

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 19 2023

FOR THE NINTH CIRCUIT

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

JOHNDELL HENDERSON,

No. 22-16191

Plaintiff-Appellant,

D.C. No. 5:22-cv-01709-EJD

v.

MEMORANDUM*

CONNIE GIBSON, Director of CDCR;
KATHLEEN ALLISON, Secretary of
CDCR; JENNIFER SHAFFER, Executive
Officer, PBH,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted September 12, 2023**

Before: CANBY, CALLAHAN, and OWENS Circuit Judges.

California state prisoner Johndell Henderson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that his continued incarceration violates the constitution and various federal laws. We

* 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).

have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A. *Mangiaracina v. Penzone*, 849 F.3d 1191, 1195 (9th Cir. 2017).

We affirm.

The district court properly dismissed Henderson’s action without prejudice because Henderson challenged the fact or duration of his confinement, success on his claims would necessarily imply the invalidity of his conviction or sentence, and Henderson has not demonstrated that his conviction has been invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding that, “in order to recover damages for an allegedly unconstitutional conviction or imprisonment,” a plaintiff must prove “that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus”); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that the “sole federal remedy is a writ of habeas corpus” when a prisoner seeks immediate or speedier release from incarceration).

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