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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN C. WATERS,

Petitioner - Appellant,

v.

J. T. MARSHALL, Warden,

Respondent - Appellee.

No. 07-56733

D.C. No. CV-06-08006-ABC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, Chief District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

California state prisoner Kevin C. Waters appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* 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).

jurisdiction under 28 U.S.C. § 2253,¹ and we affirm.

Waters contends that prison officials violated his due process rights by placing a criminal complaint, containing over 100 pages of drug related documents, in his central file. This claim is not cognizable because Waters has failed to show that the removal of the document from his file is likely to impact the duration of his confinement. *See Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005); *see also Ramirez v. Galaza*, 334 F.3d 850, 858-59 (9th Cir. 2003).

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the inclusion of a criminal complaint in Waters' central file violated due process.