

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2017

FOR THE NINTH CIRCUIT

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

JOHN L. WILLIAMS-EL,

No. 16-15271

Plaintiff-Appellant,

D.C. No. 3:15-cv-00422-RCJ-WGC

v.

MEMORANDUM*

JAMES GREG COX, N.D.O.C. Director; et
al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

John L. Williams-El, a Nevada state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional violations in connection with his validation as a gang member. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Weilburg v. Shapiro*, 488

* 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).

F.3d 1202, 1205 (9th Cir. 2007) (dismissal under 28 U.S.C. § 1915A); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)). We vacate and remand.

Dismissal without leave to amend was premature because it is not “absolutely clear” that the deficiencies in Williams-El’s complaint could not be cured by amendment. *Weilburg*, 488 F.3d at 1205; *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (standard of review); *see also Bruce v. Ylst*, 351 F.3d 1283, 1287 (9th Cir. 2003) (relevant question for gang validation due process claim is “whether there was ‘some evidence’ to support [the prisoner’s] validation”).

Accordingly, we vacate the judgment and remand for the district to give Williams-El an opportunity to amend his complaint.

VACATED and REMANDED.