NOT FOR PUBLICATION

FILED

JAN 19 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ISSA DOREH, Plaintiff-Appellant, v. UNKNOWN RODRIGUEZ, named as Ms. Rodriguez, Housing Unit Manager at FCI Tucson; UNITED STATES OF AMERICA; W. PRATT, named as Mr. W. Pratt, Food Manager at FCI Tucson; L. R. MOLINAR, named as Ms. Rodriguez, Mail-Room Staff Supervisor at FCI Tucson; FEDERAL BUREAU OF PRISONS, Defendants-Appellees.	No. 22-15432 D.C. No. 4:16-cv-00108-JAS MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
James Alan Soto, District Judge, Presiding

Submitted January 17, 2024[**]

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

Former federal prisoner Issa Doreh appeals pro se from the district court's

[*] 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).

judgment dismissing for failure to exhaust administrative remedies his action brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging an Eighth Amendment claim. We review for clear error the district court's factual findings relevant to its exhaustion determination. *Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014) (en banc). We affirm.

The district court did not commit clear error by finding, following an evidentiary hearing, that Doreh failed to exhaust administrative remedies on his Eighth Amendment failure-to-protect claim, and that Doreh's administrative remedies were not effectively unavailable. *See Ross v. Blake*, 578 U.S. 632, 638, 642-44 (2016) (explaining that an inmate must exhaust "such administrative remedies as are available" before bringing suit, and describing limited circumstances under which administrative remedies are effectively unavailable); *Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002) ("[I]f the district court's findings are plausible in light of the record viewed in its entirety, the appellate court cannot reverse even if it is convinced it would have found differently.").

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on

appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.