

OCT 13 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRIAN L. BROWN,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>UNKNOWN OLIVIOUS, Federal Officer; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 10-16541

D.C. No. 4:10-cv-00336-JMR-
PSOT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Brian L. Brown, a federal prisoner, appeals pro se from the district court’s order denying him leave to proceed in forma pauperis, under the “three strikes” provision of 28 U.S.C. § 1915(g), in his action under *Bivens v. Six Unknown*

* 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).

Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging violations of his First and Eighth Amendment rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court’s interpretation and application of 28 U.S.C. § 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and for an abuse of discretion its denial of leave to proceed in forma pauperis, *O’Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion in denying Brown’s application to proceed in forma pauperis because Brown does not contest that he is a three-strikes filer and he failed to show that he was “under imminent danger of serious physical injury” at the time he filed the complaint. 28 U.S.C. § 1915(g); *see also Andrews*, 493 F.3d at 1055 (explaining that the exception to the three-strikes rule applies only “if the complaint makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing”).

AFFIRMED.