To increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.

IN THE SENATE OF THE UNITED STATES

February 24, 2015

Mrs. Feinstein (for herself, Mr. Whitehouse, Mr. Schumer, Mr. Durbin, Mr. Blumenthal, Mrs. Boxer, Mr. Reed, Mr. Menendez, Mrs. Gillibrand, Mr. Murphy, Ms. Warren, and Mr. Markey) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Denying Firearms and Explosives to Dangerous Terrorists Act of 2015”.

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SEC. 2. GRANTING THE ATTORNEY GENERAL THE AUTHORITY TO DENY THE SALE, DELIVERY, OR TRANSFER OF A FIREARM OR THE ISSUANCE OF A FIREARMS OR EXPLOSIVES LICENSE OR PERMIT TO DANGEROUS TERRORISTS.

(a) STANDARD FOR EXERCISING ATTORNEY GENERAL DISCRETION REGARDING TRANSFERRING FIREARMS OR ISSUING FIREARMS PERMITS TO DANGEROUS TERRORISTS.—Chapter 44 of title 18, United States Code, is amended—

(1) by inserting after section 922 the following:

“§ 922A. Attorney General’s discretion to deny transfer of a firearm

“The Attorney General may deny the transfer of a firearm under section 922(t)(1)(B)(ii) of this title if the Attorney General—

“(1) determines that the transferee is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, or providing material support or resources for terrorism; and

“(2) has a reasonable belief that the prospective transferee may use a firearm in connection with terrorism.
§ 922B. Attorney General's discretion regarding applicants for firearm permits which would qualify for the exemption provided under section 922(t)(3)

"The Attorney General may determine that—

"(1) an applicant for a firearm permit which would qualify for an exemption under section 922(t)(3) is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, or providing material support or resources for terrorism; and

"(2) the Attorney General has a reasonable belief that the applicant may use a firearm in connection with terrorism."

(2) in section 921(a), by adding at the end the following:

"(36) The term 'terrorism' includes international terrorism and domestic terrorism, as defined in section 2331 of this title.

"(37) The term 'material support or resources' has the meaning given the term in section 2339A of this title.

"(38) The term 'responsible person' means an individual who has the power, directly or indirectly, to direct or cause the direction of the management
and policies of the applicant or licensee pertaining to
firearms.”; and

(3) in the table of sections, by inserting after
the item relating to section 922 the following:

“922A. Attorney General’s discretion to deny transfer of a firearm.
“922B. Attorney General’s discretion regarding applicants for firearm permits
which would qualify for the exemption provided under section
922(t)(3).”.

(b) EFFECT OF ATTORNEY GENERAL DISCRE-
TIONARY DENIAL THROUGH THE NATIONAL INSTANT
CRIMINAL BACKGROUND CHECK SYSTEM (NICS) ON
FIREARMS PERMITS.—Section 922(t) of title 18, United
States Code, is amended—

(1) in paragraph (1)(B)(ii), by inserting “or
State law, or that the Attorney General has deter-
mined to deny the transfer of a firearm pursuant to
section 922A of this title” before the semicolon;

(2) in paragraph (2), in the matter preceding
subparagraph (A), by inserting “, or if the Attorney
General has not determined to deny the transfer of
a firearm pursuant to section 922A of this title”
after “or State law”;

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) in clause (i)—

(I) in subclause (I), by striking
“and” at the end; and
(II) by adding at the end the following:

“(III) was issued after a check of the system established pursuant to paragraph (1);”;

(ii) in clause (ii), by inserting “and” after the semicolon; and

(iii) by adding at the end the following:

“(iii) the State issuing the permit agrees to deny the permit application if such other person is the subject of a determination by the Attorney General pursuant to section 922B of this title;”;

(4) in paragraph (4), by inserting “, or if the Attorney General has not determined to deny the transfer of a firearm pursuant to section 922A of this title” after “or State law”; and

(5) in paragraph (5), by inserting “, or if the Attorney General has determined to deny the transfer of a firearm pursuant to section 922A of this title” after “or State law”.

(c) Unlawful Sale or Disposition of Firearm Based Upon Attorney General Discretionary Denial.—Section 922(d) of title 18, United States Code, is amended—
(1) in paragraph (8), by striking “or” at the end;
(2) in paragraph (9), by striking the period at the end and inserting “; or”; and
(3) by adding at the end the following:
“(10) has been the subject of a determination by the Attorney General under section 922A, 922B, 923(d)(3), or 923(e) of this title.”.

(d) ATTORNEY GENERAL DISCRETIONARY DENIAL AS PROHIBITOR.—Section 922(g) of title 18, United States Code, is amended—
(1) in paragraph (8), by striking “or” at the end;
(2) in paragraph (9), by striking the comma at the end and inserting “; or”; and
(3) by inserting after paragraph (9) the following:
“(10) who has received actual notice of the Attorney General’s determination made under section 922A, 922B, 923(d)(3) or 923(e) of this title,”.

(e) ATTORNEY GENERAL DISCRETIONARY DENIAL OF FEDERAL FIREARMS LICENSES.—Section 923(d) of title 18, United States Code, is amended—
(1) in paragraph (1), in the matter preceding subparagraph (A), by striking “Any” and inserting “Except as provided in paragraph (3), any”; and

(2) by adding at the end the following:

“(3) The Attorney General may deny a license application if the Attorney General determines that the applicant (including any responsible person) is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, or providing material support or resources for terrorism, and the Attorney General has a reasonable belief that the applicant may use a firearm in connection with terrorism.”.

(f) DISCRETIONARY REVOCATION OF FEDERAL FIREARMS LICENSES.—Section 923(e) of title 18, United States Code, is amended—

(1) by inserting “(1)” after “(e)”;

(2) by striking “revoke any license” and inserting the following: “revoke—

“(A) any license”; and

(3) by striking “. The Attorney General may, after notice and opportunity for hearing, revoke the license” and inserting the following: “;

“(B) the license”; and
(4) by striking “. The Secretary’s action” and inserting the following: “; or

“(C) any license issued under this section if the Attorney General determines that the holder of such license (including any responsible person) is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism or providing material support or resources for terrorism, and the Attorney General has a reasonable belief that the applicant may use a firearm in connection with terrorism.

“(2) The Attorney General’s action”.

(g) Attorney General’s Ability To Withhold Information in Firearms License Denial and Revocation Suit.—

(1) In General.—Section 923(f)(1) of title 18, United States Code, is amended by inserting after the first sentence the following: “However, if the denial or revocation is pursuant to subsection (d)(3) or (e)(1)(C), any information upon which the Attorney General relied for this determination may be withheld from the petitioner, if the Attorney General determines that disclosure of the information would likely compromise national security.”.
(2) SUMMARIES.—Section 923(f)(3) of title 18, United States Code, is amended by inserting after the third sentence the following: “With respect to any information withheld from the aggrieved party under paragraph (1), the United States may submit, and the court may rely upon, summaries or redacted versions of documents containing information the disclosure of which the Attorney General has determined would likely compromise national security.”.

(h) ATTORNEY GENERAL’S ABILITY TO WITHHOLD INFORMATION IN RELIEF FROM DISABILITIES LAWSUITS.—Section 925(c) of title 18, United States Code, is amended by inserting after the third sentence the following: “If the person is subject to a disability under section 922(g)(10) of this title, any information which the Attorney General relied on for this determination may be withheld from the applicant if the Attorney General determines that disclosure of the information would likely compromise national security. In responding to the petition, the United States may submit, and the court may rely upon, summaries or redacted versions of documents containing information the disclosure of which the Attorney General has determined would likely compromise national security.”.
(i) **Penalties.**—Section 924(k) of title 18, United States Code, is amended—

(1) in paragraph (2), by striking “or” at the end;

(2) in paragraph (3), by striking the comma at the end and inserting “; or”; and

(3) by inserting after paragraph (3) the following:

“(4) constitutes an act of terrorism, or providing material support or resources for terrorism.”.

(j) **Remedy for Erroneous Denial of Firearm or Firearm Permit Exemption.**—

(1) **In General.**—Section 925A of title 18, United States Code, is amended—

(A) in the section heading, by striking “Remedy for erroneous denial of firearm” and inserting “Remedies”;

(B) by striking “Any person denied a firearm pursuant to subsection (s) or (t) of section 922” and inserting the following:

“(a) Except as provided in subsection (b), any person denied a firearm pursuant to subsection (s) or (t) of section 922 or a firearm permit pursuant to a determination made under section 922B”; and

(C) by adding at the end the following:
“(b) In any case in which the Attorney General has denied the transfer of a firearm to a prospective transferee pursuant to section 922A of this title or has made a determination regarding a firearm permit applicant pursuant to section 922B of this title, an action challenging the determination may be brought against the United States. The petition shall be filed not later than 60 days after the petitioner has received actual notice of the Attorney General’s determination under section 922A or 922B of this title. The court shall sustain the Attorney General’s determination upon a showing by the United States by a preponderance of evidence that the Attorney General’s determination satisfied the requirements of section 922A or 922B, as the case may be. To make this showing, the United States may submit, and the court may rely upon, summaries or redacted versions of documents containing information the disclosure of which the Attorney General has determined would likely compromise national security. Upon request of the petitioner or the court’s own motion, the court may review the full, undisclosed documents ex parte and in camera. The court shall determine whether the summaries or redacted versions, as the case may be, are fair and accurate representations of the underlying documents. The court shall not consider the full, undisclosed documents in deciding whether the Attorney Gen-
eral’s determination satisfies the requirements of section 922A or 922B.”.

(2) Technical and Conforming Amendment.—The table of sections for chapter 44 of title 18, United States Code, is amended by striking the item relating to section 925A and inserting the following:

“925A. Remedies.”.

(k) Provision of Grounds Underlying Ineligibility Determination by the National Instant Criminal Background Check System.—Section 103 of the Brady Handgun Violence Prevention Act (18 U.S.C. 922 note) is amended—

(1) in subsection (f)—

(A) by inserting “or the Attorney General has made a determination regarding an applicant for a firearm permit pursuant to section 922B of title 18, United States Code,” after “is ineligible to receive a firearm”; and

(B) by inserting “except any information for which the Attorney General has determined that disclosure would likely compromise national security,” after “reasons to the individual”; and

(2) in subsection (g)—

(A) the first sentence—
(i) by inserting "or if the Attorney
General has made a determination pursu-
ant to section 922A or 922B of title 18,
United States Code," after "or State
law,"; and

(ii) by inserting "except any infor-
mation for which the Attorney General has
determined that disclosure would likely
compromise national security" before the
period at the end; and

(B) by adding at the end the following:
"Any petition for review of information with-
held by the Attorney General under this sub-
section shall be made in accordance with section
925A of title 18, United States Code.".

(l) UNLAWFUL DISTRIBUTION OF EXPLOSIVES
BASED UPON ATTORNEY GENERAL DISCRETIONARY DE-
NIAL.—Section 842(d) of title 18, United States Code, is
amended—

(1) in paragraph (9), by striking the period and
inserting "; or"; and

(2) by adding at the end the following:
"(10) has received actual notice of the Attorney
General’s determination made pursuant to sub-
section (j) or (d)(1)(B) of section 843 of this title.".
(m) **ATTORNEY GENERAL DISCRETIONARY DENIAL AS PROHIBITOR.**—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (7), by inserting “; or” at the end; and

(2) by inserting after paragraph (7) the following:

“(8) who has received actual notice of the Attorney General’s determination made pursuant to subsection (j) or (d)(1)(B) of section 843 of this title.”.

(n) **ATTORNEY GENERAL DISCRETIONARY DENIAL OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.**—Section 843 of title 18, United States Code, is amended—

(1) in subsection (b), by striking “Upon” and inserting “Except as provided in subsection (j), upon”; and

(2) by adding at the end the following:

“(j) The Attorney General may deny the issuance of a permit or license to an applicant if the Attorney General determines that the applicant or a responsible person or employee possessor thereof is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation of, in aid of, or related to terrorism, or providing material support or resources for terrorism,
and the Attorney General has a reasonable belief that the person may use explosives in connection with terrorism.”.

(o) ATTORNEY GENERAL DISCRETIONARY REVOCATION OF FEDERAL EXPLOSIVES LICENSES AND PERMITS.—Section 843(d) of title 18, United States Code, is amended—

(1) by inserting “(1)” after “(d)”;

(2) by striking “if in the opinion” and inserting the following: “if—

“(A) in the opinion”; and

(3) by striking “. The Secretary’s action” and inserting the following: “; or

“(B) the Attorney General determines that the licensee or holder (or any responsible person or employee possessor thereof) is known (or appropriately suspected) to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, or providing material support or resources for terrorism, and that the Attorney General has a reasonable belief that the person may use explosives in connection with terrorism.

“(2) The Attorney General’s action”.

(p) ATTORNEY GENERAL’S ABILITY TO WITHHOLD INFORMATION IN EXPLOSIVES LICENSE AND PERMIT DE-
NIAL AND REVOCATION SUITS.—Section 843(e) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting after the first sentence the following: “However, if the denial or revocation is based upon an Attorney General determination under subsection (j) or (d)(1)(B), any information which the Attorney General relied on for this determination may be withheld from the petitioner if the Attorney General determines that disclosure of the information would likely compromise national security.”; and

(2) in paragraph (2), by adding at the end the following: “In responding to any petition for review of a denial or revocation based upon an Attorney General determination under subsection (j) or (d)(1)(B), the United States may submit, and the court may rely upon, summaries or redacted versions of documents containing information the disclosure of which the Attorney General has determined would likely compromise national security.”.

(q) ABILITY TO WITHHOLD INFORMATION IN COMMUNICATIONS TO EMPLOYERS.—Section 843(h)(2) of title 18, United States Code, is amended—
(1) in subparagraph (A), by inserting “or in subsection (j) of this section (on grounds of terrorism)” after “section 842(i)”; and

(2) in subparagraph (B)—

(A) in the matter preceding clause (i), by inserting “or in subsection (j) of this section,” after “section 842(i),”; and

(B) in clause (ii), by inserting “, except that any information that the Attorney General relied on for a determination pursuant to subsection (j) may be withheld if the Attorney General concludes that disclosure of the information would likely compromise national security” after “determination”.

(r) CONFORMING AMENDMENT TO IMMIGRATION AND NATIONALITY ACT.—Section 101(a)(43)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(E)(ii)) is amended by striking “or (5)” and inserting “(5), or (10)’’.

(s) GUIDELINES.—

(1) IN GENERAL.—The Attorney General shall issue guidelines describing the circumstances under which the Attorney General will exercise the authority and make determinations under subsections (d)(1)(B) and (j) of section 843 and sections 922A
and 922B of title 18, United States Code, as amended by this Act.

(2) CONTENTS.—The guidelines issued under paragraph (1) shall—

(A) provide accountability and a basis for monitoring to ensure that the intended goals for, and expected results of, the grant of authority under subsections (d)(1)(B) and (j) of section 843 and sections 922A and 922B of title 18, United States Code, as amended by this Act, are being achieved; and

(B) ensure that terrorist watch list records are used in a manner that safeguards privacy and civil liberties protections, in accordance with requirements outlines in Homeland Security Presidential Directive 11 (dated August 27, 2004).

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