

October 1, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUITElisabeth A. Shumaker
Clerk of Court

ANTOINE GOMIS,

Petitioner - Appellant,

v.

U.S. STATE SECRET; U.S. ATTORNEY
GEN; U.S. DHS SECRET; U.S.
DEFENSE SECRET,
Respondents - Appellees.No. 08-1352
(D.C. No. 1:08-CV-2003-BNB)

ORDER

Before **KELLY, LUCERO** and **McCONNELL**, Circuit Judges.

This court lacks jurisdiction over this appeal because the order being appealed is not final or otherwise immediately appealable, and no exception to the final judgment rule is present here.

Plaintiff Antoine Gomis appeals the magistrate judge's September 17, 2008 order directing him both to file his complaint or petition in the proper format and to either pay the filing fees or submit a compliant motion to proceed *in forma pauperis* within 30 days or face dismissal of his case. The district court has not reviewed the magistrate judge's order, dismissed the case, nor entered final judgment.

This court has jurisdiction to review only final decisions, 28 U.S.C. § 1291, and

specific types of interlocutory orders. A final decision is one that disposes of all issues on the merits and leaves nothing for the court to do but execute the judgment. Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 712 (1996); Atiya v. Salk Lake County, 988 F.2d 1013, 1016 (10th Cir. 1993). As an initial matter, orders entered by magistrate judges and not acted upon by district courts are generally not final and appealable. Phillips v. Beierwaltes, 466 F.3d 1217, 1222 (10th Cir. 2006). But even if the district court had entered the order being appealed here, the time for compliance with the order has not expired, no final judgment has been entered, and the case remains pending.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Lara Smith".

by: Lara Smith
Counsel to the Clerk