

AMENDMENT TO H.R. 5611
OFFERED BY MR. CURBELO OF FLORIDA

Page 20, strike line 5 and all that follows through
page 22, line 6, and insert the following:

1 **SEC. __. DISCRETIONARY AUTHORITY TO DENY TRANSFER**
2 **OF FIREARM, EXPLOSIVE, OR FIREARMS OR**
3 **EXPLOSIVES LICENSE OR PERMIT 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, subsection (g) or (n) of section 922,
10 or section 923 of title 18, United States Code, the
11 Attorney General may deny the transfer of a fire-
12 arm, not later than 3 business days after a licensee
13 under chapter 44 of such title, contacts the national
14 instant criminal background check system estab-
15 lished under section 103 of Public Law 103–159 (18
16 U.S.C. 922 note), deny the transfer of an explosive,
17 or deny the issuance of a Federal firearms or explo-
18 sives license or permit, if either of the following are
19 met:

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

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

11 (ii) based on credible information,
12 poses—

13 (I) a threat of committing an act
14 of international terrorism or domestic
15 terrorism with respect to an aircraft
16 (including a threat of piracy, or a
17 threat to airline, passenger, or civil
18 aviation security);

19 (II) a threat of committing an
20 act of domestic terrorism with respect
21 to the homeland;

22 (III) a threat of committing an
23 act of international terrorism against
24 any United States Government facility
25 abroad and associated or supporting

1 personnel, including a United States
2 embassy, consulate and mission, mili-
3 tary installation, United States ship,
4 United States aircraft, or other auxil-
5 iary craft owned or leased by the
6 United States Government; or

7 (IV) a threat of engaging in or
8 conducting a violent act of terrorism
9 and is operationally capable of doing
10 so.

11 (B) SELECTEE LIST.—The Attorney Gen-
12 eral determines that the transferee or appli-
13 cant—

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

22 (ii) based on credible information,
23 is—

24 (I) a member of a terrorist orga-
25 nization (including a foreign terrorist

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

3 (II) associated with terrorist ac-
4 tivity, unless information exists that
5 demonstrates that the application of
6 secondary screening to such individual
7 is not necessary.

8 (2) NICS.—Solely for purposes of sections
9 922(t)(1), (2), (5), and (6) of title 18, United States
10 Code, and section 103(g) of Public Law 103–159
11 (18 U.S.C. 922 note), a denial by the Attorney Gen-
12 eral under paragraph (1) shall be treated as a deter-
13 mination that receipt of a firearm would violate sub-
14 section (g) or (n) of section 922 of such title. Dur-
15 ing the 3-business-day period beginning when a li-
16 censee under chapter 44 of such title, contacts the
17 national instant criminal background check system
18 established under section 103 of Public Law 103–
19 159 (18 U.S.C. 922 note), and notwithstanding sec-
20 tion 922(t)(2) of such title, the Attorney General
21 may delay assigning a unique identification number
22 to a transfer of a firearm in order to determine
23 whether the transferee meets the requirements of
24 paragraph (1).

1 (b) NOTIFICATION OF PROSPECTIVE FIREARMS AND
2 EXPLOSIVES TRANSFERS TO KNOWN OR SUSPECTED
3 TERRORIST.—The Attorney General and Federal, State,
4 and local law enforcement shall be immediately notified,
5 as appropriate, of any request made of a licensee under
6 chapter 44 of title 18, United States Code, to transfer a
7 firearm to a person who is, or within the previous 5 years
8 was, identified in the Terrorist Screening Database main-
9 tained by the Terrorist Screening Center of the Federal
10 Bureau of Investigation.

11 (c) REVIEW OF DENIAL.—

12 (1) REMEDIAL PROCEDURES AND PETITION
13 FOR REVIEW.—

14 (A) IN GENERAL.—An individual who is a
15 citizen or lawful permanent resident of the
16 United States who seeks to challenge a denial
17 by the Attorney General under subsection
18 (a)(1) may—

19 (i) pursue the remedial procedures
20 under section 103(g) of Public Law 103–
21 159 (18 U.S.C. 922 note); or

22 (ii) file a petition for review and any
23 claims related to that petition in the
24 United States District Court for the Dis-
25 trict of Columbia or in the district court of

1 the United States for the judicial district
2 in which the individual resides.

3 (B) EXHAUSTION NOT REQUIRED.—A peti-
4 tioner is not required to exhaust the remedial
5 procedures authorized under clause (i) of sub-
6 paragraph (A) before filing a petition for review
7 under clause (ii) of subparagraph (A).

8 (C) PROCEDURES.—Notwithstanding any
9 other provision of law, the Attorney General
10 may promulgate regulations governing pro-
11 ceedings under subparagraph (A)(i) to prevent
12 the unauthorized disclosure of information that
13 reasonably could be expected to result in dam-
14 age to national security or an ongoing law en-
15 forcement operation.

16 (2) DEADLINES FOR FILING.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), a petition for review under
19 paragraph (1)(A)(ii), and any claims related to
20 that petition, shall be filed not later than the
21 earlier of—

22 (i) 1 year after the petitioner receives
23 actual notice of the reason for the denial
24 by the Attorney General; or

1 (ii) 5 years after the petitioner re-
2 ceives notice of the denial by the Attorney
3 General.

4 (B) EXCEPTION.—The district court in
5 which a petition for review is to be filed under
6 paragraph (1)(A)(ii) may allow the petition to
7 be filed after the deadline specified in subpara-
8 graph (A) only if there is good cause for not fil-
9 ing by that deadline.

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

13 (A) shall have—

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

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

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

22 (4) EXCLUSIVE JURISDICTION.—

23 (A) IN GENERAL.—No district court of the
24 United States or court of appeals of the United
25 States shall have jurisdiction to consider the

1 lawfulness or constitutionality of this section ex-
2 cept pursuant to a petition for review under
3 subsection (c)(1)(A)(ii).

4 (B) NONCITIZENS.—No district court of
5 the United States or court of appeals of the
6 United States shall have jurisdiction to hear
7 any claim by an individual who is not a citizen
8 or lawful permanent resident of the United
9 States related to or arising out a denial by the
10 Attorney General under subsection (a)(1).

11 (d) REQUIREMENT FOR AN ADMINISTRATIVE
12 RECORD AND PROCEDURES FOR JUDICIAL REVIEW.—
13 Notwithstanding any other provision of law, the following
14 procedures shall apply with respect to a petition for review
15 filed in a district court under subsection (c)(1)(A)(ii):

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

18 (A) the information the Attorney General
19 relied upon in denying the transfer or applica-
20 tion;

21 (B) a summary of known material mitiga-
22 tion information;

23 (C) any information the petitioner has sub-
24 mitted pursuant to any administrative process;
25 and

1 (D) any information determined relevant
2 by the United States.

3 (2)(A) The petitioner may file with the court
4 any information determined relevant by the peti-
5 tioner.

6 (B) With leave of the court, the United States
7 may supplement the administrative record with addi-
8 tional information.

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

13 (4) No discovery shall be permitted, unless the
14 court determines that extraordinary circumstances
15 require discovery in the interests of justice.

16 (5) Sensitive security information contained in
17 the administrative record may only be provided to
18 petitioner's counsel, pursuant to a protective order.

19 (6)(A) The administrative record may include
20 classified information, which the United States shall
21 submit to the court in camera and ex parte. The
22 court shall review all classified information in cam-
23 era and ex parte unless it enters an order under
24 subparagraph (C).

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 is authorized to determine the
5 extent to which cleared counsel shall be permitted to
6 access classified information necessary to protect the
7 due process rights of a petitioner and enter an ap-
8 propriate order.

9 (D)(i) If the court enters an order under sub-
10 paragraph (C) providing for the disclosure of infor-
11 mation and the United States files with the court an
12 affidavit of the Attorney General objecting to the
13 disclosure, the court shall order that the information
14 not be disclosed.

15 (ii) If information is not disclosed under clause
16 (i), the court shall enter such an order as the inter-
17 ests of justice require, which may include an order
18 quashing the denial by the Attorney General under
19 subsection (a)(1).

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

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

1 (v) The functions and duties of the Attorney
2 General under this subparagraph—

3 (I) may be exercised by the Deputy Attor-
4 ney General, the Associate Attorney General, or
5 by an Assistant Attorney General designated by
6 the Attorney General for such purpose; and

7 (II) may not be delegated to any other offi-
8 cial.

9 (E) Any information disclosed under subpara-
10 graph (C) shall be subject to an appropriate protec-
11 tive order.

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

1 and 1841)), it shall provide in camera and ex parte
2 notice to the court concerning such use.

3 (B) If the court receives a notice under sub-
4 paragraph (A), the court shall review, in camera and
5 ex parte, the order described in that subparagraph
6 and any other materials that may be submitted by
7 the United States.

8 (C) If the court determines that the order de-
9 scribed in subparagraph (A) was not lawfully au-
10 thorized, or the information was not obtained in con-
11 formity with the order, it shall exclude such informa-
12 tion from consideration as part of the administrative
13 record.

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

1 (9) The court shall award a reasonable attor-
2 ney's fee to a petitioner who is a prevailing party in
3 an action under this section.

4 (10) After the expiration of the time to seek
5 further review, or the conclusion of further pro-
6 ceedings, the court shall return the administrative
7 record, including any copy, to the United States. All
8 privileged information or other information in the
9 possession of counsel for the petitioner that was pro-
10 vided by the United States under a protective order
11 shall be returned to the United States, or the coun-
12 sel for the petitioner shall certify its destruction, in-
13 cluding any copy.

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

19 (1) that the transferee or applicant—

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

1 viding material support or resources therefor;
2 and

3 (B) based on credible information, poses—

4 (i) a threat of committing an act of
5 international terrorism or domestic ter-
6 rorism with respect to an aircraft (includ-
7 ing a threat of piracy, or a threat to air-
8 line, passenger, or civil aviation security);

9 (ii) a threat of committing an act of
10 domestic terrorism with respect to the
11 homeland;

12 (iii) a threat of committing an act of
13 international terrorism against any United
14 States Government facility abroad and as-
15 sociated or supporting personnel, including
16 United States embassy, consulate and mis-
17 sion, military installation, United States
18 ship, United States aircraft, or other auxil-
19 iary craft owned or leased by the United
20 States Government; or

21 (iv) a threat of engaging in or con-
22 ducting a violent act of terrorism and is
23 operationally capable of doing so; or

24 (2) that the transferee or applicant—

1 (A) based on the totality of the cir-
2 cumstances, represents a threat to public safety
3 based on a reasonable suspicion that the trans-
4 feree or applicant is engaged, or has been en-
5 gaged, in conduct constituting, in preparation
6 of, in aid of, or related to terrorism, or pro-
7 viding material support or resources therefor;
8 and

9 (B) based on credible information—

10 (i) is a member of a terrorist organi-
11 zation (including a foreign terrorist organi-
12 zation designated pursuant to a statute or
13 Executive Order; and

14 (ii) is associated with terrorist activ-
15 ity, unless information exists that dem-
16 onstrates that the application of secondary
17 screening to such individual is not nec-
18 essary.

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

23 (1) in the case of a denial of the transfer of a
24 firearm, cause a unique identifier to issue pursuant
25 to section 922(t)(2) of title 18, United States Code,

1 not later than 3 days after the issuance of the order
2 under subsection (e); and

3 (2) in the case of a denial of a license or per-
4 mit, expeditiously issue a license or permit under
5 chapter 40 or 44 of title 18, United States Code, as
6 applicable.

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

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

16 (i) EXPEDITED CONSIDERATION.—

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

22 (2) OF QUASHING.—If the district court
23 quashes a denial by the Attorney General under sub-
24 section (e), a petitioner may submit the order quash-

1 ing the denial to the Department of Homeland Secu-
2 rity for expedited review, as appropriate.

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

6 (1) the Attorney General shall submit to the
7 Committee on the Judiciary and the Select Com-
8 mittee on Intelligence of the Senate and the Com-
9 mittee on the Judiciary and the Permanent Select
10 Committee on Intelligence of the House of Rep-
11 resentatives a report specifying—

12 (A) the number of individuals denied a
13 firearm or explosives transfer or a license or
14 permit under subsection (a)(1) during the re-
15 porting period;

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

18 (C) the number of instances in which a
19 district court quashed a denial by the Attorney
20 General under subsection (e); and

21 (2) the Secretary of Homeland Security shall
22 submit to the Committee on Homeland Security and
23 Governmental Affairs, the Select Committee on In-
24 telligence, and the Committee on the Judiciary of
25 the Senate and the Committee on Homeland Secu-

1 rity, the Permanent Select Committee on Intel-
2 ligence, and the Committee on the Judiciary of the
3 House of Representatives a report specifying—

4 (A) the number of individuals with respect
5 to whom a district court quashed a denial by
6 the Attorney General under subsection (e);

7 (B) the number of individuals who sub-
8 mitted the order quashing the denial to the De-
9 partment of Homeland Security under sub-
10 section (i)(2); and

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

18 (k) DEFINITIONS.—In this section:

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

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

1 (3) EXPLOSIVE.—The term “explosive” means
2 “explosive materials” as defined in section 841(c) of
3 title 18, United States Code.

4 (4) FIREARM.—The term “firearm” has the
5 meaning given that term in section 921(a)(3) of title
6 18, United States Code.

7 (5) INTERNATIONAL TERRORISM.—The term
8 “international terrorism” has the meaning given
9 that term in section 2331(1) of title 18, United
10 States Code.

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

15 (7) NATIONAL SECURITY.—The term “national
16 security” has the meaning given that term in section
17 219 of the Immigration and Nationality Act (8
18 U.S.C. 1189).

19 (8) SENSITIVE SECURITY INFORMATION.—The
20 term “sensitive security information” has the mean-
21 ing given that term by sections 114(r) and 40119 of
22 title 49, United States Code, and the regulations
23 and orders issued pursuant to those sections.

24 (9) TERRORIST ACTIVITY.—The term “terrorist
25 activity” has the meaning given that term in section

1 212(a)(3)(B) of the Immigration and Nationality
2 Act (8 U.S.C. 1182(a)(3)(B)).

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

5 (1) except as set forth in this section, authorize
6 the Attorney General to modify the length of period
7 before a firearm may be transferred under section
8 922(t) of title 18, United States Code; or

9 (2) apply to any claim other than a claim chal-
10 lenging the denial of a firearm, explosive, or
11 issuance of a firearm or explosives permit or license
12 by the Attorney General.

