

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2026

FOR THE NINTH CIRCUIT

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

ERIC JESSE KIKKERT,

Plaintiff - Appellant,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;
TOM COLE, in his official capacity as
Chair of the House Appropriations
Committee; SUSAN COLLINS, in her
official capacity as Chair of the Senate
Appropriations Committee; MIKE
JOHNSON, in his official capacity as
Speaker of the House; JOHN THUNE, in
his official capacity as Senate Majority
Leader,

Defendants - Appellees.

No. 25-6431

D.C. No.
2:25-cv-00861-JHC

MEMORANDUM*

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

Submitted August 25, 2026**

* 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).

Before: SILVERMAN, N.R. SMITH, and DE ALBA, Circuit Judges.

Eric Jesse Kikkert appeals pro se the district court's judgment dismissing his action alleging claims arising from the United States' support for the State of Israel. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(1). *Garza v. Woods*, 150 F.4th 1118, 1123 (9th Cir. 2025). We affirm.

The district court properly dismissed Kikkert's action for lack of standing because Kikkert failed to allege an injury in fact. *See id.* (setting forth the constitutional requirements for standing, including an injury in fact); *see also Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 592, 609 (2007) (plurality opinion) (explaining that *Flast v. Cohen*, 392 U.S. 83 (1968), recognized a narrow exception to the general rule against taxpayer standing, and that *Flast* "has largely been confined to its facts"). However, a dismissal for lack of standing should be without prejudice. *See Foothills Christian Ministries v. Johnson*, 148 F.4th 1040, 1050 n.4 (9th Cir. 2025). We instruct the district court to amend the judgment to reflect that the dismissal of the action is without prejudice.

The district court did not abuse its discretion by denying leave to amend because amendment would have been futile. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We do not consider issues that are not specifically and distinctly argued in the opening brief, or issues raised for the first time on appeal. *See Roley v. Google LLC*, 40 F.4th 903, 911 (9th Cir. 2022).

AFFIRMED with instructions to amend the judgment.