

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4636

SOUTH CAROLINA,

Plaintiff - Appellee,

v.

SAKIMA IBAN SALIH EL BEY, We the people preamble Citizen of
the United States Government National of the United States,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Joseph F. Anderson, Jr., Chief
District Judge. (3:08-cr-00519-JFA-1)

Submitted: October 30, 2008

Decided: November 20, 2008

Before WILKINSON, MOTZ, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Sakima Iban Salih El Bey, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Sakima Iban Salih El Bey appeals the district court's order remanding his case to the state court from which it was removed. Generally, "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d) (2006). Although this section could be read expansively to apply to all remand orders, the Supreme Court has held that it must be read in conjunction with 28 U.S.C. § 1447(c) (2006). Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 711-12 (1996).

In sua sponte remanding El Bey's case to state court, the district court found that there was no legitimate jurisdictional basis for the removal of his pending state criminal case to federal court. Because the remand order is based on a lack of subject matter jurisdiction, it falls within the scope of § 1447(c) and is therefore not reviewable. See § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."); Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th Cir. 2008) (holding that a remand order based on lack of subject matter jurisdiction, whether sua sponte or not, falls under § 1447(c) and is not reviewable).

Accordingly, we deny El Bey's motion to proceed in forma pauperis and dismiss the appeal. We dispense with oral

argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED