NOT FOR PUBLICATION

FILED

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANAND JON ALEXANDER,

Plaintiff - Appellant,

v.

COREY CROSS; DOES 1-70, Inclusive and Jointly and Severally; KARL E. GRETHER; LINDSEY GERVASONI; GABRIEL MENCHACA,

Defendants - Appellees,

and

RALPH DIAZ, Secretary of CDCR, MARCUS POLLARD, Warden, Richard J. Donovan Correctional Facility, DANIEL PARAMO, former Warden, Richard J. Donovan Correctional Facility, E. RAMIREZ, Correctional Officer, PATRICK COVELLO,

Defendants.

No. 24-2942

D.C. No. 3:20-cv-00100-CAB-KSC

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

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

Argued and Submitted June 6, 2025
Pasadena, California

Before: HURWITZ, MILLER, and SUNG, Circuit Judges.

In 2019, Anand Jon Alexander, an inmate at Richard J. Donovan Correctional Facility ("RJD"), was stabbed by Dominic Rizzo, a fellow inmate, after Rizzo was transferred to RJD from High Desert State Prison ("High Desert"), a higher-security facility. Rizzo's transfer followed a "behavioral override" of his previous custody classification score by prison officials, who allowed Rizzo to be housed in a lower-security facility inconsistent with his score because of his good behavior. *See* Cal. Code Regs. tit. 15, § 3375.2(b)(3). In this 42 U.S.C. § 1983 action, Alexander raises Eighth Amendment and state-law negligence claims against three High Desert officials and a California Department of Corrections and Rehabilitation ("CDCR") official (collectively, the "Defendants") who approved the behavioral override and transfer.

After a previous remand by this Court, *Alexander v. Diaz*, No. 22-55223, 2023 WL 3407082 (9th Cir. May 12, 2023), the district court held that the Defendants were entitled to qualified immunity, granted them summary judgment on the Eighth Amendment claim, and dismissed the state-law claim without prejudice. We have jurisdiction over Alexander's appeal under 28 U.S.C. § 1291, and we review de novo. *Est. of Lopez ex rel. Lopez v. Gelhaus*, 871 F.3d 998, 1005 (9th Cir. 2017). We affirm.

1. In 2018, the Defendants approved a behavioral override allowing Rizzo, a Level IV inmate at High Desert, to be placed in a lower-security facility and recommended his transfer to the Level III Sensitive Needs Yard on Facility D at RJD, where Alexander was housed. Sensitive Needs Yards house inmates with "systemic safety concerns," such as sex offenders and gang dropouts.[1] In 2003, Rizzo stabbed an inmate whom he believed to be a "child molester." *Alexander*, 2023 WL 3407082, at *1. In 2014, officers discovered a nine-inch-long "inmate manufactured weapon" in Rizzo's cell, which an informant stated Rizzo had planned to use to stab a "child molester or drug dealer." *Id.*

2. We previously held that material questions of fact—namely, whether the Defendants knew and disregarded a substantial risk that Rizzo "posed . . . to sex offenders, a group which includes Alexander"—precluded summary judgment on whether Alexander's constitutional rights were violated. *Alexander*, 2023 WL 3407082, at *2. We "decline[d] to address [D]efendants' claim to qualified immunity in the first instance." *Id*. The narrow question before us now is whether it was "clearly established" in 2018 that the Defendants' conduct would violate the Eighth Amendment, such that "every reasonable official would have understood that what he is doing violates that right." *Sampson v. Cnty. of Los Angeles*, 974 F.3d

[1] Rizzo was placed in a Sensitive Needs Yard after he dropped out of a white supremacist gang. The High Desert Sensitive Needs Yard where Rizzo was previously placed also housed sex offenders.

1012, 1018–19 (9th Cir. 2020) (cleaned up).

"Courts must define the clearly established right at issue on the basis of the specific context of the case," and a plaintiff "bears the burden of showing that the right at issue was clearly established." *Emmons v. City of Escondido*, 921 F.3d 1172, 1174 (9th Cir. 2019) (cleaned up). "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

To the extent the district court found on remand that the Defendants are entitled to qualified immunity because they were not aware of a risk of harm to Alexander in particular, we disagree. *See, e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 843 (1994) ("[A] prison official [cannot] escape liability . . . by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely to be assaulted by the specific prisoner who eventually committed the assault."); *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1448 (9th Cir. 1991) (en banc) (promulgating policy of housing inmates with a history of sexual aggression in the general population rather than in isolation or a higher-security unit could violate plaintiff's constitutional rights), *abrogated on other grounds by Farmer*, 511 U.S. at 836.

However, Alexander identifies no case clearly establishing that transfer of Rizzo to a different Sensitive Needs Yard in a lower-security facility after the review

process the Defendants conducted would violate the Eighth Amendment. The Defendants approved Rizzo's transfer following an annual review of his housing placement, during which they evaluated his "case factors" and behavioral history while incarcerated. They noted Rizzo's "positive behavior," lack of disciplinary incident since 2015, and participation in multiple rehabilitative programs.[2] The Defendants recommended Rizzo's placement on Facility D at RJD because he had no "documented enemies" there. Alexander was not identified in departmental records as one of Rizzo's enemies. On the facts of this case, it would not have been clear to "every reasonable official," *Sampson*, 974 F.3d at 1018, that the Defendants' conduct was unconstitutional.

AFFIRMED.

[2] A July 2016 CDCR memorandum instructs staff to "consider all inmates during all classification committee reviews for placement into the next lower or higher facility security level in accordance with CCR, Title 15, Sections 3375 and 3375.2" to "expand inmate access to all rehabilitative programs, for those who have demonstrated positive programming."