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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DARYL K. HOWARD,

Plaintiff - Appellant,

v.

NELSON, et al.,

Defendants - Appellee.

No. 09-15802

D.C. No. 1:06-cv-01829-ALA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Arthur L. Alarcón, Circuit Judge, Presiding**

Submitted May 25, 2010***

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

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

** The Honorable Arthur L. Alarcón, United States Circuit Judge for the Ninth Circuit, sitting by designation.

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

Daryl K. Howard, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging denial of access to courts. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Nelson v. Heiss*, 271 F.3d 891, 893 (9th Cir. 2001), and we affirm.

The district court properly dismissed Howard's denial of access to courts claim because he failed to allege facts indicating that defendant impeded his right to file a habeas petition. *See Lewis v. Casey*, 518 U.S. 343, 353-55 (1996) (access to courts claim requires actual injury to plaintiff's non-frivolous legal claim caused by defendants' conduct). Howard's habeas petition was time-barred before he was placed in administrative segregation and deprived of any legal materials.

Dismissal without leave to amend was proper because it is clear that the deficiencies of the complaint cannot be cured by amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc).

We do not consider issues raised for the first time on appeal. *See Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998).

AFFIRMED.