

1 1915(a)(1). Permission to proceed IFP is a matter of privilege and not right, and the
2 Court may deny leave to proceed IFP “if it appears from the face of the proposed
3 complaint that the action is frivolous or without merit.” O’Loughlin v. Doe, 920 F.2d 614,
4 616 (9th Cir. 1990). Thus, the Court must conduct a review of Plaintiff’s complaint to
5 determine whether it “state[s] a claim on which relief may be granted,” is “frivolous or
6 malicious,” or “seeks monetary relief from a defendant who is immune from such relief.”
7 28 U.S.C. § 1915(e)(2).

8 The Court has reviewed Plaintiff’s complaint, and finds it is frivolous within the
9 meaning of § 1915(e)(2). Plaintiff sues former President of the United States Barack
10 Hussein Obama. Plaintiff purports to sue on behalf of the people of the County of
11 Fresno, California, and designates himself a “solicitor of equity” and “relator.” In essence,
12 he claims that President Obama failed to faithfully execute his duties under Article II,
13 Section 3 of the United States Constitution¹, thereby causing injury to himself and the
14 people of Fresno. While the basis of Plaintiff’s claim is unclear, it appears to be based on
15 his belief that the perceived misconduct of local judicial officials in Fresno (detailed in
16 Plaintiff’s sheaves of supporting documentation) is directly attributable to the negligence
17 of the former President. His complaint spans 166 pages, and is composed of copies of
18 letters addressed to the President and other officials, as well as copies of other filings by
19 Plaintiff in other lawsuits. While Plaintiff’s filing is replete with legal terms, statutes, and

20 ¹ U.S. Const. Art. II, § 3 reads:

21 “The President shall be commander in chief of the Army and Navy of the United States, and of the militia
22 of the several states, when called into the actual service of the United States; he may require the opinion,
23 in writing, of the principal officer in each of the executive departments, upon any subject relating to the
duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses
against the United States, except in cases of impeachment.

24 He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two
25 thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of
26 the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court,
and all other officers of the United States, whose appointments are not herein otherwise provided for, and
which shall be established by law: but the Congress may by law vest the appointment of such inferior
officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

27 The President shall have power to fill up all vacancies that may happen during the recess of the Senate,
28 by granting commissions which shall expire at the end of their next session.”

1 case law, it puts forth no factual allegations, states no claims for the violation of any
2 rights, and fails to establish that Plaintiff even has standing to sue the President. Lujan v.
3 Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (“To establish Article III standing, a
4 plaintiff must show: (1) an injury in fact—an invasion of a legally protected interest which
5 is (a) concrete and particularized and (b) actual or imminent, not conjectural or
6 hypothetical; (2) a causal connection between the injury and the conduct complained
7 of—the injury has to be fairly . . . traceable to the challenged action of the defendant,
8 and not . . . the result of the independent action of some third party not before the court;
9 and (3) it must be likely, as opposed to merely speculative, that the injury will be
10 redressed by a favorable decision.”) (internal quotation marks and citations omitted).
11 Furthermore, “a litigant's interest cannot be based on the ‘generalized interest of all
12 citizens in constitutional governance.” Drake v. Obama, 664 F.3d 774, 779 (9th Cir.
13 2011) (quoting Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 217
14 (1974)).

15 For the foregoing reasons, the Court finds that Plaintiff’s complaint is frivolous and
16 cannot state a claim for which relief may be granted, and it is unlikely amendment could
17 cure its deficiency. Plaintiff is thus not entitled to proceed IFP.

18 Accordingly, IT IS HEREBY RECOMMENDED that:

- 19 1. Plaintiff’s application to proceed IFP (ECF No. 2) be DENIED;
- 20 2. Plaintiff be DIRECTED to pay the filing fee in full; and
- 21 3. If Plaintiff fails to pay the filing fee within twenty-one days of the order adopting
22 these findings and recommendations, his case be dismissed.

23 These Findings and Recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
25 **fourteen** (14) days after being served with these Findings and Recommendations,
26 Plaintiff may file written objections with the Court and serve a copy on all parties. Such a
27 document should be captioned “Objections to Magistrate Judge’s Findings and
28 Recommendations.” Failure to file objections within the specified time may result in the

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waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 5, 2017

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE