NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHANNON L. KELLY, Plaintiff - Appellant, v. M. ROSALES, Correctional Lieutenant, official capacity; J. CODY, Correctional Sergeant, official capacity; J. MARTINEZ, Correctional Officer, official capacity, Defendants - Appellees.	No. 24-827 D.C. No. 2:23-cv-05940-MCS-JPR MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Mark C. Scarsi, District Judge, Presiding

Submitted July 14, 2025**

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

Shannon Kelly appeals pro se from district court orders (1) dismissing her Section 1983 action against Officer Martinez, Officer Rosales, and Sergeant Cody

* 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).

of California State Prison, Los Angeles County; and (2) and denying her motions for judicial notice and discovery. We have jurisdiction under 28 U.S.C. § 1291, and we review de novo the district court's decision to grant a motion to dismiss. *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 889 (9th Cir. 2021). We review for abuse of discretion the decisions not to take judicial notice or permit discovery. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018); *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1119 (9th Cir. 2020). We affirm.

First, the district court properly dismissed Kelly's Section 1983 action on qualified immunity grounds, because Defendants did not violate any clearly established right to be notified of a cancelled visit with an incarcerated relative. Kelly's Fifth Amendment claims do not apply to the state-employee Defendants in this case, so she must show the deprivation of a liberty or property interest in violation of the Fourteenth Amendment.[1] *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). A liberty interest can arise from an expectation created by state statutes and prison regulations, *Neal v. Shimoda*, 131 F.3d 818, 827 (9th Cir. 1997), and a property interest can form where these policies and procedures create an "entitlement to the benefit at issue," *Armstrong v. Reynolds*, 22 F.4th 1058, 1067

[1] To the extent that Kelly presents claims of intentional infliction of emotional distress and retaliation in violation of her First Amendment rights, we decline to entertain them because she did not bring these claims in district court and raises them for the first time on appeal. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010).

(9th Cir. 2022). However, the provisions here do not create that sort of expectation or entitlement. The California Code of Regulation not only states that family visits are "a privilege" subject to "institution security" and "space availability," tit. 15, § 3177, but also makes inmates responsible for notifying visitors of a change in visiting status, tit. 15, § 3176.4(f). The Department's Operations Manual asks only that the family visiting coordinator "make a reasonable effort" to notify visiting families of a cancellation "[d]uring emergency situations"—which this was not. § 54020.33.7. Because Kelly's appeal does not raise any other authority clearly establishing her right to advanced notice of a cancelled family visit, we affirm the district court's decision to grant Defendants qualified immunity and dismiss her complaint.[2]

Second, the district court did not abuse its discretion in denying Kelly's requests for judicial notice and discovery. The court denied judicial notice for the three documents attached to Kelly's first motion because they were submitted without authentication and otherwise incomplete. *See Madeja v. Olympic Packers,*

[2] Kelly attaches certain "Institutional policy and procedures" to her opening brief that she previously attached to her objection to the Magistrate Judge's report and recommendation. These policies appear to post-date the May 2023 visit at issue in this lawsuit. We grant Defendants' motion to strike these and other incomplete and inauthenticated exhibits attached to Kelly's opening brief. We have based our decision entirely on the record developed below. *See, e.g.*, *Tonry v. Sec. Experts, Inc.*, 20 F.3d 967, 974 (9th Cir. 1994) (calling it a "basic tenet of appellate jurisprudence . . . that parties may not unilaterally supplement the record on appeal with evidence not reviewed by the court below").

LLC, 310 F.3d 628, 639 (9th Cir. 2002). As for the other six documents submitted with Kelly's second motion, the court emphasized that they postdated her cancelled visit and were therefore irrelevant to legal questions presented by Defendants' motion to dismiss. *See Cuellar v. Joyce*, 596 F.3d 505, 512 (9th Cir. 2010). Finally, with respect to Kelly's discovery motions, the court declined to permit discovery until resolution of the threshold issue of qualified immunity. *See Crawfold-El v. Britton*, 523 U.S. 574, 598 (1998). These evidentiary determinations were grounded in precedent and hardly exceeded the district court's discretion. Nor did they compromise Kelly's ability to demonstrate a clearly established constitutional right to advanced notice of a cancelled prison visit. Therefore, we affirm the district court's denials of judicial notice and discovery on appeal. *Kulas v. Flores*, 255 F.3d 780, 783 (9th Cir. 2001).

AFFIRMED.