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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID KUZNETSOV,  
  
  Petitioner,  
  
  v.  
  
NEIL CLARK, et al.,  
  
  Respondents.

CASE NO. C07-858-MJP-MAT  
  
ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING ORDER

Petitioner David Kuznetsov, proceeding through counsel, has filed a Motion for Temporary Restraining Order and Order for Release From Custody, requesting that the Court issue a temporary restraining order (“TRO”) preventing his transfer out of this jurisdiction and preventing the U.S. Immigration and Customs Enforcement (“ICE”) from holding him in detention without bond.

The basic function of a preliminary injunction is to preserve the *status quo ante litem* pending a determination of the action on the merits. *Los Angeles Memorial Coliseum Comm'n v. National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). In determining whether to grant a temporary restraining order or a preliminary injunction, the Ninth Circuit considers: (1) the likelihood of success on the merits; (2) the possibility of irreparable injury to plaintiff if an injunction

1 is not granted; (3) the extent to which the balance of hardships favor plaintiff; and (4) whether the  
2 public interest will be advanced by the injunction. *See, e.g., Los Angeles Mem'l Coliseum Comm'n,*  
3 634 F.2d at 1200. The analysis is often compressed into a single continuum where the required  
4 showing of merit varies inversely with the showing of irreparable harm. *See Prudential Real Estate*  
5 *Affiliates, Inc. v. PRP Realty, Inc.*, 204 F.3d 867, 874 (9<sup>th</sup> Cir. 2000). The moving party may meet  
6 its burden by demonstrating either: (1) a probability of success on the merits and the possibility of  
7 irreparable injury; or (2) that serious legal questions are raised and the balance of hardship tips  
8 sharply in petitioner's favor. *Los Angeles Mem'l Coliseum Comm'n*, 634 F.2d at 1201.

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10 The Court finds that petitioner does not satisfy either standard. Petitioner asserts that "ICE  
11 officers intend to send [him] to a prison in Alabama to be held pending removal proceedings." (Dkt.  
12 #2 at 2). Petitioner "requests this Court to issue a temporary restraining order preventing his  
13 transfer out of this jurisdiction." (Dkt. #2 at 2 and 9). Aside from this request for relief, petitioner  
14 provides no argument or legal authority showing that the Court has any basis or authority to enter  
15 such relief. Petitioner also claims that the Department of Homeland Security ("DHS") and the  
16 Immigration Judge have wrongfully refused to establish a bond amount because he has been deemed  
17 to be an "arriving alien." (Dkt. #2 at 3). Petitioner claims that he is not an "arriving alien" and that  
18 he is entitled to release from detention pursuant to INA § 236(a), 8 U.S.C. § 1226(a). However,  
19 there is insufficient evidence in the record currently before the court to conclude that petitioner is  
20 not an arriving alien or that he is entitled to release from detention pursuant to INA § 236(a).  
21 Despite the harm which petitioner is and will continue to suffer during his detention, he has not  
22 raised serious questions regarding his entitlement to relief, much less shown a probability of success  
23 on the merits. In such circumstances, equitable relief is inappropriate. Plaintiff's motion for  
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1 temporary restraining order is therefore DENIED.

2 DATED this 6th day of June, 2007.

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6 Marsha J. Pechman  
U.S. District Judge

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25 ORDER DENYING MOTION FOR  
26 TEMPORARY RESTRAINING ORDER  
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