

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 23 2010

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

LOUIS FRANCIS,

Plaintiff - Appellant,

v.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant - Appellee.

No. 09-16600

D.C. No. 1:06-CV-00968-AWI-
DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief Judge, Presiding

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Louis Francis appeals pro se from the district court's order dismissing his action seeking to compel an inquiry by the Federal Bureau of Investigation ("FBI") into the Los Angeles Police Department's refusal to conduct a homicide

* 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).

investigation after Francis's brother disappeared. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009), and we affirm.

The district court properly dismissed the Administrative Procedure Act claim for lack of subject matter jurisdiction, because Francis failed to rebut the presumption that the FBI's decision not to conduct an investigation is immune from judicial review. *See Heckler v. Chaney*, 470 U.S. 821, 831-33 (1985).

We do not consider Francis's contention concerning the consent decree, because it was raised for the first time on appeal and consideration is not necessary to prevent "manifest injustice." *Travelers Prop. Cas. Co. of Am. v. ConocoPhillips Co.*, 546 F.3d 1142, 1146 (9th Cir. 2008).

AFFIRMED.