

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-30254
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 13, 2018

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff-Appellee

v.

MICHAEL THOMAS CUPP,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:14-CR-15-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Michael Thomas Cupp, federal prisoner # 17129-035, was convicted under 18 U.S.C. § 2250(a) after he pleaded guilty to failing to comply with the Sex Offender Registration and Notification Act (SORNA). He appeals the district court's denial of his motion for immediate release from the 60-month sentence he is serving. Cupp argues that he is entitled to immediate release because the retroactive application of SORNA violates the Ex Post Facto

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Clause, his continued incarceration violates the Eighth and Fourteenth Amendments, and federal jurisdiction is lacking.

The district court has not yet adjudicated Cupp's pending 28 U.S.C. § 2255 motion challenging his conviction and sentence for violating SORNA. Thus, his motion for immediate release was a constructive motion to amend his § 2255 motion, *cf. United States v. Riascos*, 76 F.3d 93, 94 (5th Cir. 1996), which the district court implicitly denied, *see Norman v. Apache Corp.*, 19 F.3d 1021-22 (5th Cir. 1994). The district court's denial of Cupp's motion to amend his § 2255 motion, however, is a nonfinal order. *See Askanase v. Livingwell, Inc.*, 981 F.2d 807, 809-10 (5th Cir. 1993). Therefore, we lack jurisdiction to consider his interlocutory appeal. *See id.*

Cupp's appeal is DISMISSED for lack of jurisdiction. Cupp's motion asking us to respond to his appellate brief is DENIED as unnecessary.