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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN SZE KIT MA,

Plaintiff,

v.

JOHN MARTINEZ, et al.,

Defendants.

Case No. 15-cv-03709-PJH

**ORDER DENYING APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiff's application for a temporary restraining order came on for hearing before this court on August 17, 2015. Plaintiff Stephen Sze Kit Ma appeared by his counsel Anthony J. Palik, and defendants Jeh Johnson, Sarah Saldaña, Thomas D. Holman, Timothy S. Aitken, and John Martinez appeared by their counsel Assistant United States Attorney Robin Wall. Having read the papers submitted by plaintiff and carefully considered the arguments presented at the hearing and the relevant legal authority, the court hereby DENIES the application as follows for the reasons stated at the hearing.

Requests for temporary restraining orders are governed by the same general standards that govern the issuance of a preliminary injunction. See New Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n.2 (1977); Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 22 (2008); see also Munaf v. Geren, 553 U.S. 674, 689-90 (2008).

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of

1 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
2 the public interest. Winter, 555 U.S. at 20. Alternatively, the plaintiff may demonstrate
3 that the likelihood of success is such that “serious questions going to the merits were
4 raised and that the balance of hardships tips sharply in the plaintiff’s favor,” so long as
5 the other two elements of the Winter test are met. Alliance for Wild Rockies v. Cottrell,
6 632 F.3d 1127, 1131-32 (9th Cir. 2011).

7 Here, plaintiff seeks an order enjoining defendants “from taking any further action
8 to remove plaintiff” from the United States. Plaintiff concedes removability, but argues
9 that the manner in which defendants plan on executing the order of removal violates his
10 rights under the Due Process Clause of the Fifth Amendment to the United States
11 Constitution. At the hearing, plaintiff’s counsel indicated that plaintiff’s objection was
12 based on his belief that defendants plan on putting him on a commercial flight to China
13 unaccompanied and without medical monitoring, rather than accompanying him to China
14 on a charter flight and delivering him to Chinese authorities directly; and on his belief that
15 defendants had failed to obtain a “travel certificate” from Chinese authorities pursuant to
16 which he would be admitted into China.

17 Plaintiff has not shown a likelihood of success as to either of these claims, or a
18 likelihood of irreparable harm, as he admits that neither of these procedures is required
19 by law. Moreover, Mr. Wall represented on behalf of the defendants that it is the practice,
20 when an alien who is an aggravated felon is being returned to his country under an order
21 of removal, for agents of the United States to accompany him to his destination and to
22 deliver him to the foreign customs officials. As for the issue of the government’s alleged
23 inability to obtain a “travel certificate,” the evidence shows that plaintiff currently has a
24 valid Chinese passport, which is the only “travel certificate” required, and that the
25 passport had not yet been issued when the government previously requested a travel
26 certificate from Chinese authorities. In addition, the fact that a commercial rather than a
27 charter flight is contemplated is of no significance given that commercial flights are
28 routinely used when the person being removed is not considered dangerous.

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The parties shall meet and confer regarding whether plaintiff will file a motion for preliminary injunction and a briefing schedule for said motion. This matter will otherwise proceed in accordance with the Initial Case Management Scheduling Order to be issued forthwith by the court.

IT IS SO ORDERED.

Dated: August 18, 2015



PHYLLIS J. HAMILTON
United States District Judge