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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alberto Rodriguez,

Plaintiff,

v.

William K. Brooks, Director of Field
Operations, Tucson Field Office, U.S.
Customs and Border Protection; Jason West,
Acting Port Director at Phoenix Sky Harbor
International Airport, U.S. Customs and
Border Protection; Heather Froese, Assistant
Port Director Phoenix Sky Harbor
International Airport, U.S. Customs and
Border Protection; Kimberly Kros,
Supervisory Officer, U.S. Customs and
Border Protection; Todd C. Owen, Assistant
Commissioner of Office of Field Operations,
U.S. Customs and Border Protection;
KEVIN K. Mcaleenan, acting Commissioner
of U.S. Customs and Border Protection; John
F. Kelly, Secretary of Department of
Homeland Security,

Defendants.

No. CV-17-01200-PHX-NVW

ORDER

Plaintiff's Complaint for Mandamus (Doc. 1) does not appear to state a claim for mandamus. It appears to be in substance an action for judicial review of agency action. To state a claim for mandamus, or other extraordinary relief, Plaintiff would have to

1 allege, among other things, that there is no other procedure or remedy for the allegedly
2 wrongful agency action. But Plaintiff makes no such allegation.

3 To the contrary, Plaintiff also alleges jurisdiction of this action under the
4 Administrative Procedure Act, 5 U.S.C. § § 701 *et seq.* If there is such jurisdiction, it
5 would preclude mandamus jurisdiction. Moreover, Plaintiff does not allege whether
6 judicial review is available under any other statute or whether any limitation on such
7 review, such as time limits for other review, “expressly or impliedly forbids the relief
8 which is sought” under the APA. 5 U.S.C. § 702.

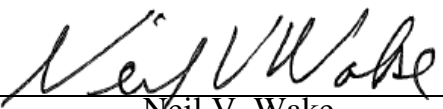
9 Finally, neither the Complaint nor the Motion (Doc. 3) demonstrates why
10 emergency proceedings are necessary when this has been the status quo for over six
11 months and Plaintiff waited all that time to bring this action and to seek emergency relief.

12 IT IS THEREFORE ORDERED that the Order (Doc. 6) of April 24, 2017 setting
13 a hearing on the Motion for Temporary Restraining Order/Preliminary Injunction (Doc.
14 3) is vacated and the hearing is vacated.

15 IT IS FURTHER ORDERED that Plaintiff show cause by May 12, 2017: (1) why
16 this action should not be dismissed under Rule 12(b)(1) for failure to plead federal
17 jurisdiction under Rules 8(a)(1); (2) why this action should not be dismissed for failure to
18 state a claim upon which relief can be granted under Rule 12(b)(6); and (3) why
19 Plaintiff’s request for emergency relief, however styled, should not be denied as
20 demonstrably unnecessary because Plaintiff waited for six months to seek it. Plaintiff is
21 free to amend his complaint of right.

22 Plaintiff shall serve each Defendant with a copy of this order forthwith.

23 Dated: April 25, 2017.

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Neil V. Wake
Senior United States District Judge