



The Alien Terrorist Removal Court: A Brief Overview

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On July 16, 2026, the [Alien Terrorist Removal Court of the United States](#) (ATRC) issued its first order since it was established by Congress in 1996. The court's order indicated that the government had, the previous day, [filed](#) an application to remove an [alien terrorist](#), the first application ever received by the ATRC. Since that order issued, other documents have been placed on the ATRC's [public docket](#) reflecting the government's use of the unique procedures of the ATRC to remove an alien. Because the ATRC has not previously been used for the removal of an alien terrorist, these developments afford Congress an opportunity to consider the degree to which the jurisdiction, composition, and procedures of the ATRC achieve the purpose for which Congress originally created it.

Origin of the ATRC

The ATRC is a specialized court established by Title IV of the Antiterrorism and Effective Death Penalty Act, a comprehensive law [passed](#) by Congress in 1996 to address a wide range of terrorism, law enforcement, and criminal law matters. In an [accompanying](#) conference report, lawmakers provided several rationales for the establishment of the ATRC. In particular, they [noted](#) the “compelling” need to protect U.S. residents and preserve national security, which they believed was being compromised by the ability of alien terrorists “to exploit many of the substantive and procedural provisions available to all deportable aliens in order to delay their removal from the U.S.” They also [explained](#) that, especially because of the need to protect cooperative intelligence-sharing relationships with other nations, it was “essential . . . that procedures be established to permit the use of classified information in appropriate cases to establish the deportability of an alien terrorist.” At the same time, lawmakers [acknowledged](#) the necessity that ATRC procedures “meet constitutional requirements” and that the interests of the government reflected in those procedures be appropriately “balanced against the legitimate rights of those privileged to be present within the United States.”

Operation of the ATRC

The provisions establishing the ATRC and its operations are codified in [8 U.S.C. §§ 1531-37](#). In addition to defining the jurisdiction of the ATRC and its composition, these provisions set forth the procedures to be used in removal of an alien, including what portions of the ATRC's proceedings are public and how classified information may be presented and used by the government to pursue removal of an alien.

Jurisdiction of the ATRC

The ATRC is designed to address removal of “alien terrorists,” a term defined in [8 U.S.C. § 1531\(1\)](#) by cross-reference to existing provisions in the Immigration and Nationality Act (INA) governing removal of aliens on [terrorism grounds](#). Accordingly, as lawmakers contemplated, the ATRC serves as a

means of removal for certain aliens outside of the procedures otherwise [already provided](#) for in the INA.

Composition of the ATRC

Under 8 U.S.C. § 1532, the Chief Justice of the United States is [required](#) to designate five district court judges to constitute the ATRC. These judges may be the [same judges](#) that are designated to conduct proceedings under the [Foreign Intelligence Surveillance Act](#) (FISA). The Chief Justice is [responsible](#) for designating a Chief Judge of the ATRC, who is charged with promulgating rules for its operation and assigning cases among the appointed judges. Each judge [serves](#) a staggered five-year [term](#) that may be renewed.

Initial Applications and Orders

The first step in removal through the ATRC is, under 8 U.S.C. § 1533, the Attorney General's [submission](#) of an application to the ATRC seeking removal of an [alien](#) as an alien terrorist. The Attorney General may [seek](#) such removal when “the Attorney General has classified information that an alien is an alien terrorist,” and the application must [contain](#) various elements, including “a statement of the facts and circumstances relied on by the Department of Justice to establish probable cause that . . . the alien is an alien terrorist” and that removal under other provisions of the INA “would pose a risk to the national security of the United States.” The application must be [filed](#) under seal and “ex parte and in camera,” that is, only to the ATRC and only reviewable by the ATRC, not the subject alien or any other party. In addition to the application, the reviewing ATRC judge “may consider, ex parte and in camera,” [other information](#), including classified information, and testimony. That judge [must](#) then issue an order granting the application if the judge finds there is “probable cause to believe” that the alien in question is an alien terrorist and that removal under other provisions of the INA would pose a national security risk. The issuance of the order granting an application triggers the [exclusivity](#) of the ATRC and its procedures as to “the rights of the alien regarding removal and expulsion.”

The Public Removal Hearing

The issuance of an order under § 1533 [requires](#) the ATRC to then hold a public “removal hearing . . . as expeditiously as practicable” to determine whether the alien should be removed as an alien terrorist. The statutory provision governing this hearing, 8 U.S.C. § 1534, [requires](#) “reasonable notice” be given to the alien of the charges, and it also sets forth specific rights of the alien. The alien has a [right](#) to attend the hearing, and, unlike in proceedings under the INA, the statute provides that the alien has a [right](#) to appointed counsel if they are financially unable to otherwise secure counsel. The alien is also entitled to “reasonable” opportunities to [introduce](#) evidence, [examine](#) evidence, and [cross-examine](#) witnesses. The alien can be [ordered removed](#) “based only on that evidence introduced at the removal hearing.”

Evidence and Classified Information in the Public Removal Hearing

Other parts of § 1534 address the evidence that may be introduced by the government, and the Federal Rules of Evidence **do not apply**. The government is **authorized** to use “the fruits of electronic surveillance and unconsented physical searches authorized” under FISA, and the alien may not be able to **review** that evidence. The alien is **denied** “entitle[ment] to suppress evidence that the alien alleges was unlawfully obtained” and the government may **exempt** itself from certain potential limits imposed by other statutory provisions on evidence obtained through intercepts or electronic surveillance.

The provision also sets forth procedures for the potential use of evidence involving **classified information**. The presiding ATRC judge “shall examine, ex parte and in camera, any evidence for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States or to the security of any individual because it would disclose classified information”; the only potential notice to the alien of such evidence is through an unclassified **summary** that the provision requires the government to submit first to the ATRC. If the judge **determines** that the summary “is sufficient to enable the alien to prepare a defense,” the government must then submit the summary to the alien. If the judge **disapproves** of the summary, the government is afforded an opportunity to correct it and **submit** a revised summary to the ATRC. By default, failure to approve this revised summary generally **terminates** the removal hearing.

If the judge does not approve the revised summary, the removal hearing may still continue if the judge **finds** both that “the continued presence of the alien in the United States would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person” and “the provision of the summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person.” If such findings are **made**, “in all cases the special removal hearing shall continue,” and the government must provide the alien with a notification that a summary is not possible. The classified information **may be used** by the government, although **special procedures** apply for “an alien lawfully admitted for permanent residence.” In cases involving such aliens, the presiding judge must **designate** a “special attorney to assist the alien.” That special attorney may review the classified information and challenge “the veracity of the evidence contained in the classified information” but **may not disclose** the information to “to the alien or to any other attorney representing the alien,” on pain of fine or imprisonment.

The Removal Decision

In order to secure a removal, the government bears the **burden** of proving, “by the preponderance of the evidence,” that the alien is removable as an alien terrorist. After submission of evidence, both the government and the alien must be **given** “fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien.” That opportunity **includes** an opening argument by the government, a response by the alien, and a reply in rebuttal by the government, with provision for the judge to “allow any part of the argument that

refers to evidence received in camera and ex parte to be heard in camera and ex parte.” The statute does not expressly provide for an opportunity for the alien to raise non-evidentiary arguments, such as constitutional challenges, in the removal hearing.

If the presiding judge “after considering the evidence on the record as a whole” determines that the government has carried its burden, the judge **must order** the alien removed and detained pending removal. That decision must be **accompanied** by “a written order containing a statement of facts found and conclusions of law.” No portion of that order “that would reveal the substance or source of information received in camera and ex parte” may be released to the alien or the public. The judge is **forbidden** from providing specified types of statutory relief from removal, such as **voluntary departure**.

Detention and Removal

Under 8 U.S.C. § 1536, an alien for whom an application for removal has been submitted may be taken into **custody** pending the removal hearing. During such custody, only aliens “lawfully admitted for permanent residence shall be entitled to a release hearing.” Denial of the application for removal **may**, in some cases, still result in continued custody should the government seek review of that denial.

If an alien is ordered removed, the alien must be **detained** under 8 U.S.C. § 1537 “pending the outcome of any appeal.” Once the appellate process is completed, the statute sets forth the **process** of choosing the country for removal. If no country can be identified “willing to receive such an alien,” the government is **authorized** to continue detention while making “periodic efforts to reach agreement with other countries to accept such an alien.” Such custody is not subject to **judicial review** outside of constitutional challenges to continued custody. The government may also delay removal so that the alien may be **criminally tried** in federal or state court, if circumstances warrant.

Appellate Review

Three types of **appeals** may be taken with respect to ATRC decisions, all of which must be before the **U.S. Court of Appeals for the District of Columbia Circuit** (D.C. Circuit). **First**, the government may seek review of the ATRC judge’s order denying an application for removal, which would be heard ex parte. **Second**, the government may take an interlocutory appeal of any determination by the ATRC judge with respect to classified information and of any “refusal” by the judge to make the findings that would permit the removal hearing to continue in the absence of a summary of classified evidence. **Third**, after the ATRC judge renders a decision on removal, either the alien or the government may appeal that decision. The D.C. Circuit must generally defer to the findings of fact in the ATRC “unless clearly erroneous,” but may conduct a de novo review of the facts in the case of a removal order pertaining to “an alien lawfully admitted for permanent residence [who] was denied a written summary of classified information.” Both parties may **petition** the Supreme Court for review of an appellate decision concerning the determination of an ATRC judge at the conclusion of a removal hearing.

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