

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)<sup>1</sup> 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.

<sup>1</sup> 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.