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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETER GERARD WAHL,

Plaintiff-Appellant,

v.

SUTTON, Warden,

Defendant-Appellee.

No. 18-15754

D.C. No. 1:16-cv-01576-LJO-BAM

MEMORANDUM\*

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

Submitted August 15, 2018\*\*

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Former California state prisoner Peter Gerard Wahl appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging Eighth and Fourteenth Amendment claims relating to his detention past his release date. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wilhelm v.*

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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).

1 *Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012) (dismissal under 28 U.S.C.  
2 § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order)  
3 (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We affirm in part, reverse in part,  
4 and remand.

5         The district court properly dismissed Wahl's due process claim because  
6 Wahl failed to allege facts sufficient to show that an official practice or procedure  
7 led to his unlawful detention. *See Haygood v. Younger*, 769 F.2d 1350, 1359 (9th  
8 Cir. 1985) (en banc) (setting forth standard for evaluating a due process violation  
9 in the context of an unlawful detention).

10         The district court dismissed Wahl's deliberate indifference claim, finding no  
11 indication that defendant was aware of Wahl's reduced sentence. However, Wahl  
12 alleged that defendant was informed of his reduced sentence through the grievance  
13 process and then failed to intervene. Liberally construed, these allegations are  
14 sufficient to warrant ordering defendant to file an answer. *See id.* at 1354-55  
15 (explaining that detention beyond the termination of a sentence constitutes cruel  
16 and unusual punishment where the defendant, after being put on notice, fails to  
17 act); *see also Wilhelm*, 680 F.3d at 116 (pro se pleadings must be liberally  
18 construed). We reverse the judgment as to Wahl's deliberate indifference claim

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2 only and remand for further proceedings.

3 **AFFIRMED in part, REVERSED in part, and REMANDED.**