

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOEL E SILVA,
Petitioner,
v.
SARA SANDANA, et al.,
Defendants.

Case No. 16-CV-05435-LHK
**ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER**
Re: Dkt. No. 2

On September 22, 2016, Joel Empleo Silva (“Petitioner”) filed a Petition for Habeas Corpus and a Motion for a Temporary Restraining Order. ECF No. 1; ECF No. 2 (collectively referred to as “Pet.”). This case was assigned to Magistrate Judge Corley on September 23, 2016 and reassigned to the undersigned judge at 12:49 p.m. on September 23, 2016. Before the court is Petitioner’s Motion for a Temporary Restraining Order. *Id.*

I. FACTUAL & PROCEDURAL BACKGROUND

On August 28, 2015, an Immigration Judge (“IJ”) ordered Petitioner’s removal from the United States. Pet. ¶ 13. Petitioner was a legal permanent resident convicted four times of petty theft. *Id.* The IJ found Petitioner removable under 8 U.S.C. § 1227(a)(2)(A)(ii) for having committed crimes involving moral turpitude. *Id.*

1 within the equitable discretion of the district courts,” and “such discretion must be exercised
2 consistent with traditional principles of equity.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S.
3 388, 394 (2006).

4 **III. DISCUSSION**

5 As discussed above, Petitioner seeks two forms of relief in the instant motion for a
6 temporary restraining order. First, Petitioner requests that the court enjoin ICE from transferring
7 Petitioner to Louisiana or order ICE to return Petitioner to Richmond, California. Pet. ¶ 22–23.
8 Second, Petitioner requests that the court order Petitioner’s release from ICE custody. Pet. ¶ 24.
9 The Court addresses each of these forms of relief in turn.

10 With respect to Petitioner’s first claim, Petitioner fails to establish a likelihood of success
11 on the merits. In Petitioner’s motion for a temporary restraining order and petition for habeas
12 corpus, Petitioner cites to no legal authority showing that Petitioner has a right to a specific
13 detention location. Therefore, Petitioner fails to establish that he is likely to succeed on the merits
14 with respect to Petitioner’s transfer by ICE, and the Court need not reach the other *Winter* factors.
15 *See Kuznetsov v. Clark*, 2007 WL 1655233 (D. Wash June 6, 2007) (denying petitioner’s motion
16 for temporary restraining order seeking to prevent a transfer from an ICE facility in Washington to
17 a “prison in Alabama” because petitioner “provide[d] no argument or legal authority showing that
18 the Court has any basis or authority to enter such relief”); *Rosales-Leon v. Chertoff*, 2007 WL
19 1655237 (D. Wash. June 6, 2007) (same).

20 With respect to Petitioner’s second claim, Petitioner has also failed to show a likelihood of
21 success on the merits. Petitioner asserts that the BIA denied Petitioner’s release bond based on
22 Petitioner’s four prior petty theft convictions. Pet. ¶ 20. Petitioner asserts that the BIA’s denial
23 of bond is in violation of *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), which holds that the
24 government must show that the detainee is a “flight risk or a danger to the community” by clear
25 and convincing evidence. *Id.* at 1203. *Singh* also notes that, in some cases, denials of bond based
26 on criminal history alone “may not be warranted.” *Id.* at 1206. Petitioner’s arguments do not
27 establish a likelihood of success on the merits. First, while the table of contents in Petitioner’s

1 petition lists the “BIA decision denying bond” as Exhibit C, the Petitioner fails to attach that
2 decision to the petition. *See* Pet. at 10. Second, Petitioner fails to cite authority or explain why
3 *Singh’s* conditional statement that a denial of bond *may* not be warranted under some
4 circumstances if based solely on prior petty theft convictions forbids the BIA from basing its
5 decision on prior petty theft convictions in all circumstances, or in Petitioner’s case in particular.
6 Additionally, Petitioner fails to cite authority or explain why the BIA’s use of Petitioner’s criminal
7 record as the basis for its decision denying release shows that the BIA did not apply the required
8 clear and convincing evidence standard. Thus, Plaintiff fails to establish a likelihood of success
9 on the merits on this claim as well, and the Court need not reach the other *Winter* factors.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Petitioner’s motion for a temporary restraining order is
12 DENIED.

13 **IT IS SO ORDERED.**

14
15 Dated: September 23, 2016

16 
17 _____
18 LUCY H. KOH
19 United States District Judge

20
21
22
23
24
25
26
27
28