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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JUAN FERNANDO MEJIA BANEGAS,  
12 Booking #201237255,

13 Plaintiffs,

14 vs.

15 MICHAEL MANSFIELD, et al.,

16 Defendants.  
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Case No.: 20cv2142-LAB (MSB)

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff Juan Fernando Mejia Banegas, an Immigrations and Customs Enforcement  
20 detainee incarcerated at the Elroy Detention Center and proceeding pro se, has filed a civil  
21 right complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Because Plaintiff is in federal  
22 custody alleging constitutional violations by federal officers the Court will construe his  
23 Complaint as an action brought pursuant to *Bivens v. Six Unknown Named Agents of the*  
24 *Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff alleges two Border Patrol  
25 Officers used excessive force and were deliberately indifferent to his medical needs during  
26 his apprehension. (*Id.* at 2-9.) Plaintiff has not prepaid the \$400 civil filing fee required  
27 by 28 U.S.C. § 1914(a) and has not filed a Motion to Proceed *In Forma Pauperis* (“IFP”)  
28 pursuant to 28 U.S.C. § 1915(a).

1 **I. Failure to Pay Filing Fee or Request IFP Status**

2 All parties instituting any civil action, suit or proceeding in a district court of the  
3 United States, except an application for writ of habeas corpus, must pay a filing fee of  
4 \$400. *See* 28 U.S.C. § 1914(a). The action may proceed despite a plaintiff’s failure to  
5 prepay the entire fee only if he is granted leave to proceed *IFP* pursuant to 28 U.S.C.  
6 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
7 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Section 1915(a)(2) requires all persons seeking  
8 to proceed without full prepayment of fees to file an affidavit that includes a statement of  
9 all assets possessed and demonstrates an inability to pay. *See Escobedo v. Applebees*, 787  
10 F.3d 1226, 1234 (9th Cir. 2015).

11 Because Plaintiff has neither paid the filing fee required by 28 U.S.C. § 1914(a) to  
12 commence a civil action, nor filed a Motion to Proceed *IFP* pursuant to 28 U.S.C.  
13 § 1915(a), his case cannot yet proceed. *See* 28 U.S.C. § 1914(a); *Andrews*, 493 F.3d at  
14 1051.

15 **II. Conclusion and Order**

16 Accordingly, the Court:

17 (1) **DISMISSES** this civil action without prejudice based on Plaintiff’s failure to  
18 pay the civil filing fee or submit a Motion to Proceed *IFP* pursuant to 28 U.S.C. §§ 1914(a)  
19 and 1915(a).

20 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date this Order is filed  
21 to: (a) prepay the entire civil filing fee in full; or (b) complete and file a Motion to Proceed  
22 *IFP*. *See* 28 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

23 (3) **DIRECTS** the Clerk of the Court to provide Plaintiff with the Court’s  
24 approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*  
25 *Pauperis*.”<sup>1</sup> If Plaintiff fails to either prepay the civil filing fee or fully complete and  
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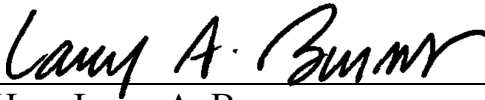
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27 <sup>1</sup> Plaintiff is cautioned that if he chooses to proceed further by submitting a properly  
28 supported Motion to Proceed *IFP*, his Complaint will be screened before service and may

1 submit the enclosed Motion to Proceed *IFP* within 45 days, this action will remain  
2 dismissed without prejudice based on his failure to satisfy 28 U.S.C. § 1914(a)'s fee  
3 requirement and without further Order of the Court.

4 **IT IS SO ORDERED.**

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6 Dated: March 31, 2021



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8 Hon. Larry A. Burns  
9 United States District Judge

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26 be dismissed *sua sponte* pursuant to 28 U.S.C. § 1915A(b). *See Lopez v. Smith*, 203 F.3d  
27 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits  
28 but requires” the court to *sua sponte* dismiss an in forma pauperis complaint that is  
frivolous, malicious, fails to state a claim, or seeks damages from defendants who are  
immune).