

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 24 2019

FOR THE NINTH CIRCUIT

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

MELINDA GABRIELLA VALENZUELA,

No. 18-16347

Plaintiff-Appellant,

D.C. No. 2:16-cv-04120-DLR

v.

MEMORANDUM\*

JULIA BARNETT, Medical Director/  
Medical Doctor at Lewis Complex; et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the District of Arizona  
Douglas L. Rayes, District Judge, Presiding

Submitted September 18, 2019\*\*

Before: FARRIS, TASHIMA, and NGUYEN, Circuit Judges.

Melinda Gabriella Valenzuela, an Arizona state prisoner, appeals pro se from the district court's summary judgment in her action brought under 42 U.S.C. § 1983 alleging deliberate indifference to her serious medical needs and retaliation. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v.*

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\* 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).

*Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The district court properly granted summary judgment on Valenzuela’s deliberate indifference claim because Valenzuela failed to raise a genuine dispute of material fact as to whether defendants were deliberately indifferent to her medical needs. *See id.* at 1057-60 (a prison official is deliberately indifferent only if he or she knows of and disregards an excessive risk to inmate health; medical malpractice, negligence, or a difference of opinion concerning the course of treatment does not amount to deliberate indifference); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (deliberate indifference requires showing a “purposeful act or failure to respond to prisoner’s pain or possible medical need and . . . harm caused by the indifference” (citation and internal quotation marks omitted)).

The district court properly granted summary judgment on Valenzuela’s retaliation claim because Valenzuela failed to raise a genuine dispute of material fact as to whether defendants took any adverse action against Valenzuela. *See Rhodes v. Robinson*, 408 F.3d 567-68 (9th Cir. 2005) (setting forth elements of a retaliation claim in the prison context).

We do not consider documents that were not filed with the district court. *See Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988) (“Papers not filed with the district court or admitted into evidence by that court are

not part of the clerk's record and cannot be part of the record on appeal.”).

All pending motions are denied.

**AFFIRMED.**