

APS-110

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 05-4876

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BYRON ADELSON RUANO-ORELLANO,

Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES

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On Petition for Review of an Order  
of the Board of Immigration Appeals  
Agency No. A76 283 765  
on April 12, 2004

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Submitted For Possible Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6  
January 26, 2006

BEFORE: SLOVITER, McKEE and FISHER, CIRCUIT JUDGES

(Filed: February 16, 2006)

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OPINION

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PER CURIAM

This petition originated as a habeas petition in the United States District Court for the District of New Jersey. The petition sought release from detention and a stay of

removal pending this Court's adjudication of his then-pending petition for review. It also argued that the Board of Immigration Appeals' (BIA's) decision denying his motion to reopen was in error.

Soon after the habeas petition was filed, two significant things occurred. First, this Court denied Ruano-Orellano's petition for review of the BIA's decision denying his motion to reopen. See Ruano-Orellano v. Attorney General, C.A. No. 04-2306 (April 29, 2005) (not precedential opinion). Second, the Congress passed the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005). On the Government's motion, the District Court transferred the petition to this Court pursuant to section 106(c) of that act.

To the extent the original habeas petition challenged Ruano-Orellano's order of removal, we would normally treat it as a timely-filed petition for review. See Bonhometre v. Gonzales, 414 F.3d 442, 446 (3d Cir. 2005). However, because we have already decided his petition for review of the BIA's April 12, 2004 decision, we must dismiss the petition for lack of jurisdiction. See 8 U.S.C. § 1252(d)(2) (court may review final order of removal only if another court has not decided validity of order). To the extent he seeks release and a stay of removal pending this Court's adjudication of the petition for review filed at 04-2306, that request is moot.<sup>1</sup>

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<sup>1</sup> To the extent Ruano-Orellano remains in BICE custody and continues to seek release from detention, such a claim should be presented to the district court in the district in which he is detained. See Bonhometre v. Gonzales, 414 F.3d 442, 445-46 (3d Cir. 2005) (recognizing that the Real ID Act made petitions for review the exclusive means for

We will therefore dismiss the petition.

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judicial review of orders of removal, but did not eliminate district court habeas jurisdiction over challenges to detention); 28 U.S.C. § 2241.