging the denial of a firearm, explosive, or  
18               issuance of a firearm or explosives permit or license  
19               by the Attorney General.