

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DMITRIY YEGOROV,

 Plaintiff,

 v.

SPAIN,

 Defendant.

No. 2:18-cv-1732-KJM-EFB PS

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.¹ His declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 2. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. As explained below, plaintiff’s complaint must be dismissed for failure to state a claim.

Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it

¹ This case, in which plaintiffs are proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
3 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
4 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
5 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
6 relief above the speculative level on the assumption that all of the complaint’s allegations are
7 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
8 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
9 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

10 Under this standard, the court must accept as true the allegations of the complaint in
11 question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976), construe the
12 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
13 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy the pleading
14 requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a
15 complaint to include a short and plain statement of the claim showing that the pleader is entitled
16 to relief, in order to give the defendant fair notice of what the claim is and the grounds upon
17 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v.*
18 *Gibson*, 355 U.S. 41 (1957)).

19 Plaintiff’s complaint alleges that “Government USA and employee Nikki Haley ignored
20 letters” and have violated international law by keeping children in the custody of a family gang
21 that “abused children with black eye and kidnapped children on territory USA.” ECF No. 1 at 2.
22 Plaintiff further alleges that in May 2018, “government USA destroyed evidence of multiple
23 crimes against life, health and personal property in USA, without court hearing” *Id.* He
24 also alleges that “Government USA bribed diplomats with cash on territory USA and officials in
25 Spain.” Based on these allegations, plaintiff purports to assert claims under 18 U.S.C. §§ 241 and
26 1113 against the country of Spain. *Id.* at 1.

27 Plaintiff, however, cannot state a claim for violations of 18 U.S.C. §§ 241 and 1113,
28 which are criminal statutes that do not provide a private right of action. *Allen v. Gold Country*

1 *Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (affirming the dismissal claims under 18 U.S.C.
2 § 241 because it is a criminal statute that does “not give rise to civil liability”); *Nguyen v.*
3 *Ridgewood Sav. Bank*, 2015 WL 2354308, at *13 (E.D.N.Y. May 15, 2015) (holding that 18
4 U.S.C. § 1113 does not provide a private right of action).

5 Additionally, plaintiff’s allegations are fanciful and frivolous, and could not plausibly
6 support a claim against the only named defendant, Spain. *Denton v. Hernandez*, 504 U.S. 25, 33
7 (1992) (“[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level
8 of the irrational or the wholly incredible . . .”). Therefore, it is recommended that plaintiff’s
9 complaint be dismissed without leave to amend. *See Noll v. Carlson*, 809 F.2d 1446, 1448 (9th
10 Cir. 1987) (while the court ordinarily would permit a pro se plaintiff to amend, leave to amend
11 should not be granted where it appears amendment would be futile); *California Architectural*
12 *Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988) (“Valid reasons for
13 denying leave to amend include undue delay, bad faith, prejudice, and futility.”).

14 Accordingly, IT IS ORDERED that plaintiff’s request for leave to proceed *in forma*
15 *pauperis* (ECF No. 2) is granted.

16 Further, it is RECOMMENDED that plaintiff’s complaint be dismissed without leave to
17 amend, and the Clerk be directed to close the case.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
23 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
24 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: July 17, 2019.

26 
27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE