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 of this chapter.

(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.