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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JEANNE MUNDONGO MANUNGA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LOUIS, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

CASE NO. CV 14-3910 AG (RZ)  
  
MEMORANDUM AND ORDER  
DISMISSING COMPLAINT WITH  
LEAVE TO AMEND

The *pro se* and *in forma pauperis* plaintiff in this *Bivens* action, Jeanne Mundongo Manunga, is an immigration detainee, *i.e.*, is in custody for removal proceedings. She appears to assert that she was beaten and injured by an Immigration and Customs Enforcement (ICE) guard, and that four additional ICE (or other federal) employees neglected or mistreated her around the same time. Due to certain pleading flaws discussed below, the Court will dismiss the initial complaint with leave to amend.

**I.**  
**COURT’S OBLIGATION TO SCREEN *IN FORMA PAUPERIS* CASES**

The Court must screen all complaints, including Plaintiff’s, brought *in forma pauperis*. See *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (per curiam); 28 U.S.C. § 1915(e)(2) (screening of *in forma pauperis* actions generally). The law requires this

1 Court to “dismiss the case if at any time it determines that . . . the action . . . (i) is frivolous  
2 or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks  
3 monetary relief from a defendant who is immune from such relief.” 28 U.S.C.  
4 § 1915(e)(2)(B).

5 A “complaint . . . must contain either direct or inferential allegations  
6 respecting all the material elements necessary to sustain recovery under *some* viable legal  
7 theory”; otherwise, it is subject to dismissal for failure to state a claim. *See Bell Atlantic*  
8 *Corp. v. Twombly*, 550 U.S. 544, 562, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (quoting,  
9 and including original emphasis from, *Car Carriers Inc. v. Ford Motor Co.*, 745 F.2d 1101,  
10 1106 (7th Cir. 1984)); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679-80, 129 S. Ct. 1937,  
11 173 L. Ed. 2d 868 (2009) (courts weighing dismissal should not accept, as true, allegations  
12 “that are no more than conclusions” and should dismiss if the well-pleaded allegations do  
13 not “plausibly suggest” an entitlement to relief).

14 *A pro se* plaintiff’s civil rights complaint must be construed liberally, and the  
15 plaintiff must be given leave to amend his complaint, “unless it is absolutely clear that the  
16 deficiencies of the complaint could not be cured by amendment.” *Noll v. Carlson*, 809  
17 F.2d 1446, 1448 (9th Cir. 1987). A dismissal with leave to amend is a non-dispositive  
18 matter within the purview of a Magistrate Judge. *McKeever v. Block*, 932 F.2d 795, 798  
19 (9th Cir. 1991).

## 20 21 **II.**

### 22 **SUMMARY OF ALLEGATIONS**

23 According to Plaintiff, on August 29, 2013, an ICE officer named Louis  
24 battered Plaintiff at the federal building at 300 North Los Angeles Street in Los Angeles,  
25 breaking her coccyx and causing other injuries. Two additional ICE employees, a female  
26 with the last name of Gutierrez and a male John Doe 1, were present but neither halted  
27 Louis’s assault nor spoke up in protest. Plaintiff sues a fourth defendant, a male ICE  
28 supervisor named Rivera, for reasons that are largely unintelligible: “He malic[i]ous,

1 | govern, treating retaliating me and other Detainee retaliating to report criminal act, refuse  
2 | to report . . . physical assault and treat other Detainee[.]” Fifth and finally, Plaintiff sues  
3 | John Doe 2, a nurse, for “malicious[ly]” refusing to provide or arrange for medical care  
4 | even though Doe 2 personally saw that Plaintiff’s hand was bleeding and her knee was  
5 | swelling. *See Comp.* at 3-4. Plaintiff sues all five Defendants solely in their official  
6 | capacity, seeking millions of dollars in damages and other relief. (Attached to the  
7 | complaint are various medical records, all or almost all of which pertain principally to  
8 | medical visits long after Plaintiff’s August 29, 2013 injuries. In any amended complaint,  
9 | Plaintiff should omit such materials, for they are prematurely submitted at best.)

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11 | **III.**

12 | **SHORTCOMINGS IN THE COMPLAINT**

13 | **A. Improperly Targets Defendants Solely In Official Capacity**

14 | A claim targeting a government employee in his or her official capacity is an  
15 | assertion that the plaintiff was harmed by the employing agency’s *improper* policy or  
16 | practice. In contrast, a claim against government employee in his or her *individual* capacity  
17 | is an assertion that the employee him- or herself acted wrongly, *in violation of* the  
18 | employing agency’s proper policies. Plaintiff’s factual allegations make clear that she  
19 | believes it was the defendants’ *individual* wrongful acts and omissions, rather than the  
20 | government’s bad policies, that violated the law and harmed her. Thus, she should have  
21 | targeted Defendants in their *individual* capacity. She may do so in an amended complaint.  
22 | (Plaintiff may sue a government employee in his or her official capacity as well, but only  
23 | if she can allege in good faith that a government policy or practice, rather than individual  
24 | misconduct, was the moving force behind her injuries.)

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1           **B. Fails To Specify Any Legal Claim(s)**

2           Even in *pro se* cases, plaintiffs must state their various claims separately, each  
3 identifying a discrete alleged violation of the Constitution. *See Bautista v. Los Angeles*  
4 *County*, 216 F.3d 837, 839-40 (9th Cir. 2000). This separation serves the purpose of  
5 clarity:

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7           Experience teaches that, unless cases are pleaded clearly and precisely, issues  
8 are not joined, discovery is not controlled, the trial court’s docket becomes  
9 unmanageable, the litigants suffer and society loses confidence in the court’s  
10 ability to administer justice.

11  
12 *Id.* at 840-41 (*quoting Anderson v. District Bd. of Trustees*, 77 F.3d 364, 367 (11th Cir.  
13 1996)) (*citing* FED. R. CIV. P. 10(b) *and* JAMES W. MOORE, ET AL., MOORE’S FEDERAL  
14 PRACTICE, § 10.03[2][a] (3d ed. 1997)).

15           Here, Plaintiff asserts no legal claim at all. Instead, in the space provided in  
16 the form complaint for the kind of legal claim being asserted, Plaintiff simply begins her  
17 factual narrative. The reader is left to guess, based on the factual narrative, that perhaps  
18 she wishes to assert, the following claims for violations of her constitutional rights as a  
19 federal civil detainee, perhaps among others:

- 20 1. Excessive force by Louis;  
21 2. Deliberate indifference by Gutierrez and guard Doe 1; and  
22 3. Deliberate medical indifference by Doe 2.

23 The complaint makes no intelligible claim against supervisor Rivera, who Plaintiff does  
24 not allege was present when Louis attacked her.

25           Even more unclear is whether Plaintiff intends to assert any additional legal  
26 claim(s). Sprinkled throughout the complaint are terms hinting at this possibility, such as  
27 “retaliation.” The Court will not speculate about any possible legal claims that are not  
28 clearly asserted in any amended complaint and will not give legal advice about the

1 availability or merits of any claim.) In any amended complaint, Plaintiff must state one or  
2 more express, separate claims for relief, each including –

- 3 (1) a *single* civil right that defendant(s) allegedly violated, *e.g.*, a federal employee’s  
4 deliberate indifference to an immigration detainee in violation of the Fifth  
5 Amendment; and  
6 (2) *as to each count of each claim*, the specific events and other facts that give rise to,  
7 and that make out a prima facie case of, *that specific claim*. (If Plaintiff asserts more  
8 than one legal claim, then she must make clear which of the Defendants she targets  
9 in each claim.)

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11 **IV.**  
12 **CONCLUSION**

13 Based on the foregoing, the initial complaint hereby is DISMISSED, and leave  
14 to amend is granted. More specifically, Plaintiff has three options:

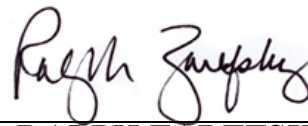
- 15 (1) **Plaintiff may pursue this action further** by filing an original and one copy of a  
16 pleading captioned as her First Amended Complaint (1AC), bearing the current case  
17 number, within 30 days of the filing date of this Order. To withstand another  
18 dismissal, the 1AC must correct the deficiencies identified in this Order and must  
19 comply with the Federal Rules of Civil Procedure and this Court’s Local Rules. The  
20 1AC must be complete in itself and must not refer to any prior version of the  
21 complaint.  
22 (2) **Plaintiff may file a “Notice of Intent Not to Amend Complaint” within 30 days**  
23 of the filing date of this Order. If Plaintiff timely files such a Notice, then the  
24 undersigned will recommend to the assigned District Judge that this action be  
25 dismissed, freeing Plaintiff to appeal the dismissal on the grounds cited above. *See*  
26 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1063-66 (9th Cir. 2004).  
27 (3) **Plaintiff may do nothing** in response to this Order. If Plaintiff does not file a  
28 document pursuant to either option 1 or 2 above within the 30-day deadline, then the

1 Court shall deem her to have consented to dismissal of this action for failure to  
2 prosecute and for failure to comply with this Order. *See id.*

3 **The Court cautions Plaintiff that if she fails to file a timely amended**  
4 **complaint or otherwise fails to comply substantially with the terms of this Order, then**  
5 **this action may be dismissed.**

6 IT IS SO ORDERED.

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8 DATED: June 16, 2014

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12 RALPH ZAREFSKY  
13 UNITED STATES MAGISTRATE JUDGE  
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