

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 25 2020

FOR THE NINTH CIRCUIT

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

PHILLIP MARTINEZ,

No. 19-56296

Plaintiff-Appellant,

D.C. No.

5:15-cv-02160-TJH-AFM

v.

UNITED STATES BUREAU OF
PRISONS; et al.,

MEMORANDUM*

Defendants-Appellees,

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Jr., District Judge, Presiding

Submitted November 23, 2020**

Before: GOODWIN, SCHROEDER, and SILVERMAN, Circuit Judges.

Phillip Martinez, a former federal prisoner proceeding pro se, appeals the district court's dismissal of Martinez's action filed pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971),

* 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).

alleging violations of his Fifth and Eighth Amendment rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

The district court properly dismissed Martinez’s Fifth Amendment claim concerning his placement in a maximum-security prison because inmates lack a protected liberty interest in their housing or classification status. *See Meachum v. Fano*, 427 U.S. 215, 225 (1976) (holding that an inmate lacked due process protections in his transfer between prisons, resulting in a reclassification to maximum security, because the transfer was “within the normal limits or range of custody which the conviction has authorized the State to impose”); *see also Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976) (stating that *Meachum*’s holding applies to “prison classification . . . in the federal system”).

The district court properly dismissed Martinez’s Eighth Amendment claim alleging inadequate exercise, first, because a *Bivens* remedy is not available for such a claim. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017) (urging courts to use caution before extending the *Bivens* remedy into new contexts and requiring a “special factors” analysis before doing so). Second, the district court properly dismissed the claim because Martinez failed to allege medical effects as a result of any temporary denial of exercise. *See May v. Baldwin*, 109 F.3d 557, 565 (9th Cir. 1997) (“a temporary denial of outdoor exercise with no medical effects is not a

substantial deprivation,” a requirement of an Eighth Amendment conditions-of-confinement claim).

The district court properly dismissed Martinez’s Eighth Amendment claim alleging deliberate indifference to a serious medical need because Martinez failed to allege facts showing that he had a serious medical need or that any defendant was deliberately indifferent that need. *See Peralta v. Dillard*, 744 F.3d 1076, 1081 (9th Cir. 2014) (en banc) (“Prison officials violate the Eighth Amendment if they are deliberately indifferent to a prisoner’s serious medical needs. A medical need is serious if failure to treat it will result in significant injury or the unnecessary and wanton infliction of pain.” (citations, alterations, and quotation marks omitted)).

AFFIRMED.