

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 1 2026

FOR THE NINTH CIRCUIT

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

ROBERT O. DINKINS,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA; COUNTY OF
SAN BERNARDINO, and other Counties;
SAN BERNARDINO HOSPITAL;
UNKNOWN PARTIES, Drs and other
Hospitals Drs; JOHN DOES,

Defendants - Appellees.

No. 26-1309

D.C. No. 5:25-cv-02554-CAS-KES

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted August 25, 2026**

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

Federal prisoner Robert O. Dinkins appeals pro se from the district court's
order dismissing without prejudice his action alleging federal and state law claims

* 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).

for failure to pay the filing fee after denying Dinkins's request to proceed in forma pauperis ("IFP"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's interpretation and application of 28 U.S.C.

§ 1915(g), *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007), and for an abuse of discretion the denial of leave to proceed IFP, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We vacate and remand.

The district court denied Dinkins's motion to proceed IFP on the basis that Dinkins had filed at least three prior actions in federal court that were dismissed as frivolous or malicious, or for failing to state a claim, and that he did not establish that he was in imminent danger of serious physical injury at the time he brought this action. *See* 28 U.S.C. § 1915(g). However, Dinkins alleged that his sinus condition interfered with his breathing, caused him to choke while sleeping, and caused his eyes to swell. *See Williams v. Paramo*, 775 F.3d 1182, 1189-90 (9th Cir. 2015) (explaining that courts should liberally construe a prisoner's "facial allegations" and determine if the complaint makes a plausible allegation of imminent danger); *Andrews*, 493 F.3d at 1056-57 (discussing the imminent danger exception to § 1915(g)). Dinkins also submitted information about his indigency and an explanation about his failure to provide complete IFP documentation. Because Dinkins plausibly alleged imminent danger of serious physical injury and it is not clear from the record that the district court considered the documents

Dinkins included with his request to proceed IFP, we vacate the judgment and remand for further proceedings.

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).

VACATED and REMANDED.