

clude 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, notwith-