

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 27 2026

FOR THE NINTH CIRCUIT

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

DANNY FABRICANT, a.k.a. Daniel Joseph
Fabricant, a.k.a. Danny Joseph Fabricant,

Plaintiff-Appellant,

v.

DAVID SHINN, Director, Warden;
CHRISTOPHER LYNN GONZALES,
Correctional Counselor, individual capacity;
JOUSE CASTILLO, Special Investigative
Service Technician, individual capacity,

Defendants-Appellees.

No. 22-56204

D.C. No.

5:19-cv-00144-ODW-AS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

Submitted April 27, 2026**

Before: O'SCANNLAIN, SILVERMAN, and N.R. SMITH, Circuit Judges.

Danny Fabricant, a federal prisoner, appeals pro se from the district court's
summary judgment in his action under *Bivens v. Six Unknown Named Agents of the*

* 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)*.

Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging Eighth Amendment claims for failure to protect him from assault by other inmates. We may affirm on any ground supported by the record. *Opara v. Yellen*, 57 F.4th 709, 721 (9th Cir. 2023). We affirm.

Summary judgment was proper because case law precludes the extension of the *Bivens* remedy to Fabricant’s claims. *See Chambers v. C. Herrera*, 78 F.4th 1100, 1105-07 (9th Cir. 2023) (declining to recognize a cause of action under *Bivens* for an inmate’s Eighth Amendment claim alleging failure to protect).

We reject as unsupported by the record Fabricant’s assertion that the district court failed to conduct a *de novo* review of the record when adopting the magistrate judge’s report and recommendation. *See United States v. Ramos*, 65 F.4th 427, 435 (9th Cir. 2023) (“When the district court said it independently reviewed the record and there is no evidence indicating otherwise, we have no reason to second-guess its assertion of *de novo* review.”).

We decline to consider matters not distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Fabricant’s request to require defendants to file additional excerpts of record, (Docket Entry No. 43) is denied. Fabricant’s request for a status report and a request for a ruling on a motion to require defendants to file additional excerpts of record (Docket Entry No. 57) is denied as moot.

AFFIRMED.