

**ROSS  
DECLARATION**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE ASSOCIATION OF AMERICAN :  
UNIVERSITY PRESSES, INC.; THE :  
PROFESSIONAL/SCHOLARLY PUBLISHING :  
DIVISION OF THE ASSOCIATION OF :  
AMERICAN PUBLISHERS, INC.; PEN :  
AMERICAN CENTER, INC.; and ARCADE :  
PUBLISHING, INC., :  
 :  
  : 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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**DECLARATION OF  
DANIEL J.J. ROSS**

Pursuant to 28 U.S.C. § 1746, I, Daniel J.J. Ross, hereby declare under penalty of perjury that the following is true and correct to the best of my information and belief:

1. I am the Director and Editor-in-Chief of The University of Alabama Press (“UA Press”), which is located in Tuscaloosa, Alabama.
2. I submit this declaration in support of the application for declaratory and injunctive relief from regulations of the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) that restrict and, in some cases, prohibit the publication of works from countries subject to United States trade sanctions, including Cuba, Iran and Sudan (the “OFAC Information Regulations”).

3. This declaration highlights two important works that UA Press had intended to publish but has now put on hold as a result of OFAC's recent interpretive rulings suggesting that such publications would violate the OFAC Information Regulations. The OFAC Information Regulations subject publishers to serious civil and criminal penalties for such violations.

4. I understand that OFAC's Information Regulations prohibit (i) "transactions related to information or informational materials not fully created and in existence at the date of the transaction," including payment of an advance; (ii) "the substantive or artistic alteration or enhancement of information or informational materials," including collaborations, and (iii) "the provision of marketing and business consulting services" for information and informational materials. As explained more fully below, these prohibited activities are part of the standard practice of UA Press's in publishing books. The OFAC Information Regulations thus prevent us from publishing these two worthwhile books written by authors from the restricted countries.

*The University of Alabama Press*

5. The University of Alabama Press is the primary scholarly publishing arm of the University of Alabama.

6. Our publishing program is overseen by an Editorial Board comprised of representatives from all doctoral degree granting state universities within Alabama. Submissions to UA Press are reviewed by leading academics in the relevant fields who provide recommendations to the Board on whether the submissions merit publication.

7. Guided by these experts, the Board initiates and selects projects which support, extend and preserve academic research. Part of UA Press's mission also includes publishing books which foster an understanding of the history and cultures of Alabama and our region.

8. In connection with that aim, UA Press publishes books in southern history and

culture; Latin American history; American and southeastern archaeology; ethnohistory and anthropology. In particular, UA Press publishes the following special series: Classics in Southeastern Archaeology; Deep South Books; The Modern South; and Contemporary American Indian Studies. We have also published a number of books concerning the Caribbean.

9. Consistent with this focus, our Editorial Board earlier this year elected to publish two exciting new works relating to Cuba. Both books are already far along in the publication process.

10. The first work, *Dialogues in Cuban Archaeology*, is a collaboration between leading Cuban and American archaeologists. It explores the state of Cuban archaeological research and the impact of the U.S. embargo on such research. It is edited by two American archaeologists, L. Antonio Curet of the Field Museum in Chicago and Shannon L. Dawdy of the University of Michigan, and a Cuban, Gabino La Rosa, an archaeologist with the Centro de Antropologia in Havana. The second book, *A Colossus on the Sand: The Slave Revolt of 1825 in Guamacaro and the Atlantic World*, by Cuban scholar Manuel Barcia Paz, is an analysis of the far-reaching consequences of the Guamacaro slave revolt – a largely unstudied rebellion now brought to light by Mr. Barcia with the help of previously unpublished materials from the Cuban National Archives.

11. The Editorial Board voted to publish these two books because of the substantial contributions each would provide to the existing academic studies in their respective fields.

***Dialogues in Cuban Archaeology***

12. This book brings together esteemed Cuban and American archaeologists to reveal critical aspects of the current state of Cuban archaeological research – from rock art to mortuary practices to historical renovation – answering pressing questions for studying our common

historical past.

13. The volume evolved from a 2001 symposium of the Society for American Archaeology in Denver, Colorado, which provided the first opportunity for American and Cuban archaeologists to engage in dialogue concerning their respective research since the early 1960s. To continue that dialogue, the book presents the results of recent collaborative projects and serves as a foundation for future coordinated efforts.

14. Indeed, as the title of the work suggests, what makes it such a seminal work is the dialogue between Cuban and American archaeologists and the joint contributions to their understanding of archaeological research.

15. Yet I now understand that the OFAC Information Regulations plainly prohibit exactly this type of collaborative, co-authored publication. OFAC has recently stated 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.”

16. *Dialogues in Cuban Archaeology* is certainly a collaboration between Cuban and American authors; a work not only edited and arranged by Cuban and American scholars but with chapters written by an assortment of distinguished Cuban and American archaeologists. It begins with a preface by each of the three editors, followed by essays written by thirteen other authors, eight of them Cuban. The first part of the book focuses on the history of Cuban archaeology and the second on archeological research at specific sites in Cuba and the methodological approaches employed at those sites.

17. The manuscript has been reviewed by three experts in the field of Caribbean archaeology, each of whom praised the work and strongly urged its publication. “There is a crying need for such a volume,” one reviewer noted. Another noted that the book “would bring

important new information to the English-language audience.” The editors point out, and the reviewers agree, that “there has been a lengthy gap in scholarly communication between Cuba and North America, [because] of the U.S.-imposed embargo.” This book is an attempt to overcome that gap by highlighting what Cuban archaeologists have been able to uncover over the past few decades and in their recent and ongoing research.

18. Its discussion of current archaeological studies in Cuba – which are largely inaccessible to American archaeologists – is all the more critical given the minimal contact between American and Cuban archaeologists. In fact, to the best of our knowledge, there has been only one English-language review of Cuban archaeology since the 1960s . American archaeologists, the reviewers explained, would thus be very eager to learn and would benefit significantly from this new information.

*A Colossus on the Sand: The Slave Revolt of 1825  
in Guamacaro and the Atlantic World*

19. Of equal interest to an American audience is *A Colossus on the Sand*, a book analyzing the impact on Cuba and the entire Atlantic region caused by a major Cuban slave revolt in 1825. Written by a Cuban scholar, Manuel Barcia Paz, the manuscript provides insight into a previously unstudied slave rebellion led by three African men in Guamacaro which had far-reaching and long-lasting repercussions. The author situates the revolt within the broader context of Atlantic-region slave revolts, examining the effects of ideological, political and cultural forces in shaping the African slave resistance movement in Cuba and elsewhere in the region.

20. The Editorial Board selected this book for publication following favorable reviews by two leading authorities on slave revolts. The reviewers explained that there are few comparable works on the social history of Cuban slavery and that the book would therefore

contribute greatly to the literature in this field. Importantly, it would “place the history of Cuban slavery in an Atlantic context,” with an analysis of slave revolts in Cuba and the factors contributing to them permitting meaningful reflections on parallel periods in our own history in the United States. Its contribution would be all the more significant given the author’s reliance on previously unpublished material from the Cuban National Archives – materials not otherwise accessible to American academics.

21. As one of the reviewers commented, “the author has performed unprecedented research on Cuban slave revolts in Cuban archives.... The Cuban slave revolt of 1825 has not received the attention it deserves from historians of slavery [yet] it ranks as one of the largest slave revolts in Cuban history and was probably the most destructive.” The book provides an important and original interpretation of this major event in Cuban history and the history of slavery. For that reason, and on the basis of the enthusiastic endorsement of two leading experts in the field, UA Press, committed itself to this project.

#### ***Publishing Contracts***

22. It is standard practice for university presses to enter into publishing contracts with prospective authors for works before they are completed, conditioned upon the acceptability of the final manuscript. This often includes the payment of an advance on royalties for new works or for previously published works that will undergo significant revisions. Without the benefit of a contract in hand, and thus some assurance of publication, many authors would be reluctant to spend the hundreds or thousands of hours, typically over a period of years, often necessary to prepare a book. Advances are often needed by authors who otherwise could not afford to devote the time necessary to complete those works.

23. In accordance with its standard practice, UA Press contracted with the editors of *Dialogues in Cuban Archaeology* before the book was written. UA Press's contract with the editors provides that the two American editors would receive monetary royalties following publication of the book. The Cuban editor would receive no royalties but instead would receive a selection of UA Press books having a total retail value of \$300. In this particular case, the editors did not receive any compensation in advance.

24. UA Press's contract with the author of *Colossus on the Sand* was also executed prior to completion of that work. It similarly provides for the author to receive royalties following publication of the book but no advance.

25. Although UA Press has paid no advances with respect to these two particular works, I am informed that any future payment of royalties or payment in books to these Cuban authors following publication would still likely be viewed by OFAC as violating the OFAC Information Regulations.

### *The Editing Process*

26. The OFAC Information Regulations also forbid the substantive alteration or enhancement of information. I understand that OFAC has taken confusing and inconsistent positions in letters to publishers who have sought guidance on the types of editorial activities that may be permitted. In 2003, various letters from OFAC indicated that routine editing is prohibited. More recently, OFAC has permitted newspapers to engage in such editing. One position has remained constant, however: that the OFAC Information Regulations prohibit American publishers from effecting the "substantive or artistic alteration or enhancement" of a work by an author in one of the forbidden countries. OFAC has permitted changes to be made only when it deems them not to be substantive or artistic alterations or enhancements. The



changes we would make in publishing *Dialogues in Cuban Archaeology* and *A Colossus in the Sand* would substantively alter and enhance those works, given the plain meaning of those words.

27. In addition, our editing process regularly entails the “substantive rewrit[ing] and revis[ion]” of works submitted for publication – efforts that I understand are prohibited by the OFAC Information Regulations. With respect to foreign authors, in particular, substantive editing is often necessary to make their works suitable for an American audience and conform them to the standards of UA Press publications.

28. As stated above, both books described above are far along in the publication process. As with all manuscripts published by UA Press, they will undergo rigorous editing.

29. UA Press, like the other academic presses, employs a multi-step editing process.

30. First, we often work with authors in the developmental stages of their works.

31. Once a draft of the manuscript is complete, UA Press sends the manuscript to outside experts to review and provide suggested revisions to the manuscript. These experts provide written reviews of the draft manuscript which discuss, among other things, the merits and weaknesses of the scholarship and the degree of interest in the various topics addressed. They also provide substantive comments and suggested revisions – sometimes on a line by line basis. The reviews are comprehensive, varying in length from several pages to dozens of pages each. And, although authors need not make all of the suggested revisions, they are strongly encouraged to abide by the reviewers’ editorial guidance.

32. Following incorporation of these comments into a revised version, the manuscript is then edited by UA Press staff members. UA Press staffers edit the manuscript for, among other things, organization, relative emphasis, clarity, style, consistency, and flow – often times

substantially rewriting sections of the draft manuscript.

33. Editing is even more rigorous when the authors are not native English speakers. Beyond corrections of grammar, usage and word choice, substantive reworkings of arguments and references are often required to appropriately gear such works for an American audience. Foreign authors, for example, may assume familiarity with their country's culture and history that American audiences do not have, requiring editors to make changes to enable American readers to understand and appreciate the foreign author's perspective.

34. *Dialogues in Cuban Archaeology* has already undergone the first step in the editing process. Three reviewers have provided the manuscript's editors with their extensive comments and critiques – which together totaled 33 pages. Comments on the draft ranged from suggesting a change in the title of the book to recommending the addition of a postscript reflecting on the methodological approaches discussed in each chapter. As the following excerpt indicates, the reviews certainly provide “substantive editing” of the work:

Page 4, end par 3 While the list of museums and university chairs is relevant, it provides little in the way archaeology is organized. In other words I would comment on the agendas and the stated purposes for which these posts and institutions were created. Who are they supposed to serve? Are these merely for satisfying an elitist demand? To what extent was the public consulted or canvassed? Are these local or dictated from a central (Havana) Government? For whom are these publications made; do they address the public or a narrow specialized (archaeologists) group? These are the sorts of questions I am left wishing to know about.

35. The reviewers' suggested revisions were passed on to the editors of *Dialogues in Cuban Archaeology* who had incorporated them into a revised manuscript when UA Press decided to put this project on hold due to concern about violating the OFAC Information

Regulations.

36. Like *Dialogues in Cuban Archaeology*, *A Colossus on the Sand* has also undergone review by relevant experts. The UA Press Editorial Board decided to publish *A Colossus on the Sand* on the basis of two sample chapters submitted by the author. Those chapters were reviewed by the leading authorities on slave history in Hispanic America, who each provided us with substantial comments and suggested revisions. Among other things, both reviewers agreed that the manuscript would need an “intrusive editor” as a reader “can tell that the author is writing in a second language.”

37. These comments were forwarded to the author and, if not for the hold put on this project, there would now be an ongoing exchange of comments until the manuscript was ready for editing by UA Press staff.

38. Such collaboration between UA Press’s reviewers, the UA Press staff and our authors is an essential part of the publication process. Editing, including suggestions from peer reviewers, is necessary to bring the work into conformity with UA Press’s publishing standards so as to permit publication. This editorial interaction is a prerequisite for all of the works we publish. It is particularly critical, however, with respect to foreign authors in light of cultural differences and language issues. Substantive rewriting and revising of those works, beyond just correcting grammar and spelling, is integral to their publication for an American audience.

#### ***Marketing and Promotion***

39. The OFAC Information Regulations forbid the marketing of books written by authors in the restricted countries. However, we could not reach readers without marketing and promotion.

40. UA Press has a comprehensive marketing program which is overseen by our sales

team. We profile each book we publish in our catalogue, which is distributed to retailers and wholesalers across the country and internationally. Our sales representatives maintain active contact with our national accounts and wholesale distributors. We distribute review copies to appropriate members of the media. We advertise our books in academic journals and promote them in press materials sent to academic and trade publications. We also promote and display the works at scholarly conferences since scholars are a major market for academic publications.

41. Such marketing and promotion efforts are the only practical means for readers to learn about the books that we publish. To my knowledge, UA Press has never published a book without including it in our catalog, providing retailers with a description of the book, or engaging in other promotional efforts. Absent such promotion campaigns, it would be effectively impossible to publish because there would be no means for the public to learn of the newly released work and, therefore, no way for the Press to recover its investment from sales.

#### *The Effect of OFAC Regulations on Publication*

42. Several months ago, I learned that OFAC had recently clarified its position regarding publication of works by authors in countries subject to United States trade sanctions. Specifically, I was advised, that in an exchange with the Institute of Electrical and Electronics Engineers, Inc. ("IEEE"), OFAC took the position that U.S. publishers may not publish new works by authors from Iran, Cuba, and other countries subject to sanctions. I learned that OFAC also claimed its regulations prohibit paying advances to authors of such works or substantively altering or enhancing their works – either new publications or already existing publications – and prohibit the promotion of either new or existing works.

43. At the time I learned of OFAC's exchange with IEEE, the two works discussed above were well developed in the publication process. Nevertheless, because of the risk that the

projects could be found to violate the OFAC Information Regulations and thereby subject UA Press to civil and/or criminal penalties, UA Press decided to put them both on hold.

44. In sum, the OFAC Information Regulations, by prohibiting the publication of works like *Dialogues in Cuban Archaeology* and *A Colossus in the Sand*, seriously compromise UA Press's mission to advance learning and disseminate scholarship to the American public. They interfere with our ability to acquire books we wish to publish and to edit them to conform to our standards, which seems counterproductive, not least because editing amounts to an enhancement which benefits the American publisher and American audience at least as much as it benefits the author.

45. In prohibiting the editing and publication of works like these, the OFAC Information Regulations deprive American scholars of information available almost exclusively in sanctioned countries, denying them access to primary source materials like historical documents and artifacts not otherwise available in the United States. By precluding American authors from collaborating with anyone in those countries as co-authors, they further inhibit the free exchange of information and ideas that is critical to advancement in academic research and learning.

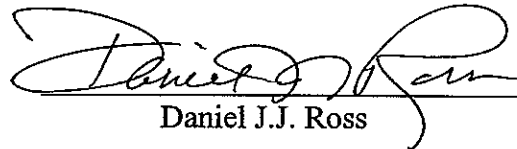
#### ***Applying for Permission to Publish***

46. I have been informed that publishers may apply to OFAC for special licenses that exempt them from the OFAC Information Regulations. I have no reason to believe OFAC would approve of our publication of the works described above in light of the recent interpretive rulings, including those focusing on the prohibited nature of collaborations and co-authorships.

47. Further, we, as a university press, would be opposed in principle to applying to the government for a license to publish. We would view this as a classic prior restraint

inconsistent with this nation's long established rejection of official supervision of the press. Free societies like ours do not require publishers to apply to the government for permission to publish. The very existence of a system of official approval inhibits the free exchange of information and ideas on which our society depends and leads to self-censorship.

Dated: September 9, 2004

  
Daniel J.J. Ross