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2006 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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8-15-2006

## Almanzar v. Atty Gen USA

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 06-3060

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XIOMARA ALMANZAR,

Appellant

v.

ATTORNEY GENERAL OF THE UNITED STATES

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On Appeal From the United States District Court  
For the District of New Jersey  
(D.C. Civ. No. 05-CV-04752)  
District Judge: Honorable Katherine S. Hayden

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Submitted For Possible Summary Action Under  
Third Circuit LAR 27.4 and I.O.P. 10.6  
July 20, 2006

Before: SLOVITER, McKEE AND FISHER, CIRCUIT JUDGES.

(Filed August 15, 2006)

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OPINION

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PER CURIAM

Xiomara Almanzar, a native and citizen of the Dominican Republic, appeals an order of the United States District Court for the District of New Jersey, dismissing her petition filed pursuant to 28 U.S.C. § 2241 for lack of jurisdiction. We will affirm.

In her petition, Almanzar sought review of decisions of the Immigration Judge (IJ) and Board of Immigration Appeals (BIA) in her removal proceedings, and sought review of a prior District Court decision docketed at 04-cv-03827. The Court noted that the latest agency decision was the BIA's denial of Almanzar's second appeal (deemed a motion to reopen), on November 30, 2004. The Court noted that the denial of a motion to reopen may only be reviewed in the appropriate court of appeals, but declined to transfer the petition to this Court because it was untimely. The Court further noted that Almanzar had previously raised the same issues in the matter docketed at 04-cv-03827.

We agree with the District Court that it lacked jurisdiction both because the petition was untimely, and because it should have been filed in this Court. 8 U.S.C. §§ 1252(a)(5); 1252(b)(1) (petition for review filed in court of appeals is exclusive means of review; petition must be filed within 30 days after the date of the final order of removal). We further note that any challenge to the decision made in 04-cv-03827 could only have been made by way of a timely appeal; filing a second habeas petition was not a proper means to challenge the decision.<sup>1</sup> We have considered Almanzar's response to this

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<sup>1</sup>Almanzar appealed the decision in that case, but the appeal was dismissed for lack of jurisdiction because it was untimely filed. Almanzar v. Attorney General, No. 05-2075 (3d Cir., June 15, 2005).

Court's order of June 16, 2006, but find that her arguments do not address the District Court's proper holding that it lacked jurisdiction.

For the foregoing reasons, we will grant the Government's motion for summary affirmance.