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Via Hand-Delivery

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 20530

RE: Ibrahim Parlak
File Number: A71-803-930
Supplement to Motion to Reopen and Motion for Stay

Dear Sir or Madam,

This letter will supplement Mr. Parlak's previously filed motion to reopen, and includes materials in support, which are indexed below. The remainder of this letter will augment the legal arguments previously offered with the original motion.

Changed Country Conditions

Mr. Parlak's assertion that country conditions in Turkey have changed is now bolstered by two internationally renowned organizations and experts confirming that the Turkish government has engaged in a major offensive against the Kurds, and especially the PKK.

It is not merely the conduct of the government towards Kurds, or even the gravity of the persecutorial conduct towards that ethnicity, that constitutes the change. The government itself has changed in style and dictatorial depth, and this has changed the political paradigm that exists in Turkey. Dr. David Phillips, of Columbia University's Institute for the Study of Human Rights, explains the new, and deeply disturbing, Turkey.

Dr. David Phillips' credentials are as impeccable as his opinion is pointed. He serves as the Director of the Program on Peace-building and Rights at Columbia University in New York City. He has held many faculty positions in the arena of Human Rights at Columbia. He has also served as a faculty member at Harvard's Humanitarian Initiative, as a Fellow



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at Harvard's Kennedy School of Government, and has been utilized by the United States government as well; he was a Senior Adviser at the U.S. Department of State's Peace-building and Post-Conflict Reconciliation, within the Bureau for South and Central Asian Affairs. He was also a Foreign Affairs Expert for the Department of State, within the Bureau of Near Eastern Affairs, and a Senior Adviser for Democracy and Regional Stability at the Department of State's Bureau for European and Canadian Affairs. His Board Membership in the Human Rights arena is extensive, as is his expertise in the mainstream press, while his publications alone encompass ten (10) pages of his CV. Dr. Phillips' narrative timeline of important events in recent Turkish history clarifies that everything has changed in the new Erdogan-led Turkey after July of 2015 – Dr. Phillips' report's highlights are italicized.

- 1984 *PKK Established*
- 1990 *Civil War Began between Turkish Security Apparatus & the PKK*
- 1991 Ibrahim Parlak Entered the US to Flee Further Torture
- 1992 Ibrahim Parlak Granted Asylum
- 1994 Ibrahim Parlak Granted Permanent Residency
- 1997 *PKK is Designated a Terrorist Organization*
- 1999 Ibrahim Parlak Pursues Naturalization
- 1999 *Abdullah Ocalan, the PKK head, apprehended by Turkish Security Agents in Nairobi.*
- 2002 *Recep Tayyip Erdogan emerges as leader of the AKP, with a hope that less confrontation politics might be possible in Turkey. Just ten days before elections were to take place, Erdogan was imprisoned, but the AKP won the election. Erdogan, when released, exclaimed, "Democracy is like a streetcar. When you come to your stop, you get off."*
- 2003 *Conditions/Democracy did not improve in Turkey. Luxembourg's Prime Minister (now Pres. of the European Commission), said, "[Turkey] a country in which torture is still common practice cannot have a seat at the table of the European Union."*
- 2003 US CIS Denies Mr. Parlak's Naturalization and Initiates Notice to Appear

- 2004 In December, the IJ Rules for the government on all grounds of removal in its NTA, including finding that a retroactive application of designating PKK as a terrorist organization was proper, making Mr. Parlak a terrorist and a material supporter of a terrorist organization.
- 2005 *The AKP's victory in the 2002 election proved illusory for human rights. The Council of Europe's progress report on Turkey criticized the Erdogan-led government for halting progress on human rights and of Kurds in particular.*
- 2005 In November, the Board rules against Parlak on all grounds of removability, except one (aggravated felony rule).
- 2007 *The AKP consolidated its electoral support in parliamentary elections on July 22, by spending lavishly in Kurdish areas. Instead of rewarding Kurds with human rights advances, Erdogan focused on Islamist issues and agenda. Phillips says, "To Erdogan, human rights mean freedom of religion, which means Islamic rights."*
- 2009 *Turkey announced its "Democracy Initiative" on August 15th. Although reforms for the Kurds were never unveiled, the PKK declared a unilateral ceasefire, but it collapsed. Turkey then targeted the KCK, and Kurdish civilians and local officials working to advance Kurdish human rights. The KCK proposed democratic autonomy for Kurdish regions, but the government responded with a crackdown, arresting 3,000 people, including governmental and political leaders. Erdogan allowed this to transpire, and remained silent.*
- 2013 *Erdogan's grab for total power intensified during the summer when peaceful demonstrators were attacked by police using truncheons and water cannons. The brutal response sparked demonstrations across Turkey, which were violently suppressed by the gendarmerie. Phillips details the many ways in which Erdogan sought more power, concluding his antics in Turkey were what Putin has one in Russia, and "is a devious figure who has polarized Turkish society and alienated Turkey from the West."*

2015 Phillips' report details why 2015 is when Turkey changed, wholesale, for the worse. Erdogan's party, the AKP, received only 40.9% of the vote on June 7th, far below the level Erdogan hoped he would have for a super-majority to change the constitution. Erdogan was infuriated by the Kurd's lack of support, so he ordered the Turkish Armed Forces to attack the PKK, and on July 24th, the new geopolitical climate took shape: The United States and Turkey announced an agreement allowing the use of Turkey's Incirlik Air Base by the coalition forces for air strikes against ISIS in Iraq and Syria. Erdogan seized the opportunity to bomb PKK outposts in Southeast Turkey and across the border in Iraqi Kurdistan. Phillips states, "To the West, counter-terrorism means fighting ISIS. To Erdogan it means killing Kurds.....Turkey has been the Islamic State's lifeline. The jihadi highway runs through Turkey to Syria. Turks provide logistics, funds, weapons, and medical care to Islamic State fighters."

Phillips explains that attacking the PKK was a cynical ploy by Erdogan to rally Turkish support. He scuttled the 2013 cease-fire implemented by the PKK itself, and has announced the bombing campaign has no finite duration or planned end. This has created a highly polarized society, and one in which right-wing extremists thrive because of Erdogan's brutal tactics. They know they will not be brought to justice.

The Turk government arrested another 350 KCK members, and threatened to close its offices and arrest its leader. Phillips says Turkey has become a police state. Last week, 1000+ academics from 89 universities signed a petition criticizing the government and calling for an end to the violence. Many were later arrested. Some of the signatories' office doors were marked with red crosses. If this sounds like Nazi

Germany, it should, as Erdogan has recently credited Hitler's government as effective governance. See Ex. 16.

Phillips closes with the powerful statement, "NATO is more than just a security alliance. If NATO were being established today, Erdogan's Turkey – Islamist, anti-democratic, authoritarian, and guilty human rights violations against the Kurds – would not qualify as a member." This is a powerful indictment against the country to which the US government would send Mr. Parlak.

Phillips believes the repatriation of Ibrahim Parlak will put him at grave risk of harassment, imprisonment, and bodily harm, and strongly urges this Board to reopen the case based on the changed country conditions he describes.

Amnesty International echoes Dr. Phillips' confirmation of Mr. Parlak's assertion of changed country conditions. See Ex. 8. Dr. William Jones explains the situation has further deteriorated since December 11, 2015, citing Amnesty International's own Urgent Action appeal, which documents human rights abuses resulting from curfew. While human rights abuses had been declining *outside* of the southeast of Turkey (where Mr. Parlak will go if he's not arrested at the airport), Dr. Jones expresses concern of the heightened risk to Mr. Parlak because of the Turkish press coverage of his possible return. Dr. Jones' concern extends to right wing groups, since he has been threatened individually in the last month, citing to the murder of Tahir Elci, a Kurdish human rights lawyer, who was murdered in public daylight by a right wing group. *Id.*

The risk from right wing groups bears consideration in this worsened country condition context – though, the government has clarified it will arrest Mr. Parlak because it expects him to serve five (5) years time in a Turkish prison, Ex. 10 - because the law regarding acquiescence under CAT has changed since the Board ruled on that element of Mr. Parlak's claim.

Board and Circuit Court Guidance on CAT Relief

The standard for CAT is the same as it was in 2005 within the Sixth Circuit, but the doctrine of acquiescence has changed. The Sixth Circuit still subscribes to the 'more likely true than not' burden. *Mapouya v. Gonzales*, 487 F.3d 396 (6th Cir. 2007).¹ But the acquiescence standard followed by the Board in its 2005 decision in this case, according to *Matter of S-V*, 22 I&N Dec. 1306 (BIA 2000), has been abandoned by the Sixth Circuit. See *Amir v. Gonzales*, 467 F.3d 1921 (6th Cir. 2006)(where the court explicitly overruled *Matter of S-V* regarding the acquiescence doctrine, instead electing to follow the Ninth & Second Circuits by holding that Congress meant to include "willful blindness" within the definition of "acquiescence"). *Id.* at 927.

The difference between the standard applied by the Board in 2005 and the operative lesser standard under *Amir* could be very significant in Mr. Parlak's case. The Board held in 2005, "...the record does not indicate that even if the PKK would seek to torture the respondent, Turkish officials would *acquiesce* in that torture." (italics in original)(citing *Matter of S-V*-, 22 I&N Dec. 1306 (BIA 2000). The "willful blindness" holding in *Amir* only requires a showing that the authorities knew of a nefarious actor or group's threat, and would not intervene to stop the inhumane treatment. *Amir* at 927. Mr. Parlak made allegations in his original claim that made out a prima facie case in his original application for asylum, but this Board rejected that claim on the now defunct old *Matter of S-V*- standard. He will assert the same concerns in a full hearing on CAT if this motion

¹ The Seventh Circuit has abandoned the regulatory burden of persuasion, ridiculing it as random and contra to the CAT itself. Mr. Parlak invokes the same argument here, though he need not prevail on it for now, because he can show a near certainty of torture if he is returned to Turkey. See *Rodriguez -Molinero v. Lynch*, No. 15-1860 (7th Cir. Dec. 17, 2015)(only requires 'substantial grounds for believing that' (s)he will face torture or inhumane treatment, and using the civil standard of more likely true than not amounts to a vague and random standard, such that a 50.1 probability would prevail, but a 49.9 would not, resulting in 'an absurd distinction'.)

is sustained, and will add a fear of right wing groups, which is objectively verified by both attached expert reports. Exs. 7 & 8.

In assessing the evidence of the likelihood of torture for CAT relief, the adjudicator must consider the possibility of future torture, including (1) evidence of past torture inflicted upon the applicant; (2) evidence that the applicant can relocate to a part of the country of removal where he is not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal; and (4) other relevant information regarding conditions in the country of removal. *Mapouya v. Gonzales*, 487 F.3d 396, 414-15 (6th Cir. 2007).

Mr. Parlak has a strong prima facie case for CAT relief under these standards if the Board acknowledges the readily apparent changed country conditions in Turkey. First, he presents compelling evidence of his past torture, vis-à-vis photos and a physician's report about several scars from his beatings, replete with the physician's documenting the length and character of the scars. Ex. 30. He also presents a medical chronology and progress notes, going back more two decades, detailing his treatment for lingering torture-induced injuries, including persistent pain to his scrotum. Further, he sought psychiatric care for PTSD symptoms disrupting his life.² Ex. 32.

There is no evidence in any of the voluminous country condition articles and reports that someone in his situation would be safe in a different part of Turkey. Further, the evidence submitted shows the government is waiting for him, and delights in the prospect of his imminent return to Turkey. *See* Ex. 9-12. In the *Sabah* article, the author states the Turkish authorities provided the travel document to the U.S. so Mr. Parlak could be returned to Turkey, and there is no obstacle to prevent him from serving his 5 year prison sentence in Turkey.³

²Lest anyone accuse Mr. Parlak of making those complaints in order to document his case, his 2005 visits to Dr. Feldman were *after* his immigration court case was tried and decided.

³ The notion of a five year prison sentence is a new one to Mr. Parlak. He 'served' more than 17 months, where he was brutally tortured, hospitalized to recuperate, and then tortured again, on a repeat cycle, until

The evidence submitted is as voluminous as it is persuasive; not only is the evidence determinative of the changed conditions in Turkey, it is also irrefutable Turkey is engaged in a disastrous, wide-spread and deplorable human rights violating spree. It is indiscriminately killing and imprisoning thousands of Kurds, but has started with those that lead the Kurdish cause. Mr. Parlak will undoubtedly face torture because he is viewed as a leader of the opposition and PKK, regardless of whether he is, or ever was, that person. It is the mere allegation by both the U.S. and Turkey that creates the imminent and certain danger.

Finally, other highly relevant evidence is attached of the danger he faces, to seal the prima facie case he has for CAT relief. It includes an individualized threat via facebook made by someone who knew he has been sodomized during his prior torture. Ex. 13 ("it is time for him to be impaled"). Congressional Members Fred Upton (R), and Jan Schakowsky (D), authored a letter to Jay Johnson, and the DHS, imploring it to not oppose this motion because of the merits of this motion. And while Congressional support itself is not extraordinary, it should be considered as an additional factor demonstrating the grave concern members of our government have for Mr. Parlak's fate.

Conclusion

Congressional members Fred Upton and Jan Schakowsky have raised a poignant point; while there has been great disagreement about the line-drawing by the government about what constitutes terrorism and material support of terrorism, those issues are no longer operative. The agreed-upon facts, and facts about change country conditions in Turkey, call for reopening, as Mr. Parlak has adequately shown he has a prima facie claim for CAT relief. Ex. 33. Further, the Board should reopen the matter to examine the legal change now governing the case in light of the Sixth Circuit's decision in *Amir v.*

his release. The fact that Turkey believes he owes more time in prison does not amount to a legitimate sentence at all, but rather a *de facto* death sentence to Mr. Parlak.

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Gonzales, 467 F.3d 1921 (6th Cir. 2006), because the doctrine of acquiescence is of critical important to Mr. Parlak's CAT claim.

If you have any questions, please contact the undersigned directly.

Respectfully Submitted,

CARPENTER & CAPT, CHTD.

A handwritten signature in black ink, appearing to read "Robert Carpenter", written over the typed name.

Robert Carpenter

RTC/df

Enclosures

cc: Detroit EOIR, Assistant Chief Counsel (*via FedEx overnight delivery*)