

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN ACADEMY OF RELIGION; AMERICAN
ASSOCIATION OF UNIVERSITY PROFESSORS;
PEN AMERICAN CENTER; TARIQ RAMADAN,

Plaintiffs,

v.

MICHAEL CHERTOFF, in his official capacity as
Secretary of the Department of Homeland Security;
CONDOLEEZZA RICE, in her official capacity as
Secretary of State,

Defendants.

**SECOND
DECLARATION OF
MICHAEL ROBERTS**

Case No. 06-588 (PAC)

SECOND DECLARATION OF MICHAEL ROBERTS

I, Michael Roberts, of New York, New York, do declare:

1. I am the Executive Director of PEN American Center (PEN). I have served as PEN's Executive Director since 1998.
2. I received my A.B. from Dartmouth College; and a J.D. in Law, as well as an A.M. and a Ph.D. in English and American Literature, from Harvard University.
3. From 1982 until 1998, I was employed at Harvard University, as a Special Assistant to Dean James Vorenberg (1982-83) of the Harvard Law School; a Teaching Assistant in English in the Faculty of Arts and Sciences (1984-88); and as an Attorney (1982-91) with the Office of General Counsel. Finally, I was the Secretary of the University and an Assistant to the President (1991-98) in the Offices of the President and Governing Boards at Harvard.
4. In my capacity as Executive Director of PEN, I am responsible for organizing, managing, and overseeing some 14 programs, a staff of 14 full- and five part-

time employees, and a budget of \$2.7M a year, for a non-profit organization of 3,300 writers, editors, and translators from across the U.S. Additional duties include fundraising and resource development, proposing all income and expenditures for the fiscal year, setting of budgets, overseeing expenses, hiring and supervising staff, setting salaries and terms of employment, managing all aspects of day-to-day operations, and working with a 40-member Board of Trustees and ten-member Executive Committee.

PEN American Center

5. PEN is an association of authors, editors, and translators based in New York, committed to the advancement of literature and the unimpeded flow of ideas and information throughout the world. PEN has approximately 3,300 members. Though primarily U.S. citizens, our membership also includes a significant number of non-citizen U.S. residents who are practicing their professions in the United States.

6. PEN American Center is the largest of the 141 centers of International PEN. International PEN is the world's oldest international literary organization. Founded in 1921, International PEN is a worldwide association of writers founded to promote friendship and intellectual cooperation among writers everywhere; to emphasize the role of literature in the development of mutual understanding and world culture; to fight for freedom of expression; and to act as a powerful voice on behalf of writers harassed, imprisoned and sometimes killed for their views. As the largest PEN center, PEN American Center plays a major role in advancing PEN's mission both in the United States and overseas. PEN American Center has been leading an organization-wide effort to build PEN's presence in Asia, Africa, Latin America, and the Middle East, to give writers outside Europe and North America a greater voice in International PEN, and to

bring literature and writers from outside the European-American sphere more fully into the international literary mainstream.

7. PEN's mission is to advance literature, promote freedom of expression and oppose censorship in the United States and abroad, and foster international literary fellowship. These core principles are expressed in the PEN Charter, which stresses the organization's commitment to international dialogue and critical debate and its opposition to censorship. The charter states that "Members of PEN should at all times use what influence they have in favor of good understanding and mutual respect between nations; they pledge themselves to do their utmost to dispel race, class, and national hatreds, and to champion the ideal of one humanity living in peace in one world"; that "PEN stands for the principle of unhampered transmission of thought within each nation and among all nations, and members pledge themselves to oppose any form of suppression of freedom of expression in their country or their community"; and that "[PEN] believes that the necessary advance of the world toward a more highly organized political and economic order renders free criticism of governments, administrations and institutions imperative." As Arthur Miller, a lifelong member of PEN American Center and a past President of International PEN, explained in a speech in 2001: "The idea [of PEN] was to try to unite the intellectuals of Europe in an organization, a fellowship is probably a better word, around the demand for unfettered communication and publishing, so that supernationalism might be stopped in its tracks by criticism from abroad."

8. PEN fulfills its mission and supports its members through conferences, readings, and public forums that bring international writers and scholars into contact with their American counterparts, and through advocacy campaigns designed to protect the right to free expression domestically and abroad.

9. The open exchange of ideas that PEN espouses has always been an essential ingredient of culturally and politically vital societies, and it is a core value of the United States. PEN believes that despite its historic commitment to fostering a vibrant marketplace of ideas and a fully open society, the United States has recently found itself culturally, intellectually, and politically isolated. This is true even in a globalized world because the dominance of English and electronic media helps ensure that American voices and ideas are projected around the world but inhibits foreign ideas and voices from reaching the U.S. PEN is particularly troubled that in the post-9/11 world, when the need for an open and peaceful exchange of information is particularly urgent, America's cultural and intellectual isolation may be increasing.

10. One symptom of this uneven exchange is the scarcity of international writing published here in the United States. In recent years, approximately 3% of the literature published in the United States last year has been translated from another language, in comparison with significantly higher percentages of translated books published in most other countries and languages. To address this problem PEN promotes international literature that might otherwise go unread in the United States by fostering the translation of world literature into English. The PEN Translation Fund supports the translation of book-length works of fiction, creative nonfiction, poetry, and drama that have not previously appeared in English or have appeared only in flawed translations, with a priority on underrepresented languages and authors and on previously untranslated works. In addition to providing financial support for translations, the PEN Translation Fund aims to promote some of the projects it selects upon their English-language publication by pairing the international writers with writers of established reputation in the United States who provide introductions to the work. PEN sometimes also

encourages booksellers to make special ongoing promotions for the books PEN has supported. In all, 10 works translated with support from the PEN Translation Fund in the last two years have been or will soon be published in the United States. Writers whose works are translated through the program have then sometimes been invited to participate in PEN programs; for example Iraqi poet Dunya Mikhail, whose poetry collection *The War Works Hard* was published in 2005 following a grant from the PEN Translation Fund, was a participant in the 2005 PEN World Voices Festival, which is further described below. This book was recognized by The New York Public Library as “one of the 25 Books to Remember of 2005.”

11. In furtherance of its mission to ensure the unimpeded flow of ideas among authors, scholars, editors and translators, PEN has historically opposed restrictive immigration laws that limit the ability of foreign scholars and writers to visit the United States. During the 1960s, 1970s, and 1980s, PEN was a vocal critic of the government’s practice of ideological exclusion. On May 3, 1989, Larry McMurtry, then a member of PEN’s Executive Board, testified before the House Judiciary Subcommittee on Courts, Intellectual Property, and Administrative Justice about the ideological exclusion provisions of the 1952 McCarran-Walter Act and their negative effect “on the free and open exchange of ideas among writers of differing national origins and ideological perspectives.” Mr. McMurtry testified that the McCarran-Walter Act and the practice of excluding writers and scholars because of their political views and ideas “abridge[ed] the rights of American writers to engage in face to face discussion and confrontation with foreign colleagues; it violate[d] the right of citizens to hear the speakers of their choice and make their own decisions about the ideas with which they are presented; [and] it

deter[ed] foreign writers and others who hold controversial views from visiting the United States.”

12. PEN advocated on behalf of individual writers and scholars who were excluded under the ideological exclusion provisions of the McCarran-Walter Act. For example, when PEN American Center hosted International PEN’s annual World Congress of writers in 1966 and again in 1986, it sought waivers so that a number of writers who had been invited to participate but were excludable under the McCarran-Walter Act could attend the event in New York. Since the organization’s founding, PEN Congresses have been both the official business meeting of the international body and the principal means by which PEN carries out its mission of promoting international understanding through face-to-face exchanges among writers. In 1966, PEN American Center petitioned for and received a waiver that allowed Chilean poet Pablo Neruda, who had repeatedly been excluded from visiting the United States under the McCarran-Walter Act, to attend the Congress. In 1986, PEN petitioned the U.S. State Department for and received assurances that no writers invited to attend the Congress would be excluded. As a result, 55 prominent writers from around the world were able to attend as Guests of Honor, including Mahmoud Darwish, Adonis, and other writers who had previously been excluded or refused to apply to travel to the United States because of the McCarran-Walter Act’s restrictions.

13. PEN also protested instances where individual writers were excluded from visiting the United States under the McCarran-Walter Act and worked to raise public awareness of the impact of the McCarran-Walter Act on cultural and intellectual exchange. For instance, in April 1984, PEN, together with the Fund for Free Expression, sponsored a public reading in New York City where “American authors read from the

work of their foreign counterparts whose entry into the United States had been made difficult and humiliating – or impossible – under [the McCarran-Walter] provisions.” Readings that evening included work from “Argentine novelist Julio Cortazar, Palestinian poet Mahmoud Darwish, Italian playwright Dario Fo, Colombian novelist and Nobel laureate Gabriel Garcia Marquez, Chilean poet and Nobel Laureate Pablo Neruda, and Uruguayan scholar Angel Raxna.” *Id.* PEN also disseminated material that discussed and brought attention to the problematic practice of ideological exclusion – for example, we published Donna A. Demac’s 1988 book, Liberty Denied: The Current Rise of Censorship in America.

14. In addition to regular series and events such as Foreign Exchanges and PEN World Voices, which is described below, PEN presents other programs that are also aimed at promoting international dialogue and increasing awareness of and interest in literature in translation. For example, in December 2003 PEN brought together European and American writers for a program entitled “Mind the Gap: Writers Eye the U.S. – European Cultural Divide,” and in September 2003, Susan Sontag hosted an event featuring leading translators of international literature discussing the politics of translation in the United States.

15. PEN also works to ensure that writers across the world are free to write and express their ideas. Last year PEN followed the cases of 1,010 writers in 98 countries who were imprisoned, censored, or threatened for their work, conducting advocacy campaigns and providing solidarity and direct support to endangered writers around the world. In support of these efforts, PEN stages regular events and programs to publicize individual cases and to disseminate the work of endangered writers in the U.S. In 2005, PEN used its annual PEN/Barbara Goldsmith Freedom to Write awards to

generate publicity that contributed to the release of Ali al-Domaini, a poet who had been imprisoned in Saudi Arabia; coordinated an international campaign on behalf of novelist and later Nobel laureate Orhan Pamuk, who faced possible prosecution in Turkey; sponsored the publication of Strange Times, My Dear: The PEN Anthology of Contemporary Iranian Literature; joined a lawsuit challenging Treasury Department regulations that restricted publications from countries under U.S. trade embargoes; held a “Banned Voices” reading at the 2005 World Voices Festival featuring the work of writers not allowed to leave their countries and travel to the U.S.; and co-sponsored an event for poet and journalist Raúl Rivero on his first visit to the United States after being released from a Cuban prison. In 2006, PEN co-sponsored and co-curated a “Selected Shorts” program at Symphony Space in New York called “Banned: Stories by Censored Writers and Dissidents” that featured the work of Iraqi writer M.T. Sharif, Indonesian writer Pramoedya Ananta Toer, and Iranian writer Shahrnush Parsipur. PEN’s 2006 PEN/Barbara Goldsmith Freedom to Write Awards, which were conferred last April, helped secure new freedoms for the recipients: Turkmen writer Rakhim Esenov, who had been confined to his home city of Ashgabat and living under a travel ban, was permitted to travel to New York to receive the award and subsequently to receive medical treatments in Russia; and Algerian newspaper Mohammed Benchicou was released from prison in June 2006 and later allowed to travel to France, thanks largely to pressure from PEN. Also in 2006, PEN staged “An Evening Without” at the 2006 PEN World Voices Festival, in which notable American and international authors read work from writers who were excluded from the United States for ideological reasons; hosted a public program with Iranian journalist Akbar Ganji, his first U.S. appearance since his release from an Iranian prison in March 2006; and in December 2006 held a major tribute to

Russian journalist Anna Politkovskaya, who had been murdered in October. That program, "The Writer's Conscience: Remembering Anna Politkovskaya and Russia's Forgotten War," featured extensive readings of Politkovskaya's work and a conversation with a leading human rights advocate from Grozny, Chechnya; like several PEN programs in the last two years, it was subsequently broadcast nationally on C-SPAN's Book-TV.

16. PEN also publishes a journal. Since 2000, PEN has published *PEN America: A Journal for Writers and Readers*, edited by M. Mark, which strives to bring attention to works of fiction, nonfiction, poetry, and drama deserving of recognition or renewed interest. As part of PEN's effort to promote international authors, *PEN America* often publishes the work of writers and scholars from abroad. For example, Issue 6, "Metamorphoses," featured a PEN tribute to Gabriel Garcia Marquez, who was for many years excluded from the United States under the McCarran-Walter Act. That issue included work from winners of the 2004 PEN Translation Fund Grants as well as writing from many other international writers. It also presented excerpts from the PEN public program "Mind the Gap: Writers Eye the U.S.-European Cultural Divide," which featured a spirited debate between Tariq Ali (Pakistan/U.K.) and Bernard-Henri Lévy (France) over the Iraq war and current U.S. policies in the Middle East. Issue 7 of *PEN America* (2006), entitled "World Voices," featured excerpts from the 2005 World Voices Festival, including talks and readings by Michael Ondaatje, Azar Nafisi, Wole Soyinka, Chimamanda Ngozi Adichie, and Margaret Atwood, among many others.

17. PEN and its members have invited foreign writers and scholars to speak in the United States, to attend and participate in literary and public education programs, and to meet with U.S.-based writers and with members of the American public. For example,

through its Foreign Exchanges program, PEN invites foreign writers to visit the United States to discuss their works with an American writer and the general public. These one-on-one conversations, which have been presented to capacity or near-capacity audiences in venues seating from 180 to 485 people, allow well-known literary figures to introduce international writers to American audiences, and are an important part of PEN's efforts to promote international literature and voices in the United States. Foreign Exchanges programs have featured Francisco Goldman in conversation with Guatemalan writer Rodrigo Rey Rosa; Amy Tan in conversation with Chinese writer Geling Yan; and Art Spiegelman in conversation with the Iranian-born, Paris-based graphic novelist Marjane Satrapi. Exclusion or deportation of foreign writers and scholars endangers PEN's ability to provide programs like these.

18. As an organization believing that "the necessary advance of the world towards a more highly organized political and economic order renders a free criticism of government, administrations, and institutions imperative," PEN is especially committed to convening conversations and debates that question existing orthodoxies and provide new and critical perspectives on important current issues and events. In the post-9/11 world, this includes discussions of terrorism and national security, of relationships between Islamic nations and the West, and of the role of the United States in the Middle East and the world as a whole. Crucial to these programs is the presence and participation of writers from the Islamic world, and in the past three years, PEN has sponsored programs or events that featured Tariq Ali (Pakistan/U.K.), Hanan al-Shaykh (Lebanon/U.K.), Fadhil al-Azzawi (Iraq/Germany), Khaled Mattawa (Libya/USA), Kader Abdolah (Iran/Netherlands), Anouar Benmalek (Algeria), Assia Djebar (Algeria/France), Nuruddin Farah (Somalia/South Africa), Ahmad Karimi Hakkak (Iran/USA), Nassim

Khaksar (Iran/Netherlands), Kanan Makiya (Iraq/USA), Dunya Mikhail (Iraq/USA), Azar Nafisi (Iran/USA), Shahrnush Parsipur (Iran/USA), Elif Shafak (Turkey), Niloufar Talebi (U.K./Iran), Goli Taraghi (Iran/France), Ammar Abdulhamid (Syria), Azhar Abidi (Pakistan/Australia), Alaa Al-Aswany (Egypt), Nilüfer Göle (Turkey/France), Ayaan Hirsi Ali (Somalia/Netherlands), Necla Kelek (Turkey/Germany), Elias Khoury (Lebanon), Venus Khoury-Ghata (Lebanon/France), O.Z. Livaneli (Turkey), Tahira Naqvi (Pakistan), Orhan Pamuk (Turkey), Saha Tawfiq (Egypt), and Ayu Utami (Indonesia).

19. After September 11, 2001, PEN initiated a “Core Freedoms” campaign to “protect public access to . . . a full range of voices from the United States and around the world” and to “promote U.S. policies that reflect a core commitment to individual rights, preserve these rights at home, and expand them internationally.” The campaign reflects PEN’s ongoing concerns about the impact of anti-terror and national security laws worldwide, as outlined in International PEN’s 2004 report, *Antiterrorism, Writers and Freedom of Expression*. Through its Core Freedoms campaign, PEN and its members have sought to raise awareness of U.S. laws and policies that, like the ideological exclusion provision, impinge on the freedom of expression, limit access to information or effectively censor the ideas that Americans are allowed to hear from abroad, and potentially violate international human rights standards and laws. As part of this campaign PEN joined a legal challenge to the regulations of the U.S. Treasury Department’s Office of Foreign Assets Control restricting publications from countries under U.S. trade embargoes. PEN argued that the practice of erecting barriers to information from countries that are considered unfriendly or hostile both violated Congressional exemptions for informational materials and mirrored the practices of some

of the very countries currently targeted by trade embargoes. PEN noted that such practices by the United States would inevitably be used by governments in those countries to justify their own restrictions on information and ideas. It has also staged two sold-out “State of Emergency” events at New York’s Cooper Union, taped by C-SPAN’s Book TV for rebroadcast nationally, in which leading American and international authors read selections from U.S. and world literature reflecting on current U.S. domestic and international policies. Selections included writings by Nawal El Saadawi (Egypt), Eduardo Galeano (Uruguay), Raul Zurita (Chile), Curzio Malaparte (Italy), Jose Saramago (Portugal), and testimony from detainees at the U.S. military base in Guantanamo, Cuba.

20. In 2005 PEN inaugurated what is intended to be an annual international literary event: the PEN World Voices Festival of International Literature. The PEN World Voices Festival brings together some of the world’s most celebrated writers and scholars for a week of discussions, readings, and face-to-face conversations before a large American audience. The theme of the inaugural festival was free expression, which both great literature and democratic societies need to flourish. 125 writers from 43 countries on five continents and nearly 8,000 guests gathered in crowded venues throughout New York City for more than 40 events. Audiences reached by radio, television, and the Internet numbered in the hundreds of thousands.

21. The PEN World Voices Festival advances PEN’s mission and complements PEN’s other programs by bringing writers and journalists to New York City for events that include perspectives that are largely absent from public discourse in this country. The World Voices Festival and the writers who participate in the festival dramatically highlight the roles writers play in stimulating and communicating ideas that

reflect cultural diversity, innovation, and understanding across cultures. The festival is designed to contribute to a more informed worldview both in and of the United States. PEN's members have the opportunity to converse face-to-face with colleagues from around the world. Audiences have a rare opportunity to hear directly from writers from different countries and cultures as they offer their perspectives on a range of pressing local and international issues; see these writers engage one another, and PEN's members, in discussion and debate; and, in many programs, question the writers directly about their work and views. In short, PEN's members and American audiences get a unique opportunity to exercise their First Amendment right to seek information and ideas that are not normally available in the American marketplace. At the same time, writers from distant countries, many of whom have never met each other and some of whom have never been to the United States, have the opportunity to hear a rich variety of viewpoints, interact with American writers and readers, and experience first-hand American life and culture.

22. By assembling so many distinguished writers and intellectuals from around the world for a concentrated series of programs, PEN World Voices is able to attract considerable public and press interest, not only in the United States but also around the world. The 2005 PEN World Voices Festival generated more than 250 news and feature articles in the American and international press. The international press coverage serves to counter stereotypes of American insularity, while reportage in the United States conveys to audiences throughout the country a sense of the richness and diversity of world literatures and cultures and the universality of human experience. Programs from the 2005 World Voices Festival, such as a panel discussion entitled "Confronting the Worst: Writing and Catastrophe" featuring Svetlana Alexievich

(Belarus), François Bizot (France), Carolin Emcke (Germany), Philip Gourevitch (USA), Ryszard Kapuscinski (Poland), and Elena Poniatowska (Mexico), are replayed regularly on C-SPAN's Book TV.

The Effect of the Ideological Exclusion Provision on PEN

23. As an organization engaged in international human rights advocacy to protect writers and freedom of expression, PEN is particularly concerned about policies that may serve to undercut the ability of the United States to promote democracy and human rights overseas or may be used to justify censorship or the suppression of freedom of expression abroad. PEN protested the McCarran-Walter Act in part because similar laws in authoritarian regimes had forced many leading writers to choose exile in order to have contact with international voices that were banned in their own countries. PEN believed that banning international writers from visiting the U.S. only encouraged authoritarian regimes further to restrict access to international ideas and voices in their own countries. The same dangers are present in 8 U.S.C. § 1182(a)(3)(B)(i)(VII), (hereinafter the "ideological exclusion" provision). Exclusion of authors and scholars based on speech or political viewpoints is pure censorship and should be condemned.

24. The ideological exclusion provision permits the government to subject ideas and political viewpoints of foreign scholars to ideological scrutiny. It permits the government to exclude writers and scholars who have "endorse[d] or espouse[d] terrorist activity or persuade[d] others to support terrorist activity or a terrorist organization." "Endorse," "espouse," and "persuade," are not defined. The terms are both broad and vague. The possible reach of the ideological exclusion provision is further expanded by the broad definitions of "terrorist activity" and "terrorist organization" contained in the U.S. Code. PEN is concerned that this provision could permit the government to exclude

any number of authors and scholars. For example, authors who are critical of U.S. foreign policy, among others, could be subjected to this provision.

25. PEN has long been concerned about the ways in which vague antiterror and national security laws have been used by governments around the world to curtail freedom of expression and suppress opposing points of view. In 1998 International PEN conveyed its anxiety over the extent to which antiterrorism laws were being misapplied to writers and journalists in South Korea, Peru, Turkey, and other countries in a formal submission to the United Nations Human Rights Commission. "International PEN would like to bring to the attention of the Commission a widespread pattern of abuse of the right to freedom of expression in the name of national security and antiterror concerns," PEN wrote. "Legislation allegedly aimed at protecting the sovereignty of a given state is all too often extended to stifle peaceful expression of views in general and members of the media in particular. Such harsh suppression of the right to free expression only, in the end, serves to exacerbate difficult situations, increase misunderstanding and ultimately, further destabilise the state, not protect it." In a global survey of the impact on freedom of expression of antiterrorism measures enacted in many countries after the September 11, 2001 terrorist attacks, International PEN specifically highlighted definitional problems in many new laws enacted with the purpose of fighting terrorism. In a section of that report outlining how many countries' antiterrorism statutes could be construed to bar non-violent, expressive activities, International PEN pointed to the vague definition of "material support" in U.S. legislation. "The USA's 1996 antiterrorism act made it a crime to provide material support for groups allegedly "terrorist" in their intention, even if this support went towards lawful, humanitarian activities of the group. Groups that threaten foreign relations and economic interests abroad were incorporated into the new

umbrella definitions of “terrorism,” and by the Patriot Act of 2001, even actions by protestors on the street could be deemed as “terrorist.” See *Antiterrorism, Writers, and Freedom of Expression*, International PEN Writers in Prison Committee, November 2003.

26. The invidiousness of the ideological exclusion provision is well-illustrated by the case of Tariq Ramadan. Professor Ramadan is one of the leading voices of Islam in Europe and an incisive analyst of relationships between religious and secular traditions. The government’s invocation of the ideological exclusion provision to revoke Professor Ramadan’s visa in 2004 leads PEN to believe that the government is purposely excluding those authors and scholars whose opinions it disfavors because while Professor Ramadan has always, and without exception, condemned the use of terrorism, he is a well-known critic of U.S. foreign policy. While the government has since tried to disavow its use of the ideological exclusion provision to revoke Professor Ramadan’s teaching visa and has pointed to the material support provision as the basis for his most recent exclusion, there is no evidence to suggest its original revocation was based on material support concerns and not Professor Ramadan’s speech. The government’s new basis for excluding Professor Ramadan seems merely pretextual.

27. The government’s refusal to permit Professor Ramadan to enter the U.S. has adversely affected PEN and its members in several ways. Professor Ramadan was invited to attend, as a distinguished participant, PEN’s 2006 World Voices Festival in New York City. The 2006 PEN World Voices Festival of International Literature was organized around the theme of “Faith and Reason.” Over 60 writers from around the world joined leading American writers and members of PEN American Center for five days of readings, panel discussions, tributes, and dialogues. Many of the nearly 50

festival programs touched on the role of religion in literature and politics, relations between the Islamic world and the West, U.S. perceptions of the larger world, and current U.S. policies. Titles of programs included “Globalization, Fundamentalism, and Women”; “Idols and Insults: Writing, Religion, and Freedom of Expression”; “Faith and Politics in America and Elsewhere”; “The Global City”; and several “Conversations that Matter” featuring major international figures such as Nobel laureate Amartya Sen (India) in one-on-one conversations with American authors. In addition to these public events, festival participants met informally and socialized throughout the week with PEN members and leading American authors. Writers from the Islamic world and the Middle East who attended include Ammar Abdulhamid (Syria), Azhar Abidi (Pakistan/Australia), Ayaan Hirsi Ali (Somalia/Netherlands), Alaa Al-Aswani (Egypt), David Grossman (Israel), Necla Kelek (Turkey/Germany), Etgar Keret (Israel), Elias Khoury (Lebanon), Venus Khoury-Ghata (Lebanon/France), Agi Mishol (Hungary/Israel), Orhan Pamuk (Turkey), and Ayu Utami (Indonesia). The 2006 PEN World Voices Festival also generated substantial national and international press. Over 130 news stories were published or broadcast about the festival by U.S. and international media. Additionally, public television producer and host Bill Moyers broadcast a seven-part PBS television series, *Faith & Reason*, based on the 2006 PEN World Voices Festival and featuring many festival participants.

28. Initially it was unclear whether Professor Ramadan would be granted a visa to attend PEN’s 2006 World Voices Festival. The uncertainty over whether Professor Ramadan would be permitted to enter imposed practical and financial burdens on PEN, and itself had the effect of limiting audiences and opportunities to interact with him. Although Professor Ramadan accepted the invitation in February 2006, PEN could

not with certainty schedule him for specific events or finalize the line-up of participants in the programs in which he would participate. Finally, because Professor Ramadan was barred from attending the World Voices Festival, PEN was compelled to explore alternative arrangements for Professor Ramadan to present his ideas during the festival. Unable to afford the expense of live videoconferencing, PEN instead arranged for a video crew to interview Professor Ramadan at Oxford University. That interview, which centered on the Danish cartoon controversy, was screened as part of the “Idols and Insults: Writing, Religion, and Freedom of Speech” program.

29. PEN, its members, and the public also lost the opportunity to meet Professor Ramadan informally and engage in direct discussions and conversations with him about contemporary issues and events. These types of exchanges could not be replaced by Professor Ramadan’s videotaped contribution. Because Professor Ramadan was not physically present and his contribution was necessarily limited to a pre-recorded statement, panelists were not able to respond to or debate his ideas, and he was similarly prevented from supporting or challenging theirs, and audience members were unable to probe his ideas and ask him follow-up questions. Moreover, the logistical requirements of pre-recording his comments meant that PEN was only able to ensure his voice was heard at a single event, whereas festival participants in attendance customarily present their work and views in two or more festival programs.

30. PEN’s 2007 World Voices Festival of International Literature, which will take place in New York from April 24 through April 29, 2007, is organized around the theme “Home and Away.” Under this theme, PEN will continue to probe the ways in which human migrations are reshaping cultural, political, and religious landscapes, the interplay between religion, geography, and politics, and the conflict and challenges that

accompany cultural interpenetration. Writers from around the world will participate in readings, panel discussions, and conversations on such topics as “God or Country: Nationalism and Religion”; “The New European Home”; “Migrants and Refugees”; and “Defending Home.” The festival will also include an evening of readings by American and international authors exploring international views of controversial post-9/11 anterrorism initiatives such as physical and psychological abuse, indefinite detention, and extraordinary rendition. As an internationally-recognized scholar and writer and a leading explicator of Islam in the West, Professor Ramadan has an open invitation to participate in PEN’s World Voices festival. He would be an especially valuable contributor to this year’s festival, where his scholarship and views on the growth of Islam in Europe and how Islam is reshaping and being reshaped by Western cultures would be valuable additions to several festival programs. However, the continuing exclusion of Professor Ramadan once again prevents PEN from scheduling him for specific festival events and from exploring and developing other possible program opportunities for him at other times during the year.

31. PEN’s concern about the use and possible use of the ideological exclusion provision extends beyond the case of Professor Ramadan. In recent months, the government has excluded numerous other writers and scholars who appear to pose no threat to national security. The government has refused to explain these exclusions, but the circumstances suggest that the exclusions were purely ideological. To take just one example, on March 26, 2006, the government denied entry to Inaki Egaña, a Basque historian and member of the Basque PEN Center, who had arrived with the intention of researching Basques in the United States. Egaña was excluded without explanation and returned to Spain. In June 2006, PEN wrote to the Secretaries of State and Homeland

Security to protest Egaña's exclusion. *See* Letter from PEN American Center to Secretary of State Condoleeza Rice and Secretary of Homeland Security Michael Chertoff, June 26, 2006 (attached hereto as Exhibit A). In its letter, PEN noted that Egaña had been questioned by U.S. border officials concerning a Basque activist and writer who was a target of McCarthyism in the 1950s. PEN wrote that "this line of questioning and the decision to bar Mr. Egaña from entering the country adds to our concerns that the United States may once again be engaging in ideological exclusion," and that "the lack of any explanation for his exclusion raises serious questions about the United States' commitments to protecting freedom of expression and promoting the free flow of information and ideas." PEN knows of no legitimate reason why Mr. Egaña should have been excluded, and the government still has not offered one.

32. Ironically, some of those who have recently been excluded from the United States on ideological grounds are authors the United States has previously identified as having been persecuted unjustly in their own countries for allegedly endorsing or supporting terrorism before September 11, 2001. For example, Turkish sociologist and journalist Haluk Gerger was one of dozens of Turkish writers and intellectuals jailed in the 1990s for writing about Turkey's Kurdish minority. Twice during that time, in its 1994 and 1995 Country Reports on Human Rights, the U.S. State Department cited Gerger's treatment as an example of the misuse of antiterrorism legislation to stifle freedom of expression in Turkey, and in 1999, when he was on trial again for his writings, the United States issued Professor Gerger and his wife 10-year, open-ended visas to visit the United States. On October 1, 2002, however, Professor Gerger and his wife flew to the United States and presented their passports, with these visas, to immigration officials at Newark airport. Professor Gerger was informed that his

visa had been cancelled by the U.S. State Department, and he and his wife were forced to return to Munich, Germany, where they reside, on the immediate outbound flight. Such actions, in addition to stifling informed debate in the United States, undercut years of efforts to protect freedom of expression from the encroachment of overly-broad national security measures abroad. *See* Letter from PEN American Center to Secretary of State Colin Powell and Attorney General John Ashcroft, Oct. 11, 2002 (attached hereto as Exhibit B). As a member of Turkish PEN noted when asked about the impact of post-9/11 antiterrorism initiatives in the United States and other countries on free expression in Turkey, “The Turkish state was very happy to have the opportunity to say, ‘See? All the world was blaming us for the steps we had to take to stop terror, with the excuse of protecting human rights. Now all the world accepts that we were right.’”

33. Cases like these only deepen PEN’s concerns about the use and possible use of the ideological exclusion provision. Both Professor Egaña and Professor Gerger are from countries where PEN has documented cases involving writers who were prosecuted under anti-terrorism laws for their nonviolent support of minority rights. Their recent exclusions from the U.S. raise the specter that U.S. anti-terrorism laws – and the ideological exclusion’s bar on expressive activity in particular – are being similarly misapplied.

34. The ideological exclusion provision has other effects. Some foreign writers are less willing to accept invitations to events in the United States because of uncertainty about whether they will be permitted to enter the country – uncertainty that exists at least in part because of the ideological exclusion provision – and because they do not wish to expose themselves to the ideological scrutiny that accompanies the visa application process. PEN invited J.M. Coetzee, recipient of the 2003 Nobel Prize in

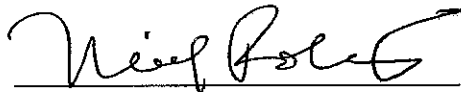
Literature, to participate in the PEN World Voices Festival in 2006. In declining PEN's invitation, Mr. Coetzee wrote: "Thank you for the invitation to visit New York City in April 2005 as a guest of PEN American Center. To get to New York from Adelaide, where I live, involves some thirty hours of air travel. I am getting on for 65. I never sleep on airplanes. I contemplate the 30-hour journey, the few days in New York trying to function ten or eleven hours out of phase, then the thirty-hour journey back, and my heart quails. The organism won't take that kind of battering any more. I feel I ought also to say that the prospect of all the bureaucratic bloodymindedness that one has to subject oneself to in order to get into Fortress America nowadays is not appealing. I am sorry I am not able to accept. I applaud the efforts of PEN to widen the horizons of American readers." E-mail from John Coetzee to Michael Roberts (Nov. 6, 2004) (attached hereto as Exhibit C).

35. The ideological exclusion provision prevents PEN members in the United States from participating fully in the face-to-face exchange of information and ideas with international colleagues that is one of the founding purposes of PEN. The ideological exclusion provision also stands in the way of PEN's ability to fulfill its mission of promoting the "unhampered transmission of thought within each nation and among all nations," which PEN enacts by ensuring that the public is able to hear and take part in rigorous debate with foreign scholars and ideas. PEN events such as PEN's World Voices Festival and Foreign Exchanges programs give the public the opportunity to listen to, and debate in person with, these scholars. Exclusion and deportation on ideological grounds by the government impedes PEN's ability to serve this public resource role.

36. The ideological exclusion provision impedes the principles of freedom of speech and expression for which PEN stands. Robust dialogue is imperative to ensuring that the very serious issues relating to terrorism are properly discussed and dealt with. Controversial scholarship, both foreign and domestic, can easily but mistakenly fall under the ambit of the ideological exclusion provision. Yet, this is precisely the type of scholarship that PEN, its members, and the general public, must have access to in order to have a serious and meaningful dialogue about some of the most important and pressing issues of our time.

I declare under penalty of perjury under the laws of the United States of America that to the best of my knowledge and belief, the foregoing is true and correct.

Executed on this 11th day of February 2007.

A handwritten signature in black ink, appearing to read "Michael Roberts", written over a horizontal line.

Michael Roberts

EXHIBIT A



PEN

American Center
588 Broadway
Suite 303
New York, New York
10012

(212) 334-1660
www.pen.org

President
Ron Chernow

Vice Presidents
Paul Anster
Jhumpa Lahiri
John Troubh

Treasurer
Wendy Gimbel

Secretary
Rick Moody

Board of Trustees
André Bernard
Maria Campbell
Michael Cunningham
Joan K. Davidson
Jonathan Safran Foer
Francisco Goldman
Barbara Goldsmith
Philip Gourevitch
Beth Gutcheon
Jessica Hagedorn
Thomas Healy
Amy Hempel
A.M. Homes
Andrew Hollkrans
Mat Johnson
Laurence J. Kirshbaum
Perri Klass
Wayne Koestenbaum
Yusef Komunyakaa
Gara LaMarche
Virginia S. Mailman
Fran Maushkin
Claudia Menza
David Michaelis
Michael F. Moore
Elizabeth Nunez
Sidney Offit
George Packer
Hannah Pakola
Bruno Quinlan
Esmeralda Santiago
Benjamin Taylor
Monique Truong
Jacqueline Weld
Colson Whitehead

General Counsel
Leon Friedman

Executive Director
Michael Roberts

PEN American Center is an association of writers and editors working to advance literature,
to defend free expression, and to foster international literary fellowship.

June 26, 2006

The Honorable Condoleezza Rice
Secretary of State
US Department of State
2201 C Street, NW
Washington, DC 20520
FAX: 202-261-8577

Michael Chertoff
Secretary, Department of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Rice and Secretary Chertoff:

We are writing on behalf of more than 2,900 professional writers who are members of PEN American Center, the U.S.-based center of International PEN, to express our concern over reports that Basque historian, publisher, writer and Basque PEN member Iñaki Egaña was detained by police at John F. Kennedy airport and denied entry to the United States.

According to information we have received from our international colleagues, Mr. Egaña flew to the United States on March 26, 2006 with his two young children. He intended to finish conducting research on the Basques in the United States, a subject on which he has published several books with Editorial Txalaparta. However, he was detained by police upon arrival at Kennedy airport and held without explanation for 24 hours before being forced to return home. His children suffered the same treatment. When Mr. Egaña arrived at an airport in Spain and was handed over to Spanish police, he was reportedly released on the basis of the report filed by the U.S. police.

We understand that Mr. Egaña was questioned about his investigative research concerning Mario Salegi, a Basque born political activist, journalist and writer who later became a U.S. citizen and was a target of McCarthyism in the 1950s.

For PEN American Center, this line of questioning and the decision to bar Mr. Egaña from entering the country adds to our concerns that the United States may once again be engaging in ideological exclusion, a practice we protested vigorously during the Cold War. For our PEN colleagues overseas, his treatment and the lack of any explanation for his exclusion raises serious questions about the United States' commitments to protecting freedom of expression and promoting the free flow of information and ideas.

We respectfully request that your offices review the decision to deny Iñaki Egaña entry to the United States—and that you either inform Mr. Egaña of the reasons he was detained and denied entry or reverse his exclusion and allow him to visit the United States and carry out his research on Mario Salegi or any other subject relating to his work.

Sincerely,

Hannah Pakola
Chair, Freedom to Write Committee

Larry Siems, Director,
Freedom to Write and International Programs

Cc: Sen. Charles Schumer
757 Third Avenue, Suite 17-02 New York, NY 10017, Fax: 212-486-7693

EXHIBIT B



568 Broadway, suite 401
New York, NY 10012
212 334-1660 Phone
212 334-2181 Fax
pen@pen.org



672 S. Lafayette Park Pl., #42
Los Angeles, CA 90057
213 365-8500 Phone
213 365-9616 Fax
pen@pen-usa-west.org

October 11, 2002

The Honorable Colin Powell
Secretary of State
US Department of State
2201 C Street, NW
Washington, DC 20520
FAX: 202-261-8577

The Honorable John Ashcroft
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
FAX: 202-307-6777

Dear Secretary Powell and Mr. Attorney General:

We are writing on behalf of more than 3,500 professional writers who are members of PEN American Center and PEN Center USA, the two U.S.-based centers of International PEN, to express our shock over reports that Turkish journalist, writer and political scientist Dr. Haluk Gerger was recently denied entry to the United States.

According to information we have received from our international colleagues, Dr. Gerger and his wife flew to the United States on October 1, 2002, and presented their passports, complete with U.S. visas issued in 1999 and valid for 10 years, to U.S. officials at Newark Airport. At that moment, Professor Haluk was informed that his visa had been cancelled by the U.S. State Department. With no plausible explanation for his treatment, he was reportedly photographed and fingerprinted, and he and his wife were forced to return to Munich on the immediate outbound flight.

As you must know, Professor Gerger is well known in Turkey for his work as a writer, academic, and human rights activist, and he has earned an international reputation for his courage in challenging restrictions on freedom of expression in Turkey – challenges that earned him two prison terms in the 1990s. International PEN vigorously protested both sentences, secured under anti-terror laws that the United States and European nations consistently condemned as serving to restrict the Turkish people's universally-guaranteed right to freedom of expression. PEN was not alone in protesting Professor Gerger's prison sentences: the U.S. State Department cited his case in discussions of misuse of anti-terror laws in its 1994 and 1995 Country Reports on Human Rights, and issued him a visa in 1999 despite the fact that he was facing trial proceedings in the Ankara State Security Court on yet more charges connected to his statements and writing. In Europe, meanwhile, the European Court of Human Rights found that Professor Gerger had been unjustly imprisoned under Turkey's anti-terror laws.

What was wrong before September 11, 2001 remains wrong today. Nothing can alter the fact that Turkey has used and continues to use overly-broad anti-terror legislation to suppress the opinions and ideas of

Professor Gerger and hundreds like him. Before September 11, 2001, the United States consistently protested such treatment, expressed concern for Professor Gerger and many other writers, journalists, and intellectuals like him, and actively sought to preserve their right to seek, receive, and impart information, up to and including their right to travel to the United States. To withdraw this support now – worse, to reverse course and join in abridging these rights – can only weaken U.S. efforts to promote democratization and human rights around the world.

We therefore respectfully request that your offices conduct thorough reviews of the decision to deny Professor Gerger entry to the United States and take action to renew his visa immediately.

Sincerely,

JOEL CONARROE
President, PEN American Center

AIMEE LIU
President, PEN Center USA

EXHIBIT C

Jameel Jaffer

From: Larry Siems [LSiems@Pen.org]
Sent: Thursday, January 04, 2007 5:41 PM
To: Jameel Jaffer; Melissa Goodman
Subject: FW: Invitation, April 2005

***** Forwarded Message Follows *****

>To: srushdie@[REDACTED]
>From: John Coetzee <john.coetzee@[REDACTED]>
>Date: Sat, 6 Nov 2004 08:14:25 +1030
>>Dear Salman,
> Thank you for your letter inviting me to New York City next April.
> Given the present political and cultural climate, I appreciate deeply what PEN
>
>is setting out to do. But -- as I explain in my letter to Michael
>Roberts,

>copied below -- I just don't feel up to making the trip.
> Allow me to wish you every success in your endeavours.
>Warm regards,
>John Coetzee

>
>
>----- Forwarded message from John Coetzee
><john.coetzee@[REDACTED]>

> Date: Sat, 6 Nov 2004 08:09:18 +1030
> From: John Coetzee <john.coetzee@[REDACTED]>
>Reply-To: John Coetzee <john.coetzee@[REDACTED]>
> Subject: Invitation, April 2005
> To: roco@[REDACTED]

>
>Dear Mr Roberts,
> Thank you for the invitation to visit New York City in April 2005 as a guest
>of PEN American Center.
> To get to New York from Adelaide, where I live, involves some thirty hours of
>air travel. I am getting on for 65. I never sleep on airplanes. I
>contemplate

>the 30-hour journey, the few days in New York trying to function ten or eleven
>hours out of phase, then the thirty-hour journey back, and my heart quails.
>The
>organism won't take that kind of battering any more.
> I feel I ought also to say that the prospect of all the bureaucratic

>bloodymindedness that one has to subject oneself to in order to get
>into

>Fortress America nowadays is not appealing.
> I am sorry I am not able to accept. I applaud the efforts of PEN to widen the
>horizons of American readers.
>Yours sincerely,
>John Coetzee

>
>----- End forwarded message -----
>
>