

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 23 2025

FOR THE NINTH CIRCUIT

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

ANDREW BENTON CUFAUDE,

Plaintiff - Appellant,

v.

THERAPEUTIC LEVEL OF CARE
COMMITTEE; Dr. GARTH GULICK; Dr.
BYRON D. HEMPHILL; SNAKE RIVER
CORRECTIONAL INSTITUTION
HEALTH SERVICES,

Defendants - Appellees.

No. 24-45

D.C. No. 2:22-cv-01604-HZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, District Judge, Presiding

Submitted May 21, 2025**

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

Andrew Benton Cufaude, an Oregon state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging

* 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).

deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Donell v. Kowell*, 533 F.3d 762, 769 (9th Cir. 2008). We affirm.

The district court properly granted summary judgment for the institutional defendants and the individual defendants sued in their official capacities because they are entitled to Eleventh Amendment immunity. *See Brown v. Or. Dep't of Corr.*, 751 F.3d 983, 988 (9th Cir. 2014) (dismissing claims against the Oregon Department of Corrections under the Eleventh Amendment); *Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 967 (9th Cir. 2010) (explaining that the Eleventh Amendment bars suits against a state as well as state officials sued in their official capacities).

The district court properly granted summary judgment for the individual defendants sued in their personal capacities because Cufaude failed to raise a genuine dispute of material fact as to whether defendants acted with deliberate indifference in treating his back pain and renal cyst. *See Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004) (explaining that to show deliberate indifference, a plaintiff must show that treatment was “medically unacceptable,” and chosen “in conscious disregard of an excessive risk to plaintiff’s health,” and that a “difference of medical opinion” is insufficient to show deliberate indifference).

The district court did not abuse its discretion in denying Cufaude’s motions

to appoint counsel because Cufaude failed to demonstrate exceptional circumstances. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and “exceptional circumstances” requirement).

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), or documents not presented to the district court, *see United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (“Documents or facts not presented to the district court are not part of the record on appeal.”).

All pending motions and requests are denied.

AFFIRMED.