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DECISION FOR PARLAK, IBRAHIM A# 071-803-930.

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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DETROIT, MICHIGAN**

File #: 071-803-930

Date: July 17, 2018

In the Matter of)

Ibrahim PARLAK,)

IN REMOVAL PROCEEDINGS

Respondent.)

CHARGES: INA §§ 212(a)(6)(C)(i), 237(a)(1)(A), 237(a)(2)(A)(iii), 237(a)(4)(B)

APPLICATION: 8 C.F.R. § 1208.17--Deferral of Removal under the United Nations Convention Against Torture

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DECISION OF THE IMMIGRATION JUDGE

I. BACKGROUND

Respondent, Ibrahim Parlak, is a 56-year-old native and citizen of Turkey who entered the United States in 1991 on a visitor visa. The United States subsequently granted Parlak's application for asylum, in 1992, and then adjustment of status in 1994. The government denied his application to naturalize in 1998, and initiated removal proceedings against him. In 2005, an immigration judge sustained the charges of removability, and denied his request for asylum, withholding of removal, and protection under the Convention Against Torture. On administrative appeal, the Board of Immigration Appeals affirmed the Judge's determinations, and the Sixth Circuit Court of Appeals, in a published opinion with an impassioned dissent, denied his 2009 petition for review. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009).

In 2014, Parlak filed a motion to reopen, which the Board granted on August 11, 2016. The Board determined that Parlak had demonstrated "materially changed country conditions or

circumstances relating to his claim of government torture on return to Turkey,” and remanded the case to the Immigration Court to consider Parlak’s renewed claim for protection under the Convention Against Torture. This court conducted a hearing on the merits of Parlak’s request for deferral of removal in Detroit, Michigan, on March 19, 2018.

The scope of the instant case is limited—Parlak has exhausted all appeals of an immigration judge’s denial of his application for asylum, and withholding of removal under the Convention Against Torture, and those decisions are not on review now. *See Parlak*, 578 F.3d 457. In the instant case, following reopening by the Board of Immigration Appeals, the Court considers whether Parlak is eligible for deferral of removal under the Convention Against Torture, under the circumstances that have arisen since the date of his final order of removal. Deferral of removal is the only form of protection from removal available to Parlak, because the Sixth Circuit Court of Appeals upheld the agency’s determination that he “assisted in the persecution of others,” a basis for mandatory denial of withholding of removal under the Convention. *Parlak*, 578 F.3d at 470; 8 C.F.R. § 1208.16(d)(2) (referencing INA § 241(b)(3)(B)(i)).

For the reasons set forth herein, the court GRANTS Parlak’s request for deferral of removal under the Convention Against Torture.

II. FACTS AND RELEVANT EVIDENCE

Respondent testified that he is of Kurdish ethnicity, from the southern part of Turkey. He said he left Turkey for Germany in the 1980s, when he was 18 or 19 years old, because things were difficult for Kurds in Turkey. At the time, he was working for the National Liberation Front of Kurdistan (ERNK). Three months after he left Turkey, in September 1980, a military coup took over, and, he said, many of his friends and family were arrested, and the Turkish consulate refused to renew his passport.

Respondent traveled among Kurdish communities in Europe for about seven years, and, wanting to reconnect with his family, and further the “Kurdish cause back home,” he made plans to reenter Turkey. He explained that, in preparation for his return to Turkey without a passport, he went to Syria and Lebanon to “get himself ready for mountain conditions, and to make arrangements to pass through the border.” . . .

According to Respondent, his first attempt to enter Turkey in 1988 was unsuccessful. He said they were using a guide to traverse the border, but they heard gunshots, so they returned to the Syrian side. He said he later learned that Turkish soldiers were killed in the incident, but he was not implicated at that time. He entered Turkey successfully on his second attempt, and he said he remained in the countryside near his home city for about six months, “moving all the time” to avoid detection. He testified that he traveled from village to village in Turkey to educate people and help those released from jail.

Respondent said he was captured in a joint police-military operation, which he later learned had been following him. He said he asked a friend to go into the city to connect with a friend from Germany, and the police captured the friend and tortured him until he disclosed

Respondent's whereabouts. Respondent said the police surrounded him, and he burned some paperwork before he surrendered.

The police transported Respondent to their headquarters, where they hung him from the ceiling with his hands over his head and beat him. He said his time was divided between an interrogation room, where the police "tried to get information from him," and a four foot square cell which was "always wet" with blood and human waste. Respondent testified that his face and eyes were covered with a bag most of the time, and that he was also beaten with a plastic police baton, a wooden stick, fists, and feet. He said the police hit him "on every part of his body" and he lost consciousness "nearly every day." Because the police were not permitted to hold people more than fourteen days at a time, he said, they constantly moved him around to different police stations. He said the officers asked him questions, he refused to provide information, and they beat him. He said the officers would get drunk in the evening, and come back "nearly every night" and beat him. He said they electro-shocked his genitals two or three times, and sodomized him with a stick. He said his captors were the Turkish secret police, and he recognized their voices.

Respondent said that when he was transferred to a third police station, he saw the man who had disclosed his location initially, and he also saw the remnants of the book he attempted to burn before turning himself into police. There, he said, the officers asked more specific questions, and he offered to show the police where he hid guns some villagers had asked him to care for. After this, he said, the beatings were "lighter," but the interrogations continued.

At a fourth police station, the police tied him to a radiator and beat him throughout the night. The next morning, he said, he saw officers walking his 70-year-old father up and down the corridor, and he agreed to cooperate with them. He took the officers to the area where guns were stored and they recovered AK-47s and "rockets." After that, he said, the officers were "more friendly," and they let his brother, a lawyer, in to see him. He said he was still fed "hardly anything," and when the officers did give him food, they wiped human refuse and blood on it.

Respondent said that the police ultimately took him to the hospital, where the doctors examined him with his clothes on. The doctor gave a report to the police, who took him to court where he was charged with being a separatist, and for attempting to enter Turkey. He was arrested and taken to jail, where he remained for about a year, during which time he was beaten about once a month.

Respondent testified that he learned that the police sent the guns to three separate labs to try to connect him to the deaths of the soldiers during the incident when he first tried to enter Turkey in 1988. He said they were ultimately unable to make the connection, and his family bribed the government to get him released from detention. He said the court sentenced him to four to five years, then reduced his sentence to time served, and then released him in 1990. Respondents said he remained in Turkey for a "short time," and "stayed out of politics." He said the ENRK had been dissolved, and he did not agree with the "violent tactics" other groups were using. According to Respondent, as a condition of his release, he was required to remain in the country, and he was not able to get a passport because he had been a political prisoner for more

than six months. He said he was able to secure a passport "in someone else's name," along with a United States visa.

Respondent travelled to the United States in April 1991 on the false passport, and he opened a restaurant in 1994, which he still operates today. He said the government granted his asylum application, and adjusted his status to that of a lawful permanent resident, but he started having problems when he applied for naturalization. He said the United States government denied his application because of his involvement in the "Kurdish movement." He explained that he has been under an order of supervision with ICE since 2005, and that he has checked in with authorities in Detroit—a more than three-hour drive from his home—every two weeks since then, and he has lived at the same residence for the past eighteen years. He testified that he has been able to remain in the United States based on private bills sponsored by Senator Levin. He said the most recent protection expired in 2015, when Levin retired. He also testified that he has applied for a Turkish passport every year since 2005, as directed by the United States government, but the Turkish government has told him they will not issue him a passport because they do not consider him a citizen. Respondent said he believes that the Department of Homeland Security arranged for Turkey to issue a travel document so he could be deported, but he did not have specific knowledge about a travel document.

On cross-examination, Respondent testified that he is aware that there was an unsuccessful coup, two years ago, in Turkey against the current leader of Turkey, Recep Erdoğan, and that many people were taken into custody and that there were human rights violations. He also responded affirmatively when government counsel asked him whether he is aware that since the coup, the United Nations has investigated torture in Turkey. Respondent testified that he is aware, from media reports, that the situation in Turkey is "still bad." Government counsel asked Respondent whether he is aware that former members of the Kurdistan Working Party (PKK) may be submitted to prosecution, not persecution, in Turkey, based on a report it submitted, and Respondent said he has no reason to believe the situation would be any different for him in Turkey than it was when he left.

Respondent also testified that he has spoken out publicly against Erdoğan, in court, at his restaurant, and at events to further "the Kurdish cause." He said he also posts on Facebook against Erdoğan, but he admitted that he had not presented copies of his posts. He testified that he believes he is being followed since he spoke out against Erdoğan, and he reiterated that he has regularly applied for travel documents to Turkey but his requests have been denied.

Government counsel asked Respondent whether he is aware that the reports state that people have been arrested in Turkey, related to their involvement with the PKK, but released, and he said he does not believe that they are being released. Respondent admitted that he does not have evidence that people who were historically involved with the PKK in Turkey are being tortured today in Turkey, because he has been away for so long that he does not have any specific information. He said he has not been involved with PKK since 1988, but he believes that anyone who criticizes Erdoğan is subject to harm in Turkey.

Respondent testified that Turkish government officials threatened the venue where a benefit concert was to be held on his behalf by Jeff Tweedy, a popular musician. He said the

Turkish consulate was trying to get Tweedy's attention to stop the event, and the manager of the venue called him the night of the event, reporting that someone had called and made a bomb threat. He said he called his attorney, who contacted the FBI. Respondent said he did not know who made the threat.

Respondent testified that he is aware that the record contains a detailed statement of his confession in the documents describing his criminal conviction in Turkey. He agreed that he made multiple statements in the course of making the confession, under the threat of torture.

Respondent testified that he is aware that the prior immigration judge determined that he had submitted a fraudulent document and made multiple false statements in his immigration pleadings. However, Respondent testified that there were incorrect translations in his early documents, because he did not have adequate money or resources to properly present his case. He denied hiding anything about his past, and testified that he had been forthcoming, offering all documentation he had.

On redirect, Respondent testified that he talks with his family in Turkey, but he does not ask them about their safety because he is concerned that someone is listening to their calls, and he does not want to jeopardize their safety.

Respondent testified that he was aware, through his contact with a political figure, that the Turkish government had issued a travel document for him in 2016. He also testified that he filed his motion to reopen his case with the Board of Immigration Appeals before the date that the department now says the Turkish government withdrew an extradition request. He also testified that multiple media outlets interviewed him about his case and he voiced his objections to the Erdoğan regime.¹

III. PARLAK HAS DEMONSTRATED THAT HE WILL MORE LIKELY THAN NOT BE TORTURED BY THE TURKISH GOVERNMENT IF HE IS REMOVED TO TURKEY

As a threshold matter, the Court finds that Respondent testified credibly and candidly, with detail and appropriate demeanor about his past experiences in Turkey and in the United States, and about his fear of removal to Turkey. 8 U.S.C. § 1158(b)(1)(B)(iii). Therefore, the court finds that Respondent has demonstrated, through credible testimony and compelling documentary evidence, that he is eligible for deferral of removal under the Convention Against Torture, and the Court grants that application. In so finding, the Court has reviewed the entire

¹ On closing, government counsel introduced a report, discussed more fully herein, to impeach Respondent's expert witness, Dr. David Phillips. The Court has not considered Dr. Phillips' report in issuing this decision.

record, including all documentary submissions, whether or not discussed explicitly, herein.² *Matter of G-K-*, 26 I&N Dec. 88, 98 (BIA 2013).

In considering whether an applicant has demonstrated eligibility for deferral of removal under the Convention Against Torture, the Court weighs the testimony and evidence in light of the following factors to determine “whether it is more likely than not” that the applicant would be subject to torture in the country of removal, by or with the acquiescence of that country’s government:

- (1) evidence of past torture inflicted upon the applicant;
- (2) evidence that the applicant could relocate to a part of the country where he or she 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.

INA §§ 1208.16(c)(3); 1208.17; 1208.18(a)(1); *see also Ventura-Reyes v. Lynch*, 797 F.3d 348, 362 (6th Cir. 2015). “Torture” is defined as “an extreme form of cruel and unusual treatment and does not include lesser forms of cruel, inhuman, or degrading treatment or punishment that do not amount to torture.” 8 C.F.R. § 1208.18(a).

A. Parlak Demonstrated That He Was Tortured By The Turkish Government

Respondent contends, and the Government does not meaningfully dispute, that he was tortured in Turkey. Respondent testified that he was captured by government and military officers in Turkey, physically harmed and detained for months. Specifically, Parlak testified that the officers interrogated him; soaked him with human waste; beat him with a baton, a stick, their fists, and their feet; tied him to a radiator; and forcibly sodomized him with a stick. He also said his captors electro-shocked his genitals and deprived him of food, offering him only an occasional meal with “human refuse and blood wiped on it.” The regulations implementing the Convention Against Torture instruct the Court, with no ambiguity, to consider “[e]vidence of past torture inflicted upon the applicant” when evaluating a claim for deferral of removal. INA §§ 1208.16(c)(3); 1208.17(a). Having done so, the Court finds that the infliction of the extraordinary physical and mental harm Parlak described amounts to “torture” as contemplated by the regulations implementing the Convention Against Torture, and as analyzed under the law

² Exhibits submitted as part of the instant case are numbered “R1-R10” to indicate that they are were submitted on reopening. The court has, however, considered the entire record, including documents submitted, numbered, and entered into the record in the earlier removal proceedings. Furthermore, based on the government’s objections, the Court has not considered the following documents: the letter from Dr. Phillips, newspaper articles submitted by Respondent to the extent that they discuss the “Gülenist” movement; letters from Respondent and his attorneys to members of Congress, and their responses. Ex. R7 at 51-73, 148-149, 155-161, 362-364.

of the Sixth Circuit court of Appeals.³ *See, e.g., Al-Safer v. I.N.S.*, 268 F.3d 1143, 1147 (9th Cir. 2001) (detention, cigarette burns sustained beatings. while detained for over one month, amounts to “torture”).

B. Parlak Has Demonstrated That He Will More Likely Than Not Be Tortured If Removed To Turkey

1. The Evidence Shows That The Turkish Government Has Closely Tracked Parlak’s Whereabouts And Continues To Be Interested In Him As A “Terrorist” And A “Convicted Murderer”

The Court finds that Parlak has demonstrated that the Turkish government is still interested in him and has closely tracked his whereabouts, and that he will more likely than not be tortured if he is removed to that country, as he was in the past. To that end, the Court has considered Respondent’s “specific evidence” that he faces a “particularized threat of torture in Turkey.” *Castellano-Chacon v. INS*, 341 F.3d 533, 552 (6th Cir. 2003) (“If Castellano had presented specific evidence in support of [his claim for protection under the torture convention], he might have made his case”); *Almuhtaseb v. Gonzales*, 453 F.3d 743, 751 (6th Cir. 2006) (an applicant for deferral of removal “must establish a particularized threat of torture”).

The record contains substantial evidence that the Turkish government is closely tracking Parlak’s immigration proceedings. For example, Respondent submitted a copy of a letter from the Consul General of the Republic of Turkey, on official letterhead, to United States Congressman Fred Upton “regarding the pending deportation and extradition of [] Parlak,” advising that the Sixth Circuit Court of Appeals “held . . . that deportation is warranted,” and urging “cooperation and solidarity for the common good.” Ex. R7 at 150-51.

Respondent also submitted a copy of a letter from the Turkish Ambassador, Serdar Kilic, to Congressman Upton, sent less than a month after the letter from the Consul General, expressing “deep regret and disappointment” that Upton introduced a bill “which calls for granting a permanent resident status to a foreigner convicted for his role in a double-murder terrorist attack”; “kindly invit[ing]” Congressman Upton to consider the feelings of “the Turkish people”; and encouraging him to “reconsider [his] support for a convicted terrorist.” *Id.* at 153-54.

The record also contains copies of e-mail communications between Ahmet Ferda Karadeniz, “the Consul at the Consulate General of the Republic of Turkey,” and a representative of Jeff Tweedy’s management company, in which Karadeniz states that she has learned that Tweedy planned to host a benefit concert for Parlak, and suggests that Tweedy be informed that “Parlak is not an immigrant facing deportation as reflected in the media,” but rather “a convicted murderer to be extradited to Turkey,” who “was a member of a terrorist

³ In so finding, the Court acknowledges that an “explicit finding as to whether an applicant has previously been tortured is not *required* so long as the claim is *considered*.” Government’s written closing argument at 1, citing *Parlak v. Holder*, 578 F.3d 457, 471 (6th Cir. 2009) (emphasis in government’s filing).

organization and convicted by a court for killing two men.” *Id.* at 162-63. The email chain reflects that someone from the consulate called Tweedy’s manager and told her that the Consul is a “huge fan of Jeff [Tweedy].” The staff member reported that the Consul’s spokesperson wanted to speak personally with Tweedy, and that he “kept insisting and asking what it would take to speak with [Tweedy].” *Id.*

Finally, Respondent submitted a copy of an email correspondence between Umut Acar, The Consul General of The Republic of Turkey in Chicago, and Phil Rogers, a member of the NBC press in Chicago, regarding a statement Congressman Upton made in support of Parlak. Acar writes that Upton’s statement was “troubling”; attempts to dispel any reports that tensions exist in Turkey between Turks and Kurds and between people of different “ethnic backgrounds,” and suggests that “[t]he reason [Congressman] Upton” can support Parlak “so enthusiastically is the fact that Parlak did not harm Mr. Upton’s [sic] loved ones.” *Id.* at 164-65. Acar attached a photograph of a baby and a toddler to the email, whom he says were recently killed by a PKK attack in Turkey, suggesting that the photos may help Upton “remember showing solidarity with a friendly and long-time NATO ally nation in difficult times as that nation has been showing solidarity with the United States for decades.” *Id.* at 166-67.

The Court finds that these letters and emails constitute “specific” and “particularized evidence” that the government of Turkey was interested in Parlak’s “deportation and extradition” as recently as August 2016, and that it considers him a terrorist associated with the PKK, and a convicted murderer. *See, e.g.*, Ex. R7 at 151. Taken together with Parlak’s past torture by the Turkish government, and the record evidence that torture continues in Turkey, specifically against those associated with the PKK, discussed more fully, *infra*, the Court finds that Parlak has demonstrated that it is more likely than not that he will be tortured in Turkey.

The Court has considered the government’s submission of an undated statement from Department of Homeland Security Assistant Field Office Director Charles T. Shanks, explaining that Turkey issued an official travel document for Parlak in early 2016; that the Consulate General of Turkey, on March 22, 2016 “had decided to withdraw their extradition request due to the expiration of time for enforcement of a criminal sentence against Parlak”; that “ERO Detroit has received no communication from the government of Turkey indicating a willingness to issue a travel document or otherwise facilitate Parlak’s return to Turkey”; and that Officer Shanks was “unaware of the existence of a ‘secret deal’ for Parlak’s return to Turkey.” Ex. R9. The Court has also considered the Department’s argument that “any interest Turkey once had in having [] Respondent return to Turkey to serve a criminal sentence is no longer extant,” and that Turkey’s withdrawal of a travel document to facilitate Parlak’s deportation to Turkey indicates that government is no longer interested in Parlak. Government’s written closing statement at 9. The Court notes, however, that the government has presented no evidence of the Turkish government’s inclinations or actions in this regard. As noted above, the government has submitted a single, undated statement, presented on plain paper rather than government letterhead, reporting that a travel document was offered, then retracted, and that an officer in Detroit “has no knowledge” of attempts to secure Parlak’s removal, without presenting the officer for cross-examination. Aside from this document, which will be accorded minimal

weight, the record is devoid of evidence showing that the government of Turkey no longer has a “nefarious” interest in Parlak.⁴ *Id.*

In its closing argument, the government also makes the salient point that the passage of time may mitigate the risk of torture to an individual facing deportation. *Id.* at 8 (“the passage of thirty years and a regime change in Turkey is an additional factor that reduces any minimal risk of torture relating to [Respondent’s] first incarceration years ago”). And, courts have agreed. For example, the Seventh Circuit Court of Appeals recently noted that “the fact that [a Petitioner] was beaten by police roughly twenty years ago does not show that he is likely to be tortured by officials today.” *Ramos-Braga v. Sessions*, 890 F.3d 686, 692 (7th Cir. 2018). Respondent’s situation, however, is remarkable in two ways.

First, the record demonstrates that the Turkish government tortured Parlak in the past *and* has maintained a persistent interest in his deportation and extradition, even attempting to bias government officials, the media, and a popular musician against him. Ex. R7 at 150-57. More commonly, Respondents who have been tortured in the past fail to meet their burden of proof for CAT protection because their fear of future torture by or with the acquiescence of a government is found to be “speculative.” *See, e.g., Cruz-Samayoa v. Holder*, 607 F.3d 1145, 1156 (6th Cir. 2010) (evidence “too generalized and too speculative to form the basis” of a claim under the Convention Against Torture). Here, Respondent has presented compelling evidence that the Turkish government tortured him in the past, that it continues to torture PKK affiliates, and that it remains interested in Parlak because he is “a PKK terrorist.” Ex. R7 at 151.

Second, while the leadership regime in Turkey may have nominally changed since it tortured Parlak in the late 1980s, the evidence shows that government’s desire to stymie the activities of the PKK remains robust. The 2018 CIA World Factbook report—submitted by the government—reports that the PKK separatist insurgency “has long dominated the attention of Turkish security forces.” Ex. R8 at 76. The most recent evidence describing the situation in Turkey—also submitted by the government—suggests that the “torture and other forms of ill-treatment of both male and female individuals suspected of being members or sympathizers of the PKK and other groups affiliated with the Kurdish insurgency” continues today. Ex. R10 at 7 (relaying “testimonies of torture” made by individuals to the United Nations Special Rapporteur). It is undisputed that Parlak was affiliated with the PKK (or the ERNK, a PKK affiliate) before he left Turkey in the late 1980s, and that the Turkish government continues to see him as “a PKK member.” *See* Respondent’s Pre-Hearing Statement at 1; Ex. R7 at 151.

At bottom, short of an explicit statement from the Turkish government that it plans to torture Parlak—evidence that would incriminate that government under a panoply of international laws—it is hard to imagine what more a reviewing body could require to find the requisite likelihood that Parlak faces torture in Turkey.

⁴ The government also argues that “Turkey no longer seeks [] [R]espondent because the time for enforcing the criminal sentence against him has expired.” Government written closing statement at 9. The Court notes that the government has not presented any legal citation from Turkish law, or documentation regarding Parlak’s conviction, to support this contention.

2. Country Conditions Reports, Including the 2016 United States Department of State Report on Human Rights in Turkey, Support Parlak's Claim That He Will Be Tortured In Turkey

Turning to the documentary evidence of country conditions, the Court finds ample “evidence of gross, flagrant or mass violations of human rights” in Turkey, specifically in relation to individuals associated with the PKK. INA §§ 1208.16(c)(3); 1208.18(a)(1). The 2016 United States Department of State Report on Human Rights, submitted by both parties, identifies “[i]nconsistent access to due process,” specifically “for those accused of ties to terrorist groups” as one of “the most significant human rights problems during the year.” Ex. R8 at 1. The report states that “human rights groups documented several suspicious deaths of detainees in official custody” following the 2016 coup attempt, and that “the HRA reported receiving hundreds of requests for assistance in connection with allegations of torture and inhuman treatment both in detention centers and outside police stations during the year.” *Id.* at 4. To that end, the report states that “Amnesty International [] alleged some detainees in Ankara and Istanbul were tortured and [they] reported widespread use of stress positions, denial of food and water, detention in unsanitary conditions, in addition to beatings and rapes,” and that the United Nations special rapporteur on torture reported that “the government’s changes to due process implemented in response to the July [2016] coup attempt created an environment conducive to torture,” and that he interviewed “many inmates who reported experiencing torture . . . in connection with alleged PKK support in the Southeast.” *Id.* at 5. The report states that Turkish authorities “at times investigated credible allegations of inhuman conditions but generally did not document the results . . . in a publicly accessible manner or take action to hold perpetrators accountable,” and that “the law provides for an independent judiciary, but the judiciary remained subject to influence.” *Id.* at 5, 8, 14. The Court finds that this information contained in the State Department Reports, which “are generally the best source of information on conditions in foreign nations” substantially support Parlak’s claim that he will more likely than not be tortured in Turkey. *Mullai v. Ashcroft*, 385 F.3d 635, 639 (6th Cir. 2004).

Other reports in the record similarly support Parlak’s claim. The Amnesty International 2017/2018 Annual Report on Turkey states that “[a]n ongoing state of emergency set a backdrop for violations of human rights,” and that instances of torture continue to be reported, but in lower numbers than in the weeks following the coup attempt of July 2016.” Ex. R7 at 243. That report also states that “[a]ny effective investigation of human rights violations by state officials was prevented by pervasive impunity.” *Id.* Other articles and commissioned reports detail torture of individuals associated with the PKK in Turkey. For example, an October 7, 2016 report from the Commissioner for Human Rights of the Council of Europe, which followed up the commissioner’s September 2016 visit to Turkey, reports that “among the most immediate human rights concerns are consistent reports of allegations of torture and ill-treatment.” *Id.* at 296.

The government has submitted three reports from the United Kingdom Home Office, intended to “provide country of origin information and guidance. . . on handling particular types of protection and human rights claims,” arguing that the incidence of torture has decreased, or even ceased in the months following the July 2016 coup. Government written closing argument at 10 (citing Ex. R8 at 187-136). The first report is dated February 2016, which pre-dates the July 15, 2016 coup attempt that was, by nearly all accounts in the record, a major turning point in

recent Turkish history, and which, according to the evidence submitted from both parties, led to an immediate uptick in the instances of torture of suspected PKK members in Turkey. *See, e.g.*, R8 at 112. The report dated August 1, 2017 states that the “increase in cases of torture and other ill-treatment reported in police detention, from curfew areas in southeast Turkey . . . [which] was widespread during the days and weeks immediately following the failed coup attempt . . . seemed to have ceased during this initial phase.” *Id.* That report, however, also advises “each case must be considered on its individual facts” to assess the risk of harm to an applicant for protection. *Id.* at 113. As the government points out, the third report states that “a significant proportion of Kurdish people have integrated fully into Turkish society,” that “the discrimination faced by Kurds does not in general amount to them being subject to action on the part of either the populace or the authorities which would amount to persecution,” and that “Kurds today are active in all spheres of social and political life.” *Id.* 137-157. While this information is relevant to Parlak insofar as he is Kurdish, it fails to contemplate the particularized harm Parlak faces based on his past torture in Turkey, and his association with the PKK.

Furthermore, another report, also submitted by the government, and written by an independent human rights expert, provides the most recent information from Turkey and suggests that incidents of torture in Turkey may be dramatically underreported. The government submitted the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey to impeach the Respondent’s expert, Dr. David Phillips, and the Court has not considered Dr. Phillips’ written statement. Ex. R9; *see n.1, supra*. The government’s submission, however, substantively supports Parlak’s claim.

For example, in a passage not highlighted by the government, the report states that

despite persistent allegations of widespread torture and other forms of ill-treatment, made in relation both to the immediate aftermath of the failed coup of 15 July 2016 and to the escalating violence in the south-east of the country, formal investigations and prosecutions in respect to such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment.

Ex. R10, Report of the Special Rapporteur, at 3. In another passage not highlighted by the government, the report states “throughout his visit, the Special Rapporteur received consistent

allegations pointing to a near-complete absence of complaints being submitted, transmitted, or investigated by officials.” *Id.* at. 13. The report continues,

the Special Rapporteur was informed that most victims of torture or other forms of ill-treatment did not file complaints with the authorities for fear of retaliation against them or their families, and due to deep distrust in the independence of the prosecution and the judiciary and—consequently—in their willingness or ability to adequately investigate and adjudicate claims.

Id. Finally, “many of those who had filed formal complaints reported that no follow-up had been undertaken by the prosecution and the judiciary.” *Id.* In a different section, the Special Rapporteur observes that

In light of the great number of allegations of torture and ill-treatment . . . failure to investigate and prosecute a significant number of State officials for torture or ill-treatment strongly indicates insufficient determination on the part of the responsible authorities to actually live up to the Government’s official policy of zero tolerance on (sic) torture.

Id. at 14. The Court finds that these relevant reports, submitted by the government, which indicate that the instances of torture may be dramatically underreported, significantly undermine the government’s reliance on statements in the UK Home Office Reports and elsewhere that torture has significantly decreased, or even ceased, in the weeks and months following the July 2016 coup.

The Court acknowledges that the Report of the Special Rapporteur is based on his visit to Turkey in November 2016-2017, and that the situation in Turkey may have evolved since then. The Court, however, finds the report compelling, nonetheless for several reasons. First, the information contained within the report indicates that it was submitted to a meeting of the 37th Session of the Human Rights Council, February 26-March 23, 2018. The Report concludes with comprehensive recommendations, suggesting, *inter alia*, that the Turkish government “reinforce its zero-tolerance policy on torture, to take all legislative and administrative measures to implement that policy, and in particular to unequivocally make it clear to State officials at all levels that they are expected and, indeed, obliged to report and investigate all allegations of torture and to bring perpetrators to justice.” Had the situation changed dramatically for the better since the Special Rapporteur’s visit, it seems unlikely that the report would be submitted and contemplated in March 2018.

Moreover, the Special Rapporteur’s report, along with other documents in the record, report that the instances of torture increased immediately, and possibly as a result of, the government’s declaration of a “state of emergency” following a July 2016 coup attempt, and the resulting “series of decrees with the force of law,” which “extensively interfere[] with the human rights of persons suspected to be associated with the coup plotters or the Gulenist Movement.” Ex. R10 at 6. Other evidence of record indicates that the state of emergency was subsequently

extended several times, and was still in effect as recently as October 17, 2017. Ex. R7 at 359 (“Turkish Parliament extends state of emergency for an additional three months”). Therefore, the record evidence demonstrates that the conditions in Turkey, which the Special Rapporteur identified as perpetuating torture, persist.

In short, the Court has considered the government’s submissions and finds that the most compelling point is that incidents of *reported* torture spiked following the July 2016 coup and then declined thereafter, and even ceased in certain “curfew areas in Southeast Turkey.” The Respondent’s evidence, including the State Department Report, the Amnesty International report, and the Council of Europe report, however, provide a more geographically broad picture of the situation Parlak would face in Turkey, based on the specific circumstances of his case, and the accusations made against him by Turkish government officials. Furthermore, to the extent that the government’s evidence suggests that Kurds, generally, play a more substantial role in government in Turkey and are more integrated than in the past, those points are only tangentially relevant to the instant inquiry: whether the government of Turkey will more likely than not torture Parlak, whom, it tortured in the past, and whom the evidence shows, it believes to be a convicted criminal and a terrorist.

Finally, the Court has taken administrative notice of the 2017 State Department Report on Human Rights in Turkey, which was not available at the time of the individual hearing. 8 C.F.R. § 1003.1(d)(3)(iv) (authorizing “administrative notice of commonly known facts such as current events or the contents of official documents”). Therein, the State Department reports that the state of emergency was renewed once in 2016 and four additional times in 2017, and that “the most significant human rights issues included alleged torture of detainees in official custody.” 2017 State Department report at 1. That report also states that “[h]uman rights groups alleged that torture and mistreatment in police custody had increased,” and that the Human Rights Foundation of Turkey reported that “in the first 11 months of [2017], it received 570 complaints, including 328 allegations of torture and inhuman treatment by government authorities.” *Id.* at 4. The State Department Report also quotes a 2017 report by Human Rights Watch, which found that

The weakening of safeguards against abuse in detention under the state of emergency was accompanied by increased reports of torture and mistreatment in police detention, such as beating and stripping detainees, use of prolonged stress positions, and threats of rape as well as threats to lawyers and interference with medical examinations,

and that “[p]olice dismissed the torture claims as terrorist propaganda.” *Id.* at 5. The court finds that this most recent State Department report indicates that torture still happens in Turkey, and that Parlak, as a perceived member of the PKK and based on their alleged extradition request, is clearly within the groups at risk for torture.

On balance, the Court finds that the record contains substantial support for Parlak’s fear that he will be tortured in Turkey, by the Turkish government. Parlak’s proffered evidence demonstrates a concerted effort of the Turkish government to interfere with public support for

him in the United States. Furthermore, the documentary evidence demonstrates the Turkish government's explicit desire to have Parlak extradited or deported to Turkey. In light of the Turkish government's stated belief that Parlak is a terrorist and a criminal, the reports of torture still occurring in Turkey, and his past torture by the Turkish government, the Court finds that Parlak requires protection in the United States, and that he has demonstrated eligibility for deferral of removal under the Convention Against Torture. The Court, therefore, grants his application.

ORDER OF THE IMMIGRATION JUDGE

Respondent is hereby ORDERED that Respondent's application for deferral of removal under the Convention Against Torture is GRANTED.

NOTICE TO ALIEN GRANTED DEFERRAL OF REMOVAL (8 C.F.R. § 1208.17(b)): Your removal to Turkey shall be deferred until such time as the deferral is terminated. This grant of deferral of removal:

1. Does not confer upon you any lawful or permanent immigration status in the United States;
2. Will not necessarily result in you being released from the custody of the Government if you are subject to such custody;
3. Is effective only until terminated;
4. Is subject to review and termination based on a Government motion if the Immigration Judge determines that it is not likely that you would be tortured in the country to which removal has been deferred, or upon your request; and
5. Defers removal only to Mexico and does not preclude the Government from removing you to another country where it is not likely you would be tortured.



KATHRYN L. DEANGELIS
IMMIGRATION JUDGE