UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 05-4488

IBRAHIM PARLAK,
Petitioner,

v.

ALBERTO GONZALES, ATTORNEY GENERAL,
Respondent.

MOTION FOR STAY OF REMOVAL PENDING PETITION FOR REVIEW

LATHAM & WATKINS
David Foster
John J. Marhoefer

233 South Wacker Drive
Suite 5800
Chicago, IL 60606
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

Counsel for Petitioner
IBRAHIM PARLAK

INTRODUCTION

The Petitioner, Ibrahim Parlak ("Mr. Parlak") moves the Court for a stay of his removal pending disposition of his Petition for Review of the November 22, 2005 decision of the Board of Immigration Appeals ("BIA") affirming the Immigration Judge's ("IJ's") order to remove (deport) Mr. Parlak to Turkey.

Mr. Parlak, a persecuted Kurd from Turkey, was granted asylum by the United States in 1992 and became a lawful permanent resident ("LPR") in 1994. He has lived an exemplary life in the United States, and was recently called a "model immigrant" by Judge Avern Cohn of the Eastern District of Michigan. Parlak v. Baker, 374 F. Supp. 2d 551, 561 (E.D. Mich. 2005). Despite his law-abiding conduct, the INS initiated deportation proceedings against Mr. Parlak in 2002. In its initial charges, the INS claimed that Mr. Parlak had been a persecutor of Turkish citizens in the 1980s and that he had fraudulently completed his green card application in 1993. BIA at 2. In 2004, DHS (the successor organization to INS) added two additional sets of deportation charges. The first set of additional charges claimed that Mr. Parlak had been convicted of an aggravated felony after admission. The second set of charges claimed that he had engaged in terrorist activity. Id. The purported basis for all of these charges was conduct alleged to have occurred in the 1980s, years before Mr. Parlak's arrival in the United States.

Each of the charges against Mr. Parlak were insupportable as a matter of law and fact. Nevertheless, the Immigration Judge ruled against Mr. Parlak on all counts and ordered Mr. Parlak removed. He timely appealed the Immigration Judge's decision to the BIA, citing 73 errors of law and fact.

Despite these errors, the BIA dismissed Mr. Parlak's appeal and affirmed the IJ's order. BIA at 15. The BIA vacated the aggravated felony charge, but erred by failing to conclude that the terrorism, fraud, and persecutor charges should also be vacated. The BIA was also without jurisdiction to review Mr. Parlak's constitutional claims (which he raised in his Brief to the BIA) and did not consider them in dismissing Mr. Parlak's appeal.

Mr. Parlak timely filed a Petition for Review of the BIA's dismissal on November 23, 2005 and respectfully moves this Court to stay his removal pending adjudication of his Petition. This Court has jurisdiction to grant this stay. In accordance with the standard of the Sixth Circuit for granting such a stay, Mr. Parlak is able to show a very high likelihood of grave and irreparable harm if he is deported. DHS will suffer little or no harm if this stay is granted, and the public interest favors a stay of removal. Finally, Mr. Parlak is able to demonstrate the required likelihood of success on the merits. The BIA committed numerous errors in dismissing Mr. Parlak's appeal, and his substantial constitutional arguments

have not yet been addressed by any court. For all of these reasons, Mr. Parlak respectfully moves the Court to grant a stay of removal.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mr. Parlak came to this country 14 years ago to start a new life of freedom in the United States. He had spent much of his life being brutally persecuted by the Turkish government for his advocacy of the rights and culture of the Kurdish people, the largest stateless population on the planet. But after years of enduring beatings, torture and imprisonment at the hands of the Turkish government, he decided to seek asylum here in 1991. Asylum was granted in 1992, and Mr. Parlak became a lawful permanent resident (LPR) two years later. Mr. Parlak went on to apply for naturalization in 1998, which the INS rejected in November 2001, five months before initiating removal proceedings against him.

Mr. Parlak began his career in this country as a busboy and cook and eventually bought his own restaurant, Café Gulistan, in Harbert, Michigan. During the past 14 years, he has also bought his own home, raised a beloved American-citizen daughter, and formed deep bonds of friendship and mutual respect with his community. He has never been arrested for any type of crime in this country.

Mr. Parlak arrived in the United States one year after his release from a Turkish prison in 1990. Mr. Parlak was convicted of the “crime” of Kurdish separatism by the widely reviled and now-dissolved Turkish Security Court and

served a 17-month sentence. The Turkish government revoked Mr. Parlak's citizenship in 2003 and does not presently seek his extradition or return. In fact, in response to Congressional inquiry through diplomatic channels, Turkey advised that it would not issue travel documents to Mr. Parlak for a return to Turkey. At the time of this filing, Turkey has not indicated that they will allow him to return.[1]

On April 2, 2002, the INS issued a Notice To Appear to Mr. Parlak, claiming he was removable on two grounds. The first charge was that Mr. Parlak had made willful misrepresentations on his green card application. The second charge was that Mr. Parlak had himself persecuted Turkish citizens, making him ineligible for asylum. He was not taken into custody for these charges. Mr. Parlak faithfully attended every immigration proceeding, including a hearing on the merits of these charges held February 11, 2004 before an Immigration Judge in Detroit.

On July 29, 2004, DHS added two new charges that claimed Mr. Parlak was removable as an aggravated felon. On the same day, DHS took him into custody.[2] DHS added three new charges of removability for terrorist activity on October 14, 2004.

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[1] As a condition of his release on bond from DHS detention, Mr. Parlak applied for travel documents from the Turkish embassy in August 2005. He has received no response, nor has the government indicated to him that the required documents have been issued as of the time of this filing.

[2] These charges were vacated by the BIA in its recent opinion, demonstrating that DHS's initial arrest of Mr. Parlak on the basis of these charges was

In December 2004, a two-day removal hearing was conducted by an Immigration Judge in Detroit. On December 29, 2004, the Immigration Judge ordered Mr. Parlak's removal to Turkey. IJ at 59. Mr. Parlak, through his counsel, filed a Notice of Appeal to the Board of Immigration Appeals ("BIA") on January 21, 2005 and his appellate brief on May 5, 2005. On November 22, 2005, the BIA dismissed Mr. Parlak's appeal, and Mr. Parlak duly filed with this Court a Petition for Review of the BIA's dismissal on November 23, 2005.

Mr. Parlak has exhausted all administrative remedies available to him and has filed a timely Petition for Review pursuant to 8 U.S.C. § 1252(b). Because the filing of a Petition for Review does not automatically stay Mr. Parlak's removal from the United States, Mr. Parlak could be deported at any time, subjecting him to persecution and potentially death upon his return to Turkey. Mr. Parlak therefore seeks the protection of this Court and respectfully requests that the Court grant a stay of removal during its consideration of his Petition for Review.

ARGUMENT

In considering whether to grant a stay of removal, the Sixth Circuit employs a standard that is comparable to that for issuing a preliminary injunction.[3]

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improper. BIA at 15. Mr. Parlak was ultimately released from DHS detention, pursuant to a federal court order, on June 3, 2005.

[3] There does not appear to be Sixth Circuit precedent on the question of whether an immigrant must first request a stay from DHS. However, the Seventh Circuit has held that a petitioner need not move before the

This standard weighs: (i) the likelihood of success on the merits, (ii) whether the moving party will be irreparably injured if the stay is denied, (iii) whether the party opposing the stay will suffer substantial injury if the Court grants a stay, and (iv) whether granting the stay would be in the public interest. Bejjani v. INS, 271 F.3d 670, 688 (6th Cir. 2001) (citing Sofinet v. INS, 188 F.3d 703, 706 (7th Cir. 1999)), reh'g denied (Feb. 25, 2002).[4] These factors are balanced; when a greater showing of irreparable harm in the absence of a stay is made, a lesser showing of likelihood of success on the merits is necessary to support a stay. Nwakanma v. Ashcroft, 352 F.3d 325, 327-28 (6th Cir. 2003).

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administrative agency for a stay pending review of its decision or order, per F.R.A.P. 18(a)(1), because there is nothing in the provisions of the INA or the immigration regulations that confers authority on the DHS to stay deportation pending judicial review. See Sofinet v. DHS, 188 F.3d 703, 706-07 (7th Cir. 1999). Accordingly, "in review proceedings from deportation orders, the petitioner has no obligation to try to persuade the DHS to stay the order before filing a motion with the court." Id. at 707.

[4] The First, Second, Third, Fifth and Seventh Circuits have adopted this same standard in determining whether to issue a stay of deportation. See Arevalo v. Ashcroft, 344 F.3d 1, 6-9 (1st Cir. 2003); Mohammed v. Reno, 309 F.3d 95, 100 (2d Cir. 2002) (citing Hilton v. Braunskill, 481 U.S. 770, 776 (1987)); Douglas v. Ashcroft, 374 F.3d 230, 234 (3rd Cir. 2004); Tesfamichael v. Gonzales, __ F.3d __, (5th Cir. 2005); Hor v. Gonzales, 400 F.3d 482, 485 (7th Cir. 2005). The Ninth Circuit has consolidated the four factors into a two-part test, requiring that a petitioner "show either (1) a probability of success on the merits and the possibility of irreparable injury, or (2) that serious legal questions are raised and the balance of hardships tips sharply in the petitioner's favor." Maharaj v. Ashcroft, 295 F.3d 963, 966 (9th Cir. 2002) (internal citations omitted). The Supreme Court has declined to set forth a single standard. Kenyeres v. Ashcroft, 538 U.S. 1301, 1305 (2003).

Circuits adopting this standard do not require petitioners to demonstrate that success on the merits is probable. "It is enough that the plaintiff's chances are better than negligible." Sofinet v. INS, 188 F.3d 703, 707 (7th Cir. 1999) (quoting Roland Mach, Co. v. Dressler Indust., Inc., 749 F.2d 380, 387 (7th Cir. 1984)); see also Mohammed v. Reno, 309 F.3d 95, 102 (2nd Cir. 2002) (concluding that "the degree of likelihood of success on appeal need not be set too high").

The balance of these factors in Mr. Parlak's case more than satisfies this standard for issuing a stay of removal pending appeal. First, Mr. Parlak can demonstrate that his likelihood of success on the merits meets the required threshold. Second, Mr. Parlak's predicament satisfies the requirement of irreparable harm. Third, any potential harm to the government is, at most, *de minimus*. Finally, the grant of a stay of removal by this Court is sound public policy.

I. MR. PARLAK HAS DEMONSTRATED THE REQUIRED LIKELIHOOD OF SUCCESS ON THE MERITS.

Mr. Parlak's appeal raises constitutional issues and pure questions of law that have never received judicial review. The fundamental constitutional questions before this Court will be whether DHS can deport Mr. Parlak for alleged pre-entry, pre-1990 activities disclosed in his asylum application without violating:

a) substantive due process; b) non-delegation doctrine; and c) the Ex Post Facto clause. Although this Court has held that aliens *inadmissible* on terrorist grounds can later be deported pursuant to 8 U.S.C. §1227(a)(1)(A) (which is not at issue here), it has not addressed the question of whether an alien who was lawfully admitted after disclosing pre-entry events to INS can later become deportable for the same events, despite a record of exemplary conduct in this country. Cf. Denshvar v. Ashcroft, 355 F.3d 615, 621 (6th Cir. 2004) (adjudication based upon the inadmissibility statute, 8 U.S.C. §1182(a)(3)(B), not deportation statute, 8 U.S.C. §1227(a)(4)(B)).

Similarly, Mr. Parlak's appeal raises questions of law that were erroneously adjudicated by the BIA. Foremost among these was the Board's failure to properly consider the impact of the Immigration Judge's reliance upon evidence that was the clear result of Mr. Parlak's torture. Additionally, the Board's rulings on each individual charge contains serious reversible error.

A. Mr. Parlak's appeal raises significant constitutional questions that have not been adjudicated in these proceedings, or indeed, by *any* court.

It is well-settled that the BIA does not have subject matter jurisdiction to adjudicate constitutional issues. Matter of Valdovinos, 18 I. & N. Dec. 343, 345 (BIA 1982). In this case, three constitutional issues were raised in Mr. Parlak's appeal to the BIA for purposes of preserving them for this appeal. All three of

these questions pertain to the terrorism charges premised on the INA §237(a)(4)(B) deportation statute and the charge that Mr. Parlak was a persecutor of the Turkish people.

First, §237(a)(4)(B) cannot have *unlimited* retroactivity, even with express direction from Congress. The extent to which a law can reach back to affect one's liability for past conduct is subject to constitutional limits. INS v. St. Cyr, 533 U.S. 289, 316 (2001). Despite this limitation, the BIA ruled that §237(a)(4)(B) can apply retroactively to pre-entry, pre-IMMACT[5] conduct that occurred in the 1980s—years before IMMACT. The Board so held, despite the fact that IMMACT was the first public law to codify terrorist activity as a ground for deportation. This raises a significant constitutional question that compels a limited interpretation of the retroactivity of the statute.[6] "'[I]t is a cardinal

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[5] See Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990) ("IMMACT").

[6] Mr. Parlak acknowledges that this Court has allowed extensive retroactivity to apply to aggravated felons and excludable/inadmissible aliens. However, the rationales for doing so are inapplicable here. For aggravated felons, deportation has a rational basis because expelling criminal aliens—no matter when their crimes were committed *here*—is a legitimate goal. Hamama v. INS, 78 F.3d 233, 236 (6th Cir. 1996). For excludable/inadmissible aliens, unlimited retroactivity is permissible because those aliens are not "in the United States" and thus do not have due process rights. But these reasons are inapplicable to immigrants subject to deportation for pre-entry acts. These immigrants have due process rights, and at some retrospective point the remoteness of their pre-entry activities makes deportation on the basis of that conduct irrational.

principle' of statutory interpretation that when a statute raises 'a serious doubt' as to its constitutionality, [a court must] first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Zadvydas v. Davis, 533 U.S. 678, 689 (2001) (quoting Crowell v. Benson, 285 U.S. 22, 62 (1932)). An interpretation of a federal statute that engenders constitutional questions must be avoided if a reasonable alternative interpretation poses no constitutional question. Gomez v. U.S., 490 U.S. 858, 864 (1989). The fundamental question in this case is whether INA §237(a)(4)(B) can have infinite retroactivity. This question has important and wide-ranging implications, given the applicability of "terrorist activity" to World War 2 resistance fighters, Irgun, members of the African National Congress, and Kurdish freedom fighters who fought Saddam Hussein. See, generally, 8 U.S.C. §1182(a)(3)(B).

Second, delegating §237(a)(4)(B) deportation decisions to the Attorney General's discretion when pre-entry, pre-IMMACT application encompasses *all* immigrants with militant pasts (friend and foe alike) is an impermissible delegation of Congressional power. Non-delegation doctrine requires Congress to "lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform." Whitman v. Am. Trucking Ass'ns, Inc., 531 U.S. 457, 472 (2001) (internal citation omitted). However, the INA does not provide the Attorney General with "intelligible

principles" to determine, for example, why a Turkish Kurd should be deported but an Iraqi Kurd should not, when both have engaged in similar pre-entry conduct. This is an unlawful delegation to the Attorney General of Congress's "plenary power" to expel aliens. Carlson v. Landon, 342 U.S. 524, 531 (1952).

Third, although the Supreme Court has consistently held (with reservation) that deportation statutes are civil/regulatory and thus not subject to Ex Post Facto considerations, the terrorism deportation statute at issue here raises novel questions. Specifically, the unique requirements of deportation for terrorist activity—which allow the worst possible stigmatization of an immigrant without the procedural protections of a criminal trial—implicate the seven factor punitive-vs-regulatory test outlined in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963). These factors are: (1) affirmative disability or restraint; (2) historical regard as punishment; (3) requirement of scienter; (4) promoting the traditional aims of punishment, retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) an assignable, alternative purpose to which it may rationally be connected; and (7) excessiveness to the alternative purpose assigned. Mendoza-Martinez, 372 U.S. at 168. This is not a case in which an immigrant is deportable for earlier crimes committed in the United States when those crimes were later classified as deportable conduct. Mr. Parlak is not the beneficiary of a criminal trial in the United States for these charges, and the government's

stigmatization of him as a terrorist has never met the burden of "beyond a reasonable doubt." Under the Mendoza-Martinez standard, this specific immigration charge implicates the Ex Post Facto clause.

Neither the BIA nor the federal courts have addressed these specific issues in the context of immigration and terrorism. This warrants judicial review and establishes the required likelihood of success on the merits.

B. The BIA's affirmance contained a number of reversible errors.

The BIA's ruling on each of the charges it affirmed against Mr. Parlak was seriously flawed. At the outset, however, one critical error pertaining to all the charges warrants discussion: the Board's failure to vacate or remand the charges on the basis of the Immigration Judge's reliance on evidence procured from torture.

Mr. Parlak presented compelling proof that the government's primary evidence against him—statements in the Turkish security court's opinions—was the result of torture. The Immigration Judge made no specific adverse credibility determination of Mr. Parlak's claim of torture, and relied heavily upon this tainted evidence in ruling against him on all charges. The Immigration Judge's failure to make a specific finding as to the credibility of Mr. Parlak's claims of torture is itself reversible error. Singh v. Ashcroft, 398 F.3d 396, 405 (6th Cir. 2005). Moreover, under federal harmless error doctrine, reversal is warranted when a trial error "had a substantial or injurious effect or influence" in determining the trial

court's verdict. Brecht v. Abrahamson, 507 U.S. 619, 637 (1993). In its opinion, the BIA states that "[w]e note at the outset that the Immigration Judge did not make any findings of fact with regard to whether the Turkish conviction documents contain statements induced by torture," and declined to provide *de novo* review. BIA at 5. However, the Immigration Judge's opinion is permeated by factual reliance upon these documents. See, e.g., IJ at 38 *et seq*. Rather than review this reliance for clear error, the BIA engaged in its own *de novo* review of the record, contravening 8 C.F.R. §1003.1(d)(3). At no time did the BIA consider the impact of the inadmissible Turkish security court documents on the Immigration Judge's findings of fact or credibility, and whether admission of those documents "had a substantial or injurious effect or influence" on that court's verdict.

In addition to this global error, the BIA committed, *inter alia*, the following reversible errors for each charge:

Terrorist activity

(1) The BIA erroneously disregarded the principle that an alien granted relief with INS knowledge of pre-entry conduct cannot later be deported for the same conduct. The BIA has squarely held in the case of §212(c) waivers that "when relief has been granted in accordance with the authorization of Congress, it would be clearly repugnant to say that the respondent remains

deportable because of the same conviction." Matter of G-A-, 7 I.&N. Dec. at 275-76. Though it does not appear that any federal court has examined this issue in the context of a grant of asylum, there is no reasonable basis for the BIA's failure to apply its precedent in this setting.

(2) The BIA clearly erred by concluding that the ERNK was a source of terrorism funding for the PKK in 1988 and before. The ERNK—the only organization for which Mr. Parlak solicited funds—has *never* appeared on the U.S. Treasury Department's list of "Specially Designated Nationals and Blocked Persons" ("SDN list") since that list was established in the early 1990s. The Board's statement that "the failure to add the ERNK to the current SDN today does not mean that the ERNK was not a source of funding for the PKK at one time" is clearly erroneous, as the ERNK has *never* appeared on the SDN list. BIA at 11.

Fraud or willful misrepresentation

(3) On his asylum application, Mr. Parlak disclosed that he had belonged to the ERNK, which had "close ties" to the PKK; that he had lived at a PKK camp in Lebanon; that he was involved in a firefight at the Syrian-Turkish border; and that he had been arrested, convicted and imprisoned in Turkey. The BIA erred by ruling that the omission of his conviction and ERNK membership on Mr. Parlak's green card application were material. According to the Supreme Court, "What must have a natural tendency to influence the official decision [i.e.,

what is material] is…the failure to state the truth, *not the failure to state what had been stated earlier*." Kungys v. U.S., 485 U.S. 759, 776 (1988) (emphasis supplied). Moreover, even if Mr. Parlak had repeated his answers from his asylum application two years earlier, these facts would not have made him inadmissible, and thus, these omissions cannot be material.

Persecutor of others

(4) The BIA clearly erred by concluding that Mr. Parlak transported weapons into Turkey for PKK use. BIA at 8. No evidence was ever presented that weapons to which Mr. Parlak led Turkish authorities were intended for PKK use or were for any purpose other than the Kurdish villagers' self-defense. Both the Immigration Judge and the BIA ignored compelling evidence that the conflict between the PKK and the "village guards" was located hundreds of miles to the east of the location where Mr. Parlak was captured (and where the Turkish authorities recovered the weapons). Additionally, the government presented no evidence of guerilla operations *ever* occurring in Gaziantep province—before or after Mr. Parlak's apprehension.

II. MR. PARLAK HAS DEMONSTRATED THE POSSIBILITY OF IRREPARABLE INJURY IF RETURNED TO TURKEY.

The United States granted Mr. Parlak asylum in 1992, concluding that he had a well-founded fear of future persecution if he returned to Turkey. A review of the State Department's 2003 human rights report on Turkey reveals that

persecution of Kurds continues almost unabated. See United States Department of State, 2003 Country Report on Human Rights Practices for Turkey, 1-5, 7. Although deporting Mr. Parlak to Turkey now would not moot his appeal, the potential harm (possible torture or even death) is substantial, if not irreparable.[7] This weighs in favor of granting the stay requested here. Bejjani, 271 F.3d at 688-89.

III. DHS WILL NOT SUFFER SUBSTANTIAL HARM IF THE STAY IS GRANTED.

Assuming the Department of Homeland Security ("DHS") opposes this stay, harm (though not necessarily substantial harm) ensues if the stay "caus[es] [DHS] to suspend execution of its deportation order, engage in another round of litigation, and incur the costs of further detention." See, e.g., Jenkins v. INS, 32 F.3d 11, 15 (2d Cir. 1994), overruled on other grounds, Aguirre v. INS, 79 F.3d 315 (2d Cir. 1996). In this case, the potential harm to DHS is limited to its suspension of the deportation order. As discussed supra, another round of litigation—this appeal—will occur regardless of whether DHS deports Mr. Parlak now. Moreover, pursuant to Judge Cohn's habeas order, Mr. Parlak is entitled to remain free on bond should this Court grant a stay. See 8 U.S.C. §241(a)(1)(B) ("[t]he removal period begins on the latest of the following:…[i]f the removal

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[7] Even the Board opined that "there is some evidence that the respondent may face a possibility of mistreatment in Turkey." BIA at 14.

order is judicially reviewed and if a court orders a stay of removal of the alien, the date of the court's order.").

The potential impact on DHS of a grant of a stay here certainly does not rise to the level of *substantial* harm. If this Court rejects Mr. Parlak's Petition for Review, then DHS is required to do nothing more than obtain travel documents—which, at the time this brief was filed, it has not done. This involves no additional burden to DHS, and does not begin to compare to the irreparable harm that Mr. Parlak would suffer if a stay pending appeal is not granted. "[T]he United States Government is in a better position to absorb the harm of one alien who is permitted to remain in the United States, than [Mr. Parlak] is to absorb the harm caused by his removal." Kahn v. Elwood, 232 F. Supp. 2d 344, 352 (M.D. Pa. 2002). The government's harm if a stay is granted is *de minimus*.

IV. GRANTING THE STAY IS IN THE PUBLIC INTEREST.

Staying Mr. Parlak's removal until he has been afforded the opportunity to receive appellate review serves the public interest for two reasons. First, if Mr. Parlak ultimately prevails, then the stay will have prevented his unnecessary deportation. However, if this Court dismisses his petition, then the stay will have merely delayed it. "[T]he public's interest in deporting certain aliens at the earliest opportunity must yield to the public's greater interest in taking enough time to ensure that the harsh consequences of deportation are not visited

upon the undeserving." Sandoval v. Reno, 1997 WL 839465 at *13 (E.D. Pa. 1997). Put another way, deporting Mr. Parlak on the sole basis of administrative proceedings would unsettle the public's confidence in DHS and the courts if, upon review by this Court, it turned out that the basis for his deportation was flawed.

Additionally, the important and novel questions raised by Mr. Parlak's case warrant the grant of a stay. By analogy, Mr. Parlak's mandatory detention by DHS, premised on applying the terrorism statutes to his alleged pre-entry conduct (despite his exemplary conduct in the United States), was held to be unconstitutional by a federal judge. Parlak, 374 F. Supp. 2d at 561-62. This was the first case in this Circuit that addressed whether mandatory detention could be lawfully applied to "model immigrants" for pre-entry, pre-1990 conduct. Such an adjudication served the public interest because it applied this Court's decision in Ly v. Hansen to allegations of pre-entry terrorism. Likewise, the permissible extent of the terrorism deportation statute's retroactive reach is of vital importance to immigrants who arrived here with pro-U.S., "freedom fighting" backgrounds (e.g., World War II resistance fighters, anti-Castro Cubans). It would not serve the public interest to deport Mr. Parlak before this question (and many others to be raised in his appeal) is adjudicated.

Finally, a stay is in the public interest because, as Judge Cohn opined, Mr. Parlak has lived "an exemplary life" in the United States and "has strong

family and community ties and support" [including an eight year-old American citizen daughter]. Parlak, 374 F. Supp. 2d at 561. Such an immigrant should not be summarily deported without first receiving judicial review.

CONCLUSION

Mr. Parlak has satisfied all four elements of the test used by courts in this Circuit to determine whether to issue a stay. Mr. Parlak has established the required likelihood of success on the merits of his appeal. Mr. Parlak has established the very real possibility that he would suffer irreparable harm and that no substantial harm would befall the government should the order be stayed. Issuing the stay of removal is in the public interest. Accordingly, Petitioner Ibrahim Parlak respectfully requests that this Court grant his motion to stay his removal pending resolution of the Petition for Review.

Dated: November 25, 2005

Respectfully submitted,

LATHAM & WATKINS
David Foster
John J. Marhoefer

By________________________________