

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 28 2017

FOR THE NINTH CIRCUIT

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

SEAVON PIERCE,

Plaintiff-Appellant,

v.

DONALD J. TRUMP, President,

Defendant-Appellee.

No. 16-16523

D.C. No. 1:16-cv-01083-LJO-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Chief Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

California state prisoner Seavon Pierce appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action for failure to pay the filing fee, after denying Pierce's application to proceed in forma pauperis ("IFP") on the basis that Pierce has three strikes under 28 U.S.C. § 1915(g). We have jurisdiction

* 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).

under 28 U.S.C. § 1291. We review de novo. *Washington v. L.A. Cty. Sheriff's Dep't*, 833 F.3d 1048, 1054 (9th Cir. 2016). We affirm.

The district court properly denied Pierce's motion to proceed IFP because at the time Pierce filed the complaint, he had filed three actions that qualified as strikes, and he did not plausibly allege that he was "under imminent danger of serious physical injury" at the time he lodged the complaint. 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1053, 1055-56 (9th Cir. 2007) (discussing the imminent danger exception to § 1915(g)).

We do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

Pierce's requests for judicial notice, set forth in his opening brief and Docket Entry Nos. 8 and 17, are denied.

AFFIRMED.