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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 AMINA SALVADOR,
12 Detainee No. A200968077,

13 Plaintiff,

14 vs.

15
16 OFFICER PEREZ,

17
18 Defendant.
19

Civil No. 12-cv-1726 BEN (NLS)

ORDER:

(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*
[ECF No. 2];

(2) DENYING MOTION TO
APPOINT COUNSEL [ECF No. 3]; and

(3) SUA SPONTE DISMISSING
COMPLAINT FOR FAILING
TO STATE A CLAIM

20 Amina Salvador ("Plaintiff"), currently detained at the San Diego Correctional Facility
21 located in San Diego, California, and proceeding pro se, has filed a civil action. Plaintiff has not
22 prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, she has filed a Motion to
23 Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [ECF No. 2], along with
24 a Motion to Appoint Counsel [ECF No. 3].

25 **I.**

26 **MOTION TO PROCEED IFP**

27 All parties instituting any civil action, suit or proceeding in a district court of the United
28 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. See 28

1 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee
2 only if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*
3 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, “[u]nlike other indigent
4 litigants, prisoners proceeding IFP must pay the full amount of filing fees in civil actions and
5 appeals pursuant to the PLRA [Prison Litigation Reform Act].” *Agyeman v. INS*, 296 F.3d 871,
6 886 (9th Cir. 2002). As defined by the PLRA, a “prisoner” is “any person incarcerated or
7 detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent
8 for, violations of criminal law or the terms and conditions of parole, probation, pretrial release,
9 or diversionary program.” 28 U.S.C. § 1915(h). Under this definition, “an alien detained by the
10 INS pending deportation is not a ‘prisoner’ within the meaning of the PLRA,” because
11 deportation proceedings are civil, rather than criminal in nature, and an alien detained pending
12 deportation has not necessarily been “accused of, convicted of, sentenced or adjudicated
13 delinquent for, a violation of criminal law.” *Agyeman*, 296 F.3d at 886. Thus, because Plaintiff
14 claims she was civilly detained pursuant to immigration or deportation proceedings, and not a
15 “prisoner” as defined by 28 U.S.C. § 1915(h), the filing fee provisions of 28 U.S.C. § 1915(b)
16 do not apply to her.

17 Accordingly, the Court has reviewed Plaintiff's affidavit of assets, just as it would for any
18 other non-prisoner litigant seeking IFP status, *see* S.D. CAL. CIV. L.R. 3.2(d), finds it is sufficient
19 to show that Plaintiff is unable to pay the fees or post securities required to maintain this action,
20 and hereby **GRANTS** Plaintiff's Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF
21 No. 2].

22 II.

23 MOTION FOR APPOINTMENT OF COUNSEL

24 Plaintiff also requests the appointment of counsel to assist her in prosecuting this civil
25 action. The Constitution provides no right to appointment of counsel in a civil case, however,
26 unless an indigent litigant may lose her physical liberty if she loses the litigation. *Lassiter v.*
27 *Dep't of Soc. Servs.*, 452 U.S. 18, 25 (1981). Nonetheless, under 28 U.S.C. § 1915(e)(1), district
28 courts are granted discretion to appoint counsel for indigent persons. This discretion may be

1 exercised only under “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
2 Cir. 1991). “A finding of exceptional circumstances requires an evaluation of both the
3 ‘likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se
4 in light of the complexity of the legal issues involved.’ Neither of these issues is dispositive and
5 both must be viewed together before reaching a decision.” *Id.* (quoting *Wilborn v. Escalderon*,
6 789 F.2d 1328, 1331 (9th Cir. 1986)).

7 The Court denies Plaintiff’s request without prejudice because, for the reasons set forth
8 below, neither the interests of justice nor exceptional circumstances warrant appointment of
9 counsel at this time. *Terrell*, 935 F.2d at 1017; *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir.
10 1987).

11 III.

12 SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)

13 Any complaint filed by a person proceeding IFP is subject to sua sponte dismissal by the
14 Court to the extent it contains claims which are “frivolous, malicious, fail to state a claim upon
15 which relief may be granted, or seek monetary relief from a defendant immune from such relief.”
16 28 U.S.C. § 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam)
17 (holding that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners”); *Lopez*
18 *v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[S]ection 1915(e) not only permits,
19 but requires a district court to dismiss an in forma pauperis complaint that fails to state a
20 claim.”). “[W]hen determining whether a complaint states a claim, a court must accept as true
21 all allegations of material fact and must construe those facts in the light most favorable to the
22 plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see also Barren v. Harrington*,
23 152 F.3d 1193, 1194 (9th Cir. 1998) (§ 1915(e)(2) “parallels the language of Federal Rule of
24 Civil Procedure 12(b)(6).”).

25 Plaintiff’s Complaint is far from clear and contains very few factual allegations. In this
26 Complaint, Plaintiff appears to allege that an “Officer Perez” forced her to sign a “medical
27 document” under duress. (Compl. at 1.) While Plaintiff is currently housed in the San Diego
28 Detention Center (“SDDC”), it is not clear that this incident happened at SDDC or whether

1 Officer Perez is an employee of the private company that operates SDDC. Moreover, there are
2 no allegations as to the nature of this “medical document” or how it relates to the conditions of
3 her confinement. (*Id.*)

4 Because it appears that Plaintiff may be alleging facts relating to her confinement in a
5 Federal Immigration center and she may be trying to claim violation of her civil rights by federal
6 actors, the Court construes this matter as arising under *Bivens v. Six Unknown Named Federal*
7 *Narcotics Agents*, 403 U.S. 388 (1971). *Bivens* established that “compensable injury to a
8 constitutionally protected interest [by federal officials alleged to have acted under color of
9 federal law] could be vindicated by a suit for damages invoking the general federal question
10 jurisdiction of the federal courts [pursuant to 28 U.S.C. § 1331].” *Butz v. Economou*, 438 U.S.
11 478, 486 (1978). “Actions under § 1983 and those under *Bivens* are identical save for the
12 replacement of a state actor under § 1983 by a federal actor under *Bivens*.” *Van Strum v. Lawn*,
13 940 F.2d 406, 409 (9th Cir. 1991).

14 To state a private cause of action under *Bivens*, Plaintiff must allege: (1) that a right
15 secured by the Constitution of the United States was violated, and (2) that the violation was
16 committed by a federal actor. *Id.*; *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 624 (9th
17 Cir. 1988). *Bivens* provides that “federal courts have the inherent authority to award damages
18 against federal officials to compensate plaintiffs for violations of their constitutional rights.”
19 *W. Ctr. for Journalism v. Cederquist*, 235 F.3d 1153, 1156 (9th Cir. 2000). However, a *Bivens*
20 action may only be brought against the responsible federal official in his or her individual
21 capacity. *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1988). *Bivens* does not
22 authorize a suit against the government or its agencies for monetary relief. *FDIC v. Meyer*, 510
23 U.S. 471, 486 (1994); *Thomas-Lazear v. FBI*, 851 F.2d 1202, 1207 (9th Cir. 1988);
24 *Daly-Murphy*, 837 F.2d at 355.

25 Nor does *Bivens* provide a remedy for alleged wrongs committed by a private entity
26 alleged to have denied Plaintiff’s constitutional rights under color of federal law. *Corr. Servs.*
27 *Corp. v. Malesko*, 534 U.S. 61, 66 n.2, 69 (2001) (holding that *Meyer* “forecloses the extension
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1 of *Bivens* to private entities” and that “the purpose of *Bivens* is to deter *the officer,*’ not the
2 agency” (quoting *Meyer*, 510 U.S. at 485)).

3 Here, Plaintiff alleges “duress” as the basis of her claim but fails to offer sufficient factual
4 allegations relating to any potential civil rights claim. Aside from an allegation that she was
5 forced to sign a medical document, there are no facts to suggest that any of her civil rights have
6 been violated. Without more, the Court cannot determine the true nature of her allegations or
7 whether she is attempting to state a claim under federal law. Federal courts are courts of limited
8 jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal
9 question jurisdiction exists over “civil actions arising under the Constitution, laws, or treaties
10 of the United States.” 28 U.S.C. § 1331. Because Plaintiff’s Complaint does not comply with
11 § 1331, there is no subject matter jurisdiction. Thus, Plaintiff’s entire action is dismissed for
12 failing to state a claim upon which relief may be granted and for lack of subject matter
13 jurisdiction.

14 IV.

15 CONCLUSION AND ORDER

16 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

17 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is
18 **GRANTED**.

19 2. Plaintiff’s Motion to Appoint Counsel [ECF No. 3] is **DENIED** without prejudice.

20 **IT IS FURTHER ORDERED** that:

21 3. Plaintiff’s Complaint is **DISMISSED** without prejudice pursuant to 28 U.S.C.
22 § 1915(e)(2)(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this
23 Order is filed in which to file a First Amended Complaint which cures the deficiencies of
24 pleading noted above. Plaintiff’s Amended Complaint must be complete in itself without
25 reference to the superseded pleading. *See* S.D. CAL. CIV. L.R. 15.1. Defendants not named and
26 any claim not re-alleged in the Amended Complaint will be considered waived. *See King v.*
27 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). If Plaintiff fails to file an Amended Complaint
28

1 within 45 days, this case shall remain dismissed for failing to state a claim pursuant to 28 U.S.C.
2 § 1915(e)(2).

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4 DATED:

8/6/2012

[Signature]

HON. ROGER T. BENITEZ
United States District Judge

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