

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 5 2023

FOR THE NINTH CIRCUIT

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

JOHNNY LEE WARREN,

No. 22-15717

Plaintiff-Appellant,

D.C. No. 4:21-cv-00540-JCH-PSOT

v.

MEMORANDUM*

MARK NAPIER, Sheriff at Pima County
Jail; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
John Charles Hinderaker, District Judge, Presiding

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Johnny Lee Warren appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging various constitutional claims that arose while he was a pretrial detainee. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Resnick v.*

* 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).

Hayes, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Warren’s claims against defendants Conover and Judge Bernini as barred by absolute immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1976) (holding that prosecutors are entitled to absolute immunity for activities “intimately associated with the judicial phase of the criminal process”); *Shucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (“A judge loses absolute immunity only when [the judge] acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature.”).

The district court properly dismissed Warren’s claims against defendant Brerenton because Warren failed to allege facts sufficient to show that Brerenton acted under color of state law. *See Polk County v. Dodson*, 454 U.S. 312, 317-20 (1981) (explaining that a private attorney or public defender does not act under color of state law within the meaning of § 1983).

The district court properly dismissed Warren’s claims against defendant Nanos because Warren failed to allege facts sufficient to show that Nanos made any particular decisions regarding the jail’s COVID-19 policy, failed to train or supervise his subordinates, or discriminated against Warren. *See Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018) (explaining that an unconstitutional conditions claim requires showing an “intentional decision” by the defendant and a failure to take reasonable measures to abate the risk of serious

harm to the plaintiff); *Barren v. Harrington*, 152 F.3d 1193, 1194-95 (9th Cir. 1998) (order) (explaining that a discrimination claim requires showing “an intent or purpose to discriminate” on the basis of the plaintiff’s membership in a protected class); *Canell v. Lightner*, 143 F.3d 1210, 1213-14 (9th Cir. 1998) (explaining that liability for failure to train properly requires showing that inadequate training was a deliberate choice).

The district court properly dismissed Warren’s claims against Sergeant Ariz, Nurse KMH, and the individual detention officers because Warren failed to allege facts sufficient to show that these defendants violated his constitutional rights. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (explaining that although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief); *Barren*, 152 F.3d at 1194 (“A plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights.”).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Warren’s motion for a default judgment (Docket Entry No. 14) is denied. Warren’s requests for a copy of his opening brief, set forth in his opening brief, are granted. The Clerk will send a copy of the opening brief submitted at Docket

Entry No. 8 to Warren.

AFFIRMED.