

JAN 15 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDDIE PERALES,

Plaintiff - Appellant,

v.

R. HICKMAN; et al.,

Defendants - Appellees.

No. 07-16716

D.C. No. CV-06-00358-MCE

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: GOODWIN, WALLACE and RYMER, Circuit Judges.

Eddie Perales, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C § 1983 action alleging violations of his

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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 finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

due process rights under the Fourteenth Amendment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003), and we affirm.

The district court properly dismissed the action because, liberally construed, Perales's complaint did not allege facts to show that the defendants deprived him of a constitutional or federal right. *See Moody v. Daggett*, 429 U.S. 78, 88 n. 9 (1976) (noting that prison officials' exercise of discretion to assign a security classification to an inmate does not implicate an inmate's liberty interest); *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007) (rejecting due process claim where there was "no showing that the state's classification of [inmate would] invariably affect the duration of his sentence."); *Lopez v. Dep't of Health Servs.*, 939 F.2d 881, 883 (9th Cir. 1991) (setting forth elements of § 1983 claim).

The district court did not abuse its discretion by denying Perales leave to amend because further amendment would have been futile. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (explaining that a district court should grant leave to amend, unless it determines that the pleading could not possibly be cured).

**AFFIRMED.**