

SEP 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EMILIANO LOPEZ,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>JAMES A. YATES, Warden; et al.,</p> <p>Defendants - Appellees.</p>
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No. 11-17356

D.C. No. 1:11-cv-00107-LJO-GBC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O’Neill, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Emiliano Lopez, a California state prisoner, appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging denial of his right to access the courts. We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

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

The district court dismissed Lopez’s access to courts claim because he failed to allege that defendants actions or inactions prevented him from pursuing a challenge to his sentence or conditions of confinement. However, the district court did not have the benefit of our recent decision in *Silva v. Di Vittorio*, 658 F.3d 1090, 1102-04 (9th Cir. 2011), in which we explained that prisoners have access to court rights to litigate without active interference claims that have a reasonable basis in law or fact. As the district court noted, Lopez alleged an access to court claim based on defendants’ alleged interference with his ability to litigate in family court. Furthermore, Lopez clarified in his objections to the Findings and Recommendation that his “interference” access to court claim is his sole claim. Accordingly, we vacate and remand for further proceedings.

Lopez shall bear his own costs on appeal.

VACATED and REMANDED.