

JAN 23 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DAVID STORMAN,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF
HEALTH SERVICES; et al.,

Defendants - Appellees.

No. 07-15722

D.C. No. CV-06-02892-GEB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Chief Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Michael David Storman appeals pro se from the district court's judgment
dismissing his 42 U.S.C. § 1983 action challenging the constitutionality of

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

Medicare Part D pursuant to 28 U.S.C. § 1915(e)(2) for failure to state a claim for relief. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and we affirm.

The district court properly determined that defendants are immune from claims for damages. See *Rattlesnake Coal. v. United States Env'tl. Prot. Agency*, 509 F.3d 1095, 1103 (9th Cir. 2007) (requiring waiver by the United States before a federal court may adjudicate a claim brought against a federal agency); *Regents of the Univ. of Calif. v. Doe*, 519 U.S. 425, 429 (1997) (explaining Eleventh Amendment immunity extends to state agencies); *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1382 n.5 (9th Cir. 1988) (“A claim alleged against a state officer acting in his official capacity is treated as a claim against the state itself.”).

The district court properly dismissed Storman’s claim for injunctive relief because “the Due Process Clauses generally confer no affirmative right to governmental aid” and the government has a legitimate purpose in demanding nominal co-payments when allocating limited aid dollars. *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989).

Storman’s remaining contentions are unpersuasive.

AFFIRMED.