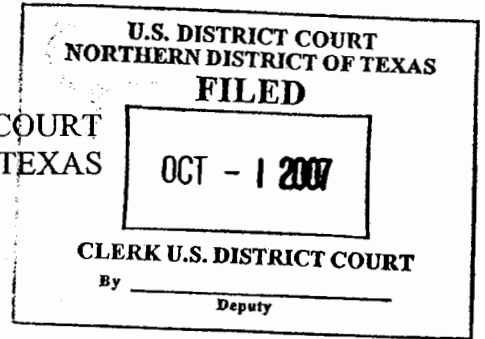


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION



UNITED STATES OF AMERICA, §
Plaintiff, §
v. §
RRUSTEM NEZA, §
Defendant. §

CIVIL NO. **1-07-CV-0176-C**

**COMPLAINT FOR INJUNCTIVE RELIEF
AND
EXPEDITED MOTION FOR A PRELIMINARY INJUNCTION
AUTHORIZING MEDICAL TREATMENT TO FACILITATE
DEFENDANT'S REMOVAL**

The United States of America, through the Department of Homeland Security, United States Immigration and Customs Enforcement (hereinafter "ICE"), by and through the United States Attorney for the Northern District of Texas, files this civil action to enjoin Defendant, Rrustem Neza (hereinafter "Neza"), an alien, from his unlawful physical resistance to the efforts of ICE to execute the lawfully issued, final order for his removal from the United States. In order to enforce this injunction, the United States seeks an order authorizing ICE to use any medical means and/or treatment, including the administration of an appropriate sedative, to enable ICE to execute the removal order.

PARTIES

1. Plaintiff herein is the United States of America, through the Department of Homeland Security, United States Immigration and Customs Enforcement. Defendant

herein is Rrustem Neza, an alien, who is subject to a final order of removal from the United States to Albania. His alien registration number is A79 091 766.

JURISDICTION

2. This Court has jurisdiction over this suit pursuant to 8 U.S.C. § 1329 (suits by the United States under the Immigration and Nationality Act (hereinafter "INA")) and 28 U.S.C. § 1651 (the All Writs Act). Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, this Court has jurisdiction to issue preliminary injunctions.

VENUE

3. Venue is proper in the Abilene Division of the United States District Court for the Northern District of Texas because Neza is detained by ICE at the Rolling Plains Detention Center in Haskell, Texas, which is located within the Abilene Division. ICE will begin the execution of the removal order at the Rolling Plains Detention Center.

CAUSE OF ACTION

4. The Secretary of Homeland Security¹, through ICE, is authorized to execute administratively final orders of removal. 8 U.S.C. § 1231(a)(1)(A), (b)(1); 8 C.F.R. § 241.2.

5. The Secretary of Homeland Security, through the ICE, is authorized to provide medical treatment to aliens who require such treatment during removal. 8 U.S.C.

¹ The Secretary of Homeland Security has assumed the functions previously exercised by the Attorney General with respect to the enforcement of the Immigration and Nationality Act. 6 U.S.C. §§ 251, 291, and 557.

§ 1231(f); 8 C.F.R. § 241.2(a).

6. Upon the request of the Secretary of Homeland Security, through ICE, the district courts have the jurisdiction to order the use of medical treatment, including the administration of a sedative, to enable the ICE to execute a removal order. *U.S. v. Bechara*, 935 F. Supp. 892 (S.D. Tex. 1996), *aff'd*, 116 F.3d 478 (5th Cir. 1997), *cert. denied*, 522 U.S. 843 (1997).

7. Neza is a citizen of Albania, whose application for asylum was denied by an immigration judge on January 30, 2002. Neza appealed and, on August 27, 2003, the Board of Immigration Appeals (hereinafter "BIA") dismissed his appeal. *See* Appendix to Plaintiff's Memorandum of Law in Support of the Complaint for Injunctive Relief (hereinafter "Appendix"), pps. 1-2. Thus, Neza's removal order became final on August 27, 2003. Thereafter, he absconded.

8. On or about February 13, 2007, Neza was arrested by Texas Alcoholic Beverage Commission agents for the offense of Falsifying Government Documents. The arrest was based on an application for a liquor license completed by Neza, in which he falsely stated that he is a United States citizen. After his arrest, Neza was transferred to the custody of the ICE for removal, based on the outstanding final order of removal. On February 20, 2007, the Field Office Director for ICE Detention and Removal Operations issued a Warrant of Removal/Deportation in Neza's case. *See* Appendix, pp. 3-4.

9. Neza's previous motion to reconsider and two prior motions to reopen his immigration proceeding have been denied by the BIA. On August 7, 2007, the BIA denied Neza's emergency motion for a stay of removal. *See Appendix, p. 5.* On that same date, Neza's immigration attorney filed a petition for review of the BIA's denial of his motion for a stay of removal with the United States Court of Appeals for the Eleventh Circuit. On August 8, 2007, the Eleventh Circuit denied Neza's motion for a stay of removal. *See Appendix, p. 6.* On August 20, 2007, the BIA denied Neza's second motion to reopen. *See Appendix, p. 7.* Neza then filed a second petition for review of the BIA's denial of his second motion to reopen, which remains pending. On or about September 11, 2007, Neza filed a third motion to reopen with the BIA and another request for a stay of removal. Those motions remain pending.

10. Neza's removal order remains valid and subject to execution, despite his recent filings with the BIA and the Eleventh Circuit. Both the BIA and the Eleventh Circuit have denied his requests for a stay of removal. Additionally, his removal is not stayed by the filing of a second petition for review or a third motion to reopen with the BIA. 8 U.S.C. § 1252(b)(3)(B); 8 C.F.R. § 1003.2(f).

11. Neza has prevented ICE from executing the removal order by physical resistance. *See Appendix, pp. 8-13.* During his scheduled removal, on August 8, 2007, he physically resisted efforts by ICE officers to effect his removal by becoming combative with the officers and repeatedly shouting, "I am not a terrorist" in the airport

terminal at Dallas/Forth Worth International Airport. He refused to comply with the orders of the ICE officers, who were escorting him to his flight, to stop shouting and resisting. Eventually, with the assistance of airport police officers, ICE officers were able to handcuff Neza and take him to a holding cell at the airport. However, because of the disturbance Neza created and his continued physical resistance to his removal, ICE officers were not able to safely board Neza on a commercial flight. Thus, his removal was postponed.

12. On several occasions, Neza has stated to an ICE Deportation Officer that he will not voluntarily return to Albania. However, no amount of restraint will prevent Neza from causing similar disruptions, which prevent his removal.

13. Due to requirements by the Federal Aviation Administration and concerns by the air carriers, it is impossible to use more severe restraints to overcome Neza's resistance.

14. ICE has contacted the United States Public Health Service (hereinafter "PHS") concerning Neza's sedation, for purposes of executing the removal order. If so authorized by an order issued by this Court and in accordance with PHS policy, a licensed physician will review Neza's medical history and other information, and prescribe an appropriate sedative for him. *See* Appendix, pp. 14-16. Thereafter, one or more licensed medical care providers employed by PHS will administer the sedative to Neza, prior to his removal. *Id.* The sedative will sedate Neza, so that he will not pose a danger to himself

or others during the execution of the removal order.

15. The PHS medical care provider will accompany Neza and the ICE officers during the removal. The PHS medical care provider will monitor Neza from the time he is administered the sedative, until his removal is complete when he is returned to Albania.

16. Unless this Court enjoins Neza from any further unlawful resistance to his removal and authorizes ICE, through PHS, to use medical means and/or treatment, including the administration of an appropriate sedative to overcome Neza's unlawful resistance, it will be impossible to execute the final order of removal and safely remove Neza from the United States to Albania.

REQUEST FOR A PRELIMINARY INJUNCTION

17. The United States incorporates by reference paragraphs 1 through 16 above, as if set forth herein in their entirety.

18. The United States has a significant interest in the enforcement of the immigration laws, and, in particular, the removal of aliens who are subject to final orders of removal. The Secretary of Homeland Security is statutorily mandated to remove from the United States aliens who have been ordered removed. 8 U.S.C. § 1231(a)(1)(A). The significant public interest in the administration of the immigration laws is not served by the Neza's unlawful physical resistance to his lawful removal.

19. Neza has no legitimate interest in preventing his removal by unlawful physical resistance. In addition, his unlawful physical resistance to his removal creates a

substantial risk of injury to Neza, the escorting ICE officers, and the general public.

20. The United States is without an adequate remedy at law. Unless this Court enjoins Neza's unlawful physical resistance to his removal, ICE will be unable to execute the administratively final removal order. Moreover, because Neza has stated that he will not comply with the removal order, it is unlikely that he will obey an order by this Court to cease and desist in his efforts to physically resist his removal. Thus, a cease and desist order will be impossible to enforce. Accordingly, it also will be necessary for the Court to issue an order authorizing ICE to use medical means and/or treatment, including the administration of an appropriate sedative, to overcome Neza's unlawful resistance to removal.

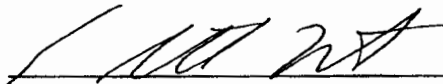
WHEREFORE, the United States prays that this Court:

1. Issue an order for Neza to cease and desist his physical resistance to the administratively final order for his removal;
2. Issue an order authorizing ICE to use any medical means and/or treatment, including the administration of an appropriate sedative by a qualified medical care provider, to facilitate the execution of Neza's removal order; and
3. Grant the United States a preliminary injunction, ordering Neza to immediately cease and desist his physical resistance to the administratively final order for his removal, and authorizing ICE to use any medical means and/or treatment, including

the administration of an appropriate sedative, to facilitate the execution of Neza's removal order.

Respectfully submitted,

RICHARD B. ROPER
United States Attorney



E. SCOTT FROST
Assistant United States Attorney
Texas State Bar No. 07488080
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Tel: 806.472.7566
Fax: 806.472.7324
Email: scott.frost@usdoj.gov

TRACY SHORT
Special Assistant United States Attorney
Louisiana Bar No. 23940
Office of the Chief Counsel
8101 N. Stemmons Freeway
Dallas, Texas 75247
Tel: 214.905.5791
E-mail: Tracy.Short@dhs.gov

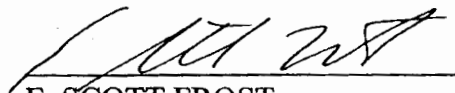
CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of October 2007, a true and correct copy of the foregoing document was provided to ALLIANCE CIVIL PROCESS SERVERS with instructions to personally serve the defendant in accordance with Rule 4, F.R.Civ.P., at the following location:

Rrustem Neza
A79 091 766
Rolling Plains Detention Center
118 County Road 206
Haskell, Texas 79521

I further certify that a courtesy copy of the foregoing document was provided, on the same date, via first class mail, to defendant's counsel of record in the underlying removal proceedings, as follows:

John Wheat Gibson
LAW OFFICE OF JOHN WHEAT GIBSON
Attorneys at Law
701 Commerce Street, Suite 110
Dallas, Texas 75202



E. SCOTT FROST
Assistant United States Attorney

TRACY SHORT
Special Assistant United States Attorney

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 ABILENE DIVISION

4 BUREAU OF IMMIGRATION §
5 AND CUSTOMS ENFORCEMENT §
6 Plaintiff §

7 §
8 versus §

Civil No. 1-07CV0176-C

9 §
10 RRUSTEM NEZA §
11 Defendant §

12 **DEFENDANT'S STATUS REPORT**

13 TO THE HONORABLE JUDGE OF THE COURT:

14 Defendant Rustem Neza files his *Defendant's Status Report* pursuant to this Court's
15 order of 4 March 2008, respectfully showing the following:

16 No matter related to this cause now is pending at the Board of Immigration Appeals.

17 No criminal proceeding of any kind has been brought against the Defendant, the
18 Plaintiff's allegations to the contrary having been invented for the sole purpose of generating
19 prejudice against the Defendant.

20 On 29 February 2008 Defendant Rustem Neza was released from detention, and is at
21 home with his wife and children awaiting the outcome of the legal actions now pending on their
22 behalf in the Congress and before the Court of Appeals for the 11th Circuit.

23 The office of United States Congressman Louie Gohmert has informed Defendant's
24 counsel that the Judiciary Committee of the House of Representatives has requested a report
25 from the Department of Homeland Security regarding its desire to deport the Defendant. The
26 Congressman indicates that the deportation of Mr. Neza is thereby stayed until 15 March 2009.

27 On 4 February 2008 the Board of Immigration Appeals denied the *Defendant's Motion to*
28 *Reconsider Denial of Amended Motion to Reopen*, and a petition for review was filed with the

1 United States Court of Appeals for the 11th Circuit. On 14 February 2008 the Court of Appeals
2 granted the Defendant's motion to consolidate that petition for review with the ones previously
3 filed by the Defendant.

4 Therefore, at present, in this cause, a private bill is pending in the United States Congress
5 to grant legal status to the Defendant, and another private bill is pending there to grant him an
6 opportunity to present evidence in support of his application for asylum in the United States to a
7 competent tribunal, since, to date, both the BIA and his previous counsel have prevented him
8 from doing so. Also pending is the consolidated petition for review before the 11th Circuit Court
9 of Appeals. On 21 December 2007 the Defendant filed a brief with the 11th Circuit. To date,
10 the Respondent has not filed a brief; the 11th Circuit has not requested briefs in the consolidated
11 cases, and the Respondent has not filed the transcript in the consolidated cases.

12 Respectfully submitted,

John Wheat Gibson

13
14
15 _____
16 JOHN WHEAT GIBSON, P.C.

17 By John Wheat Gibson

18 Texas Bar No. 07868500

19 701 Commerce, Suite 800

20 Dallas, Texas 75202

21 (214) 748-6944, FAX (214) 748-8693

22 ATTORNEY FOR PLAINTIFF
23
24

25 CERTIFICATE OF SERVICE

26
27 I certify that a true copy of the above *Defendant's Status Report* was served on AUSA E.
28 Scott Frost, Office of the United States Attorney, Northern District of Texas, Lubbock Division,
29 1205 Texas Avenue, Suite 700, Lubbock, Texas 79401 by first class mail on 13 March 2008.

John Wheat Gibson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL NO. <u>1:07-CV-0176-C</u>
	§	ECF
RRUSTEM NEZA,	§	
Defendant.	§	

**GOVERNMENT’S MOTION TO ADMINISTRATIVELY CLOSE CASE
AND STAY PROCEEDINGS, AND ALTERNATIVE
MOTION TO DISMISS WITHOUT PREJUDICE**

Plaintiff herein, the United States of America, on behalf of the Department of Homeland Security, United States Immigration and Customs Enforcement (hereinafter, “the Government” or “ICE”), and by and through the United States Attorney for the Northern District of Texas, files this Motion to Administratively Close Case and Alternative Motion to Dismiss Without Prejudice.

On or about February 26, 2008, the United States House of Representatives, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law issued a formal request to ICE for a report in connection with a private bill introduced on behalf of Defendant, Rrustem Neza. *See* Appendix to Government’s Motion to Administratively Close Case (hereinafter “Appendix”), p. 1. The private bill, H.R. 4070, introduced by Congressman Louie Gohmert, provides for lawful permanent resident status for Neza, notwithstanding his outstanding order of removal and the provisions of the

Immigration and Nationality Act to the contrary. *See* Appendix, pps. 2-3. As a result of the introduction of the private bill and its referral to the House Subcommittee for a report, Neza's removal has been stayed until March 15, 2009, pursuant to a longstanding agreement between ICE and the Congress to stay the removal of aliens who are the beneficiaries of private bills, until March 15th of the year of the next session of Congress, at the latest. *See* Appendix, pps. 4-5.

Accordingly, ICE cannot remove Neza until March 15, 2009, at the latest. As a result, it would be prudent to conserve the Court's judicial resources and administratively close this proceeding, remove it from the Court's active docket, and stay all matters pending in this proceeding, until such time as Neza's removal can be effected.

There is a very low likelihood that the private bill introduced on behalf of Neza will be passed by the Congress and signed by the President. A 2005 report issued by the Congressional Research Service, a division of the Library of Congress, reflects that, of the 237 private immigration bills introduced during the last three sessions of Congress, only seven were enacted into law. *Private Immigration Legislation*, Congressional Research Service, at 29 (2005). *See* Appendix, pps. 6-37. Indeed, none of the 73 private immigration bills introduced during the last session of Congress (109th) were passed. *Id.* Based on that statistical evidence and the adverse facts of Neza's case, the unlikelihood of the passage of the private bill means that ICE will once again seek to remove him to Albania pursuant to the lawful order of removal. Moreover, insofar as Neza has physically resisted efforts to

remove him and he has stated that he will not return to Albania, it is substantially likely that ICE will find it necessary again to seek the aid of this Court, including seeking a request for Neza's involuntary sedation, to safely effect his removal.

Based on the foregoing, ICE requests that the present proceeding be administratively closed and removed from the Court's active docket, and that all matters pending before the Court, including outstanding discovery requests, be stayed until further order of the Court. In the alternative, and only in the event that the Court concludes that administrative closure of the case is not warranted, the Government moves to dismiss this proceeding without prejudice to filing a similar action in the future, if Neza again impedes or prevents his lawful removal.

WHEREFORE, the Government prays that the instant motion be granted in all respects.

Respectfully submitted,

RICHARD B. ROPER
United States Attorney

/s/ E. SCOTT FROST

E. SCOTT FROST
Assistant United States Attorney
Texas State Bar No. 07488080
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Tel: 806.472.7566
Fax: 806.472.7324
Email: scott.frost@usdoj.gov

TRACY SHORT
Special Assistant United States Attorney
Louisiana Bar No. 23940
Office of the Chief Counsel
8101 N. Stemmons Freeway
Dallas, Texas 75247
Tel: 214.905.5791
E-mail: Tracy.Short@dhs.gov

CERTIFICATE OF CONFERENCE

I do hereby certify that on the 18th day of March 2008, a telephone conference was held with John Wheat Gibson, attorney for Plaintiff, on the merits of this motion, and said motion is not opposed.

/s/ E. SCOTT FROST
E. SCOTT FROST
Assistant United States Attorney

TRACY SHORT
Special Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March 2008, I electronically filed the foregoing document with the clerk of court for the United States District Court for the Northern District of Texas using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorney of record:

John Wheat Gibson
LAW OFFICE OF JOHN WHEAT GIBSON
Attorneys at Law
701 Commerce Street, Suite 110
Dallas, Texas 75202

I hereby certify that on the 18th day of March 2008, I mailed a true and correct copy of the foregoing document to the following party:

AMICUS CURIAE
Honorable Louie Gohmert
Congressman
First District, Texas
510 Cannon House Office Building
Washington, D.C. 20615

/s/ E. SCOTT FROST
E. SCOTT FROST
Assistant United States Attorney

TRACY SHORT
Special Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL NO. <u>1:07-CV-0176-C</u>
	§	ECF
RRUSTEM NEZA,	§	
Defendant.	§	

**ORDER GRANTING GOVERNMENT'S MOTION TO ADMINISTRATIVELY CLOSE
CASE, AND STAY PROCEEDINGS, AND ALTERNATIVE
MOTION TO DISMISS WITHOUT PREJUDICE**

On this day came on to be considered the Government's Motion to Administratively Close Case and Alternative Motion to Dismiss Without Prejudice.

The Court, having reviewed the motion and other pleadings on file, is of the opinion that said motion is proper and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the above-styled and referenced cause is hereby administratively closed and all matters pending before the Court are stayed until further order of the Court.

SO ORDERED this the 20th day of March, 2008.


SAM R. CUMMINGS
UNITED STATES DISTRICT COURT