

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 20 2023

FOR THE NINTH CIRCUIT

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

LYRALISA LAVENA STEVENS,

No. 22-16850

Plaintiff-Appellant,

D.C. No. 1:22-cv-00741-ADA-SAB

v.

MEMORANDUM*

S. SMITH; C. MARTINEZ; A. SHIMMIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
Ana de Alba, District Judge, Presiding

Submitted September 12, 2023**

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

Former California state prisoner Lyralisa Lavena Stevens appeals pro se from the district court's judgment dismissing for failure to state a claim her 42 U.S.C. § 1983 action alleging claims under the Eighth and Fourteenth Amendments. 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).

Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (dismissal under 28 U.S.C. § 1915A). We affirm.

The district court properly dismissed Stevens’s action because Stevens failed to allege facts sufficient to state any plausible claims. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are to be liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief); *see also Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013) (elements of an equal protection claim under the Fourteenth Amendment); *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996) (explaining that “disrespectful and assaultive comments” do not necessarily state a claim under the Eighth Amendment).

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). We do not consider documents not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Stevens’s request for judicial notice, set forth in the opening brief, is denied as unnecessary.

AFFIRMED.