

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED

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U.S. DIST. COURT CLERK
EAST DIST. MICH.
ANN ARBOR

IBRAHIM PARLAK,

Petitioner/Plaintiff,

v.

ROBIN BAKER, in his official capacity as
Detroit Field Office Director, Bureau of
Immigration and Customs Enforcement
Detention and Removal Operations, United
States Department of Homeland Security,

Respondent/Defendant.

CASE NO:

CIVIL ACTION

AVERN COHN

MAGISTRATE JUDGE R. STEVEN WHALEN

**EMERGENCY MOTION FOR RELEASE AND
REQUEST FOR EXPEDITED BRIEFING AND ORAL ARGUMENT**

Petitioner Ibrahim Parlak hereby moves for his immediate release from detention. In light of the clearly *ultra vires* nature of Mr. Parlak’s initial and continued detention, now in excess of seven months, and the irreparable harm he suffers each day he remains in unlawful detention, Petitioner respectfully requests that this Court issue an expedited briefing and oral argument schedule.

Mr. Parlak was initially arrested and jailed by DHS on July 29, 2004. DHS did not claim INA §236(c) as the basis for this detention—in fact, their Bond brief to the Immigration Judge cites *no* statutory authority—but instead alleged that Mr. Parlak was ineligible for bond pursuant to 8 C.F.R 1003.19(h)(2)(i)(C) as an alien “described in” INA §237(a)(4)(B). His detention on

this initial basis was both an impermissibly retroactive application of the regulation and regulation and *ultra vires* in light of INA §236A.

DHS sought to moot these defects by charging Mr. Parlak with removal under §237(a)(4)(B) on October 14, 2004, thus changing the alleged basis of his detention to INA §236(c)(1)(D). However, detention on this basis is also fatally flawed for two reasons. First, application of §236(c) to conduct that preceded the effective date of the IIRIRA is impermissibly retroactive. Second, the “released after” language of the IIRIRA proscribes applying §236(c) to aliens released from non-INS/DHS incarceration before October 9, 1998—even those aliens who allegedly engaged in terrorist activity. Despite these infirmities, DHS continues to detain Mr. Parlak in violation of the INA.

In addition, Mr. Parlak is a lawful permanent resident who poses no danger or risk of flight and is vigorously contesting his removal in good faith. Moreover, Mr. Parlak has no reasonable prospect of ever being removed, given that Turkey has revoked his citizenship and has advised United States diplomatic authorities that it will not issue travel papers allowing Mr. Parlak back into that country. As a consequence, even if he were subject to §236(c) (which he is not), his continued jailing—well past the six-month benchmark for reasonableness—is in violation of the Due Process clause of the Fifth Amendment to the United States Constitution. More fundamentally, however, because Mr. Parlak is not subject to §236(c) *at all*, any detention of him under these circumstances is barred by due process.

The grounds for his emergency motion are set forth in detail in the accompanying Memorandum of Law, and are further supported by the Petition for Habeas Corpus and Complaint for Declaratory Relief.

Petitioner seeks emergency relief because each additional day he is unlawfully detained subjects him to further irreparable harm. He therefore requests that the Court set an expedited briefing schedule and hearing in the above matter.

Dated: March 3, 2005

Respectfully submitted,



By

Attorneys for Petitioner
IBRAHIM PARLAK

David S. Foster
John J. Marhoefer
Cindy Sobel
LATHAM & WATKINS LLP
233 S. Wacker, Suite 5800
Chicago, IL 60606
(312) 876-7700
(312) 993-9767 (fax)

David A. Nacht (#P47034)
DAVID A. NACHT, P.C.
201 S. Main St. Suite 1000
Ann Arbor, MI 48104
(734) 663-7550

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT, EMERGENCY MOTION FOR RELEASE AND REQUEST FOR EXPEDITED BRIEFING AND ORAL ARGUMENT**, and **MEMORANDUM IN SUPPORT OF PETITIONER'S EMERGENCY MOTION FOR IMMEDIATE RELEASE FROM CUSTODY** has been furnished by overnight delivery this 3rd day of March, 2005, to the following parties and counsel, in accordance with Rule 4(i) of the Federal Rules of Civil Procedure:

Mr. Robin Baker
Detroit Field Office Director,
Detention & Removal Operations
DHS Bureau of Immigration and Customs
Enforcement
333 Mt. Elliott St.
Detroit, MI 48207

United States Attorney
211 W. Fort Street
Suite 2300
Detroit, MI 48226
Attn: Civil Process Clerk

Office of the Attorney General
United States Department of Justice
10th & Pennsylvania Ave., N.W.
Washington, D.C. 20530

Mr. Michael Chertoff, Secretary
United States Department of Homeland
Security
3801 Nebraska Ave.
Washington, DC 20393-0001



David A. Nacht (#P47034)
DAVID A. NACHT, P.C.
201 S. Main St. Suite 1000
Ann Arbor, MI 48104
(734) 663-7550