

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2022

FOR THE NINTH CIRCUIT

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

ZAINAB MOHAMMED,

Plaintiff-Appellant,

v.

CHRISTINE WORMUTH, Secretary, U.S.
Department of the Army,

Defendant-Appellee.

No. 21-16993

D.C. No. 5:21-cv-03481-NC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Nathanael M. Cousins, Magistrate Judge, Presiding**

Submitted December 8, 2022***

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Zainab Mohammed appeals pro se from the district court's judgment dismissing her Title VII employment action alleging retaliation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Ariz. All. for Cmty.*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

Health Ctrs. v. Ariz. Health Care Cost Containment Sys., 47 F.4th 992, 998 (9th Cir. 2022) (dismissal for failure to state a claim); *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992) (legal rulings on issue preclusion). We affirm.

The district court properly dismissed Mohammed's Title VII retaliation claim on the basis of issue preclusion because whether the Army retaliated against Mohammed was actually litigated and decided in *Mohammed v. Department of the Army*, 780 F. App'x 870 (Fed. Cir. 2019). See *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1225 (9th Cir. 2016) (elements of issue preclusion). Contrary to Mohammed's contention, the district court properly concluded that the Army was not equitably estopped from raising issue preclusion because the Army did not intend its conduct to induce reliance. See *Est. of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011) (elements of equitable estoppel).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009). Nor do we consider documents not presented to the district court. See *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

AFFIRMED.