UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

In the Matter of IBRAHIM PARLAK A71 803 930 (Detroit District)	IN REMOVAL PROCEEDINGS **DETAINED**

RESPONDENT'S CLOSING ARGUMENT

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DHS has the burden of proving its case by clear, convincing and substantial evidence. It has failed to meet that burden on any count.

I. Fraud/Willful Misrepresentation: Given the disclosures in his 1991 asylum application, Mr. Parlak was at most guilty of negligence on his Form I-485 – not the *willful* misrepresentation required by law. When Mr. Parlak applied for asylum, he was as forthcoming as someone without the ability to speak or understand English could be. The disclosure of his membership in the ERNK and its "close ties to the PKK," his stay at the PKK Helve camp and his arrest, conviction and imprisonment in Turkey are all well documented. See Trial Ex. 2, Tab A at 3, 4, 7, 9-10. But what is most important here is that Mr. Parlak attached a Turkish newspaper article that gave a full account of what the Turkish government claimed happened at the border in May 1988. Id. at 30.

DHS has made much of the fact that the English translation of the article did not discuss the deaths of the two soldiers. DHS continues to miss the salient point, however. Mr. Parlak did not know what the translation said in English. All he knew was what the article said *in Turkish.* Based on the *Turkish* text he could read and understand, Mr. Parlak was submitting an article stating that he "had an armed encounter with soldiers" leading to "the martyrdom of soldiers Serif Kaya and Dincer Demir." See Trial Ex. 2, Tab E at 8. Mr. Parlak disagreed with this newspaper account, but still turned it over. In fact, if one goes through every Turkish document submitted with the asylum application – the documents Mr. Parlak could read and understand – *none* of them casts Mr. Parlak in a positive light. See id., Tab A at 24, 26, 28, 30. Despite this, Mr. Parlak chose full disclosure.

In view of the above, it makes no sense to claim – as DHS does here – that Mr. Parlak thought he was hiding his Turkish past when he checked "No" on Form I-485 two years later.

To the contrary, his attorney at the time (Lynn Coyle) explains that Mr. Parlak was always forthcoming with her about his penal history in Turkey; that his spoken English was quite poor at the time, and his reading/writing of English were even more limited; and that in view of this, Mr. Parlak could reasonably have misunderstood the question about prior arrests, etc. as referring to events subsequent to the Turkish history he provided in his asylum application two years earlier. See Resp. Ex. 9, ¶¶ 5-11. Ms. Coyle does not believe Mr. Parlak was asked about arrests, etc. in his I-485 interview, and corroborates the same with her notes, her correspondence, and her regular handling of clients with similar issues. Id. at ¶¶6-8 & Tabs 2-5 thereto. By contrast, the INS interviewer (Jennifer West) simply relies on her "usual practice" of "always" asking an applicant about arrests. See DHS Ex. T at ¶4. She does not rebut Ms. Coyle's testimony that the Chicago INS office was seriously overwhelmed at the time of Mr. Parlak's interview, resulting in highly perfunctory questioning by INS interviewers. See Resp. Ex. 10 at ¶10.

DHS thus has not proven "willfulness" by clear, convincing and substantial evidence. Respondent also relies on the legal defects already briefed. See 10/15/04 Resp. Br. at 14-30.

II. Persecutor Charge: The recent hearing record underscores the cruel irony of DHS's "persecutor" charge against a Turkish Kurd like Mr. Parlak. In grade school, Mr. Parlak was constantly told that "Turkish blood is great," but that Kurds are "like donkeys." 12/7 Tr. Beatings and torture of Kurds were routine. Id. Kurds were not allowed to sing their songs, dance their dances, or speak their tongue. Id. According to Prof. Gunter, the Turkish government framed Kurds for crimes they did not commit. Id. Extrajudicial murder was a Turkish tool of the trade. Id.

Given this unrebutted record, it is shameful for the United States government to continue its attempt to brand Mr. Parlak a "persecutor." Respondent of course also relies on his brief showing that the persecutor charge must fail as a matter of law. See 10/15/04 Resp. Br. at 30-34.

III. Aggravated Felony: Mr. Parlak's conviction under Article 125 occurred in 1990 – *prior* to admission to the U.S. See 10/15/04 Resp. Br. at 8-11 and 12/3/04 Resp. Supp. Br. re "Conviction" Date at 1-5. Nothing said by DHS alters that fact in the slightest. The aggravated felony charges cannot stand.

IV. Terrorist Activity: In addition to the matter-of-law defects already briefed (11/23/04 Resp. Br. at 14-26), none of the "terrorist activity" charges are supported by clear, convincing and substantial evidence. DHS's proof on all these charges is insufficient for four major reasons: (1) its heavy reliance on the Security Court "conviction records;" (2) the factual errors underlying Agent Miranda's opinion; (3) the flawed analytic approach by Agent Mirdanda; and (4) the alternative non-violent interpretation supported by Prof. Gunter.

A. Heavy reliance on the Security Court: The centerpiece of DHS's "terrorist activity" case is a series of factual assertions supported only by the Security Court, and denied by Mr. Parlak. Specifically, DHS relies heavily on the notion that Mr. Parlak was a militarily-trained "ARGK unit commander," that his group carried "rocket launchers," that he led a "revenge group," that he "fired his weapon" during the border incident, and that he arranged to "rendezvous" with other groups. See DHS Ex. SS at 9-15.

The fundamental problem here is that the Security Court "conviction records" are not reliable due to lack of independence and systematic use of torture. The proof on this point is compelling and unrebutted, coming from: (1) Mr. Parlak's own description of his horrific torture; (2) Prof. Gunter's corroboration; (3) the scholarly study published in the Fordham International

Law Journal, Resp. Ex. 8 at 2153, 2165; (4) reports from the U.S. State Department., Resp. Ex. 1 at 8; (5) repeated rulings from the European Court of Human Rights; Resp. Ex. 11 at 7, 10, 13, 19, 27, 29, 32; and (6) Turkey's own abolition of the Security Court system earlier this year, Resp. Ex. 7 at 2. The same flaw is true for the two "corroborating" confessions relied on by DHS, which suspiciously "matched" Mr. Parlak's "explanation." See DHS Ex. SS at 22.

U.S. courts exclude evidence procured by torture, and the UN Convention Against Torture mandates that torture-induced evidence "shall not be invoked in any proceedings, except against a person accused of torture ...." See 23 I.L.M. 1027, 1031 (1984). This Court should not credit anything in the Security Court documents that was not confirmed by Mr. Parlak.

B. Factual errors underlying Agent Miranda's opinion: Agent Miranda relied on the same list of unreliable, torture-induced "facts" from the Security Court discussed above. 12/6 Tr. His opinions must be discounted to the extent premised on such inappropriate "evidence."

In addition, Agent Miranda erroneously included Gaziantep province in the "emergency zone" of southeast Turkey where most all violent activity of PKK and ARGK occurred. 12/6 Tr. In fact, the "emergency zone" ended *two provinces to the east* of Gaziantep. See Resp. Ex. 5 at 2. Per Prof. Gunter, Gaziantep was *never* a part of the emergency zone. 12/7 Tr. Agent Miranda's error on this point is critical because his opinion was so fundamentally shaped by the assumption that Mr. Parlak was returning home to Gaziantep for violent purposes.

Respondent does not dispute that ARGK and elements of PKK were violent. But the "front lines" of this violence were within the emergency zone in the far southeast, as both Agent Miranda and Prof. Gunter testified. 12/6 & 12/7 Tr.; Resp. Ex. 5 at 2. Prof. Gunter and Agent Miranda also agreed that it was the Turkish government's decision to create the village guard system in the far southeast in 1984 that precipitated the escalation in PKK violence. Id.; see also

Trial Ex. 2, Tab I at 7. Per Prof. Gunter, the village guard system was not employed in Gaziantep in 1987-88, if ever. 12/7 Tr. In all the huge stack of exhibits submitted by DHS, only one alleged PKK terrorist act occurred in Gaziantep (in 1990) during the last 20 years. See DHS Ex. HH at 29.

The battle between the PKK and Turkish security forces in Cizre described by Agent Miranda occurred in a city within the emergency zone and 250 miles east of Gaziantep. 12/6 Tr.; Resp. Ex. 5 at 2 (map of emergency zone). Conversely, the government offers no evidence of a "guerilla army" or similar military conflict as far west as Gaziantep at any time. Agent Miranda's erroneous lumping of Gaziantep into the "emergency zone" area of violence in far southeast Turkey seriously undermines his analysis.

C. Agent Miranda's flawed analytic approach: Agent Miranda's analysis was a profiling approach – i.e., seeing facts "consistent" with terrorist activity, he concluded that Mr. Parlak must indeed be guilty of same. 12/6 Tr. This type of analysis is, by design, a cautious and over-inclusive one. It may well be appropriate for the *pre-emptive* purposes of a counter-terrorism official like Agent Miranda. It is not, however, appropriate for the very different task of *adjudicating* past acts – particularly so where such adjudication must be premised on clear, convincing and substantial evidence.

The fundamental problem with Agent Miranda's approach is that it filters everything through the lens of a fore-ordained conclusion. The inherent bias in such an approach was repeatedly exhibited by Agent Miranda's interpretation of a range of facts at face value, a practice he himself described as "reckless" (12/6 Tr.):

Photographs. Agent Miranda placed much emphasis on supposed photographing of villages, calling it "a big red flag." 12/6 Tr. But even the Security Court says nothing more than

that a picture was taken "at" the top part of a village – not that a picture "of" the village was taken. See DHS Ex. SS at 10. Only an observer with a pre-ordained conclusion could interpret this as sinister.

"ARGK unit commander". Agent Miranda readily accepted the notion that Mr. Parlak was an "ARGK unit commander," ignoring the absurdity of such a claim for someone with no military experience and minimal training (mostly with wooden sticks, 2/11 Tr.).

Code names. Agent Miranda found terrorist indicia in use of code names, despite the undisputed fact that Mr. Parlak's Kurdish advocacy made him a criminal in the eyes of the Turkish government. 12/7 Tr. Of course a Kurdish dissident needed to protect himself and his family by concealing his real name. Agent Miranda's profiling lens obscured this legitimate and necessary purpose even though he had himself employed false names in his undercover anti-drug work for the U.S. FOFI. 12/6 Tr.

Other covert acts. In the same vein, Agent Miranda could only see a terrorist interpretation of Mr. Parlak being smuggled into Turkey, being armed and digging shelters in the mountains. But each of these is a reasonable response of a non-violent Kurd who is an outlaw simply by virtue of working for Kurdish rights. Agent Miranda's lens filtered out this interpretation.

Ocalan meeting. Agent Miranda likewise could not conceive of Mr. Parlak meeting with Ocalan for anything other than a mission of violence. But as Prof. Gunter explained, the PKK promoted the Kurdish cause through a number of non-violent political and cultural means. 12/7 Tr. Mr. Parlak's mission of teaching and consciousness-raising among Gaziantep Kurds was valuable to Ocalan and the Kurdish cause, notwithstanding its peaceful goals. Id.

Being a "fighter." Over and over, Agent Miranda emphasized that Mr. Parlak calls himself a "fighter." Given his mindset, Agent Miranda was unable to imagine how a committed dissident like Mr. Parlak could "fight" for his people, his language and his culture in a non-violent way. But in fact, thousands such "fighters" have come to our shores over the centuries, escaping tyranny and bringing great energy and passion to their new homeland. "Fighter" does not mean terrorist, despite Agent Miranda's assumption to the contrary.

D. Alternative non-violent interpretation: Credibly and in detail, Mr. Parlak explained his non-violent "mission" in returning to Gaziantep. As he had done in his teens, his whole purpose was to teach Kurds, through group effort, how to work together to better their plight. Examples of such effort included the alternative tea-house he organized to take young Kurds away from gambling, and the alternative water supply project he headed up to improve the water available to a village. 12/7 Tr.

The Court therefore must decide whether to credit Mr. Parlak's non-violent purpose in going back to Turkey. DHS attempts to refute this conclusion, based on a terrorist interpretation of a wide range of facts. Prof. Gunter, on the other hand, has provided a scholarly and objective alternative interpretation, based on: the large number of non-violent Kurds who joined the ERNK; the fact that because of Turkey's strict suppression of all Kurdish political activity, the only organizations for promoting Kurdish rights were all PKK-affiliated entities like ERNK; and the illegality of all political activity for the Kurdish cause requiring covert conduct of someone in Mr. Parlak's circumstances – use of code names, smuggled entry, hiding out, etc. 12/7 Tr.

Prof. Gunter's alternative perspective is deserving of great weight because of: a) the authoritativeness of his research; b) his reputation as an "unbiased" researcher who has assisted the Turkish and United States governments as well as the Kurds; and c) his understanding of the

differences in the conflict within and outside of the emergency zone. 12/7 Tr.; Resp. Ex. 19. Conversely, this Court should evaluate the opinion of Agent Miranda with caution, given the inherent bias of his profiling approach to this case.

But even if the Court were to conclude that the competing interpretations of Prof. Gunter and Agent Miranda were equally credible, the burden of proof requires a ruling for Respondent. DHS's obligation of proof by clear, convincing and substantial evidence means that where two alternative views are balanced, the government cannot prevail.

In addition to the above points – applicable generally to all the charges of "terrorist activity" – a few particularized comments pertinent to the individual charges are set out below.

Committing a terrorist activity – Subsection (B)(iv)(I): This charge requires proof of intent – "intention to cause death or seriously body injury." The Security Court opinion concludes only that Mr. Parlak was an accessory because he had been "randomly shooting" – i.e., with no intent to kill. See DHS Ex. SS at 22-23. However, this conclusion has no factual support in even the torture-induced confessions relied upon, casting serious doubt on whether Mr. Parlak was even an accessory. Id. at 13, 15, 16. Moreover, Mr. Parlak's only goal in returning to Turkey was teaching/consciousness-raising, not violence, and he made every effort to avoid confrontation or even contact with Turkish forces. 2/11 Tr. and 12/7 Tr.

This charge also requires "use" of a weapon. But Mr. Parlak never shot his weapon, at any time from the May 1988 crossing attempt up through his peaceful surrender in October 1988. 12/7 Tr. There is not a single fact recited by the Security Court to support its statement to the contrary – not even in the various "confessions" attributed to Mr. Parlak. See DHS Ex. SS at 8-16. As for the "dropped" grenade continually referenced by DHS, it inadvertently fell from Mr. Parlak as he ran across the border. Id.; Resp. Ex. 10 at ¶7.

Recognizing this hole in its proof, DHS has belatedly asserted "conspiracy." 11/23/04 DHS Supp. Br. Their evidence, however, is not even supported by the factual conclusions of the unreliable Security Court. See DHS Ex. SS at 23 ("Other than [being an accessory] no other act [including conspiracy, found in the bill of indictment at Ex. SS, p. 6] was found to have been committed.").

Material support – Subsections (B)(iv)(VI)(aa) – (cc): DHS has failed in any way to link Mr. Parlak's activities after his 1988 entry to a specific terrorist act (subsection (aa)) or a specific terrorist individual (subsection (bb)). As for a specific terrorist organization (subsection (dd)), DHS does claim that all of Mr. Parlak's post-return activities in Turkey supported PKK. But there simply was no guerilla army to "materially support" in Gaziantep. Nor is there any basis, other than the unreliable Security Court, for DHS's claim that Mr. Parlak provided weapons, money, transportation or shelter to a terrorist organization in Turkey. None of this was corroborated by Mr. Parlak.

Finally, if the "material support" charged against Mr. Parlak is the support he gave the PKK by being a non-violent activist for Kurdish rights, then under this analysis, hundreds of thousands of Kurds would be "terrorists" – along with countless others such as those who work by peaceful means to achieve Palestinian rights or Catholic rights in Northern Ireland. A country founded on freedom of expression should not interpret its laws in the way DHS suggests, particularly given the absence of any lawful ways of supporting Kurdish rights in Turkey. Mr. Parlak's non-violent advocacy for Kurds did not assist the PKK's terrorist activities in any way.

Soliciting funds – Subsection (B)(iv)(IV)(cc): This charge requires that Mr. Parlak have solicited "funds or other things of value" for a terrorist organization. DHS's only evidence, however, is based on the folklore nights that Mr. Parlak helped organize while in Europe. As

Mr. Parlak explained, money raised by ERNK at such events *could* have gone to the PKK, but he did not know of it happening and he did not solicit for that purpose. 2/11 Tr.[1] Also, contrary to DHS's assumption, thousands of ERNK members were committed to achieving rights for the Kurds by political means – not by violence. 12/7 Tr. (Gunter). There is no clear and convincing proof that Mr. Parlak solicited anything of value for the PKK.

V. Convention Against Torture (CAT): As demonstrated by recent coverage of these proceedings in the Turkish media, DHS's charges against Mr. Parlak have received national attention in Turkey. All the articles submitted refer to him as a PKK "militant" or "terrorist." See CAT App., 2nd Supp. It is more likely than not that his return to Turkey would garner even greater media attention.

As Prof. Gunter testified, the PKK has a history of killing "turncoats" like the village guards. 12/7 Tr. He also testified that the Turkish government has historically acquiesced to and even assisted in extrajudicial killings. Id. In light of that government's propensity to pit Kurds against fellow Kurds, it is more likely than not that Mr. Parlak faces torture and even death if he is returned to Turkey.

Conclusion: Mr. Parlak has suffered enough—in both Turkey and the United States. For the foregoing reasons, Respondent respectfully requests that this Court reject all charges of deportability pending against Mr. Parlak. Alternatively, this Court should grant Mr. Parlak relief under the Convention Against Torture.

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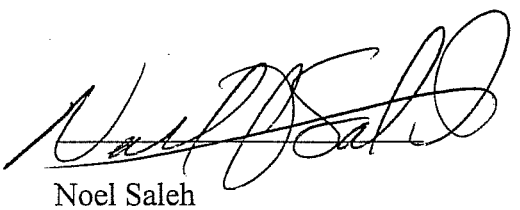
[1] For further verification that the alleged financial link between the ERNK and the PKK was at best tenuous, the Court can take judicial notice of the "Specially Designated Nationals and Blocked Persons" list published each year since 1993 by the U.S. Treasury Dept.'s Office of Terrorism and Financial Intelligence (OTFI). The OTFI list includes organizations that fund terrorism, and can be found at http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf. Over the years, this list has included the PKK (under a variety of names) and numerous "fronts" such as Republican Sinn Fein (for the IRA) and the Holy Land Foundation (for Hamas). The ERNK has *never* been included in the OTFI list.

Dated: December 17, 2004

Respectfully Submitted,



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CERTIFICATION OF SERVICE

I certify that I have served a copy of the foregoing Respondent's CLOSING ARGUMENT on counsel for the Department of Homeland Security by depositing same in the U.S. mail, postage prepaid, on the 17th day of December, 2004, addressed to:

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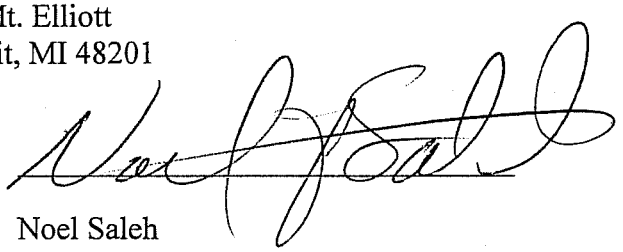

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