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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRANCE JON IRBY,

Plaintiff - Appellant,

v.

BERNIE WARNER; et al.,

Defendants - Appellees.

No. 14-35630

D.C. No. 4:14-cv-05054-EFS

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Edward F. Shea, District Judge, Presiding

Submitted June 22, 2015\*\*

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

Washington state prisoner Terrance Jon Irby appeals pro se from the district court's judgment dismissing for failure to pay the required filing fee his 42 U.S.C. § 1983 action alleging various constitutional violations. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's interpretation and

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\* 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).

application of 28 U.S.C. § 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and review for an abuse of discretion its denial of leave to proceed in forma pauperis, *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by denying Irby’s motion to proceed in forma pauperis because at least three of Irby’s prior § 1983 actions were dismissed as frivolous or for failure to state a claim, and Irby did not plausibly allege that he was “under imminent danger of serious physical injury” at the time that he lodged the complaint. 28 U.S.C. § 1915(g); *see Andrews*, 493 F.3d at 1055-56 (discussing imminent danger exception to three-strikes rule).

Irby’s contentions that the district court judge was biased are unpersuasive.

We do not consider matters not specifically and distinctly raised and argued in the opening or supplemental briefs, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam). We also do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (“Documents or facts not presented to the district court are not part of the record on appeal.”).

All pending motions are denied.

**AFFIRMED.**