

SEP 27 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERIC JOHNSON; et al.,

Plaintiffs - Appellants,

v.

EDWARD S. ALAMEIDA, JR., Director,

Defendant - Appellee,

and

GRAY DAVIS, Governor; et al.,

Defendants.

No. 06-16414

D.C. No. CV-03-05369-
OWW/LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Eric Johnson, a California state prisoner, appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging that prison classification regulations do not specifically address the needs of transgender inmates in violation of the Eighth Amendment. 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 because Johnson did not controvert defendants' evidence that sexual orientation is taken into account when classifying and placing inmates, and Johnson conceded that whenever he raised safety concerns, prison staff took action to protect him. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994) ("prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."). Moreover, prisoners have no constitutional right to a particular classification status. *See Moody v. Daggett*, 429 U.S. 78, 88 n.9 (1976).

Johnson's remaining contentions are not persuasive.

AFFIRMED.