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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MAI THI VU,

Plaintiff,

v.

JACQUES MONIQUE,

Defendant.

**CASE NO. 1:14-cv-0249-LJO-MJS (PC)**  
**ORDER DISMISSING COMPLAINT WITH**  
**LEAVE TO AMEND**  
**(ECF NO. 1)**  
**AMENDED COMPLAINT DUE WITHIN**  
**THIRTY (30) DAYS**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983.

Her complaint is before the Court for screening.

**I. SCREENING REQUIREMENT**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion

1 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
2 determines that . . . the action or appeal . . . fails to state a claim upon which relief may  
3 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

## 4 **II. PLEADING STANDARD**

5 Section 1983 “provides a cause of action for the deprivation of any rights,  
6 privileges, or immunities secured by the Constitution and laws of the United States.”  
7 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To  
8 state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right  
9 secured by the Constitution or laws of the United States was violated and (2) that the  
10 alleged violation was committed by a person acting under the color of state law. See  
11 West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245  
12 (9th Cir. 1987).

13  
14 Plaintiff’s claims against Defendant are not cognizable under § 1983 because  
15 Defendant was acting under color of federal law, rather than state law. However, pro se  
16 complaints are liberally construed, Estelle v. Gamble, 429 U.S. 97, 106 (1976), and the  
17 Court will treat Plaintiff’s complaint as an attempt to state a claim under Bivens v. Six  
18 Unknown Named Agents, 403 U.S. 388 (1971). “Actions under § 1983 and those under  
19 Bivens are identical save for the replacement of a state actor under § 1983 by a federal  
20 actor under Bivens.” Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991). Thus, to  
21 state a claim under Bivens, a plaintiff must allege: (1) that a right secured by the  
22 Constitution of the United States was violated, and (2) that the alleged violation was  
23 committed by a federal actor. See id.

24 A complaint must contain “a short and plain statement of the claim showing that  
25 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
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1 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
2 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
3 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

4 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief  
5 that is plausible on its face.” Id. Facial plausibility demands more than the mere  
6 possibility that a defendant committed misconduct and, while factual allegations are  
7 accepted as true, legal conclusions are not. Id. at 677-78.

### 9 **III. PLAINTIFF’S ALLEGATIONS**

10 The incidents at issue in Plaintiff’s Complaint occurred during her incarceration at  
11 Central California Women’s Facility (“CCWF”). Plaintiff names Jacques Monique, IEA at  
12 United States Immigration & Customs Enforcement (“ICE”), as Defendant.

13 Plaintiff alleges that Defendant filed an unwarranted immigration detainer on  
14 Plaintiff, a lawful permanent resident. Because of the detainer, Plaintiff is deprived of the  
15 opportunity to participate in otherwise available programs at CCWF. Plaintiff had no  
16 opportunity to challenge the detainer.

17 Plaintiff argues that Defendant’s actions violated her rights under the Due Process  
18 and Equal Protection Clauses of the United States Constitution.

19 Plaintiff asks for a hearing regarding the detainer and that the detainer be lifted.

### 20 **IV. ANALYSIS**

#### 21 **A. Equal Protection**

22 The Equal Protection Clause requires that persons who are similarly situated be  
23 treated alike. City of Cleburne, Tex. v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439  
24 (1985). An equal protection claim may be established by showing that the defendant  
25 intentionally discriminated against the plaintiff based on the plaintiff’s membership in a  
26 protected class, Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), Lee v. City of

1 Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were  
2 intentionally treated differently without a rational relationship to a legitimate state  
3 purpose. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also Lazy Y  
4 Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of  
5 Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

7 Plaintiff's allegations are not sufficient to support a constitutional claim for  
8 discrimination. Plaintiff does not state how or why she believes she was discriminated  
9 against. She does not allege membership in a suspect class or that she was treated  
10 differently from similarly situated inmates and that Defendant acted without a legitimate  
11 state purpose. Nor does she explain what personal character traits she believes  
12 motivated the discrimination and why. See Washington v. Davis, 426 U.S. 229, 239-40  
13 (1976) (to establish a violation of the Equal Protection Clause, the prisoner must present  
14 evidence of discriminatory intent). Plaintiff's conclusory allegation that her Equal  
15 Protection rights were violated is unenlightening in these regards.

17 Plaintiff's allegations do not show denial of equal protection.

18 **B. Due Process**

19 The Due Process Clause protects prisoners from being deprived of liberty without  
20 due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a  
21 cause of action for deprivation of procedural due process, a plaintiff must first establish  
22 the existence of a liberty interest for which the protection is sought. Liberty interests may  
23 arise from the Due Process Clause itself or from state law. Hewitt v. Helms, 459 U.S.  
24 460, 466-68 (1983).

26 The Due Process Clause does not confer on inmates a liberty interest in eligibility  
27 for prison programs. Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976) (rejecting argument  
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1 that a pending warrant and detainer that adversely affected defendant's prison  
2 classification and qualification for institutional programs implicated a due process right).  
3 Liberty interests created by state law are generally limited to freedom from restraint  
4 which "imposes atypical and significant hardship on the inmate in relation to the ordinary  
5 incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995). Under certain  
6 circumstances, labeling a prisoner with a particular classification may implicate a liberty  
7 interest subject to the protections of due process. Neal v. Shimoda, 131 F.3d 818, 827  
8 (9th Cir. 1997) ("sex offender" label coupled with mandatory treatment program triggered  
9 procedural protections).

11 Plaintiff's allegation that she is unable to qualify for prison programs due to the  
12 immigration detainer is not sufficient to show a due process violation. Plaintiff does not  
13 describe the programs she is disqualified from and does not provide sufficient facts to  
14 enable the Court to analyze whether disqualification "imposes atypical and significant  
15 hardship on the inmate in relation to the ordinary incidents of prison life." Sandin, 515  
16 U.S. at 484. If Plaintiff chooses to amend, she must allege facts showing that the  
17 immigration detainer imposes "atypical and significant hardship" on her.

### 19 **C. Habeas Corpus**

20 State prisoners cannot challenge the fact or duration of their confinement in a §  
21 1983 action. Their sole remedy lies in habeas corpus relief. Wilkinson v. Dotson, 544  
22 U.S. 74, 78 (2005). Often referred to as the favorable termination rule or the Heck bar,  
23 this exception to § 1983's otherwise broad scope applies whenever state prisoners "seek  
24 to invalidate the duration of their confinement-either directly through an injunction  
25 compelling speedier release or indirectly through a judicial determination that necessarily  
26 implies the unlawfulness of the State's custody." Wilkinson, 544 U.S. at 81. "[A] state  
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1 prisoner's § 1983 action is barred (absent prior invalidation) if success in that action  
2 would necessarily demonstrate the invalidity of confinement or its duration.” Id. at 81-82;  
3 Heck v. Humphrey, 512 U.S. 477, 489 (1994) (until and unless favorable termination of  
4 the conviction or sentence occurs, no cause of action under § 1983 exists).

5  
6 Plaintiff does not appear to challenge her confinement at CCWF. However, if  
7 Plaintiff chooses to amend, she should note that such a challenge cannot be raised in a  
8 § 1983 action.

## 9 **V. CONCLUSION AND ORDER**

10 Plaintiff’s Complaint does not state a claim for relief. The Court will grant Plaintiff  
11 an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49  
12 (9th Cir. 1987). If Plaintiff opts to amend, she must demonstrate that the alleged acts  
13 resulted in a deprivation of her constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff  
14 must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’”  
15 Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate  
16 that the named Defendant personally participated in a deprivation of her rights. Jones v.  
17 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

18  
19 Plaintiff should note that although she has been given the opportunity to amend, it  
20 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th  
21 Cir. 2007). Plaintiff should carefully read this Screening Order and focus her efforts on  
22 curing the deficiencies set forth above.

23  
24 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
25 complaint be complete in itself without reference to any prior pleading. As a general rule,  
26 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d  
27 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no  
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1 longer serves any function in the case. Therefore, in an amended complaint, as in an  
2 original complaint, each claim and the involvement of each defendant must be  
3 sufficiently alleged. The amended complaint should be clearly and boldly titled "First  
4 Amended Complaint," refer to the appropriate case number, and be an original signed  
5 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
6 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a  
7 right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations  
8 omitted).

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10 Accordingly, it is HEREBY ORDERED that:

11 1. The Clerk's Office shall send Plaintiff (1) a blank civil rights complaint form  
12 and (2) a copy of her Complaint, filed February 26, 2014;

13 2. Plaintiff's Complaint is dismissed for failure to state a claim upon which  
14 relief may be granted;

15 3. Plaintiff shall file an amended complaint within thirty (30) days; and

16 4. If Plaintiff fails to file an amended complaint in compliance with this order,  
17 the Court will recommend that this action be dismissed, with prejudice, for failure to state  
18 a claim and failure to comply with a court order.  
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22 IT IS SO ORDERED.

23 Dated: June 24, 2014

24 /s/ Michael J. Seng  
25 UNITED STATES MAGISTRATE JUDGE  
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