

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-2323

YOGESWARAN KUMARASAMY,
Appellant

v.

ATTORNEY GENERAL OF UNITED STATES;
SECRETARY OF DEPARTMENT OF HOMELAND SECURITY; JOHN CARBONE,
Field Office Director, Immigration & Customs Enforcement; VENSON DAVID, Agent,
Immigration & Customs Enforcement; BOB,
Agent, Immigration & Customs Enforcement

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
D.C. Civil No. 04-cv-02341
District Judge: The Honorable William G. Bassler

Submitted Under Third Circuit LAR 34.1(a)
May 11, 2006

Before: BARRY, SMITH and TASHIMA, * Circuit Judges

ORDER AMENDING OPINION

IT IS ORDERED that the slip opinion in the above case, filed June 23, 2006, be amended as follows:

Delete the following sentence found in the first full paragraph on page 5 which

* The Honorable A. Wallace Tashima, Senior Circuit Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation.

reads:

“The REAL ID Act applies, by its own terms, only to cases in which the petitioner seeks review of a final order of removal.”

and replace with:

“Under the REAL ID Act, by its own terms, we have jurisdiction only in those cases in which the petitioner seeks review of a final order of removal.⁵”

By the Court,

/s/ Maryanne Trump Barry
Circuit Judge

Dated: August 4, 2006

⁵ In the REAL ID Act, Congress amended both 8 U.S.C. §§ 1252(b)(9) and (g) to make clear that these provisions preclude any habeas corpus review over certain removal-related claims. See REAL ID Act §§ 106(a)(2) & (3). Thus, if an alien challenges an action taken or a proceeding brought to remove him, it would appear that 8 U.S.C. §§ 1252(b)(9) and (g), as amended by the REAL ID Act, would preclude habeas review over that challenge. We need not reach the question of whether §§ 1252(b)(9) and (g) apply in this case because we conclude that the District Court lacked jurisdiction on the separate ground that Kumarasamy was not in “custody” at the time he filed his habeas petition. *See infra*.