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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VICTOR MARTINEZ,	)	Civil No. 06-CV-1260-L(JMA)
	)	
Plaintiff,	)	<b>ORDER DIRECTING THE FILING</b>
	)	<b>OF PLAINTIFF’S MOTION AS A</b>
v.	)	<b>FIRST AMENDED COMPLAINT</b>
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Victor Martinez filed a Complaint under the Federal Tort Claims Act contending that while in the custody of the Bureau of Immigration and Customs Enforcement he suffered violations of his civil and constitutional rights. Plaintiff sought and was granted leave to proceed *in forma pauperis*. Plaintiff also sought appointment of counsel which the Court denied. See Order filed January 8, 2007 [doc. #9]. In that same Order, the Court performed a *sua sponte* screening of the Complaint under 28 U.S.C. § 1915(e)(2) and found that plaintiff had failed to state a claim. See FED. R. CIV. P. 12(b)(6). The Court found that “[t]here is no allegation in Plaintiff’s Complaint that he was the victim of any tort under the laws of the State of California. Thus, because Plaintiff has failed to identify a cognizable state law tort claim, his claim under the Federal Tort Claims act must be dismissed for failing to state a claim.” *Id.* at 4. Plaintiff was given 30 days from the date of the Order, January 8, 2007, in which to file an amended complaint.

1 Plaintiff then sought a six-month extension of time in which to file his amended  
2 complaint. The Court granted plaintiff until March 23, 2007 to file an amended complaint. On  
3 March 20, 2007, plaintiff sent for filing a document entitled "Motion to file First Amended  
4 Complaint As order by the Court Pursuant to FRCP." The purported "Motion" appears,  
5 however, to be plaintiff's first amended complaint.<sup>1</sup> Accordingly, **IT IS ORDERED** that the  
6 Clerk of the Court shall file plaintiff's "Motion to file First Amended Complaint As order by the  
7 Court Pursuant to FRCP" as the first amended complaint *nunc pro tunc* to March 23, 2007.

8 **IT IS SO ORDERED.**

9 DATED: March 28, 2007

10   
11 M. James Lorenz  
United States District Court Judge

12 COPY TO:

13 HON. JAN M. ADLER  
14 UNITED STATES MAGISTRATE JUDGE

15 Victor Martinez  
16 A#30-700-636  
17 408 S. Serrano Avenue  
Los Angeles, CA 90020

18 Sam Bettwy  
19 Assistant United States Attorney  
880 Front Street  
San Diego, CA 92101

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28 <sup>1</sup> It appears plaintiff has had a change of address that he has not brought to the  
Court's attention. Plaintiff is admonished that it is his obligation to file with the Clerk of the  
Court and serve on opposing counsel any and all notices of change address.