

DEC 27 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GLENN MATTHEW TRACCHIA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>JAMES E. TILTON and KEN CLARK, Warden,</p> <p>Defendants - Appellees.</p>

No. 09-17899

D.C. No. 2:06-cv-02916-GEB-
KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

California state prisoner Glenn Matthew Tracchia appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action, alleging that the prison's family visitation policy violates his rights under the Equal Protection

* 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).

Clause. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Tracchia's as-applied equal protection claim. Prisoners are not a suspect class, *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999), and overnight family visits while incarcerated are not a fundamental right, *Gerber v. Hickman*, 291 F.3d 617, 621 (9th Cir. 2002) (en banc). Tracchia failed to raise a triable issue as to whether the prison's family visitation policy that bars prisoners, who are serving life sentences and who do not have parole dates, from overnight family visits is not rationally related to legitimate penological interests. *See Overton v. Bazzetta*, 539 U.S. 126, 133 (2003).

Tracchia's contention that the district court treated his claim as a facial challenge is not persuasive.

AFFIRMED.