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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TODD KENNETH HOROB,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p>Defendant - Appellee.</p>
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No. 10-35622

D.C. No. 1:10-cv-00037-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief Judge, Presiding

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Todd Kenneth Horob, a federal prisoner, appeals pro se from the district court’s judgment dismissing his action brought under *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), challenging the validity of his conviction and the conditions of his confinement. We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed without prejudice Horob’s action because his allegations against the United States regarding his trial necessarily imply the invalidity of his conviction, and Horob has not shown that his conviction has been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (§ 1983 complaint in which “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence . . . must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated”); *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996) (applying *Heck* to actions brought against federal actors).

We do not consider arguments, including those regarding access to the law library, made for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). Issues not raised in the opening brief, including those regarding conditions of confinement, are deemed waived. *Id.*

Horob’s remaining contentions are unpersuasive.

AFFIRMED.