

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 21 2017

FOR THE NINTH CIRCUIT

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

GREGORY C. BONTEMPS,

Plaintiff-Appellant,

v.

K. PENATE, Correctional Officer at
Lancaster State Prison, in his/her individual
capacity,

Defendant-Appellee.

No. 16-56886

D.C. No. 2:15-cv-02268-JFW-SP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted December 18, 2017**

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

Gregory C. Bontemps, a California state prisoner, 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 revoking his in forma pauperis status ("IFP") on the ground that

* 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).

Bontemps has “three strikes” under 28 U.S.C. § 1915(g). We have jurisdiction 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 revoked Bontemps’ IFP status because at least three of Bontemps’ prior cases qualified as “strikes” under 28 U.S.C. § 1915, and Bontemps did not allege facts demonstrating that he faced imminent danger at the time he filed his complaint. *See Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (defining when a case is frivolous or malicious, or fails to state a claim under 28 U.S.C. § 1915, and can be considered a strike); *Andrews v. Cervantes*, 493 F.3d 1047, 1055-57 (9th Cir. 2007) (discussing imminent danger exception); *see also Harris v. Mangum*, 863 F.3d 1133, 1143 (9th Cir. 2017) (“[W]hen (1) a district court dismisses a complaint on the ground that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff then fails to file an amended complaint, the dismissal counts as a strike under § 1915(g).”).

Bontemps’ motion seeking appointment of counsel, attached to his opening brief, is denied.

AFFIRMED.