

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ASSOCIATION OF AMERICAN
UNIVERSITY PUBLISHERS, INC.;
THE PROFESSIONAL/SCHOLARLY
PUBLISHING DIVISION OF THE
ASSOCIATION OF AMERICAN
PUBLISHERS, INC.;
PEN AMERICAN CENTER, INC.; and
ARCADE PUBLISHING, INC.,

Judge Casey

Civ. No. _____

Plaintiffs,

- against -

THE OFFICE OF FOREIGN ASSETS
CONTROL OF THE DEPARTMENT OF THE
TREASURY; JOHN W. SNOW, SECRETARY
OF THE TREASURY, in his official capacity;
and R. RICHARD NEWCOMB, DIRECTOR,
OFFICE OF FOREIGN ASSETS CONTROL,
in his official capacity,

Defendants.
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04 CV 7604

**DECLARATIONS IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY AND PERMANENT INJUNCTIONS**

(VOLUME 2 OF 2)

**DECLARATION OF SALMAN RUSHDIE
DECLARATION OF RICHARD SEAVER
DECLARATION OF EDWARD J. DAVIS**

**RUSHDIE
DECLARATION**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PROFESSIONAL/SCHOLARLY PUBLISHING :
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OF THE TREASURY, in his official capacity; :
and R. RICHARD NEWCOMB, DIRECTOR, :
OFFICE OF FOREIGN ASSETS CONTROL, :
in his official capacity, :
:

Defendants. :
----- x

**DECLARATION OF
SALMAN RUSHDIE**

Pursuant to 28 U.S.C. § 1746, Salman Rushdie hereby declares under penalty of perjury that the following is true, to the best of his information and belief:

1. I am the President of the Board of Trustees of PEN American Center, a non-profit association of writers that includes poets, playwrights, essayists, novelists, editors, journalists, literary agents and translators ("PEN"). PEN has approximately 2,700 members and is affiliated with International PEN, the global writers' organization with 138 centers in Europe, Asia, Africa, Australia and the Americas. PEN is a plaintiff in this action.

2. International PEN was founded in 1921, in the aftermath of the first World War, by leading European and American writers who believed that international exchange was the only way to prevent disastrous conflicts born of isolation and extreme nationalism. The Charter

of International PEN establishes the founding principles of PEN. It declares our commitment to the unimpeded flow of ideas and information throughout the world:

PEN stands for the principle of unhampered transmission of thought within each nation and between all nations, and members pledge themselves to oppose any form of suppression in the country and community to which they belong, as well as throughout the world wherever this is possible.

3. PEN joins in bringing this action to challenge a suppression of free expression in the United States. U.S. trade sanctions are being misinterpreted by the Office of Foreign Assets Control of the United States Department of the Treasury (“OFAC”) to deprive Americans of information and ideas from writers in certain sanctioned countries, including Cuba, Iran and Sudan, and to deprive American writers, translators, editors and publishers of opportunities to express themselves by collaborating with authors in those countries or by publishing their work.

4. Congress has twice acted to prevent U.S. trade embargoes from affecting the free exchange of information and ideas that is vital to a more complete understanding of the world. In the Berman Amendment in 1988 and the Free Trade in Ideas Amendment in 1994, Congress declared that OFAC does not have the authority to regulate or prohibit the import or export of information or informational materials, including publications.

5. OFAC has nonetheless promulgated regulations (the “OFAC Information Regulations”) that regulate and, indeed, prohibit many of the kinds of exchanges Congress exempted from trade regulation. OFAC would permit Americans to import publications only if they are already completed, and the OFAC Information Regulations do not allow Americans to make “substantive or artistic alterations or enhancements” to imported works, to promote them or market them, to work with authors in the sanctioned countries as co-authors, or to help them bring any new works into existence.

6. The OFAC Information Regulations and OFAC's interpretations of them restrict the expression of writers, translators, editors and publishers in the United States, and they exclude ideas and information from the United States based on their country of origin. Those are precisely the kinds of restrictions that PEN was founded to fight.

7. PEN's members are directly affected by the OFAC Information Regulations because, as explained in paragraphs 12-42, below, PEN members wish to translate, edit and publish works by authors in the affected countries, to produce new works with them as co-authors, and to help them promote their works in the United States. The regulations subject them to civil and criminal penalties for exercising their freedom to express themselves in those ways, and they inhibit publishers from undertaking or proceeding with projects involving authors in those countries.

8. PEN itself is directly affected by the OFAC Information Regulations because PEN administers its own translation fund and co-administers a new Iranian translation project whose purposes will be frustrated if the OFAC Information Regulations continue in effect. As described in paragraphs 43-60 below, our first translation project, which is almost complete, is scheduled for publication in 2005 and is directly endangered by the regulations, and a second such project has already been derailed.

9. The OFAC Information Regulations threaten the principles and activities of PEN and its members and the fundamental interests of the United States. The United States government should not keep information and ideas from any countries from us. Iran, Cuba and Sudan are of especially vital importance to stability and security in the world at this time. Knowledge is necessary to self-government, and we need to learn all we can as we determine

how to preserve peace and encourage the international communication that PEN believes ultimately brings peoples together.

10. The United States has led the world in promoting the same open exchange of ideas and experiences that PEN is dedicated to promoting. That is one of the reasons I decided to live in the United States. My own work often questions rigidly held beliefs and customs and grapples with the effects of cultural and geographic boundaries and conflicts in individual lives. Fanatics who have decided to take offense have tried to silence me. In 1989, Ayatollah Khomeini of Iran issued a *fatwa* on my life, which is tantamount to a death sentence, for my novel, *The Satanic Verses*. Many countries still forbid the reading and mere possession of my books. Publishers have been threatened with boycotts and violent retribution, but my works have always been published in the United States.

11. At a time when the United States calls for citizens of other countries to follow the example of American democracy, preventing writers in certain countries from reaching the American public sends exactly the wrong message. Writers in Iran, Cuba and Sudan cannot publish freely in their own countries. It is a tragic and dangerous irony that Americans may not freely publish the works of those writers here, either.

Effects the Regulations Have on Writers and Editors

12. The American literary community has always welcomed ideas and works from other lands. As writers, the members of PEN recognize the importance of reading the works of other authors. As readers of foreign authors, we know that Americans respond strongly to the truths in serious works from any country. We recognize the gains in understanding that result from making unfamiliar ideas and information available to Americans and making American authors' ideas and information accessible to people around the world.

13. Writers, editors and literary agents in the United States introduce American readers to the works of foreign writers in several ways: by writing about them in American publications, by recommending them to publishers and critics, by including them in anthologies, and often by contributing introductory essays or prefaces when their works are published in the United States.

14. This form of cultural exchange has always worked both ways. In the nineteenth century, the French poet and critic Charles Baudelaire introduced European audiences to the works of Edgar Allen Poe by publishing essays about them, translating them and promoting them. Poe's work had a widely appreciated influence on European letters, and some of the European writers influenced by Poe later influenced subsequent generations of American writers.

15. Many of the most important American writers have made it their duty to share their discoveries with the American public. In the 1940s and 1950s, Langston Hughes introduced American audiences to the Haitian writer Jacques Roumain, the Spanish poet Federico García Lorca, and the Cuban poet Nicholas Guillen, whose use of African-American speech patterns in poetry paralleled his own. Hughes translated some of their works into English and published them with introductions of his own. In the 1960s, Philip Roth began to champion the works of Eastern European writers. In 1974, he inaugurated a series of books, "Writers From The Other Europe," for which he served as general editor until 1989. He wrote introductions for some of their works, lending his own reputation to help build theirs. The series helped introduce American readers to Milan Kundera, Primo Levi, Aharon Appelfeld and Ivan Klima, among others. Susan Sontag has carried on this tradition, championing the works of writers such as W. G. Sebald in her essays and reviews and, recently, contributing an introductory essay for the English translation of *Summer in Baden-Baden*, a novel by the late Leonid Tsypkin, a medical

scientist who wrote in secret in the Soviet Union and whose works were never published in his native Russia.

16. PEN plays a role in continuing the cross-fertilization of cultures by bringing writers of many nations together to exchange ideas and learn about each other's work in international conferences and through ongoing campaigns to protect writers and encourage open communication among nations.

17. The OFAC Information Regulations establish a literary quarantine. American writers, editors and agents who want to share their enthusiasm for the works of authors in Iran, Cuba or Sudan with readers in the United States may not do what they would ordinarily do to share their discoveries. They may not facilitate the publication of new works by authors from the embargoed countries here. They may not contribute introductions or prefaces or essays to new works or existing works by those authors. An introduction by a U.S. writer would add to the value of the work by the foreign author and "substantively enhance" it, which the regulations forbid.

18. American editors may not make "substantive or artistic alterations or enhancements" to such works without violating the regulations. For many foreign works, that prohibition is tantamount to prohibiting publication. An author's writing often presupposes an understanding of the history or society of her country that an American reader is not likely to share. It may assume a shared frame of reference that helps readers interpret the experiences recounted, or a common understanding of certain modes of argument or forms of storytelling. Editors must often make changes to help authors reach their audience and help audiences appreciate the authors' works. Literary agents may share this duty, which takes on added importance when an author seeks to communicate to another community. Even books published

in English but not in the United States are often edited here to avoid misunderstanding. The greater the distance between the author's culture and the reader's, the greater the need for care in illuminating the unfamiliar. Without substantive editing, a work may not be understood and publishing it may not be worthwhile.

19. Editors who want to publish works by authors in the affected countries with additional materials are also thwarted by the regulations because the additional materials would substantively enhance the works. Editors may not include works from forbidden countries in anthologies because adding other authors' stories or essays would enhance them. They may not add illustrations for the same reason. Indeed, OFAC has specifically stated that "the creation of illustrations" for books from Iran is "not permitted as it constitutes a prohibited exportation of services." Editors, agents and publishers therefore may not arrange the kinds of collaborations among writers, scholars and artists that combine separate writings or combine words and images to produce new works that can enlighten and delight or trouble us powerfully.

20. The OFAC Information Regulations also silence American writers in another way, by preventing them from collaborating with authors in other countries to create jointly authored works. OFAC has declared that it "would consider a prohibited exportation of services to occur when a collaborative interaction takes place ... resulting in co-authorship or the equivalent thereof." Many nonfiction works have more than one author. Indeed, in scholarly and scientific fields co-authorship is often the rule. Scholars share their research with one another and jointly build new contributions to knowledge and understanding. Writers also work as co-authors with artists, political figures and other citizens who lack the time, capacity or resources to write on their own, to enable them to transmit their ideas and experiences.

21. The OFAC Information Regulations cut American writers off from ideas and information that may be exclusively available to authors in Cuba, Iran and Sudan. Dissidents in those countries, for instance, have unique views and understandings of social and political developments that many American writers would like to help communicate. Archaeologists have unique access to excavations and artifacts that Americans often may not visit. Historians have access to evidence that is not available to scholars in the U.S. People in each of these countries have experienced life under repressive regimes and have lived lives very different from our own. Their stories would interest readers in the United States and elsewhere in the world. Many in Sudan, for example, have had unique experiences of the suffering caused by religious strife, civil war, social repression and natural disasters.

22. The OFAC Information Regulations, however, forbid American writers to collaborate with anyone in those countries as co-authors of books or articles that could bring essential information and important ideas to the United States and the world. For instance, an American could not co-author a book with a political prisoner in Cuba or Iran.

23. Books that cannot be co-authored by Americans may never be written, and books that cannot be sold in the United States may never come into being. Writers in some countries, such as Sudan, may never see their works published because economic resources are too scarce and the domestic market is too small.

24. The OFAC Information Regulations forbid all manner of transactions, including the payment of advances. They implicate all the actors responsible for bringing works to the public, including publishers, editors and even literary agents, who are often responsible for helping authors develop new ideas, putting co-authors together, and rewriting their works, in

addition to performing the essential service of bringing new works to the attention of publishers on behalf of authors who do not have access to the publishing world.

25. The work of many writers in the affected countries is directly suppressed by their own government authorities. PEN maintains a list of writers who are in prison or otherwise in danger because of their work, and we campaign for the release of prisoners such as the 19 leading Iranian writers and intellectuals arrested in Tehran in April 2000 after participating in an international conference in Berlin and the 35 journalists, writers and librarians arrested in Cuba last year in a crackdown intended to silence dissent. (The Cuban prisoners of conscience were the focus of a campaign coordinated by International PEN from July 19 to August 15, 2004.) In recent years, our “watch” list has grown to include more and more scholars, journalists, editors, translators and other writers whose governments do not want the facts they reveal and the ideas they express to be communicated to the world.

26. PEN’s Freedom to Write Committee has elected many of these writers Honorary Members of Pen American Center. Brief profiles of our Honorary Members may be found at www.pen.org/freedom/hm/index/htm. They have courageously defied censorship in Cameroon, China, Cuba, Eritrea, Iran, Myanmar, Tunisia, Turkey, Uzbekistan and Vietnam. They have all paid dearly for their commitment.

27. The United States has historically served as a conduit for ideas and information suppressed by other governments. Alexander Solzhenitsyn’s exposés of the Soviet prison camp system were published in the United States when they could not be published in the Soviet Union. The letters written by democracy advocate Wei Jingsheng to his family and government officials during his first fifteen years as a political prisoner in China were published in the United States. *Freedom from Fear*, by Aung San Suu Kyi, the Nobel Peace Prize winner who remains

under house arrest in Burma (Myanmar), was also published in this country. The government of Myanmar has not allowed it to be published there.

28. We need books like these to understand what is happening in countries whose governments shield their people from our view. Few countries have societies as closed and cultures as foreign to us as Iran, Cuba and Sudan. Excluding works by authors there deprives us of insight and information that is all too rare. Americans have a basic right to receive information; it is part of the foundation of democracy because it is so necessary for self-government. It also permits American culture and society to grow. As writers, members of PEN have an acute appreciation of the ways in which ideas are exchanged, interpreted and built upon. That is the basis for progress in literature, in science and in every field of knowledge and art.

29. Many American readers are now learning about life in post-revolution Iran from *Reading Lolita in Tehran*, the memoir of Azar Nafisi, a literature professor who invited seven of her best female students to meet weekly in secret in her home to study works of Western literature that were banned in Iran. The book has been on best-seller lists in the United States for more than 30 weeks. Its author fled Iran for this country in 1997. If she had remained in Iran, her book could not have been published there. It also could not have been published here because of the OFAC Information Regulations. Her story about forbidden literature in the Islamic Republic of Iran would have been forbidden literature in the United States.

Effects the Regulations Have on Translators

30. The OFAC Information Regulations have naturally been of special concern for American translators. Their work is at the center of international communication, which the regulations interrupt.

31. From its inception, PEN has been committed to the promotion and preservation of translation as a cornerstone of communication and understanding among nations. The Translation Committee of PEN was founded in 1959 to protect and support the work of American translators through public forums, awards, publications and campaigns to promote the recognition of translators and protect them from censorship or persecution. The work of American translators has become even more important in the aftermath of terrorist attacks in the United States.

32. In letters to two organizations, OFAC has stated that translation by itself does not violate the regulations, but OFAC's letters do not create binding precedents, the prohibition on substantive or artistic alteration or enhancement of works remains in the regulations, and the truth is that translation *does* substantively and artistically alter a work by recreating it in a different language. Translators would take serious risks in translating works from the affected countries.

33. In any event, translations are often published with introductions, annotations, explanatory notes and other materials that are added to enhance the understanding and appreciation of readers. Adding those materials alters and enhances the underlying works, which the OFAC Information Regulations clearly bar, but those materials are needed to permit true communication, especially if the work takes readers into unfamiliar social, cultural and political terrain.

34. OFAC's conclusion that translation does not violate the regulations betrays a fundamental misunderstanding of what translation is. Translation is not a mechanical process. It always calls for creativity. Because languages do not mirror one another, a translator must

construct a new work out of entirely different materials, hoping to convey as much of the meaning as possible to an audience that cannot glean it from the original.

35. Translations cannot exactly match the originals. They cannot reproduce in English, for example, the same effect a story or poem or essay would have on a Chinese reader in Chinese. The languages are different, the frames of reference do not perfectly overlap, and the histories that give deep meaning to words cannot be readily reproduced.

36. Explaining what every word means could turn each translation into an encyclopedia. Translators instead devise creative ways to approximate and subtly explain the meaning of the original while providing an impression of the original writer's voice and style. The possible approaches are unlimited. The editor, publisher and translator Richard Seaver has described some of the artistic strategies translators develop to create their new versions of the original works in his declaration submitted herewith. As Mr. Seaver explains, each translation builds on the original in a different way. Translations of the same work differ widely from one another, and each one substantively and artistically alters the original.

37. The independent contributions of translators have gained increasing appreciation in recent years. PEN began awarding the annual PEN Book-of-the-Month Club Translation Prize for individual works in 1963 and the triennial PEN/Ralph Manheim Medal for excellence in a body of work in 1982. PEN Awards for Poetry in Translation were added in 1996. Dozens of other awards are now presented for translations from particular languages or in particular genres. In 1993, the Library of Congress began to include the names of translators of belles lettres in its cataloging system. As our Translation Committee's *Handbook for Literary Translators* explains, "[t]he translator, long considered a mere functionary in the production of

books, is now much more likely to be recognized as the co-creator of a new text in another language.”

38. The work that has earned translators the PEN/Ralph Manheim Medal demonstrates the variety of independent contributions translators make to the new works that emerge from the process of translation. Robert Fagles’ translations of Homer, for instance, differs significantly from all previous translations of *The Odyssey* and *The Iliad*, which all vary from one another in form and content. His versions reflect his assessment of new scholarship on ancient Greece, his rethinking of the philosophical meanings in the originals, and his talent in tuning poetry for modern ears while conveying a powerful sense of history. Richard Wilbur’s elegant verse translations, especially of the plays of Molière, show a unique poetic voice inspired to match the wit and tone of the originals, not by reproducing their words in order (which would never work) but by striving to recreate similar effects through his own creative means. And Gregory Rabassa’s translations of modern Latin American literature have created classics, making it possible for English speakers to appreciate works that can be challenging in the original Spanish. Gabriel García Márquez has acknowledged that Rabassa improved his work in retelling it in English.

39. The contributions translators make often involve collaborating with living authors, and they do rise to the level of co-authorship, which OFAC flatly prohibits. As PEN’s *Handbook* states, however, “[t]ranslation is an intrinsically collaborative undertaking.”

40. Even if translation alone did not substantively or artistically alter the works translated, publishing works in translation alters them in ways the OFAC Information Regulations forbid because so many are published with valuable matter added, such as forewords, introductions, interpretive essays and explanatory notes and annotations. The prison

letters of Wei Jingsheng, for example, were published in the volume *The Courage to Stand Alone* with a wealth of added materials: explanatory notes describing the factual circumstances in which Wei wrote the letters and legal and political developments in China; a biographical essay, "Wei Jingsheng's Lifelong Battle for Democracy," contributed by an American scholar; an introduction by Columbia University political scientist Andrew J. Nathan (co-editor of *The Tiananmen Papers*); and a preface by a fellow Chinese activist. Those additions help American readers better understand the experiences and aspirations Mr. Wei shares in his letters and the historical challenges facing those who dedicate themselves to political change in China. They enhance the letters without question.

41. We can easily imagine Orville Schell's words about Wei being applied to activists and intellectuals imprisoned in Iran, Cuba and Sudan:

In a society where self-censorship has been the norm, almost alone Wei Jingsheng has continued to speak out against the suppression of free expression with lucidity and forthrightness. Even the full weight of the Party's persecutory powers and a decade and a half in prison have failed to silence his distinctive voice of conscience.

Yet we could not publish letters from prisoners in Iran, Cuba or Sudan with the same biographical and interpretive materials that have told us so much about China and Wei.

42. Since publishers became aware of OFAC's interpretations earlier this year, translation projects have been halted. The Smithsonian Institution Press, for example, planned to publish a bilingual edition of one of the few works by the Cuban author Alejo Carpentier that have not yet been translated into English, a literary essay on the architecture of Havana, *La ciudad de las columnas*. Translated by the award-winning translator Esther Allen, who currently chairs the PEN Translation Committee, the volume was to be illustrated with photographs by three leading American photographers, Andrew Moore, Andrea Brizzi and Robert Polidori, and three Cuban photographers. The translation had been completed, the selection of the

photographs was under way, and a preface had been prepared by the noted American architect James Stewart Polshek. Photographers, translator and architect were collaborating to create a stimulating and beautiful new work, which the Director of Cultural Heritage Policy of the Smithsonian Institution Center for Folklife and Cultural Heritage called an “important book” and would clearly enhance the original text in many ways. When the publisher was informed that it would violate the OFAC Information Regulations, the project was dropped.

Effects the Regulations Have on PEN Itself

43. PEN’s own activities as an organization are affected by the OFAC Information Regulations because PEN supports, arranges and promotes translations that import and transform works from abroad, including works from Iran.

44. To advance international understanding in a concrete way, PEN has established the PEN Translation Fund, which provides awards averaging \$2,500 for the translation of literary works into English. The ten awards made for 1993 have supported translations of innovative, subversive poems in Arabic; a satirical jaunt through twentieth-century history in Czech; works by a Congolese novelist, playwright and poet who died of AIDS; poetry by leading writers of modern Bolivia and Portugal; a novel from Transylvania’s Golden Age; Hebrew poetry from medieval Spain; novels set in Soviet-occupied Germany and in Kazakhstan under Stalin; and a collection of contemporary stories and novellas from South Korea that depict a Kafkaesque world of ordinary people trapped in an authoritarian society.

45. In addition to providing grant moneys to support these translations, the PEN Translation Fund works to bring them to the attention of publishers through press releases announcing the winners and describing their projects, through postings on PEN’s Web site, and

through direct outreach to agents and publishers. The PEN Translation Fund will also help promote the translations once they are published.

46. The PEN Translation Fund selects translation projects based on their individual promise and does not exclude works written by authors in Cuba, Iran and Sudan. We understand that supporting such translations may be prohibited by the OFAC Information Regulations because the translations add value to the originals, and we understand that promoting the publication and sale of such works violates the OFAC Information Regulations, but PEN believes strongly that translations from those four countries are effective vehicles for international communication and can attract international attention that may protect vulnerable writers from persecution.

47. PEN is already supporting and promoting translations from two of the countries under embargo. In 2001, PEN, working jointly with the International Freedom to Publish Committee of the Association of American Publishers (“IFTPC”), inaugurated a program of translation of works by contemporary Iranian authors living in Iran. The idea for the project grew out of meetings sponsored by PEN with a delegation of Iranian writers who visited the United States in November 1999. The program has many goals: to make the vibrant contemporary literature of Iran available in translation to help create cultural ties, to encourage a more complete understanding of Iran in the United States, to connect relatively isolated Iranian writers to the international community, and to provide a buffer for Iranian writers in their battle against censorship and repression.

48. In an application for a grant from the New York State Council on the Arts for a project that became part of our joint Iranian translation program, PEN explained why translating contemporary Iranian works into English is a matter of urgency:

As the movement seeking reform and democracy gathered momentum in Iran over the last three years, it became apparent that writers and intellectuals were at the forefront of this struggle for change. Not since the days of the Soviet Union have writers and intellectuals been such an important element in the movement for reform, and, as a group, such an object of wrath, repression and vilification by a repressive state. Gradually, the largely negative image of Iran in the news has given way to fascination among general readers about these intellectuals and the direction that modern Iran is taking.

49. The struggles of writers and intellectuals against violence and other forms of persecution form a leading edge of the movement for political change in Iran. There were serial killings of writers and intellectuals in 1999 and 2000, and violent intimidation has continued.

50. With writers and journalists at the forefront of social and political change, we should take every opportunity we have to learn from them and encourage them to write for an international audience whose attention may help protect them from harm. Iran has a Ministry of Culture and Islamic Guidance that licenses news agencies and censors books, magazines and other publications. The government and religious authorities, who are often the same, attempt to control what the public can learn in overt and covert ways. Many Iranian writers cannot get their works published in Iran, and many others dare not try. Iranian writers obviously have reason to fear if they even attempt to publish anything of which the government does not approve.

51. As the subject of a notorious *fatwa* issued by Iran's late revolutionary leader Ayatollah Khomeini, I lived in hiding and in fear for my life and the lives of those I love for many years. I know very personally how vital the sanctuary provided by countries like the United States is to maintaining the free flow of ideas and information around the world.

52. Especially given the global importance of Iran in our increasingly fragile world, we all have the strongest possible reasons to hear from writers in Iran today. The members of PEN are pledged to help them communicate with the world.

53. The New York State Council on the Arts has contributed funds to support PEN's first Iranian translation project, which is *The PEN Anthology of Contemporary Iranian Literature*. It has been edited by Nahid Mozaffari and is to be published in the United States in 2005 by Arcade Publishing. The anthology includes more than 50 works by Iranian authors and could not be published if the OFAC Information Restrictions were enforced.

54. The ways in which the *PEN Anthology* violates the regulations are many of the same ways in which it will contribute to international cultural exchange:

- Preparing that anthology has been a collaborative project involving Iranian writers, poets, critics, academics in Iran, their compatriots in exile around the world, and American writers, editors and translators.
- The translators have added value to the works they have translated, as the declaration of Richard Seaver explains in greater detail; editors have added brief essays about the writers and their works; and Ms. Mozaffari has contributed a thoughtful and informative introductory essay on the state of writers in Iran before and after the revolution and how the works in the anthology express themes bearing on artistic, political and social life in Iran.
- The anthology is to be promoted by PEN and by Arcade Publishing through press releases, readings in bookstores, visits by writers, and public readings and other events in New York, New England and Los Angeles.

55. PEN has also joined with the IFTPC to expand the project of Iranian translations. Funded by a grant from the Open Society Institute, the IFTPC/PEN project aims to interest publishers in publishing books from Iran by making sample translations available and offering stipends for translation and for post-publication marketing and promotion of the books, in connection with PEN activities. The IFTPC/PEN grants are to be used for translators and for advertising, author tours and/or point-of-purchase promotion. PEN and IFTPC will endorse the books, lending their name and credibility, and will organize activities both to promote sales and to give the books a cultural life beyond their actual sales.

56. Our purpose is to overcome the initial barriers that prevent many publishers from even considering publishing translated works. Before a publisher can decide whether to publish, the original often must be translated, so that American editors can determine whether there is an audience for it here. Translation is an expense English-language projects do not incur. In 2003, the IFTPC/PEN project commissioned sample translations of three works by authors living in Iran. The translations were completed in 2004, and PEN and IFTPC have been working to secure publishers for them.

57. The IFTPC/PEN project also invests in the cost of promoting a translated work to help the interested public discover it and generate the kind of commercial success that will encourage publishers to invest in further translations to keep the lines of international communication open.

58. Again, PEN's activities would not conform to the OFAC Information Regulations, which plainly bar the promotion of works by authors in Iran. Without promoting the books, however, PEN would not be able to promote a more complete understanding of Iran and Iranian culture and politics in the United States. And PEN believes that generating interest from Americans in works from Iran could prove useful to forces within Iran that are struggling to create civil society there.

59. The OFAC Information Regulations have held up another translation project sponsored by PEN. The project, titled *Cubanacan: New Short Fiction from Cuba*, is a selection of twelve short stories written in Cuba during the past decade, most by young writers, translated for the first time for this volume. The collection has particular relevance to PEN's mission to defend free expression wherever it is threatened, as it includes work that could be viewed as subversive in Cuba whose translation and circulation have been restricted by political factors.

The editors, comparative literature scholars Jacqueline Loss and Esther Whitfield, will provide an introduction to help American readers more fully appreciate the translated works. The contributions of the editors and the translators will substantively and artistically alter the original works.

60. Northwestern University Press (“NU Press”) agreed to publish *Cubanacan* but has decided to suspend its involvement in the project until the legal status of the OFAC Information Regulations becomes clear. In light of the current uncertainty over the degree of alteration or enhancement that is allowed – and the current ban on marketing – NU Press is understandably unwilling to proceed. PEN and NU Press had planned to market this book actively by hosting a series of readings in the New York area and advertising the book through traditional print and electronic media.

Self-Censorship and Seeking Government Approval to Publish

61. The existence of the OFAC Information Regulations naturally makes Americans wary of projects involving any of the countries under cultural embargo. Resources in publishing are scarce. Writers, translators, editors, agents and publishers all have to choose the projects they devote themselves to with care. It may take years of constant work to bring a project to fruition. During that time, writers and translators have to forgo other work. If they dedicate themselves to a project that is found to violate the regulations, their livelihoods and their careers could be devastated. The book could not be published, they could be fined hundreds of thousands of dollars, and they could be prosecuted and jailed. But the loss of the book alone would inflict significant damage.

62. Faced with those risks, some writers, translators, editors, agents and publishers inevitably choose other projects. They are unlikely to have the resources to devote to defending

themselves in a legal battle or the time to devote to determining whether the OFAC Information Regulations would allow them to do what they want. The regulations are worryingly ambiguous – what qualifies as “substantive or artistic alteration,” for example? – and OFAC’s recent letters interpreting them have been contradictory and only increased the confusion. But they have made it clear that OFAC will enforce the regulations. That means many people, to avert danger or just to prevent wasting time, avoid any project that could potentially appear perilous, and potential contributions to our knowledge and understanding are being lost.

63. PEN is aware that those who wish to help bring the works of writers in Iran, Cuba and Sudan to the American public may apply to OFAC for permission to do so. However, the members of PEN have pledged to strive for the free exchange of information and ideas across borders. We have always drawn on the ideals of the United States, especially the guarantees of free expression established by the First Amendment to the United States Constitution and protected by Congress. Prior restraints on publication have been abhorred since America’s colonial days. Applying to the government for permission to publish is just as inconsistent with the values of this country as it is with the values of PEN.

64. PEN has observed self-censorship in many regimes. Ambiguous regulations leave writers unsure as to what may be allowed and discourage them from preparing any potentially controversial works. Self-censorship relieves governments of the need to censor directly. Where permits to publish must be applied for, unpredictability has the same result: most human beings avoid risks and stick to topics that are safe.

65. The United States has long been proud to encourage a diversity of voices and an open marketplace of ideas. A system that requires writers to apply for permission is unworthy of American ideals.

International Obligations

66. PEN believes that the regime established by OFAC not only runs contrary to the intention of Congress and the principles of the First Amendment, but also endangers America's compliance with international treaties that protect freedom of expression.

67. The application of trade sanctions to literature and other information and informational materials cannot be squared with America's national commitments to uphold the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights. They guarantee, in almost identical terms, the right to freedom of thought and expression, which "includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice." The American Declaration of the Rights and Duties of Man adds that every person has the right "to participate in the benefits that result from intellectual progress."

68. PEN knows of more than 1,000 writers and journalists who are currently in prison or under threat from governments that violate international laws protecting freedom of expression. They include Ven Ngawang Phulchung, a Tibetan monk serving a 19-year sentence for publishing translations of such documents as the Universal Declaration of Human Rights; Pham Hong Son, who is currently in prison in Vietnam for translating and circulating an article titled "What Is Democracy?" from the Web site of the U.S. Embassy in Vietnam; and many others around the world, including writers in Cuba, Iran and Sudan.

69. The OFAC Information Regulations create a mechanism for punishing publishers, scholars, writers, translators and editors for exercising rights that are universally guaranteed. They put the United States in dubious company internationally and deprive Americans of

literature and ideas that would improve their understanding of the world and help undermine the walls other countries have erected to keep Americans and their own people from communicating.

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Salman Rushdie