

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 26 2021

FOR THE NINTH CIRCUIT

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

GILBERT RAMIREZ,

Plaintiff-Appellant,

v.

E. ROSE, Correctional Officer,

Defendant-Appellee.

No. 20-15825

D.C. No. 2:19-cv-00827-TLN-KJN

MEMORANDUM*

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

Submitted July 19, 2021**

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

California state prisoner Gilbert Ramirez appeals pro se from the district court's summary judgment for failure to exhaust administrative remedies in his 42 U.S.C. § 1983 action alleging excessive force. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir.

* 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).

2014) (en banc). We affirm.

The district court properly granted summary judgment because Ramirez did not exhaust his administrative remedies, and failed to raise a genuine dispute of material fact as to whether administrative remedies were effectively unavailable to him. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (proper exhaustion requires “using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)” (citation and internal quotation marks omitted)); *see also Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016) (setting forth circumstances when administrative remedies are effectively unavailable).

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.