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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN WILLIAM DALTON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA; et al.,</p> <p>Defendants - Appellees.</p>

No. 10-16069

D.C. No. 3:09-cv-05452-SI

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, O’SCANNLAIN, and BYBEE, Circuit Judges.

John William Dalton, a federal prisoner, appeals pro se from the district court’s order denying his application for leave to proceed in forma pauperis under 28 U.S.C. § 1915(a), and subsequent judgment dismissing his action alleging constitutional violations arising from an investigation into his criminal activities

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

and subsequent arrest. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the determination that a complaint lacks arguable substance in law or fact, and review for an abuse of discretion the denial of leave to file a complaint in forma pauperis. *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987). We affirm.

The district court did not abuse its discretion by denying Dalton's request to proceed in forma pauperis because it appears from the face of the complaint that the action is *Heck*-barred. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (an action for damages is not cognizable under 42 U.S.C. § 1983 if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated"); *see also Tripati*, 821 F.2d at 1370 ("A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit.").

Dalton's remaining contentions are unpersuasive.

We instruct the clerk to file Dalton's motion to recuse the district judge, and deny the motion as moot.

AFFIRMED.