

AMENDMENT NO. _____ Calendar No. _____

Purpose: To authorize the Attorney General to delay or deny the transfer of firearms and explosives and issuance of 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 _____ to the amendment (No. 4685) proposed by Mr. SHELBY

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. ____ . DISCRETIONARY AUTHORITY TO DELAY OR**
- 3 **DENY TRANSFERS OF FIREARMS AND EXPLO-**
- 4 **SIVES AND ISSUANCE OF FIREARMS AND EX-**
- 5 **PLOSIVES LICENSES AND PERMITS TO TER-**
- 6 **RORISTS.**
- 7 (a) AUTHORITY.—

1 (1) IN GENERAL.—On and after the date of en-
2 actment of this Act, in accordance with the proce-
3 dures under this section, and without regard to sec-
4 tion 842, 843, section 922(g) or (n), or section 923
5 of title 18, United States Code, the Attorney Gen-
6 eral may delay or deny the transfer of a firearm, not
7 later than 3 business days after a licensee under
8 chapter 44 of title 18, United States Code, contacts
9 the national instant criminal background check sys-
10 tem established under section 103 of Public Law
11 103–159 (18 U.S.C. 922 note), delay or deny the
12 transfer of an explosive, or delay or deny the
13 issuance of a Federal firearms or explosives license
14 or permit, if—

15 (A) the transferee or applicant is appro-
16 priately included on the No Fly or Selectee
17 List; and

18 (B) the Attorney General determines—

19 (i) there is a reasonable basis to be-
20 lieve, based on specific and articulable in-
21 formation and credible evidence, that the
22 transferee or applicant is engaged, or has
23 been engaged, in conduct constituting, in
24 preparation of, in aid of, or related to ter-

1 rorism, or providing material support or
2 resources therefor; or

3 (ii) the transferee or applicant poses a
4 credible threat of—

5 (I) committing an act of inter-
6 national terrorism or domestic ter-
7 rorism with respect to an aircraft (in-
8 cluding a threat of piracy, or a threat
9 to airline, passenger, or civil aviation
10 security);

11 (II) committing an act of domes-
12 tic terrorism with respect to the
13 homeland;

14 (III) committing an act of inter-
15 national terrorism against any United
16 States Government facility abroad and
17 associated or supporting personnel, in-
18 cluding United States embassies, con-
19 sulates and missions, military installa-
20 tions, United States ships, United
21 States aircraft, or other auxiliary
22 craft owned or leased by the United
23 States Government; or

1 (IV) engaging in or conducting a
2 violent act of terrorism and is oper-
3 ationally capable of doing so.

4 (2) NICS.—Solely for purposes of sections
5 922(t) (1), (2), (5), and (6) of title 18, United
6 States Code, and section 103(g) of Public Law 103–
7 159 (18 U.S.C. 922 note), a denial by the Attorney
8 General under paragraph (1) shall be treated as
9 equivalent to a determination that receipt of a fire-
10 arm would violate subsection (g) or (n) of section
11 922 of title 18, United States Code. During the 3-
12 business-day period beginning when a licensee under
13 chapter 44 of title 18, United States Code, contacts
14 the national instant criminal background check sys-
15 tem established under section 103 of Public Law
16 103–159 (18 U.S.C. 922 note), and notwithstanding
17 section 922(t)(2) of title 18, United States Code, the
18 Attorney General may delay assigning a unique iden-
19 tification number to a transfer of a firearm in order
20 to determine whether the transferee or applicant
21 meets the requirements under paragraph (1).

22 (3) DELAY OR DENIAL.—A delay or denial
23 under paragraph (1) shall occur according to the
24 process set forth in subsection (c).

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, if the Director of the Federal Bureau of Inves-
10 tigation annually reviews and certifies the identities of the
11 known or suspected terrorists and the appropriateness of
12 such designation.

13 (c) PROCESS FOR DELAY OR DENYING A TRANSFER
14 OF A FIREARM OR EXPLOSIVE OR ISSUANCE OF LICENSE
15 OR PERMIT.—

16 (1) EMERGENCY PETITION.—

17 (A) IN GENERAL.—Under the authority
18 under subsection (a), except as provided in
19 paragraph (9) the Attorney General may delay
20 the transfer of a firearm or explosive, or the
21 issuance of a license or permit, and file an
22 emergency petition in a court of competent ju-
23 risdiction within 3 business days, to deny such
24 transfer or issuance. The transfer of such fire-

1 arm or explosive shall be delayed during the
2 pendency of a petition under this subsection.

3 (B) EXPEDITED REVIEW.—A petition
4 under subparagraph (A) and subsequent hear-
5 ing shall receive the highest possible priority on
6 the docket of the court and be subject to the
7 Classified Information Procedures Act (18
8 U.S.C. App.). A hearing shall occur not later
9 than 7 business days after the petition is filed
10 (including any extension granted under para-
11 graph (5)), and a decision by the court shall be
12 issued not later than 3 business days after the
13 hearing.

14 (2) HEARING.—

15 (A) IN GENERAL.—The prospective trans-
16 feree or applicant shall receive notice of the
17 hearing and an opportunity to participate with
18 the assistance of counsel.

19 (B) STANDARD.—The court shall authorize
20 the Attorney General to deny a transfer or
21 issuance if the court finds—

22 (i) that the prospective transferee or
23 applicant is appropriately included on the
24 No Fly or Selectee List; and

25 (ii) that—

1 (I) there is a reasonable basis to
2 believe, based on specific and
3 articulable information and credible
4 evidence, that the prospective trans-
5 feree or applicant is engaged, or has
6 been engaged, in conduct constituting,
7 in preparation of, in aid of, or related
8 to terrorism, or providing material
9 support or resources for terrorism; or

10 (II) the prospective transferee or
11 applicant poses a credible threat of—

12 (aa) committing an act of
13 international terrorism or domes-
14 tic terrorism with respect to an
15 aircraft (including a threat of pi-
16 racy, or a threat to airline, pas-
17 senger, or civil aviation security);

18 (bb) committing an act of
19 domestic terrorism with respect
20 to the homeland;

21 (cc) committing an act of
22 international terrorism against
23 any United States Government
24 facility abroad and associated or
25 supporting personnel, including

1 United States embassies, con-
2 sulates and missions, military in-
3 stallations, United States ships,
4 United States aircraft, or other
5 auxiliary craft owned or leased by
6 the United States Government;
7 or

8 (dd) engaging in or con-
9 ducting a violent act of terrorism
10 and is operationally capable of
11 doing so.

12 (3) DENIAL OF PETITION.—If a petition under
13 paragraph (1)(A) is denied, the Attorney General
14 shall—

15 (A) for a transfer of a firearm or explosive,
16 cause a unique identifier to issue pursuant to
17 section 922(t)(2) of title 18, United States
18 Code, not later than 3 days after the denial;
19 and

20 (B) for the issuance of a license or permit,
21 expeditiously issue the license or permit under
22 chapter 40 or 44 of title 18, United States
23 Code, as applicable.

24 (4) COURT COSTS AND ATTORNEY'S FEES.—If
25 a petition under paragraph (1)(A) is denied, the gov-

1 ernment shall be responsible for all reasonable costs
2 and attorney's fees.

3 (5) REQUEST FOR EXTENSION.—

4 (A) IN GENERAL.—The Attorney General
5 may request from the court an extension for fil-
6 ing a petition under paragraph (1)(A) of not
7 more than 10 additional business days.

8 (B) GRANT OF EXTENSION.—A court shall
9 grant an extension if the Attorney General
10 makes a preliminary showing to the court—

11 (i) that the prospective transferee or
12 applicant is appropriately included on the
13 No Fly or Selectee List; and

14 (ii) that—

15 (I) there is reasonable articulable
16 suspicion and credible evidence that
17 the prospective transferee or applicant
18 is engaged, or has been engaged, in
19 conduct constituting, in preparation
20 of, in aid of, or related to terrorism,
21 or providing material support or re-
22 sources for terrorism; or

23 (II) the prospective transferee or
24 applicant poses a credible threat of—

1 (aa) committing an act of
2 international terrorism or domes-
3 tic terrorism with respect to an
4 aircraft (including a threat of pi-
5 racy, or a threat to airline, pas-
6 senger, or civil aviation security);

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

10 (cc) committing an act of
11 international terrorism against
12 any United States Government
13 facility abroad and associated or
14 supporting personnel, including
15 United States embassies, con-
16 sulates and missions, military in-
17 stallations, United States ships,
18 United States aircraft, or other
19 auxiliary craft owned or leased by
20 the United States Government;
21 or

22 (dd) engaging in or con-
23 ducting a violent act of terrorism
24 and is operationally capable of
25 doing so.

1 (C) EX PARTE PROCEEDING.—A prelimi-
2 nary showing under subparagraph (B) may
3 occur in an ex parte proceeding.

4 (6) OPPORTUNITY TO APPEAL.—If the court
5 rules in favor of a denial of a transfer or issuance,
6 the prospective transferee or applicant shall be pro-
7 vided the opportunity to file a petition for review
8 and any claims related to that petition in the United
9 States Court of Appeals for the District of Columbia
10 Circuit or in the court of appeals of the United
11 States for the judicial circuit in which the individual
12 resides.

13 (7) DETENTION OR ARREST.—The Attorney
14 General may detain or arrest a prospective trans-
15 feree or applicant for whom a petition under para-
16 graph (1)(A) has been filed if probable cause exists
17 to believe that the prospective transferee or appli-
18 cant is engaged, or has been engaged, in conduct
19 constituting, in preparation of, in aid of, or related
20 to terrorism, or providing material support or re-
21 sources for terrorism.

22 (8) AUTHORITY OF COURTS OF APPEALS.—The
23 court of appeals in which a petition for review is
24 filed under paragraph (1)(A)—

25 (A) shall have—

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

3 (ii) exclusive jurisdiction to authorize,
4 modify, set aside, or deny any part of a de-
5 nial requested by the Attorney General in
6 a petition under paragraph (1)(A); and

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

9 (9) NONCITIZENS.—For an individual who is
10 not a citizen or lawful permanent resident of the
11 United States—

12 (A) the Attorney General may delay or
13 deny a transfer or issuance under subsection
14 (a)(1) without regard to the procedures under
15 paragraphs (1) through (9); and

16 (B) no district court of the United States
17 or court of appeals of the United States shall
18 have jurisdiction to hear any claim by such an
19 individual related to or arising out such a de-
20 nial by the Attorney General.

21 (d) REQUIREMENT FOR AN ADMINISTRATIVE
22 RECORD AND PROCEDURES FOR JUDICIAL REVIEW.—
23 Notwithstanding any other provision of law, the following
24 procedures shall apply with respect to a petition filed in
25 a court of appeals under subsection (c):

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

3 (A) the information the Attorney General
4 relied upon in delaying the transfer or applica-
5 tion;

6 (B) any information the prospective trans-
7 feree or applicant has submitted pursuant to
8 any administrative process;

9 (C) any information determined relevant
10 by the United States; and

11 (D) any information that is exculpatory.

12 (2)(A) The prospective transferee or applicant
13 may file with the court any information determined
14 relevant by the prospective transferee or applicant.

15 (B) With leave of the court, the United States
16 may supplement the administrative record with addi-
17 tional information.

18 (3) All information in the administrative record
19 that is not classified and is not otherwise privileged
20 or subject to statutory protections shall be provided
21 to the prospective transferee or applicant.

22 (4) No discovery shall be permitted, unless the
23 court shall determine extraordinary circumstances
24 requires discovery in the interests of justice.

1 (5) Sensitive security information contained in
2 the administrative record may only be provided pur-
3 suant to a protective order.

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

7 (B) The United States shall notify the prospec-
8 tive transferee or applicant if the administrative
9 record filed under paragraph (1) contains classified
10 information.

11 (C) The court may enter an order, after notice
12 and a hearing, allowing disclosure to the prospective
13 transferee or applicant, counsel for the prospective
14 transferee or applicant, or both, of—

15 (i) an unclassified summary of some or all
16 classified information in the administrative
17 record;

18 (ii) a statement admitting relevant facts
19 that some or all classified information in the
20 administrative record would tend to prove;

21 (iii) some or all classified information, if
22 counsel for the prospective transferee or appli-
23 cant possess the appropriate security clearance;
24 or

25 (iv) any combination thereof.

1 (D)(i) If the court enters an order under sub-
2 paragraph (C) providing for the disclosure of classi-
3 fied information and the United States files with the
4 court an affidavit of the Attorney General objecting
5 to the disclosure, the court shall order that the clas-
6 sified information not be disclosed.

7 (ii) If classified information is not dis-
8 closed under clause (i), the court shall enter
9 such an order as the interests of justice require,
10 which may include an order denying the peti-
11 tion by the Attorney General under subsection
12 (c)(1)(A).

13 (iii) An order under subparagraph (C) or
14 clause (ii) of this subparagraph shall be subject
15 to review pursuant to section 1254 of title 28,
16 United States Code.

17 (iv) An order under clause (ii) shall be ad-
18 ministratively stayed for 7 days.

19 (v) The functions and duties of the Attor-
20 ney General under this subparagraph—

21 (I) may be exercised by the Deputy
22 Attorney General, the Associate Attorney
23 General, or by an Assistant Attorney Gen-
24 eral designated by the Attorney General
25 for such purpose; and

1 (II) may not be delegated to any other
2 official.

3 (E) Any information disclosed under subpara-
4 graph (C) shall be subject to an appropriate protec-
5 tive order.

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

17 (8) The court shall award reasonable attorney
18 fees and costs to a prospective transferee or appli-
19 cant who is a prevailing party in an action under
20 this section.

21 (9) After the expiration of the time to seek fur-
22 ther review, or the conclusion of further proceedings,
23 the court shall return the administrative record, in-
24 cluding any and all copies, to the United States. All
25 privileged information or other information in the

1 possession of counsel for the prospective transferee
2 or applicant that was provided by the United States
3 under a protective order shall be returned to the
4 United States, or the counsel for the prospective
5 transferee or applicant shall certify its destruction,
6 including any and all copies.

7 (e) SUPREME COURT REVIEW.—A decision by a court
8 of appeals under this section may be reviewed by the Su-
9 preme Court under section 1254 of title 28, United States
10 Code.

11 (f) EXCLUSIVE REMEDY.—The judicial review of a
12 petition filed by the Attorney General under subsection (c)
13 shall be the sole and exclusive remedy for a claim by an
14 individual with respect to the denial requested under the
15 petition.

16 (g) EXPEDITED CONSIDERATION.—

17 (1) COURTS.—Not later than 14 days after the
18 date on which a petition is filed under subsection
19 (c)(1)(A) seeking a denial, a court of appeals shall
20 determine whether to authorize the denial, unless
21 the prospective transferee or applicant consents to a
22 longer period.

23 (2) OF DENIAL.—If the court of appeals denies
24 a petition by the Attorney General under subsection
25 (c)(1)(A), a prospective transferee or applicant may

1 submit the order denying the petition to the Depart-
2 ment of Homeland Security for expedited review, as
3 appropriate.

4 (h) TRANSPARENCY.—Not later than 60 days after
5 the date of enactment of this Act, and quarterly there-
6 after—

7 (1) the Attorney General shall submit to the
8 Committee on the Judiciary and the Select Com-
9 mittee on Intelligence of the Senate and the Com-
10 mittee on the Judiciary and the Permanent Select
11 Committee on Intelligence of the House of Rep-
12 resentatives a report providing, for the reporting pe-
13 riod—

14 (A) the number of petitions filed under
15 subsection (c)(1)(A);

16 (B) the number of individuals denied a
17 firearm or explosive transfer under an order
18 granting such a petition; and

19 (C) the number of instances in which a
20 court of appeals denied such a petition; and

21 (2) the Secretary of Homeland Security shall
22 submit to the Committee on Homeland Security and
23 Governmental Affairs and the Select Committee on
24 Intelligence of the Senate and the Committee on
25 Homeland Security and the Permanent Select Com-

1 mittee on Intelligence of the House of Representa-
2 tives a report providing—

3 (A) the number individuals—

4 (i) with respect to whom a court of
5 appeals denied a petition by the Attorney
6 General under subsection (c)(1)(A); and

7 (ii) who submitted the order denying
8 the petition to the Department of Home-
9 land Security under subsection (g)(2); and

10 (B) a description of the actions taken and
11 final determinations made by the Department
12 of Homeland Security with regard to submis-
13 sions described in subparagraph (A)(ii) respect-
14 ing the status of individuals on the No Fly List
15 or Selectee List, including the length of time
16 taken to reach a final determination.

17 (i) DEFINITIONS.—In this section:

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

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

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

5 (4) MILITARY INSTALLATION.—The term “mili-
6 tary installation” has the meaning given that term
7 in section 2801(c)(4) of title 10, United States
8 Code.

9 (5) NATIONAL SECURITY.—The term “national
10 security” has the meaning given that term in section
11 219 of the Immigration and Nationality Act (8
12 U.S.C. 1189).

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

18 (j) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to authorize the Attorney General
20 to modify the length of period before a firearm may be
21 transferred under section 922(t) of title 18, United States
22 Code.