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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LUIS MADRIGAL ALVAREZ,

Plaintiff,

vs.

JANET A. NAPOLITANO, Secretary of
Homeland Security, et al.,

Defendant.

CASE NO. 09cv2399 WQH (POR)

ORDER

HAYES, Judge:

Plaintiff, a non-prisoner proceeding pro se, has filed a Petition for a Writ of Mandamus and Stay of Removal (Doc. # 1).

Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

In this case, Plaintiff has neither prepaid the \$350 filing fee required to commence this action, nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate dismissal pursuant to 28 U.S.C. § 1914(a).

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Conclusion

For the reasons set forth above, the Court hereby:

- (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and
- (2) **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order to:
(a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) and Southern District of California Civil Local Rule 3.2.

The Clerk of the Court shall provide Plaintiff with the Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the attached Motion to Proceed IFP within that time, this action shall remain dismissed without prejudice and without further Order of the Court.

DATED: October 29, 2009


WILLIAM Q. HAYES
United States District Judge