

SUBCHAPTER V—ALIEN TERRORIST
REMOVAL PROCEDURES

§ 1531. Definitions

As used in this subchapter—

(1) the term “alien terrorist” means any alien described in section 1227(a)(4)(B) of this title;

(2) the term “classified information” has the same meaning as in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

(3) the term “national security” has the same meaning as in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App.);

(4) the term “removal court” means the court described in section 1532 of this title;

(5) the term “removal hearing” means the hearing described in section 1534 of this title;

(6) the term “removal proceeding” means a proceeding under this subchapter; and

(7) the term “special attorney” means an attorney who is on the panel established under section 1532(e) of this title.

(June 27, 1952, ch. 477, title V, § 501, as added Pub. L. 104-132, title IV, § 401(a), Apr. 24, 1996, 110 Stat. 1258; amended Pub. L. 104-208, div. C, title III, §§ 308(g)(1), 354(a)(5), Sept. 30, 1996, 110 Stat. 3009-622, 3009-643.)

Editorial Notes

REFERENCES IN TEXT

Section 1 of the Classified Information Procedures Act, referred to in pars. (2) and (3), is section 1 of Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1996—Par. (1). Pub. L. 104-208, § 308(g)(1), substituted “section 1227(a)(4)(B)” for “section 1251(a)(4)(B)”.
Par. (7). Pub. L. 104-208, § 354(a)(5), added par. (7).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(1) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 354(a)(5) of Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 358 of Pub. L. 104-208, set out as a note under section 1182 of this title.

EFFECTIVE DATE

Subchapter effective Apr. 24, 1996, and applicable to all aliens without regard to date of entry or attempted entry into United States, see section 401(f) of Pub. L. 104-132, set out as an Effective Date of 1996 Amendment note under section 1326 of this title.

§ 1532. Establishment of removal court

(a) Designation of judges

The Chief Justice of the United States shall publicly designate 5 district court judges from 5 of the United States judicial circuits who shall

constitute a court that shall have jurisdiction to conduct all removal proceedings. The Chief Justice may, in the Chief Justice’s discretion, designate the same judges under this section as are designated pursuant to section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(b) Terms

Each judge designated under subsection (a) shall serve for a term of 5 years and shall be eligible for redesignation, except that of the members first designated—

(1) 1 member shall serve for a term of 1 year;

(2) 1 member shall serve for a term of 2 years;

(3) 1 member shall serve for a term of 3 years; and

(4) 1 member shall serve for a term of 4 years.

(c) Chief judge

(1) Designation

The Chief Justice shall publicly designate one of the judges of the removal court to be the chief judge of the removal court.

(2) Responsibilities

The chief judge shall—

(A) promulgate rules to facilitate the functioning of the removal court; and

(B) assign the consideration of cases to the various judges on the removal court.

(d) Expeditious and confidential nature of proceedings

The provisions of section 103(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(c)) shall apply to removal proceedings in the same manner as they apply to proceedings under that Act [50 U.S.C. 1801 et seq.].

(e) Establishment of panel of special attorneys

The removal court shall provide for the designation of a panel of attorneys each of whom—

(1) has a security clearance which affords the attorney access to classified information, and

(2) has agreed to represent permanent resident aliens with respect to classified information under section 1534(e)(3) of this title in accordance with (and subject to the penalties under) this subchapter.

(June 27, 1952, ch. 477, title V, § 502, as added Pub. L. 104-132, title IV, § 401(a), Apr. 24, 1996, 110 Stat. 1259; amended Pub. L. 104-208, div. C, title III, § 354(a)(4), Sept. 30, 1996, 110 Stat. 3009-643.)

Editorial Notes

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (d), is Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104-208 added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 358 of Pub. L. 104-208, set out as a note under section 1182 of this title.

§ 1533. Removal court procedure**(a) Application****(1) In general**

In any case in which the Attorney General has classified information that an alien is an alien terrorist, the Attorney General may seek removal of the alien under this subchapter by filing an application with the removal court that contains—

(A) the identity of the attorney in the Department of Justice making the application;

(B) a certification by the Attorney General or the Deputy Attorney General that the application satisfies the criteria and requirements of this section;

(C) the identity of the alien for whom authorization for the removal proceeding is sought; and

(D) a statement of the facts and circumstances relied on by the Department of Justice to establish probable cause that—

(i) the alien is an alien terrorist;

(ii) the alien is physically present in the United States; and

(iii) with respect to such alien, removal under subchapter II would pose a risk to the national security of the United States.

(2) Filing

An application under this section shall be submitted *ex parte* and *in camera*, and shall be filed under seal with the removal court.

(b) Right to dismiss

The Attorney General may dismiss a removal action under this subchapter at any stage of the proceeding.

(c) Consideration of application**(1) Basis for decision**

In determining whether to grant an application under this section, a single judge of the removal court may consider, *ex parte* and *in camera*, in addition to the information contained in the application—

(A) other information, including classified information, presented under oath or affirmation; and

(B) testimony received in any hearing on the application, of which a verbatim record shall be kept.

(2) Approval of order

The judge shall issue an order granting the application, if the judge finds that there is probable cause to believe that—

(A) the alien who is the subject of the application has been correctly identified and is an alien terrorist present in the United States; and

(B) removal under subchapter II would pose a risk to the national security of the United States.

(3) Denial of order

If the judge denies the order requested in the application, the judge shall prepare a written statement of the reasons for the denial, taking all necessary precautions not to disclose any classified information contained in the Government's application.

(d) Exclusive provisions

If an order is issued under this section granting an application, the rights of the alien regarding removal and expulsion shall be governed solely by this subchapter, and except as they are specifically referenced in this subchapter, no other provisions of this chapter shall be applicable.

(June 27, 1952, ch. 477, title V, § 503, as added Pub. L. 104-132, title IV, § 401(a), Apr. 24, 1996, 110 Stat. 1259.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original, "this Act", meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Statutory Notes and Related Subsidiaries

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1534. Removal hearing**(a) In general****(1) Expeditious hearing**

In any case in which an application for an order is approved under section 1533(c)(2) of this title, a removal hearing shall be conducted under this section as expeditiously as practicable for the purpose of determining whether the alien to whom the order pertains should be removed from the United States on the grounds that the alien is an alien terrorist.

(2) Public hearing

The removal hearing shall be open to the public.

(b) Notice

An alien who is the subject of a removal hearing under this subchapter shall be given reasonable notice of—

(1) the nature of the charges against the alien, including a general account of the basis for the charges; and

(2) the time and place at which the hearing will be held.

(c) Rights in hearing**(1) Right of counsel**

The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel

shall be entitled to have counsel assigned to represent the alien. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged.

(2) Introduction of evidence

Subject to the limitations in subsection (e), the alien shall have a reasonable opportunity to introduce evidence on the alien's own behalf.

(3) Examination of witnesses

Subject to the limitations in subsection (e), the alien shall have a reasonable opportunity to examine the evidence against the alien and to cross-examine any witness.

(4) Record

A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept.

(5) Removal decision based on evidence at hearing

The decision of the judge regarding removal shall be based only on that evidence introduced at the removal hearing.

(d) Subpoenas

(1) Request

At any time prior to the conclusion of the removal hearing, either the alien or the Department of Justice may request the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made *ex parte* except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal classified evidence or the source of that evidence. The Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena.

(2) Payment for attendance

If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid from funds appropriated for the enforcement of subchapter II.

(3) Nationwide service

A subpoena under this subsection may be served anywhere in the United States.

(4) Witness fees

A witness subpoenaed under this subsection shall receive the same fees and expenses as a

witness subpoenaed in connection with a civil proceeding in a court of the United States.

(5) No access to classified information

Nothing in this subsection is intended to allow an alien to have access to classified information.

(e) Discovery

(1) In general

For purposes of this subchapter—

(A) the Government is authorized to use in a removal proceedings¹ the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) without regard to subsections (c), (e), (f), (g), and (h) of section 106 of that Act [50 U.S.C. 1806(c), (e), (f), (g), (h)] and discovery of information derived pursuant to such Act, or otherwise collected for national security purposes, shall not be authorized if disclosure would present a risk to the national security of the United States;

(B) an alien subject to removal under this subchapter shall not be entitled to suppress evidence that the alien alleges was unlawfully obtained; and

(C) section 3504 of title 18 and section 1806(c) of title 50 shall not apply if the Attorney General determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information or otherwise threaten the integrity of a pending investigation.

(2) Protective orders

Nothing in this subchapter shall prevent the United States from seeking protective orders and from asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privileges.

(3) Treatment of classified information

(A) Use

The judge shall examine, *ex parte* and in camera, any evidence for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States or to the security of any individual because it would disclose classified information and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to this paragraph. Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.

(B) Submission

With respect to such information, the Government shall submit to the removal court an unclassified summary of the specific evidence that does not pose that risk.

¹ So in original. Probably should be "proceeding".

(C) Approval

Not later than 15 days after submission, the judge shall approve the summary if the judge finds that it is sufficient to enable the alien to prepare a defense. The Government shall deliver to the alien a copy of the unclassified summary approved under this subparagraph.

(D) Disapproval**(i) In general**

If an unclassified summary is not approved by the removal court under subparagraph (C), the Government shall be afforded 15 days to correct the deficiencies identified by the court and submit a revised unclassified summary.

(ii) Revised summary

If the revised unclassified summary is not approved by the court within 15 days of its submission pursuant to subparagraph (C), the removal hearing shall be terminated unless the judge makes the findings under clause (iii).

(iii) Findings

The findings described in this clause are, with respect to an alien, that—

(I) the continued presence of the alien in the United States would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person, and

(II) the provision of the summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person.

(E) Continuation of hearing without summary

If a judge makes the findings described in subparagraph (D)(iii)—

(i) if the alien involved is an alien lawfully admitted for permanent residence, the procedures described in subparagraph (F) shall apply; and

(ii) in all cases the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to this paragraph.

(F) Special procedures for access and challenges to classified information by special attorneys in case of lawful permanent aliens**(i) In general**

The procedures described in this subparagraph are that the judge (under rules of the removal court) shall designate a special attorney to assist the alien—

(I) by reviewing in camera the classified information on behalf of the alien, and

(II) by challenging through an in camera proceeding the veracity of the evidence contained in the classified information.

(ii) Restrictions on disclosure

A special attorney receiving classified information under clause (i)—

(I) shall not disclose the information to the alien or to any other attorney representing the alien, and

(II) who discloses such information in violation of subclause (I) shall be subject to a fine under title 18, imprisoned for not less than 10 years nor more than 25 years, or both.

(f) Arguments

Following the receipt of evidence, the Government and the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The Government shall open the argument. The alien shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

(g) Burden of proof

In the hearing, it is the Government's burden to prove, by the preponderance of the evidence, that the alien is subject to removal because the alien is an alien terrorist.

(h) Rules of evidence

The Federal Rules of Evidence shall not apply in a removal hearing.

(i) Determination of deportation

If the judge, after considering the evidence on the record as a whole, finds that the Government has met its burden, the judge shall order the alien removed and detained pending removal from the United States. If the alien was released pending the removal hearing, the judge shall order the Attorney General to take the alien into custody.

(j) Written order

At the time of issuing a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (e) shall not be made available to the alien or the public.

(k) No right to ancillary relief

At no time shall the judge consider or provide for relief from removal based on—

- (1) asylum under section 1158 of this title;
- (2) by² withholding of removal under section 1231(b)(3) of this title;
- (3) cancellation of removal under section 1229b of this title;
- (4) voluntary departure under section 1254a(e)³ of this title;
- (5) adjustment of status under section 1255 of this title; or
- (6) registry under section 1259 of this title.

(I) Report on terrorist removal proceedings

Not later than 3 months from December 28, 2001, the Attorney General shall submit to Con-

² So in original. The word "by" probably should not appear.

³ See References in Text note below.

gress a report concerning the effect and efficacy of alien terrorist removal proceedings, including the reasons why proceedings pursuant to this section have not been used by the Attorney General in the past and the effect on the use of these proceedings after the enactment of the USA PATRIOT Act of 2001 (Public Law 107-56).

(June 27, 1952, ch. 477, title V, § 504, as added Pub. L. 104-132, title IV, § 401(a), Apr. 24, 1996, 110 Stat. 1260; amended Pub. L. 104-208, div. C, title III, §§ 308(g)(7)(B), (8)(B), 354(a)(1), (2), (b), 357, Sept. 30, 1996, 110 Stat. 3009-623, 3009-624, 3009-641 to 3009-644; Pub. L. 107-108, title III, § 313, Dec. 28, 2001, 115 Stat. 1401.)

Editorial Notes

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (e)(1)(A), is Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

The Federal Rules of Evidence, referred to in subsec. (h), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 1254(e) of this title, referred to in subsec. (k)(4), was in the original a reference to “section 244(e)”, meaning section 244(e) of act June 27, 1952, which was classified to section 1254(e) of this title. Pub. L. 104-208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615, repealed section 244 and renumbered section 244A as section 244, which is classified to section 1254a of this title. For provisions relating to voluntary departure, see section 1229c of this title.

The USA PATRIOT Act of 2001, referred to in subsec. (l), is Pub. L. 107-56, Oct. 26, 2001, 115 Stat. 272, known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 or the USA PATRIOT Act. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure, and Tables.

AMENDMENTS

2001—Subsec. (l). Pub. L. 107-108 added subsec. (l).
1996—Subsec. (e)(1)(A). Pub. L. 104-208, § 354(b)(1)(A)(ii), substituted “pursuant to such Act” for “pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)”.

Pub. L. 104-208, § 354(b)(1)(A)(i), inserted “the Government is authorized to use in a removal proceedings the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) without regard to subsections (c), (e), (f), (g), and (h) of section 106 of that Act and” before “discovery of information”.

Subsec. (e)(3)(A). Pub. L. 104-208, § 354(b)(1)(B), substituted “and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to this paragraph. Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.” for period at end.

Subsec. (e)(3)(D)(ii). Pub. L. 104-208, § 354(a)(1)(A), inserted “unless the judge makes the findings under clause (iii)” before period at end.

Subsec. (e)(3)(D)(iii). Pub. L. 104-208, § 354(a)(1)(B), added cl. (iii).

Subsec. (e)(3)(E), (F). Pub. L. 104-208, § 354(a)(2), added subpars. (E) and (F).

Subsec. (f). Pub. L. 104-208, § 354(b)(2), inserted at end “The judge may allow any part of the argument that

refers to evidence received in camera and ex parte to be heard in camera and ex parte.”

Subsec. (j). Pub. L. 104-208, § 354(b)(3), inserted at end “Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (e) shall not be made available to the alien or the public.”

Subsec. (k)(2). Pub. L. 104-208, § 308(g)(7)(B), substituted “by withholding of removal under section 1231(b)(3) of this title” for “withholding of deportation under section 1253(h) of this title”.

Subsec. (k)(3). Pub. L. 104-208, § 308(g)(8)(B), substituted “cancellation of removal under section 1229b of this title” for “suspension of deportation under subsection (a) or (e) of section 1254 of this title”.

Subsec. (k)(4) to (6). Pub. L. 104-208, § 357, added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(7)(B), (8)(B) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by sections 354(a)(1), (2), (b), and 357 of Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 358 of Pub. L. 104-208, set out as a note under section 1182 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1535. Appeals

(a) Appeal of denial of application for removal proceedings

(1) In general

The Attorney General may seek a review of the denial of an order sought in an application filed pursuant to section 1533 of this title. The appeal shall be filed in the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed not later than 20 days after the date of such denial.

(2) Record on appeal

The entire record of the proceeding shall be transmitted to the Court of Appeals under seal, and the Court of Appeals shall hear the matter ex parte.

(3) Standard of review

The Court of Appeals shall—

- (A) review questions of law de novo; and
- (B) set aside a finding of fact only if such finding was clearly erroneous.

(b) Appeal of determination regarding summary of classified information

(1) In general

The United States may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

- (A) any determination by the judge pursuant to section 1534(e)(3) of this title; or
- (B) the refusal of the court to make the findings permitted by section 1534(e)(3) of this title.

(2) Record

In any interlocutory appeal taken pursuant to this subsection, the entire record, including any proposed order of the judge, any classified information and the summary of evidence, shall be transmitted to the Court of Appeals. The classified information shall be transmitted under seal. A verbatim record of such appeal shall be kept under seal in the event of any other judicial review.

(c) Appeal of decision in hearing**(1) In general**

Subject to paragraph (2), the decision of the judge after a removal hearing may be appealed by either the alien or the Attorney General to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed not later than 20 days after the date on which the order is issued. The order shall not be enforced during the pendency of an appeal under this subsection.

(2) Automatic appeals in cases of permanent resident aliens in which no summary provided**(A) In general**

Unless the alien waives the right to a review under this paragraph, in any case involving an alien lawfully admitted for permanent residence who is denied a written summary of classified information under section 1534(e)(3) of this title and with respect to which the procedures described in section 1534(e)(3)(F) of this title apply, any order issued by the judge shall be reviewed by the Court of Appeals for the District of Columbia Circuit.

(B) Use of special attorney

With respect to any issue relating to classified information that arises in such review, the alien shall be represented only by the special attorney designated under section 1534(e)(3)(F)(i) of this title on behalf of the alien.

(3) Transmittal of record

In an appeal or review to the Court of Appeals pursuant to this subsection—

(A) the entire record shall be transmitted to the Court of Appeals; and

(B) information received in camera and ex parte, and any portion of the order that would reveal the substance or source of such information, shall be transmitted under seal.

(4) Expedited appellate proceeding

In an appeal or review to the Court of Appeals under this subsection—

(A) the appeal or review shall be heard as expeditiously as practicable and the court may dispense with full briefing and hear the matter solely on the record of the judge of the removal court and on such briefs or motions as the court may require to be filed by the parties;

(B) the Court of Appeals shall issue an opinion not later than 60 days after the date of the issuance of the final order of the district court;

(C) the court shall review all questions of law de novo; and

(D) a finding of fact shall be accorded deference by the reviewing court and shall not be set aside unless such finding was clearly erroneous, except that in the case of a review under paragraph (2) in which an alien lawfully admitted for permanent residence was denied a written summary of classified information under section 1534(c)(3)¹ of this title, the Court of Appeals shall review questions of fact de novo.

(d) Certiorari

Following a decision by the Court of Appeals pursuant to subsection (c), the alien or the Attorney General may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari, except as provided by the Court of Appeals or a Justice of the Supreme Court.

(e) Appeal of detention order**(1) In general**

Sections 3145 through 3148 of title 18 pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom section 1537(b)(1) of this title applies. In applying the previous sentence—

(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

(2) No review of continued detention

The determinations and actions of the Attorney General pursuant to section 1537(b)(2)(C) of this title shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates the alien's rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.

(June 27, 1952, ch. 477, title V, § 505, as added Pub. L. 104-132, title IV, § 401(a), Apr. 24, 1996, 110 Stat. 1263; amended Pub. L. 104-208, div. C, title III, § 354(a)(3), Sept. 30, 1996, 110 Stat. 3009-642.)

Editorial Notes

AMENDMENTS

1996—Subsec. (c)(1), Pub. L. 104-208, § 354(a)(3)(A), substituted “Subject to paragraph (2), the decision” for “The decision”.

Subsec. (c)(2), Pub. L. 104-208, § 354(a)(3)(D), added par. (2). Former par. (2) redesignated (3).

Subsec. (c)(3), Pub. L. 104-208, § 354(a)(3)(C), redesignated par. (2) as (3). Former par. (3) redesignated (4).

¹ So in original. Probably should be section “1534(e)(3)”.

Subsec. (c)(3)(D). Pub. L. 104-208, §354(a)(3)(B), inserted before period at end “, except that in the case of a review under paragraph (2) in which an alien lawfully admitted for permanent residence was denied a written summary of classified information under section 1534(c)(3) of this title, the Court of Appeals shall review questions of fact de novo”.

Subsec. (c)(4). Pub. L. 104-208, §354(a)(3)(C), redesignated par. (3) as (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 358 of Pub. L. 104-208, set out as a note under section 1182 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1536. Custody and release pending removal hearing

(a) Upon filing application

(1) In general

Subject to paragraphs (2) and (3), the Attorney General may—

(A) take into custody any alien with respect to whom an application under section 1533 of this title has been filed; and

(B) retain such an alien in custody in accordance with the procedures authorized by this subchapter.

(2) Special rules for permanent resident aliens

(A) Release hearing

An alien lawfully admitted for permanent residence shall be entitled to a release hearing before the judge assigned to hear the removal hearing. Such an alien shall be detained pending the removal hearing, unless the alien demonstrates to the court that the alien—

(i) is a person lawfully admitted for permanent residence in the United States;

(ii) if released upon such terms and conditions as the court may prescribe (including the posting of any monetary amount), is not likely to flee; and

(iii) will not endanger national security, or the safety of any person or the community, if released.

(B) Information considered

The judge may consider classified information submitted in camera and ex parte in making a determination whether to release an alien pending the removal hearing.

(3) Release if order denied and no review sought

(A) In general

Subject to subparagraph (B), if a judge of the removal court denies the order sought in an application filed pursuant to section 1533 of this title, and the Attorney General does not seek review of such denial, the alien shall be released from custody.

(B) Application of regular procedures

Subparagraph (A) shall not prevent the arrest and detention of the alien pursuant to subchapter II.

(b) Conditional release if order denied and review sought

(1) In general

If a judge of the removal court denies the order sought in an application filed pursuant to section 1533 of this title and the Attorney General seeks review of such denial, the judge shall release the alien from custody subject to the least restrictive condition, or combination of conditions, of release described in section 3142(b) and clauses (i) through (xiv) of section 3142(c)(1)(B) of title 18 that—

(A) will reasonably assure the appearance of the alien at any future proceeding pursuant to this subchapter; and

(B) will not endanger the safety of any other person or the community.

(2) No release for certain aliens

If the judge finds no such condition or combination of conditions, as described in paragraph (1), the alien shall remain in custody until the completion of any appeal authorized by this subchapter.

(June 27, 1952, ch. 477, title V, §506, as added Pub. L. 104-132, title IV, §401(a), Apr. 24, 1996, 110 Stat. 1265.)

Statutory Notes and Related Subsidiaries

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1537. Custody and release after removal hearing

(a) Release

(1) In general

Subject to paragraph (2), if the judge decides that an alien should not be removed, the alien shall be released from custody.

(2) Custody pending appeal

If the Attorney General takes an appeal from such decision, the alien shall remain in custody, subject to the provisions of section 3142 of title 18.

(b) Custody and removal

(1) Custody

If the judge decides that an alien shall be removed, the alien shall be detained pending the

outcome of any appeal. After the conclusion of any judicial review thereof which affirms the removal order, the Attorney General shall retain the alien in custody and remove the alien to a country specified under paragraph (2).

(2) Removal

(A) In general

The removal of an alien shall be to any country which the alien shall designate if such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

(B) Alternate countries

If the alien refuses to designate a country to which the alien wishes to be removed or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so designated would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be removed to any country willing to receive such alien.

(C) Continued detention

If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every 6 months shall provide to the attorney representing the alien at the removal hearing a written report on the Attorney General's efforts. Any alien in custody pursuant to this subparagraph shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate.

(D) Fingerprinting

Before an alien is removed from the United States pursuant to this subsection, or pursuant to an order of removal because such alien is inadmissible under section 1182(a)(3)(B) of this title, the alien shall be photographed and fingerprinted, and shall be advised of the provisions of section 1326(b) of this title.

(c) Continued detention pending trial

(1) Delay in removal

The Attorney General may hold in abeyance the removal of an alien who has been ordered removed, pursuant to this subchapter, to allow the trial of such alien on any Federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

(2) Maintenance of custody

Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall re-

main in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

(3) Subsequent removal

Following the completion of a sentence of confinement by an alien described in paragraph (1), or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to the removal of the alien under this subchapter.

(d) Application of certain provisions relating to escape of prisoners

For purposes of sections 751 and 752 of title 18, an alien in the custody of the Attorney General pursuant to this subchapter shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of a felony.

(e) Rights of aliens in custody

(1) Family and attorney visits

An alien in the custody of the Attorney General pursuant to this subchapter shall be given reasonable opportunity, as determined by the Attorney General, to communicate with and receive visits from members of the alien's family, and to contact, retain, and communicate with an attorney.

(2) Diplomatic contact

An alien in the custody of the Attorney General pursuant to this subchapter shall have the right to contact an appropriate diplomatic or consular official of the alien's country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.

(June 27, 1952, ch. 477, title V, § 507, as added Pub. L. 104-132, title IV, § 401(a), Apr. 24, 1996, 110 Stat. 1266; amended Pub. L. 104-208, div. C, title III, § 308(d)(4)(Q), Sept. 30, 1996, 110 Stat. 3009-619.)

Editorial Notes

AMENDMENTS

1996—Subsec. (b)(2)(D). Pub. L. 104-208 substituted "removal because such alien is inadmissible" for "exclusion because such alien is excludable".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related

references, see note set out under section 1551 of this title.

REFERENCES TO ORDER OF REMOVAL DEEMED TO
INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

**CHAPTER 13—IMMIGRATION AND
NATURALIZATION SERVICE**

SUBCHAPTER I—ORGANIZATION

Sec.	
1551.	Immigration and Naturalization Service.
1552.	Commissioner of Immigration and Naturalization; office.
1553.	Assistant Commissioners and one District Director; compensation and salary grade.
1554.	Special immigrant inspectors at Washington.
1555.	Immigration Service expenses.
1556.	Transferred.
1557.	Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information.

SUBCHAPTER II—IMMIGRATION SERVICES AND
INFRASTRUCTURE IMPROVEMENTS

1571.	Purposes.
1572.	Definitions.
1573.	Immigration Services and Infrastructure Improvements Account.
1574.	Reports to Congress.

SUBCHAPTER I—ORGANIZATION

§ 1551. Immigration and Naturalization Service

There is created and established in the Department of Justice an Immigration and Naturalization Service.

(Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826; June 29, 1906, ch. 3592, § 1, 34 Stat. 596; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 342 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-313, title II, § 201, Oct. 17, 2000, 114 Stat. 1262, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Immigration Services and Infrastructure Improvements Act of 2000'."

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

The Immigration and Naturalization Service was abolished by section 291(a) of Title 6, Domestic Security, upon completion of all transfers from the Immigration and Naturalization Service as provided for by chapter 1 of Title 6.

Functions of the Commissioner of Immigration and Naturalization performed under the Border Patrol pro-

gram, the detention and removal program, the intelligence program, the investigations program, and the inspections program, and all personnel, assets, and liabilities pertaining to such programs, were transferred to the Under Secretary for Border and Transportation Security of the Department of Homeland Security by section 251 of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of the Commissioner of Immigration and Naturalization relating to adjudications of immigrant visa petitions, adjudications of naturalization petitions, adjudications of asylum and refugee applications, adjudications performed at service centers, and all other adjudications performed by the Immigration and Naturalization Service, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions, were transferred to the Director of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security by section 271(b) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

Functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the functions of the Commissioner referred to in the two preceding paragraphs were transferred to the Under Secretary for Management of the Department of Homeland Security by former section 341(b)(2) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

Functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) were transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services by section 279(a) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

Personnel of the Department of Justice employed in connection with the functions transferred by part E (§ 271 et seq.) of subchapter IV of chapter 1 of Title 6 (and functions that the Secretary of Homeland Security determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), were transferred to the Director of the Bureau of Citizenship and Immigration Services by section 275(b)(2) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified. Personnel of the Department of Justice employed in connection with the functions transferred by section 279 of Title 6 were transferred to the Director of the Office of Refugee Resettlement by section 279(f)(3) of Title 6 and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified.

For treatment of references to any agency, officer, or office, etc. the functions of which were transferred to the Department of Homeland Security, see sections 552(d) and 557 of Title 6.

INDEPENDENT COMPREHENSIVE MANAGEMENT ANALYSIS
OF SERVICE OPERATIONS; ARRANGEMENTS RESPECTING,
ETC.

Pub. L. 96-132, § 10, Nov. 30, 1979, 93 Stat. 1047, provided that: "The Attorney General shall make arrangements with an appropriate entity for an independent comprehensive management analysis of the operations of the Immigration and Naturalization Service for the purpose of making such operations efficient and cost effective. After the completion of such analysis, the Attorney General shall promptly submit a report to the appropriate committees of Congress on the results of such analysis together with any administrative or legislative recommendations of the Attorney General to improve the operations of the Service."