

AUG 03 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD ARTHUR AGUIRRE,

Plaintiff-Appellant,

v.

R. LOPEZ, Warden; et al.,

Defendants-Appellees.

No. 14-17060

D.C. No. 1:08-cv-00980-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank R. Zapata, District Judge, Presiding

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

California state prisoner Richard Arthur Aguirre appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that defendants violated his Eighth Amendment rights by depriving him of outdoor exercise. We have jurisdiction under 28 U.S.C. § 1291. We review de novo,

* 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).

Toguchi v. Chung, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Aguirre's Eighth Amendment claim on the basis of qualified immunity because it would not have been clear to every reasonable official that depriving Aguirre of outdoor exercise in response to ongoing violence between rival gangs was unconstitutional. *See Ashcroft v. al-Kidd*, 563 U.S. 731, 735, 741 (2011) (explaining two-part test for qualified immunity); *see also Norwood v. Vance*, 591 F.3d 1062, 1068-70 (9th Cir. 2010) (discussing the application of qualified immunity where prisoners were deprived of outdoor exercise in response to prison violence).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.