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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSEPH V. NASH,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES DEPARTMENT OF JUSTICE; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 06-56503

D.C. No. CV-01-08454-RSWL

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted January 13, 2009**

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

Joseph V. Nash, a former federal prisoner, appeals pro se from the district court's summary judgment in favor of defendants in his action under the Freedom

* 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).

of Information Act, 5 U.S.C. § 552, *et seq.* (“FOIA”), seeking documents pertaining to his incarceration. We have jurisdiction under 28 U.S.C. § 1291. We review *de novo* the district court’s summary judgment regarding the applicability of a FOIA exemption. *Lane v. Dep’t of Interior*, 523 F.3d 1128, 1135 (9th Cir. 2008). We affirm.

The district court properly concluded that Exemption 5 applies because the documents that defendants withheld are protected by the attorney work-product privilege. *See* 5 U.S.C. § 552(b)(5) (exempting from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.”); *Pac. Fisheries Inc. v. United States*, 539 F.3d 1143, 1148 (9th Cir. 2008) (explaining that the attorney work-product privilege “shields both opinion and factual work product from discovery. Therefore, if a document is covered by the attorney work-product privilege, the government need not segregate and disclose its factual contents.”) (internal citations omitted).

Nash’s remaining contentions are unpersuasive.

AFFIRMED.