

JAN 30 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAVID SMITH,

Plaintiff - Appellant,

v.

D. LETOURNEAU; J. SILVA,

Defendants - Appellees.

No. 13-17660

D.C. No. 2:11-cv-02808-TLN-  
EFB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Troy L. Nunley, District Judge, Presiding

Submitted January 21, 2015\*\*

Before: CANBY, GOULD, and N.R. SMITH, Circuit Judges.

David Smith, a former California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.

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

2006), and we affirm.

The district court properly granted summary judgment because Smith failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent by failing to remove Smith from his work assignment, or by requiring Smith to work in the sun. *See Farmer v. Brennan*, 511 U.S. 825, 837, 844 (1994) (a prison official is deliberately indifferent only if he or she “knows of and disregards an excessive risk to inmate health or safety” and “may be found free from liability if [he or she] responded reasonably to the risk, even if the harm ultimately was not averted”).

**AFFIRMED.**