

MAY 28 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENJAMIN PUENTES,

Plaintiff - Appellant,

v.

COUNTY OF SANTA CLARA et al.,

Defendants - Appellees.

No. 12-15911

D.C. No. 4:11-cv-01228-PJH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Argued and Submitted April 13, 2015
San Francisco, California

Before: KOZINSKI and GRABER, Circuit Judges, and PONSOR,** Senior
District Judge.

Plaintiff Benjamin Puentes brought a civil action pursuant to 42 U.S.C. §
1983 related to his criminal prosecutions and termination from his public-sector

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Michael A. Ponsor, Senior United States District
Judge for the District of Massachusetts, sitting by designation.

employment. He appeals the district court's dismissal of his first amended complaint. We have jurisdiction under 28 U.S.C. § 1291.

We affirm the district court's dismissal of the Fourth Amendment illegal search and seizure claim as time-barred. Cal. Civ. Proc. Code § 335.1; *Fink v. Shedler*, 192 F.3d 911, 914 (9th Cir. 1999). Similarly, we affirm dismissal of the false arrest claims as either time-barred or inadequately pled. *Fink*, 192 F.3d at 914. We affirm dismissal of the vindictive prosecution claim against Deputy District Attorney Dana Overstreet because she is entitled to absolute prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) (holding prosecutors immune from civil suits for initiating prosecutions and presenting cases).

Regarding Puentes's claims for violation of due process based upon wrongful termination and conspiracy to deny his due process rights, we affirm dismissal for failure to state a claim upon which relief can be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). Last, we affirm the district court's dismissal of Puentes's purported malicious prosecution claim because he never raised that count in his amended complaint, despite the court's invitation for him to do so.

AFFIRMED.