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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL C. TIERNEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>ACO S. ALO; et al.,</p> <p>Defendants - Appellees.</p>
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No. 12-16024

D.C. No. 1:12-cv-00059-SOM-KSC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Susan Oki Mollway, Chief Judge, Presiding

Submitted April 16, 2013\*\*

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Michael C. Tierney, a Hawaii state prisoner, appeals pro se from the district court's order denying his request to proceed in forma pauperis in his 42 U.S.C. § 1983 action alleging deliberate indifference. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's interpretation and

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

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 its denial of leave to proceed in forma pauperis, *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). We affirm.

The district court did not abuse its discretion by denying Tierney’s request to proceed in forma pauperis because at least three of Tierney’s prior § 1983 actions were dismissed on the basis that they were frivolous or failed to state a claim, and Tierney did not provide sufficient allegations to show that he was “under imminent danger of serious physical injury” at the time he lodged the complaint. 28 U.S.C. § 1915(g); *see also Andrews*, 493 F.3d at 1055 (an exception to the three-strikes rule exists only where “the complaint makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing”).

**AFFIRMED.**