

**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;
CONDOLLEEZZA RICE, in her official capacity as
Secretary of State,

Defendants.

**DECLARATION OF
MICHAEL ROBERTS**

Case No. 06-588 (PAC)

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 twelve full- and five

part-time employees, and a budget of \$2.5M a year, for a non-profit organization of 2900 writer/editor members 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 eight-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 2,900 members.

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." PEN Charter (attached hereto as Exh. A). 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. 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. One symptom of this uneven exchange is the scarcity of international writing published here in the United States. Approximately 3% of the literature published in the United States last year was translated from another language, in comparison with significantly higher percentages of translated books published in most other countries and languages.

9. 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. 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.

11. In furtherance of its mission to ensure the unimpeded flow of ideas between 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.” Testimony of Larry McMurtry to the House Judiciary Subcommittee on Courts, Intellectual Property, and Administrative Justice, May 3, 1989 (hereinafter “McMurtry Testimony”) (attached hereto as Exh. B).

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." *McMurtry Testimony*, Exh. B at 1-2. 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 information about the problematic practice of ideological exclusion, including in the publication Liberty Denied: The Current Rise of Censorship in America. Donna A. Demac, Liberty Denied: The Current Rise of Censorship in America, (PEN American Center, 1988) at 139-143 (relevant portion attached hereto as Exh. C).

14. PEN continues to intervene on behalf of writers who are excluded from the United States. For example, PEN intervened on behalf of Professor Haluk Gerger, a Turkish journalist, writer and political scientist who was denied entry into the United States in October 2002 because his visa was cancelled without explanation. PEN wrote to the Secretary of State and the Attorney General, urging them to review the decision to deny Professor Gerger entry and to reinstate his visa. Similarly, in 2004 PEN protested the U.S. State Department's decision to revoke Cuban independent journalist Bernardo

Arévalo Padrón's refugee visa. Mr. Arévalo Padrón, who was jailed for six years in Cuba for his work as an independent journalist, had been granted political asylum in the U.S., but was informed a month before he was to leave Cuba that his visa had been revoked "without a right of appeal."

15. 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 Exchange program, PEN regularly 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 thus an important part of PEN's efforts to promote international literature and voices in the United States. Foreign Exchange 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.

16. 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.

17. 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 996 writers in 103 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 the past year, PEN has 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 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 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 Raul Rivero on his first visit to the United States after being released from a Cuban prison. On February 8, 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. That program will be broadcast nationally as part of the National Public Radio “Selected Shorts” series this year.

18. 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 to further restrict access to international ideas and voices in their own countries. Similarly, 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.

19. PEN also 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 the

projects it selects by pairing the international writers with writers of established reputation in the United States who provide introductions to the work and encouraging 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 been invited to participate in PEN programs; for example Iraqi poet Dunya Mikhail, whose poetry collection *The War Works Hard* was published last year following a grant from the PEN Translation Fund, was a participant in the 2005 PEN World Voices Festival. This book was recently recognized by The New York Public Library as “one of the 25 Books to Remember of 2005.”

20. Since 2000, PEN has published *PEN America: A Journal for Writers and Readers*, which works 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 War in Iraq and current U.S. policies in the Middle East. The forthcoming issue of *PEN America* will feature 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.

21. 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 two 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 Djébar (Algeria/France), Nuruddin Farah (Somalia/South Africa), Ahmad Karimi Hakkak (Iran/USA), Nassim Khaksar (Iran/Netherlands), Kanan Makiya (Iran/USA), Dunya Mikhail (Iraq/USA), Azar Nafisi (Iran/USA), Shahrnush Parsipur (Iran/USA), Elif Shafak (Turkey), Niloufar Talebi (U.K./Iran), and Goli Taraghi (Iran/France).

22. After September 11, 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 “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, as previously mentioned, PEN was a co-plaintiff in a lawsuit challenging restrictions the U.S. Department of Treasury's Office of Foreign Assets Control had imposed on publishing literature and other materials from countries under U.S. trade embargoes. 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 internationally 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.

The Effect of Tariq Ramadan's Exclusion on PEN

23. Last year, 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. Audience reached by radio, television, and the Internet numbered in the hundreds of thousands.

24. The PEN World Voices Festival advances PEN's mission and complements PEN's other programming 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 world view 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.

25. 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 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.

26. The 2006 PEN World Voices Festival of International Literature is being organized around the theme of “Faith and Reason.” Over 60 writers from around the world will join leading American writers and members of PEN American Center for five days of readings, panel discussions, tributes, and dialogues, with many of the nearly 50 festival programs touching 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 contemplated programs include “Globalization, Fundamentalism, and Women”; “Religious Defamation and Free Speech”; “Faith and Politics: 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 will be meeting informally and socializing throughout the week with PEN members and leading American authors. Writers from the Islamic world and the Middle East who are committed to attending include Magdi Allam (Egypt/Italy),

Ammar Abdulhamid (Syria), Azhar Abidi (Pakistan/Australia), Ayaan Hirsi Ali (Somalia/Netherlands), Alaa El-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).

27. On January 17, 2006, PEN invited Professor Ramadan to participate as a distinguished participant in the 2006 PEN World Voices Festival of International Literature scheduled for April 26-30, 2006, in New York City. Letter from Salman Rushdie to Professor Ramadan dated January 17, 2006 (attached hereto as Exh. D). Professor Ramadan has indicated that he will participate if he is able to obtain a visa. Clearly Professor Ramadan, as one of the leading voices of Islam in Europe and an incisive analyst of relationships between religious and secular traditions, would be a major contributor to the festival's formal programs, including discussions on "Religious Defamation and Free Speech" and "Faith and Politics: America and Elsewhere." Equally important for PEN and its members is the opportunity to meet Professor Ramadan informally and engage in direct discussions and conversations with him about contemporary issues and events.

28. As is evident from the current international crisis over the publication of cartoons depicting the Prophet Mohammad, there is a particular urgency to engage in cross-cultural dialogues that transcend the rhetoric of a "clash of civilizations." PEN is deeply committed to contributing to this dialogue by bringing writers from the Islamic world in contact with American writers. PEN believes that Professor Ramadan, who is a frequent contributor to public discussion on similar issues in Europe and the United Kingdom, should be included in these conversations in the United States, and that


American writers and audiences have a right to engage with him directly in a free exchange of information and ideas. Professor Ramadan has been interviewed on the cartoon crisis in Europe, and has spoken eloquently on the issue. For PEN, it is inconceivable that the World Voices Festival would not include an examination of an issue that bears so directly on PEN's dual mandate to promote cultural understanding and to protect free speech. Professor Ramadan should be able to make the same important contributions to this conversation in the United States as he has in Europe. Moreover, PEN believes that Professor Ramadan, as a respected Islamic scholar who has spoken forcefully against violence, written extensively on Islam and the West, and criticized current U.S. policies in the Middle East, will be a newsworthy presence and will make unique and valuable contributions in formal and informal events throughout the World Voices Festival.

29. The uncertainty over whether Professor Ramadan will be granted a visa imposes practical and financial burdens on PEN, and may itself have the effect of limiting audiences and opportunities to interact with him. For example, although Professor Ramadan has accepted an invitation to the festival, PEN cannot with certainty schedule him for specific events or finalize the line-up of participants in the programs in which he would participate. It may also be unable to make his travel arrangements with sufficient lead time to secure economical fares. If Professor Ramadan is barred from attending the World Voices festival, PEN will be compelled to explore arrangements for Professor Ramadan to participate in one or more of the festival programs by video conference, at substantial additional cost. Finally, if Professor Ramadan is able to attend but PEN has been unable to confirm and adequately publicize his participation, numerous PEN members and Americans who would wish to exercise their First

30. Defendants' exclusion of Professor Ramadan threatens not only to prevent Professor Ramadan from attending the World Voices Festival, but also compromises the ability of PEN and its members to invite him to other public literary forums and programs in the future, and prevents them from effectively collaborating with him on other intellectual projects.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 10th day of March, 2006.

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

Michael Roberts