

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Janet Phelan, <p style="text-align: center;">v.</p> <p style="text-align: center;">PLAINTIFF(S)</p> Central Intelligence Agency, et al., <p style="text-align: center;">DEFENDANT(S)</p>	CASE NUMBER <p style="text-align: center;">2:24-cv-05286-JWH-RAO</p> <hr/> <p style="text-align: center;">ORDER ON REQUEST TO PROCEED IN FORMA PAUPERIS (NON-PRISONER CASE)</p>
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The Court has reviewed the Request to Proceed *In Forma Pauperis* (the "Request") and the documents submitted with it. On the question of indigency, the Court finds that the party who filed the Request:

- is not able to pay the filing fees. is able to pay the filing fees.
- has not submitted enough information for the Court to tell if the filer is able to pay the filing fees. This is what is missing:

IT IS THEREFORE ORDERED that:

- The Request is GRANTED.
- Ruling on the Request is POSTPONED for 30 days so that the filer may provide additional information.
- The Request is DENIED because the filer has the ability to pay.
- As explained in the attached statement, the Request is DENIED because:
 - The District Court lacks subject matter jurisdiction removal jurisdiction.
 - The action is frivolous or malicious.
 - The action fails to state a claim upon which relief may be granted.
 - The action seeks monetary relief against defendant(s) immune from such relief.

IT IS FURTHER ORDERED that:

- Within 30 days of the date of this Order, the filer must do the following:

If the filer does not comply with these instructions within 30 days, this case will be DISMISSED without prejudice.

- As explained in the attached statement, because it is absolutely clear that the deficiencies in the complaint cannot be cured by amendment, this case is hereby DISMISSED WITHOUT PREJUDICE WITH PREJUDICE.
- This case is REMANDED to state court as explained in the attached statement.

June 27, 2024

 Date

John W. Holcomb 

 United States District Judge

On June 20, 2024, Plaintiff filed a Complaint and a Request to Proceed In Forma Pauperis. (ECF Nos. 1, 3.) Plaintiff alleges the following. She is the victim of ongoing assault and battery by the Central Intelligence Agency (“CIA”). (ECF No. 1 at 1.) The CIA has been targeting her with “unconventional weapons, largely chemical in nature, since 2003.” (Id.) As a result, she fled to Mexico in 2010 and still lives there. (Id. at 3.) In Mexico, she has been attacked by the CIA on a daily basis with chemical weapons delivered through drones, with contaminants in her food and water, and with “imposter pharmaceuticals.” (Id.) The CIA also told doctors in Mexico not to treat Plaintiff. (Id. at 4.) Plaintiff claims violations of her civil rights under 42 U.S.C. § 1983. (Id. at 8-12.) She seeks an injunction against CIA covert operations against her. (Id. at 12-13.) For the following reasons, the Complaint is dismissed without leave to amend.

First, the suit is barred by sovereign immunity. Federal agencies and its employees are immune from suit. *South Delta Water Agency v. U.S., Dept. of Interior*, 767 F.2d 531, 536 (9th Cir. 1985) (collecting cases). Even if the suit were construed as a suit against the United States, Plaintiff cannot sue the United States for alleged civil rights violations. *FDIC v. Meyer*, 510 U.S. 471, 478 (1994). Nor can Plaintiff sue the United States for alleged torts that were committed in foreign countries. *Smith v. United States*, 953 F.2d 1116, 117 (9th Cir. 1991).

Second, even if the suit were not barred by sovereign immunity, the Complaint still must be dismissed as factually frivolous. When read together, Plaintiff’s allegations of a years-long campaign by the CIA to attack her daily with chemical weapons are “clearly baseless” or “fanciful.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). In that circumstance, the Court may “pierce the veil of the complaint’s factual allegations” and “is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff’s allegations.” Id. at 32; see also *Bator v. State of Hawai‘i*, 39 F.3d 1021, 1026 (9th Cir. 1994) (“*Denton* is an exception to the general rule that a district court must accept factual allegations as true.”). Here, “a finding of factual frivolousness is appropriate [because] the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton*, 504 U.S. at 33. In a case with similar allegations, the Ninth Circuit denied a request to proceed in forma pauperis. See *Visser v. Supreme Court of State of Cal.*, 919 F.2d 113, 114 (9th Cir. 1990) (denying in forma pauperis request for “vague, rambling diatribes alleging that various state and federal officials and entities have been involved in a wide-ranging international conspiracy,” including an “attempt to kill him”).

Finally, given these deficiencies, leave to amend is not warranted. Plaintiff cannot overcome sovereign immunity through amendment. See *Cato v. United States*, 70 F.3d 1103, 1110-11 (9th Cir. 1995) (complaint alleging constitutional torts against the federal government could not be cured by amendment where the United States has not consented to suit for constitutional tort claims). In the alternative, leave to amend is not warranted given the frivolous nature of the allegations. See *Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (en banc) (“When a case may be classified as frivolous or malicious, there is, by definition, no merit to the underlying action and so no reason to grant leave to amend.”). Thus, the Complaint is dismissed without leave to amend, and the action is dismissed with prejudice.

(attach additional pages if necessary)