

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 23 2018

FOR THE NINTH CIRCUIT

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

LESLIE G. KINNEY,

Plaintiff-Appellant,

v.

CENTRAL INTELLIGENCE AGENCY,  
CIA,

Defendant-Appellee.

No. 17-35384

D.C. No. 3:16-cv-05777-BHS

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Benjamin H. Settle, District Judge, Presiding

Submitted March 13, 2018\*\*

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Leslie G. Kinney appeals pro se from the district court's summary judgment in his Freedom of Information Act ("FOIA") action arising out of his request for documents related to a specific individual that Kinney believed to be a former Office of Strategic Services agent. We have jurisdiction under 28 U.S.C. § 1291.

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

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

We review de novo, *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 990 (9th Cir. 2016) (en banc), and we affirm.

The district court properly granted summary judgment because the agency provided an affidavit establishing that Exemption 1 of FOIA, 5 U.S.C. § 552(b)(1), precludes acknowledgment of the existence of the requested documents. *See Hamdan v. U.S. Dep't of Justice*, 797 F.3d 759, 774 (9th Cir. 2015) (an agency's invocation of a FOIA exemption is sufficient if it appears "logical" or "plausible" (citation and internal quotation marks omitted)); *Berman v. CIA*, 501 F.3d 1136, 1139 (9th Cir. 2007) ("[T]here exists a near- blanket FOIA exemption for CIA records" and the courts must "afford the CIA broad deference" (citation and internal quotation marks omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening 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).

**AFFIRMED.**