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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>HASSAN RASHIDIAN,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>WAYNE K. WILLIS, DHS District Director, Southern District California; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 07-55371

D.C. No. CV-03-02163-LAB

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Larry A. Burns, District Judge, Presiding

Submitted July 14, 2009\*\*

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Hassan Rashidian appeals pro se from the district court's summary judgment in his *Bivens* action alleging deliberate indifference to his safety while he was a

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\* 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).

detainee at an Immigration and Customs Enforcement Service Processing Center.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Beene v.*

*Terhune*, 380 F.3d 1149, 1150 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment to defendant Reclosado because Rashidian failed to raise a triable issue as to whether Reclosado knew of and disregarded an excessive risk to Rashidian's health or safety. *See Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1187 (9th Cir. 2002); *see also School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993) (discussing circumstances under which a nonmoving party may not substitute an affidavit alleging helpful facts for earlier deposition testimony harmful to its case in order to avoid summary judgment).

Rashidian's remaining contentions are unpersuasive.

**AFFIRMED.**