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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Harper, et al.,

12 Plaintiffs,

13 v.

14 US, et al. ,

15 Defendants.
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Case No. 17-cv-01979-JAH-BGS

**ORDER DISMISSING COMPLAINT
WITHOUT LEAVE TO AMEND
AND DENYING AS MOOT
PLAINTIFF’S MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS**

17 On September 27, 2017, Montorey Danyell Harper, a non-prisoner appearing pro
18 se, and Montorey, LLC (collectively, “Plaintiffs”) filed a complaint against numerous
19 Defendants, including, among others, the United States, the United Nations, New York,
20 New York, NATO, San Diego, and the Secret Service. Plaintiffs’ complaint alleges claims
21 of assault, harassment, and malpractice. Doc. No. 1. Plaintiffs concurrently filed a motion
22 to proceed in forma pauperis.

23 **I. Legal Standard**

24 All parties instituting any civil action, suit, or proceeding in a district court of the
25 United States, except an application for writ of habeas corpus, must pay a filing fee. See
26 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire
27 fee only if plaintiff is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. §
28 1915(a). See Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999).

1 Notwithstanding payment of any filing fee or portion thereof, a complaint filed by
2 any person seeking to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a) is subject
3 to a mandatory and sua sponte review and dismissal by the court to the extent it is
4 “frivolous, malicious, failing to state a claim upon which relief may be granted, or seeking
5 monetary relief from a defendant immune to such relief.” 28 U.S.C. § 1915(e)(2)(B);
6 Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001)(“[T]he provisions of 28 U.S.C. 1915
7 (e))(2)(B) are not limited to prisoners.”); Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th
8 Cir. 2000) (en banc). 28 U.S.C. § 1915(e)(2) mandates that the Court reviewing a complaint
9 filed pursuant to the in forma pauperis provisions of Section 1915 make and rule on its
10 own motion to dismiss before directing that the complaint be served by the U.S. Marshal
11 pursuant to Fed. R. Civ. P. 4(c)(2). Lopez, 203 F.3d at 1127.

12 A complaint will be considered frivolous, and therefore, subject to dismissal under
13 Section 1915(e)(2)(B), “where it lacks an arguable basis either in law or in fact.” Neitzke
14 v. Williams, 490 U.S. 319, 325 (1989); see also Denton v. Hernandez, 504 U.S. 25, 32-33
15 (1992). The Supreme Court, however, has held that a federal court cannot properly sua
16 sponte dismiss an action commenced by an in forma pauperis applicant if the facts alleged
17 in the complaint are merely “unlikely.” Denton, 504 U.S. at 33. However, a complaint
18 may be properly dismissed sua sponte if the allegations are found to be “fanciful,”
19 “fantastic,” or “delusional,” or if they “rise to the level of the irrational or the wholly
20 incredible.” *Id.* (citing Neitzke, 490 U.S. at 325, 328). Moreover, if a case is classified
21 as frivolous, there is no reason to grant leave to amend because a frivolous case, by
22 definition, has no merit to the underlying action. Lopez, 203 F.3d at 1127 n.8.

23 **II. Analysis**

24 Plaintiffs’ allegations of assault, harassment, and malpractice by various
25 governmental officials and entities clearly “rise to the level of the irrational or the wholly
26 incredible.” See Denton, 504 U.S. at 33. Although in some cases it may be difficult to judge
27 whether a plaintiff’s factual allegations are truly “delusional” or merely “unlikely,” this is
28 not such a case. Although it is difficult for the Court to decipher, it appears that Plaintiff

1 alleges the Secret Service and government starting emailing and harassing Plaintiff.
2 Plaintiff states that his complaint “focused on people unknown to the [P]laintiff doing
3 things like interfering with emails and his surroundings...and warned the government that
4 years of complaining already meant that defendants like the Mormons who can influence
5 people where involve and politicians, such as Obama and business.” Plaintiff’s complaint
6 is nearly indecipherable. Doc. No. 1.

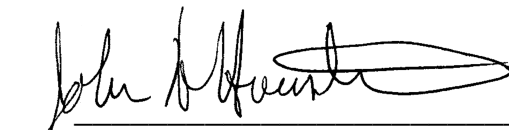
7 Therefore, this Court finds Plaintiffs’ complaint is “frivolous” as that term is defined
8 by the United States Supreme Court and, accordingly, dismisses the complaint without
9 leave to amend. Lopez, 203 F.3d at 1127, n. 8. Accordingly, Plaintiffs’ request to proceed
10 in forma pauperis is moot.

11 **III. Conclusion and Order**

12 Accordingly, **IT IS HEREBY ORDERED THAT:**

- 13 1. The instant complaint is sua sponte **DISMISSED** without leave to amend as
14 frivolous; and
- 15 2. Plaintiffs’ request to proceed in forma pauperis is **DENIED AS MOOT**.

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17 DATED: October 3, 2017

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21 JOHN A. HOUSTON
22 United States District Judge
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