

115TH CONGRESS  
2D SESSION

# S. 2458

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

Ms. COLLINS (for herself, Ms. HEITKAMP, Mr. FLAKE, Mr. HEINRICH, Mr. TOOMEY, Ms. BALDWIN, Mr. KING, Mr. NELSON, Mr. MANCHIN, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Terrorist Firearms  
5 Prevention Act”.

1 **SEC. 2. DISCRETIONARY AUTHORITY TO DENY TRANSFERS**  
2 **OF FIREARMS, EXPLOSIVES, AND FIREARMS**  
3 **AND EXPLOSIVES LICENSES AND PERMITS TO**  
4 **TERRORISTS.**

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  
10 of title 18, United States Code, the Attorney Gen-  
11 eral may deny the transfer of a firearm, not later  
12 than 3 business days after a licensee under chapter  
13 44 of title 18, United States Code, contacts the na-  
14 tional instant criminal background check system es-  
15 tablished under section 103 of Public Law 103–159  
16 (34 U.S.C. 40901), deny the transfer of an explo-  
17 sive, or deny the issuance of a Federal firearms or  
18 explosives license or permit, if either of the following  
19 are met:

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

22 (i) based on the totality of the cir-  
23 cumstances, represents a threat to public  
24 safety based on a reasonable suspicion that  
25 the transferee or applicant is engaged, or  
26 has been engaged, in conduct constituting,

1 in preparation of, in aid of, or related to  
2 terrorism, or providing material support or  
3 resources therefor; and

4 (ii) based on credible information,  
5 poses—

6 (I) a threat of committing an act  
7 of international terrorism or domestic  
8 terrorism with respect to an aircraft  
9 (including a threat of piracy, or a  
10 threat to airline, passenger, or civil  
11 aviation security);

12 (II) a threat of committing an  
13 act of domestic terrorism with respect  
14 to the homeland;

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

1 (IV) a threat of engaging in or  
2 conducting a violent act of terrorism  
3 and is operationally capable of doing  
4 so.

5 (B) SELECTEE LIST.—The Attorney Gen-  
6 eral determines that the transferee or appli-  
7 cant—

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

16 (ii) based on credible information,  
17 is—

18 (I) a member of a terrorist orga-  
19 nization (including a foreign terrorist  
20 organization designated pursuant to a  
21 statute or Executive order); and

22 (II) associated with terrorist ac-  
23 tivity, unless information exists that  
24 demonstrates that the application of

1 secondary screening to such individual  
2 is not necessary.

3 (2) NICS.—Solely for purposes of sections  
4 922(t) (1), (2), (5), and (6) of title 18, United  
5 States Code, and section 103(g) of Public Law 103–  
6 159 (34 U.S.C. 40901(g)), a denial by the Attorney  
7 General under paragraph (1) shall be treated as  
8 equivalent to a determination that receipt of a fire-  
9 arm would violate subsection (g) or (n) of section  
10 922 of title 18, United States Code. During the 3-  
11 business-day period beginning when a licensee under  
12 chapter 44 of title 18, United States Code, contacts  
13 the national instant criminal background check sys-  
14 tem established under section 103 of Public Law  
15 103–159 (34 U.S.C. 40901), and notwithstanding  
16 section 922(t)(2) of title 18, United States Code, the  
17 Attorney General may delay assigning a unique iden-  
18 tification number to a transfer of a firearm in order  
19 to determine whether the transferee or applicant  
20 meets the requirements under paragraph (1).

21 (b) NOTIFICATION OF PROSPECTIVE FIREARMS AND  
22 EXPLOSIVES TRANSFERS TO KNOWN OR SUSPECTED  
23 TERRORIST.—The Attorney General and Federal, State,  
24 and local law enforcement shall be immediately notified,  
25 as appropriate, of any request to transfer a firearm or ex-

1 plosive to a person who is, or within the previous 5 years  
2 was, identified in the Terrorist Screening Database main-  
3 tained by the Terrorist Screening Center of the Federal  
4 Bureau of Investigation.

5 (c) REVIEW OF DENIAL.—

6 (1) REMEDIAL PROCEDURES AND PETITION  
7 FOR REVIEW.—

8 (A) IN GENERAL.—An individual who is a  
9 citizen or lawful permanent resident of the  
10 United States and who seeks to challenge a de-  
11 nial by the Attorney General under subsection  
12 (a)(1) may—

13 (i) pursue the remedial procedures  
14 under section 103(g) of Public Law 103–  
15 159 (34 U.S.C. 40901(g)); or

16 (ii) file a petition for review and any  
17 claims related to that petition in the  
18 United States District Court for the Dis-  
19 trict of Columbia or in the district court of  
20 the United States for the judicial district  
21 in which the individual resides.

22 (B) EXHAUSTION NOT REQUIRED.—A peti-  
23 tioner is not required to exhaust the remedial  
24 procedures authorized under clause (i) of sub-

1 paragraph (A) before filing a petition for review  
2 under clause (ii) of subparagraph (A).

3 (C) PROCEDURES.—Notwithstanding any  
4 other provision of law, the Attorney General  
5 may promulgate regulations governing pro-  
6 ceedings under subparagraph (A)(i) to prevent  
7 the unauthorized disclosure of information that  
8 reasonably could be expected to result in dam-  
9 age to national security or ongoing law enforce-  
10 ment operations.

11 (2) DEADLINES FOR FILING.—

12 (A) IN GENERAL.—Except as provided in  
13 subparagraph (B), a petition for review under  
14 paragraph (1)(A)(ii), and any claims related to  
15 that petition, shall be filed not later than the  
16 earlier of—

17 (i) 1 year after the petitioner receives  
18 actual notice of the reason for the denial  
19 by the Attorney General; or

20 (ii) 5 years after the petitioner re-  
21 ceives notice of the denial by the Attorney  
22 General.

23 (B) EXCEPTION.—The district court in  
24 which a petition for review is to be filed under  
25 paragraph (1)(A)(ii) may allow the petition to

1 be filed after the deadline specified in subpara-  
2 graph (A) only if there is good cause for not fil-  
3 ing by that deadline.

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

7 (A) shall have—

8 (i) jurisdiction to decide all relevant  
9 questions of law and fact; and

10 (ii) exclusive jurisdiction to affirm,  
11 amend, modify, or set aside any part of the  
12 denial of the Attorney General that is the  
13 subject of the petition for review; and

14 (B) may order the Attorney General to  
15 conduct further proceedings.

16 (4) EXCLUSIVE JURISDICTION.—

17 (A) IN GENERAL.—No district court of the  
18 United States or court of appeals of the United  
19 States shall have jurisdiction to consider the  
20 lawfulness or constitutionality of this section ex-  
21 cept pursuant to a petition for review under  
22 subsection (c)(1)(A)(ii).

23 (B) NONCITIZENS.—No district court of  
24 the United States or court of appeals of the  
25 United States shall have jurisdiction to hear



1 any claim by an individual who is not a citizen  
2 or lawful permanent resident of the United  
3 States related to or arising out of a denial by  
4 the Attorney General under subsection (a)(1).

5 (d) REQUIREMENT FOR AN ADMINISTRATIVE  
6 RECORD AND PROCEDURES FOR JUDICIAL REVIEW.—

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

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

12 (A) the information the Attorney General  
13 relied upon in denying the transfer or applica-  
14 tion;

15 (B) a summary of known material mitiga-  
16 tion information;

17 (C) any information the petitioner has sub-  
18 mitted pursuant to any administrative process;  
19 and

20 (D) any information determined relevant  
21 by the United States.

22 (2)(A) The petitioner may file with the court  
23 any information determined relevant by the peti-  
24 tioner.

1           (B) With leave of the court, the United States  
2           may supplement the administrative record with addi-  
3           tional information.

4           (3) All information in the administrative record  
5           that is not classified and is not otherwise privileged  
6           or subject to statutory protections shall be provided  
7           to the petitioner.

8           (4) No discovery shall be permitted, unless the  
9           court shall determine extraordinary circumstances  
10          requires discovery in the interests of justice.

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

14          (6)(A) The administrative record may include  
15          classified information, which the United States shall  
16          submit to the court in camera and ex parte. The  
17          court shall review all classified information in cam-  
18          era and ex parte unless it enters an order under  
19          paragraph (C).

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

23          (C) The court is authorized to determine the  
24          extent to which cleared counsel shall be permitted to  
25          access classified information necessary to protect the

1 due process rights of a petitioner and enter an ap-  
2 propriate order.

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

9 (ii) If information is not disclosed under clause  
10 (i), the court shall enter such an order as the inter-  
11 ests of justice require, which may include an order  
12 quashing the denial by the Attorney General under  
13 subsection (a)(1).

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

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

20 (v) The functions and duties of the Attorney  
21 General under this subparagraph—

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

1           (II) may not be delegated to any other offi-  
2           cial.

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

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

21          (B) If the court receives a notice under sub-  
22          paragraph (A), the court shall review, in camera and  
23          ex parte, the order described in that subparagraph  
24          and any other materials that may be submitted by  
25          the United States.

1           (C) If the court determines that the order de-  
2           scribed in subparagraph (A) was not lawfully au-  
3           thorized, or the information was not obtained in con-  
4           formity with the order, it shall exclude such informa-  
5           tion from consideration as part of the administrative  
6           record.

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

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

21          (10) After the expiration of the time to seek  
22          further review, or the conclusion of further pro-  
23          ceedings, the court shall return the administrative  
24          record, including any and all copies, to the United  
25          States. All privileged information or other informa-

1       tion in the possession of counsel for the petitioner  
2       that was provided by the United States under a pro-  
3       tective order shall be returned to the United States,  
4       or the counsel for the petitioner shall certify its de-  
5       struction, including any and all copies.

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

11             (1) that the transferee or applicant—

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

20                     (B) based on credible information, poses—

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

1 (ii) a threat of committing an act of  
2 domestic terrorism with respect to the  
3 homeland;

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

13 (iv) a threat of engaging in or con-  
14 ducting a violent act of terrorism and is  
15 operationally capable of doing so; or

16 (2) that the transferee or applicant—

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

25 (B) based on credible information—

1 (i) is a member of a terrorist organi-  
2 zation (including a foreign terrorist organi-  
3 zation) designated pursuant to a statute or  
4 Executive order; and

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

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

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

19 (2) for a denial of a license or permit, expedi-  
20 tiously issue a license or permit under chapter 40 or  
21 44 of title 18, United States Code, as applicable.

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



1 (h) EXCLUSIVE REMEDIES.—The remedial proce-  
2 dures and a petition for review authorized under sub-  
3 section (c)(1)(A) shall be the sole and exclusive remedies  
4 for a claim by an individual who challenges a denial under  
5 subsection (a)(1).

6 (i) EXPEDITED CONSIDERATION.—

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

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

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

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

1 (A) the number of individuals denied a  
2 firearm or explosives transfer or a license or  
3 permit under subsection (a)(1) during the re-  
4 porting period;

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

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

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

18 (A) the number of individuals—

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

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

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 (7) TERRORIST ACTIVITY.—The term “terrorist  
9 activity” has the meaning given that term in section  
10 212(a)(3)(B) of the Immigration and Nationality  
11 Act (8 U.S.C. 1182(a)(3)(B)).

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

14 (1) except as set forth in this section, authorize  
15 the Attorney General to modify the length of period  
16 before a firearm may be transferred under section  
17 922(t) of title 18, United States Code; or

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

○