

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 4 2016

FOR THE NINTH CIRCUIT

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

MANUEL ANTONIO GONZALEZ, III,

No. 15-16138

Plaintiff-Appellant,

D.C. No. 1:15-cv-00680-DLB

v.

MEMORANDUM*

RAZO; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Dennis L. Beck, Magistrate Judge, Presiding**

Submitted October 25, 2016***

Before: LEAVY, SILVERMAN, and GRABER, Circuit Judges.

California state prisoner Manuel Antonio Gonzalez, III, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Gonzalez consented to the jurisdiction of the magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

excessive force and retaliation claims. 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.2 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by denying Gonzalez leave to proceed in forma pauperis and properly dismissed Gonzalez's action after he failed to pay the filing fee because at least three of Gonzalez's prior § 1983 cases qualified as "strikes" under the Prison Litigation Reform Act ("PLRA") and he failed to allege that he was "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g) (requiring a prisoner who is otherwise barred from proceeding in forma pauperis under the PLRA's "three strikes" provision to show that he faces an imminent danger or pay the filing fee); *Andrews*, 493 F.3d at 1055 (discussing imminent danger exception).

AFFIRMED.