



September 12, 2019

Secretary Wilbur Ross
U.S. Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

RE: Saudia (a/k/a Saudi Arabian Airlines) participating in discriminatory boycott in violation of U.S. federal anti-boycott law

Dear Secretary Ross:

We write regarding the ongoing and overtly discriminatory practice of several air carriers—which operate in the United States—of refusing to sell tickets to and transport Israeli passport holders. For your reference, please find enclosed The Lawfare Project's previous letter to the U.S. Department of Commerce (hereinafter the "Department") dated October 17, 2017, as well as the response from the Department's Bureau of Industry and Security (BIS) dated November 7, 2017.

Our last correspondence concerned Kuwait Airways Corporation (KAC), the national carrier of Kuwait. To our knowledge, and despite BIS's acknowledged awareness of the situation, KAC has continued its practice in clear violation of U.S. federal anti-boycott law. **We have since learned that Saudia (a/k/a Saudi Arabian Airlines), the national carrier of Saudi Arabia, similarly refuses to sell tickets to and transport Israeli passport holders and Israeli nationals.** This is readily apparent by visiting Saudia's website and attempting to purchase a ticket, which requires that would-be travelers select their nationality and passport issuing country from two separate drop-down lists. Israel is conspicuously absent from both. Moreover, Saudia markets and operates connecting flights between the United States and countries that accept Israeli passports, such as India. Hence, under normal circumstances, while an Israeli passport holder would be able to travel from New York to Mumbai, for example, that same individual is precluded from doing so via Saudia because of the airline's discriminatory policy. **We emphatically urge the Department to take swift, concrete, and effective steps to address these discriminatory and unlawful practices.**

As you are undoubtedly well aware, the Export Administration Regulations (EAR) were permanently authorized by statute on August 13, 2018 with the passage into law of the Export Control Reform Act of 2018 (ECRA), part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA). The ECRA repealed and replaced most of the long-expired Export Administration Act of 1979 (EAA), which previously served as the statutory authority for the EAR. Part II of the ECRA, titled "Anti-Boycott Act of 2018," reiterates the longstanding policy of the United States to oppose boycotts fostered or imposed by foreign countries against other countries friendly to the United States—such as Israel—or against any U.S. persons, including Israeli passport holders in the United States. Like the EAA, the ECRA



imposes criminal penalties for violations of up to \$1,000,000 and/or 20 years imprisonment. Civil penalties include a fine of up to \$300,000 (\$50,000 higher than that provided for by the EAA) or an amount that is twice the value of the transaction at issue, whichever is greater.

The November 7, 2017 letter from BIS to The Lawfare Project expressly recognizes that the antiboycott provisions of the EAR prohibit "United States person[s] from refusing to do business . . . with a national or resident of a boycotted country when such refusal is pursuant, for example, to a requirement of a boycotting country and is taken with intent to further or support an unsanctioned foreign boycott." Like Kuwait, Saudi Arabia is included in the U.S. Department of the Treasury's quarterly list of countries that require cooperation with international boycotts—specifically, the unsanctioned Arab League boycott of Israel. Both KAC and Saudia are foreign corporations registered as such in New Jersey and Virginia, respectively, with Saudia's main office in Virginia, and are therefore considered "United States persons" for purposes of the federal anti-boycott legislation and regulations. The conduct of these two airlines is *precisely* that which such legislation was designed to prevent and penalize.

While we understand that BIS will not confirm nor deny the existence of any ongoing potential investigation into Saudia and/or KAC, it appears that both airlines have simply been left to continue operating in (and economically benefiting from) the United States while brazenly flouting the nation's laws. Nearly two years after our last communication with BIS, we have yet to see any progress towards thwarting this implementation of the Arab League boycott on our own soil and protecting Israelis within our country from such discrimination. If any such investigations have concluded, we would greatly appreciate information from BIS on their outcomes. If ongoing, it is imperative that BIS pursue these investigations with appropriate dedication and diligence in order to ensure Saudia and KAC are complying with applicable law.

We look forward to hearing back from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brooke Goldstein".

Brooke Goldstein
Executive Director
The Lawfare Project

A handwritten signature in black ink, appearing to read "Benjamin Ryberg".

Benjamin Ryberg
COO & Director of Research
The Lawfare Project

cc: Rich Ashooh, Assistant Secretary for Export Administration
Matthew S. Borman, Deputy Assistant Secretary for Export Administration
Douglas R. Hassebrock, OEE Director Performing the Non-Exclusive Functions and Duties
of the Assistant Secretary for Export Enforcement

**Letter from The Lawfare Project to the
U.S. Department of Commerce
re. Kuwait Airways Corporation**

October 17, 2017



October 17, 2017

Secretary Wilbur Ross
U.S. Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

**Re: Kuwait Airways Corporation participating in discriminatory boycott in violation of
Export Administration Act**

Dear Secretary Ross:

We write regarding an ongoing matter of which you may already be aware: the flagrantly discriminatory conduct of Kuwait Airways Corporation (KAC) in its U.S. operations, specifically its refusal to sell airline tickets to Israeli passport holders flying out of New York's JFK International Airport.

One year ago, we wrote to former Secretary Pritzker, urging her to commence an investigation into this matter under the authority of the Office of Antiboycott Compliance. We are unaware of whether or not such an investigation has been initiated, nor whether the Department of Commerce has made any other efforts to ensure KAC complies with U.S. law. Since then, our domestic efforts have prompted the U.S. Department of Transportation to definitively conclude that KAC's conduct is a direct violation of U.S. law, and the Port Authority of New York & New Jersey to notify Kuwait airways that its operations violated its lease for JFK airport space and issue a "cease and desist" order. These developments resulted in KAC cancelling its flight route between JFK and London Heathrow Airport. Subsequently, we brought legal action in Switzerland, which led to KAC terminating all of its inter-European flight routes. Another action in Germany is pending.

KAC's discriminatory activities have again made headlines: recently, reports emerged that Nuseir Yassin, an Arab Israeli citizen who was scheduled to fly from New York to India via Kuwait, was informed at JFK airport that he would not be permitted to travel because he held an Israeli passport. Under Kuwaiti law, KAC is required to deny its services to Israeli passport holders because Israeli passports are not recognized travel documents in Kuwait and these passengers would be unable to enter Kuwait upon landing. As a member of the Arab League and an adherent to the Arab League boycott of Israel, Kuwaiti law also prevents KAC, as a state instrumentality, from contracting with individuals of Israeli national origin.

The anti-boycott laws under the Export Administration Act ("EAA") of 1979 prohibit U.S. persons and companies from furthering or supporting the boycott of Israel sponsored by the Arab League. U.S. companies must report requests to engage in activities that further or support the boycott of Israel. Conduct that may be penalized under the EAA includes: agreements to refuse



or actual refusal to do business with or in Israel or with blacklisted companies; agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality; agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies; agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person. The EAA specifies criminal and other penalties for violations including imprisonment for up to ten years and fines up to \$50,000 for each “willful” violation.

KAC, as a foreign corporation registered as such in New Jersey and doing business in New York, is considered a “United States person” for purposes of the federal anti-boycott legislation and is forbidden to intentionally cooperate in any way with any unsanctioned foreign boycott against a U.S. ally. Further, KAC has admitted all of the requisite elements of a violation of the U.S. anti-boycott laws and regulations in its response letter to the DOT, which was sent as part of the above-referenced DOT inquiry into KAC's discriminatory conduct within the United States.

As expressed in our previous letter to former Secretary Pritzker, we hope you will be willing to launch an investigation into KAC's operations. We would also be grateful for any information you could provide regarding your willingness to proceed on this important issue.

If we can be of any assistance, please do not hesitate to be in touch.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence Hill".

Lawrence Hill
Chairman of the Board, The Lawfare Project

A handwritten signature in cursive script, appearing to read "Brooke Goldstein".

Brooke Goldstein
Executive Director, The Lawfare Project

A handwritten signature in cursive script, appearing to read "Benjamin Ryberg".

Benjamin Ryberg
Chief Operating Officer / Director of Research, The Lawfare Project

**Letter from the Bureau of Industry and
Security to The Lawfare Project
re. Kuwait Airways Corporation**

November 7, 2017



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

NOV - 7 2017

Lawrence Hill, Esq.
Chairman of the Board
The Lawfare Project
633 Third Avenue
New York, NY 10017

Dear Mr. Hill:

Thank you for your letter expressing concerns regarding a recent report of alleged discriminatory conduct towards a passenger at JFK International Airport (New York).

The Office of Antiboycott Compliance (OAC) in the Bureau of Industry and Security (BIS) has also closely followed these reports.

The antiboycott provisions of the Export Administration Regulations (EAR) prohibit a United States person from refusing to do business (in U.S. interstate or foreign commerce) with a national or resident of a boycotted country when such refusal is pursuant, for example, to a requirement of a boycotting country and is taken with intent to further or support an unsanctioned foreign boycott. Those provisions also prohibit a United States person from discriminating in U.S. interstate or foreign commerce against a United States person on the basis of race, religion, sex or national origin with the intent to further or support such a boycott.

OAC scrutinizes incidents and practices that may constitute violations of the antiboycott provisions of the EAR, and, as warranted, initiates enforcement actions, under the authority of the EAR, against United States persons who have engaged in such conduct.

It is the policy of BIS to neither confirm nor deny the existence of any potential ongoing investigation. Be assured, however, that when the facts and circumstances warrant, OAC takes appropriate action against violators of our antiboycott regulations.

Sincerely,

Richard R. Majauskas
Deputy Assistant Secretary
for Export Enforcement

