

Section 1254a(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 C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615, repealed section 244 and renumbered section 244A as section 244, which is classified to section 1254a of this title.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.

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 sec-

tion 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 in-

volving 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.

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

(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.)

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).

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).

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.)

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,