detention center under the pilot program, the Attorney General and the Secretary shall consult with the redevelopment authority established for the military base and give substantial deference to the redevelopment plan prepared for the military base.

''(b) REPORT.—Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, together with the Secretary of Defense, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate, and the Committees on Armed Services of the House of Representatives and of the Senate, on the feasibility of using military bases closed under a base closure law as detention centers by the Immigration and Naturalization Service.

''(c) DEFINITION.—For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act [Sept. 30, 1996].''

INTERIOR REPATRIATION PROGRAM

Section 388 of div. C of Pub. L. 104–208 provided that: ''Not later than 30 months after the date of the enactment of this Act [Sept. 30, 1996], the Attorney General, in consultation with the Secretary of State, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of the program of interior repatriation developed under section 437 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) [set out as a note below].''

Pub. L. 104–132, title IV, § 437, Apr. 24, 1996, 110 Stat. 1275, provided that: ''Not later than 180 days after the date of enactment of this Act [Apr. 24, 1996], the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country's border with the United States.''

TERMINATION OF LIMITATION

Pub. L. 103–322, title II, § 20301(c), Sept. 13, 1994, 108 Stat. 1824, as amended by Pub. L. 104–208, div. C, title III, § 308(g)(5)(G), Sept. 30, 1996, 110 Stat. 3009–623, provided that notwithstanding subsec. (h)(5) [(i)(5)] of this section the requirements of subsec. (h) [i] of this section were not to be subject to the availability of appropriations on and after Oct. 1, 2004, prior to repeal by Pub. L. 109–162, title XI, § 1172(c), Jan. 5, 2006, 119 Stat. 3123.

PART V—ADJUSTMENT AND CHANGE OF STATUS

§ 1251. Transferred

CODIFICATION

Section 1251, act June 27, 1952, ch. 477, title II, ch. 5, § 241, 66 Stat. 204, as amended, which related to deportable aliens, was renumbered section 237 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 305(a)(2), Sept. 30, 1996, 110 Stat. 3009–598, and was transferred to section 1227 of this title.

§ 1251a. Repealed. Pub. L. 87–301, § 24(a)(3), Sept. 26, 1961, 75 Stat. 657

Section, Pub. L. 85–316, § 7, Sept. 11, 1957, 71 Stat. 640, excepted spouse, child or parent of a United States citizen, and aliens admitted between Dec. 22, 1945, and Nov. 1, 1954, inclusive, who misrepresented their nationality, place of birth, identity or residence, provided this latter group did so misrepresent because of fear of persecution because of race, religion or politics if repatriated and not to evade quota restrictions, or an investigation of themselves, from the deportation provisions of section 1251 of this title which declared excludable, those aliens who sought to procure or procured entry into the United States by fraud and misrepresentation, or who were not of the nationality specified in their visas, and authorized the admission, after Sept. 11, 1957, of any alien spouse, parent or child of a United States citizen or of an alien admitted for permanent residence who sought, or had procured fraudulent entry into the United States or admitted committing perjury in connection therewith, if otherwise admissible and the Attorney General consented. See section 1182(h) of this title.

§ 1252. Judicial review of orders of removal

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) of this section and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review

(A) Review relating to section 1225(b)(1)

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e) of this section, any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,

(ii) except as provided in subsection (e) of this section, a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in subsection (e) of this section, procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

(B) Denials of discretionary relief

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.

(D) Judicial review of certain legal claims

Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) Treatment of certain decisions

No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 1229a(c)(1)(B) of this title.

(4) Claims under the United Nations Convention

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e) of this section.

(5) Exclusive means of review

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) of this section. For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms ''judicial review'' and ''jurisdiction to review'' include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

(b) Requirements for review of orders of removal

With respect to review of an order of removal under subsection (a)(1) of this section, the following requirements apply:

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) Service

(A) In general

The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 1229a of this title was entered.

(B) Stay of order

Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) Alien's brief

The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) Scope and standard for review

Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section 1158(a) of this title shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availabil-

ity of corroborating evidence, as described in section 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B) of this section, that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) Treatment of nationality claims

(A) Court determination if no issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) Transfer if issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

(C) Limitation on determination

The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) Consolidation with review of motions to reopen or reconsider

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) Challenge to validity of orders in certain criminal proceedings

(A) In general

If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 1253(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) Claims of United States nationality

If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) Consequence of invalidation

If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 1253(a) of this title. The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) Limitation on filing petitions for review

The defendant in a criminal proceeding under section 1253(a) of this title may not file a petition for review under subsection (a) of this section during the criminal proceeding.

(8) Construction

This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 1231(a) of this title;

(B) does not relieve the alien from complying with section 1231(a)(4) of this title and section 1253(g)[1] of this title; and

(C) does not require the Attorney General to defer removal of the alien.

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) Requirements for petition

A petition for review or for habeas corpus of an order of removal—

(1) shall attach a copy of such order, and

(2) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

(d) Review of final orders

A court may review a final order of removal only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

[1] See References in Text note below.

(e) Judicial review of orders under section 1225(b)(1)

(1) Limitations on relief

Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

(3) Challenges on validity of the system

(A) In general

Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

(B) Deadlines for bringing actions

Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) Notice of appeal

A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) Expeditious consideration of cases

It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) Decision

In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 1225(b)(1) of this title, or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1) of this section.

(5) Scope of inquiry

In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) Limit on injunctive relief

(1) In general

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

(2) Particular cases

Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General

to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

(June 27, 1952, ch. 477, title II, ch. 5, § 242, 66 Stat. 208; Sept. 3, 1954, ch. 1263, § 17, 68 Stat. 1232; Pub. L. 97–116, § 18(h)(1), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 98–473, title II, § 220(b), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99–603, title VII, § 701, Nov. 6, 1986, 100 Stat. 3445; Pub. L. 100–525, § 9(n), Oct. 24, 1988, 102 Stat. 2620; Pub. L. 100–690, title VII, § 7343(a), Nov. 18, 1988, 102 Stat. 4470; Pub. L. 101–649, title V, §§ 504(a), 545(e), title VI, § 603(b)(2), Nov. 29, 1990, 104 Stat. 5049, 5066, 5085; Pub. L. 102–232, title III, §§ 306(a)(4), (c)(7), 307(m)(2), 309(b)(9), Dec. 12, 1991, 105 Stat. 1751, 1753, 1757, 1759; Pub. L. 103–322, title II, § 20301(a), title XIII, § 130001(a), Sept. 13, 1994, 108 Stat. 1823, 2023; Pub. L. 103–416, title II, §§ 219(h), 224(b), Oct. 25, 1994, 108 Stat. 4317, 4324; Pub. L. 104–132, title IV, §§ 436(a), (b)(1), 438(a), 440(c), (h), Apr. 24, 1996, 110 Stat. 1275, 1277, 1279; Pub. L. 104–208, div. C, title III, §§ 306(a), (d), 308(g)(10)(H), 371(b)(6), Sept. 30, 1996, 110 Stat. 3009–607, 3009–612, 3009–625, 3009–645; Pub. L. 109–13, div. B, title I, §§ 101(e), (f), 106(a), May 11, 2005, 119 Stat. 305, 310.)

REFERENCES IN TEXT

Section 1253 of this title, referred to in subsec. (b)(8)(B), was amended generally by Pub. L. 104–208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, no longer contains a subsec. (g). Provisions similar to those contained in former subsec. (g) of section 1253 are now contained in subsec. (d) of section 1253.

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsec. (e)(1)(B), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (f)(1), is div. C of Pub. L. 104–208, Sept. 30, 1996, 110 Stat. 3009–546. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 1101 of this title and Tables.

AMENDMENTS

2005—Subsec. (a)(2)(A). Pub. L. 109–13, § 106(a)(1)(A)(i), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''Notwithstanding any other provision of law'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–13, § 106(a)(1)(A)(ii), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law'' in introductory provisions.

Pub. L. 109–13, § 101(f)(2), inserted ''and regardless of whether the judgment, decision, or action is made in removal proceedings,'' before ''no court shall'' in introductory provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 109–13, § 101(f)(1), inserted ''or the Secretary of Homeland Security'' after ''Attorney General'' in two places.

Subsec. (a)(2)(C). Pub. L. 109–13, § 106(a)(1)(A)(ii), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)'' after ''Notwithstanding any other provision of law''.

Subsec. (a)(2)(D). Pub. L. 109–13, § 106(a)(1)(A)(iii), added subpar. (D).

Subsec. (a)(4), (5). Pub. L. 109–13, § 106(a)(1)(B), added pars. (4) and (5).

Subsec. (b)(4). Pub. L. 109–13, § 101(e), added concluding provisions.

Subsec. (b)(9). Pub. L. 109–13, § 106(a)(2), inserted at end ''Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.''

Subsec. (g). Pub. L. 109–13, § 106(a)(3), inserted ''(statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title'' after ''notwithstanding any other provision of law''.

1996—Pub. L. 104–208, § 306(a)(2), amended section generally, substituting subsecs. (a) to (g) relating to judicial review of orders of removal for former subsecs. (a) to (i) relating to apprehension and deportation of aliens.

Subsec. (a)(2). Pub. L. 104–132, § 440(c)(2), struck out subpar. (B) which read as follows: ''The Attorney General may not release from custody any lawfully admitted alien who has been convicted of an aggravated felony, either before or after a determination of deportability, unless the alien demonstrates to the satisfaction of the Attorney General that such alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Pub. L. 104–132, § 440(c)(1)(C), struck out ''but subject to subparagraph (B)'' before '', the Attorney General shall not release''.

Pub. L. 104–132, § 440(c)(1)(B), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), substituted ''any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title'' for ''an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)''.

Pub. L. 104–132, § 440(c)(1)(A), substituted ''(2) The Attorney'' for ''(2)(A) The Attorney''.

Subsec. (b). Pub. L. 104–208, § 371(b)(6), substituted ''An immigration judge'' for ''A special inquiry officer'', ''an immigration judge'' for ''a special inquiry officer'' in two places, and ''immigration judge'' for ''special inquiry officer'' wherever appearing.

Pub. L. 104–132, § 436(a), inserted before period at end of second sentence ''; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien''.

Subsec. (c)(1). Pub. L. 104–132, § 440(h)(1), designated existing provisions of subsec. (c) as par. (1) and substituted ''Subject to paragraph (2), when a final order'' for ''When a final order''.

Subsec. (c)(2). Pub. L. 104–132, § 440(h)(2), as amended by Pub. L. 104–208, §§ 306(d), 308(g)(10)(H), added par. (2).

Subsec. (h). Pub. L. 104–132, § 438(a), amended subsec. (h) generally, restating prior single par. as par. (1) and adding pars. (2) and (3) authorizing the Attorney General to deport an alien prior to the completion of a sentence of imprisonment and requiring notice to deported aliens of penalties for reentry.

Subsec. (i). Pub. L. 104–132, § 436(b)(1), inserted at end ''Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.''

Subsec. (j). Pub. L. 104–208, § 306(a)(1), redesignated subsec. (j) as subsec. (i) of section 1231 of this title.

1994—Subsec. (b). Pub. L. 103–416, § 224(b), substituted ''Except as provided in section 1252a(d) of this title, the'' for ''The'' in ninth sentence.

Subsec. (e). Pub. L. 103–322, § 130001(a), struck out ''paragraph (2), (3), or (4) of'' before ''section 1251(a) of this title'' and substituted ''shall be imprisoned not more than four years, or shall be imprisoned not more

than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1251(a) of this title.'' for ''shall be imprisoned not more than ten years''.

Subsec. (h). Pub. L. 103–416, § 219(h), substituted ''Parole,'' for ''Parole,,''.

Subsec. (j). Pub. L. 103–322, § 20301(a), added subsec. (j).

1991—Subsec. (a)(2)(B). Pub. L. 102–232, § 306(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Attorney General shall release from custody an alien who is lawfully admitted for permanent residence on bond or such other conditions as the Attorney General may prescribe if the Attorney General determines that the alien is not a threat to the community and that the alien is likely to appear before any scheduled hearings.''

Subsec. (b). Pub. L. 102–232, § 306(c)(7), amended eighth sentence generally, substituting ''Such regulations shall include requirements that are consistent with section 1252b of this title and that provide that—'' and pars. (1) to (4) for ''Such regulations shall include requirements consistent with section 1252b of this title.''

Subsec. (e). Pub. L. 102–232, § 307(m)(2), substituted ''paragraph (2), (3), or (4)'' for ''paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Subsec. (h). Pub. L. 102–232, § 309(b)(9), inserted a comma after ''Parole''.

1990—Subsec. (a)(2). Pub. L. 101–649, § 504(a), designated existing text as subpar. (A), substituted ''upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)'' for ''upon completion of the alien's sentence for such conviction'' and ''Notwithstanding paragraph (1) or subsections (c) and (d) of this section but subject to subparagraph (B)'' for ''Notwithstanding subsection (a) of this section'', and added subpar. (B).

Subsec. (b). Pub. L. 101–649, § 603(b)(2)(A), substituted ''(2), (3), or (4)'' for ''(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)''.

Pub. L. 101–649, § 545(e), amended eighth sentence generally. Prior to amendment, eighth sentence read as follows: ''Such regulations shall include requirements that—

''(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

''(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

''(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

''(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.''

Subsec. (e). Pub. L. 101–649, § 603(b)(2)(B), which directed the substitution of ''paragraph (2), (3) or (4)'' for ''paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19)'', could not be executed because the quoted language differed from the text. See 1991 Amendment note above.

1988—Subsec. (a). Pub. L. 100–690 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), any'' for ''Any'', redesignated cls. (1) to (3) as (A) to (C), respectively, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100–525 struck out ''or from September 23, 1950, whichever is the later,'' after ''from the date of the final order of the court,''.

1986—Subsec. (i). Pub. L. 99–603 added subsec. (i).

1984—Subsec. (h). Pub. L. 98–473, which directed that ''supervised release,'' be inserted after ''parole,'', was executed by inserting ''supervised release,'' after ''Parole,'' to reflect the probable intent of Congress.

1981—Subsec. (b). Pub. L. 97–116, § 18(h)(1)(A), substituted ''(18), or (19)'' for ''or (18)'' in provision following par. (4).

Subsec. (e). Pub. L. 97–116, § 18(h)(1)(B), substituted ''(18), or (19)'' for ''or (18)''.

1954—Subsec. (d). Act Sept. 3, 1954, struck out ''shall upon conviction be guilty of a felony.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–13, div. B, title I, § 101(h)(3), (4), May 11, 2005, 119 Stat. 305, 306, provided that:

''(3) The amendment made by subsection (e) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005] and shall apply to all cases in which the final administrative removal order is or was issued before, on, or after such date.

''(4) The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this division [May 11, 2005] and shall apply to all cases pending before any court on or after such date.''

Pub. L. 109–13, div. B, title I, § 106(b), May 11, 2005, 119 Stat. 311, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect upon the date of the enactment of this division [May 11, 2005] and shall apply to cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this division.''

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 306(c) of div. C of Pub. L. 104–208, as amended by Pub. L. 104–302, § 2(1), Oct. 11, 1996, 110 Stat. 3657, provided that:

''(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) [amending this section and section 1231 of this title and repealing section 1105a of this title] shall apply as provided under section 309 [8 U.S.C. 1101 note], except that subsection (g) of section 242 of the Immigration and Nationality Act [8 U.S.C. 1252(g)] (as added by subsection (a)), shall apply without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under such Act [8 U.S.C. 1101 et seq.].

''(2) LIMITATION.—Paragraph (1) shall not be considered to invalidate or to require the reconsideration of any judgment or order entered under section 106 of the Immigration and Nationality Act [former 8 U.S.C. 1105a], as amended by section 440 of Public Law 104–132.''

[Section 2 of Pub. L. 104–302 provided that the amendment made by that section to section 306(c)(1) of Pub. L. 104–208, set out above, is effective Sept. 30, 1996.]

Section 306(d) of div. C of Pub. L. 104–208 provided that the amendment made by that section is effective as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132.

Amendment by section 308(g)(10)(H) 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 371(b)(6) of Pub. L. 104–208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104–208, set out as a note under section 1101 of this title.

For delayed effective date of amendment by section 440(c) of Pub. L. 104–132, see section 303(b)(2) of Pub. L. 104–208, set out as a note under section 1226 of this title.

Section 436(b)(3) of Pub. L. 104–132 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 1101 of this title] shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 219(h) of Pub. L. 103–416 effective as if included in the enactment of the Immigration

Act of 1990, Pub. L. 101–649, see section 219(dd) of Pub. L. 103–416, set out as a note under section 1101 of this title.

Section 224(c) of Pub. L. 103–416 provided that: ''The amendments made by this section [amending this section and section 1252a of this title] shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act [Oct. 25, 1994].''

Section 20301(b) of Pub. L. 103–322 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(a)(4), (c)(7) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

Section 307(m)(2) of Pub. L. 102–232 provided that the amendment made by that section is effective as if included in section 603(b) of the Immigration Act of 1990, Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 504(c) of Pub. L. 101–649 provided that: ''The amendments made by this section [amending this section and section 1226 of this title] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

Section 545(g) of Pub. L. 101–649, as amended by Pub. L. 104–208, div. C, title III, § 308(b)(6)(B), Sept. 30, 1996, 110 Stat. 3009–623, provided that:

''(1) NOTICE-RELATED PROVISIONS.—

''(A) Subsections (a), (b), (c), and (e)(1) of section 242B of the Immigration and Nationality Act [former 8 U.S.C. 1252b(a), (b), (c) and (e)(1)] (as inserted by the amendment made by subsection (a)), and the amendment made by subsection (e) [amending this section], shall be effective on a date specified by the Attorney General in the certification described in subparagraph (B), which date may not be earlier than 6 months after the date of such certification.

''(B) The Attorney General shall certify to the Congress when the central address file system (described in section 239(a)(4) [probably means 239(a)(3)] of the Immigration and Nationality Act) [8 U.S.C. 1229(a)(3)] has been established.

''(C) The Comptroller General shall submit to Congress, within 3 months after the date of the Attorney General's certification under subparagraph (B), a report on the adequacy of such system.

''(2) CERTAIN LIMITS ON DISCRETIONARY RELIEF; SANCTIONS FOR FRIVOLOUS BEHAVIOR.—Subsections (d), (e)(2), and (e)(3) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on the date of the enactment of this Act [Nov. 29, 1990].

''(3) LIMITS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR IN ASYLUM HEARING.—Subsection (e)(4) of section 242B of the Immigration and Nationality Act (as inserted by the amendment made by subsection (a)) shall be effective on February 1, 1991.

''(4) CONSOLIDATION OF RELIEF IN JUDICIAL REVIEW.—The amendments made by subsection (b) [amending section 1105a of this title] shall apply to final orders of deportation entered on or after January 1, 1991.''

Amendment by section 603(b)(2) of Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1227 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7343(c) of Pub. L. 100–690 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1254 of this title] shall apply to any alien who has been convicted, on or after the date of the enactment of this Act [Nov. 18, 1988], of an aggravated felony.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

REGULATIONS

Section 545(d) of Pub. L. 101–649 provided that: ''Within 6 months after the date of the enactment of this Act [Nov. 29, 1990], the Attorney General shall issue regulations with respect to—

''(1) the period of time in which motions to reopen and to reconsider may be offered in deportation proceedings, which regulations include a limitation on the number of such motions that may be filed and a maximum time period for the filing of such motions; and

''(2) the time period for the filing of administrative appeals in deportation proceedings and for the filing of appellate and reply briefs, which regulations include a limitation on the number of administrative appeals that may be made, a maximum time period for the filing of such motions and briefs, the items to be included in the notice of appeal, and the consolidation of motions to reopen or to reconsider with the appeal of the order of deportation.''

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.

TRANSFER OF CASES

Pub. L. 109–13, div. B, title I, § 106(c), May 11, 2005, 119 Stat. 311, provided that: ''If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division [May 11, 2005], then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208, div. C] (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under such section 242, except that subsection (b)(1) of such section shall not apply.''

TRANSITIONAL RULE CASES

Pub. L. 109–13, div. B, title I, § 106(d), May 11, 2005, 119 Stat. 311, provided that: ''A petition for review filed under former section 106(a) of the Immigration and Nationality Act [8 U.S.C. 1105a(a)] (as in effect before its repeal by section 306(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208, div. C] (8 U.S.C. 1252 note)) shall be treated as if it had been filed as a petition for review under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, such petition for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.''

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.

AUTHORITY TO ACCEPT CERTAIN ASSISTANCE

Section 130008 of Pub. L. 103–322 provided that:

''(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, the Attorney General, in the discretion of the Attorney General, may accept, hold, administer, and utilize gifts of property and services (which may not include cash assistance) from State and local governments for the purpose of assisting the Immigration and Naturalization Service in the transportation of deportable aliens who are arrested for misdemeanor or felony crimes under State or Federal law and who are either unlawfully within the United States or willing to submit to voluntary departure under safeguards. Any property acquired pursuant to this section shall be acquired in the name of the United States.

''(b) LIMITATION.—The Attorney General shall terminate or rescind the exercise of the authority under subsection (a) if the Attorney General determines that the exercise of such authority has resulted in discrimination by law enforcement officials on the basis of race, color, or national origin.''

§ 1252a. Transferred

CODIFICATION

Section 1252a, act June 27, 1952, ch. 477, title II, ch. 5, § 242A, as added Nov. 18, 1988, Pub. L. 100–690, title VII, § 7347(a), 102 Stat. 4471, as amended, which related to expedited removal of aliens convicted of committing aggravated felonies, was renumbered section 238 of ch. 4 of title II of act June 27, 1952, by Pub. L. 104–208, div. C, title III, § 308(b)(5), Sept. 30, 1996, 110 Stat. 3009–615, and was transferred to section 1228 of this title.

§ 1252b. Repealed. Pub. L. 104–208, div. C, title III, § 308(b)(6), Sept. 30, 1996, 110 Stat. 3009–615

Section, act June 27, 1952, ch. 477, title II, ch. 5, § 242B, as added Nov. 29, 1990, Pub. L. 101–649, title V, § 545(a), 104 Stat. 5061; amended Dec. 12, 1991, Pub. L. 102–232, title III, § 306(c)(6), 105 Stat. 1753; Oct. 25, 1994, Pub. L. 103–416, title II, § 219(i), 108 Stat. 4317; Sept. 30, 1996, Pub. L. 104–208, div. C, title III, § 371(b)(7), 110 Stat. 3009–645, related to deportation procedures. See sections 1229 and 1229a of this title.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1996 Amendments note under section 1101 of this title.

§ 1252c. Authorizing State and local law enforcement officials to arrest and detain certain illegal aliens

(a) In general

Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) Cooperation

The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) of this section is made available to such officials.

(Pub. L. 104–132, title IV, § 439, Apr. 24, 1996, 110 Stat. 1276.)

CODIFICATION

This section was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Immigration and Nationality Act which comprises this chapter.

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.

§ 1253. Penalties related to removal

(a) Penalty for failure to depart

(1) In general

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 1227(a) of this title, who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or

(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order,

shall be fined under title 18, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1227(a) of this title), or both.

(2) Exception

It is not a violation of paragraph (1) to take any proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody.