

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 25 2025

FOR THE NINTH CIRCUIT

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

DON ANGELO DAVIS,

Plaintiff - Appellant,

v.

R HUTCHESON; MATTHEWS, Unit  
Housery Officer; High Desert State  
Prison; MARION SPEARMAN, Warden;  
High Desert State Prison; RALPH DIAZ,  
Office of the Secretary; C.D.C.R,

Defendants - Appellees.

No. 23-2419

D.C. No. 2:20-cv-00077-DJC-DMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Daniel J. Calabretta, District Court, Presiding

Submitted April 22, 2025\*\*

Before: GRABER, H.A. THOMAS, and JOHNSTONE, Circuit Judges.

California state prisoner Don Angelo Davis appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging a First

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\* 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).

Amendment retaliation claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment for defendant Hutcheson because Davis failed to raise a genuine dispute of material fact as to whether Hutcheson took Davis's missing items from the boxes containing his personal property. *See Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005) (setting forth elements of a First Amendment retaliation claim in the prison context); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (explaining that liability under § 1983 requires personal participation by the defendant in the alleged rights deprivation).

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.**