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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANDRE BRIGHAM YOUNG,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>STATE OF WASHINGTON; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-35640

D.C. No. 2:06-cv-01687-JCC

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
John C. Coughenour, District Judge, Presiding

Submitted March 16, 2010\*\*

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Andre Brigham Young, a former Washington state prisoner and current civil detainee, appeals pro se from the district court's judgment dismissing his 42 U.S.C.

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

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

§ 1983 action as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007). We affirm in part, vacate in part, and remand.

The district court properly dismissed the action as *Heck*-barred because a judgment in Young's favor would necessarily imply the invalidity of his conviction, and Young failed to allege that his conviction has been invalidated. *See Heck*, 512 U.S. at 486-87; *Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1139-40 (9th Cir. 2005) (applying *Heck* to civil detainees). However, we vacate the judgment to the extent that it dismissed the action with prejudice, and remand for entry of dismissal without prejudice. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (per curiam) (stating that dismissals under *Heck* are without prejudice).

We do not consider arguments raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

The parties shall bear their own costs on appeal.

**AFFIRMED in part, VACATED in part, and REMANDED.**