

# HEJAZ INTERNATIONAL JUSTICE REPARATIONS COMMISSION

DEFENDER OF THE FAITHFUL—GUARDIAN OF LIBERTY

MADINAH MISSION CHARTERED IN THE  
YEAR 622 C.E. / 1 H. — CITY OF YATHRIB —

By Hatem Alghuti

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## REINSTATED MEMORANDUM

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August 1, 2022

**Subject:** Exploring grounds for suit and causes of action against Saudi Arabia

We wish to express our thanks to the American Civil Liberties Union for guarding universal freedoms against laws foreign to both our constitution and human nature. As more fully explained in the memo, we seek assistance in filing a lawsuit against all parties involved in the nationally coordinated offensive— which aims to attach the U.S. Government endorsed<sup>1</sup> religio-political doctrine (so called “Wahhabism”) to the mainstream Orthodox Sunni Islamic body. For more information, please refer to the definition of terms and historical overview attachments.

### INTRODUCTION

The National Truth and Reconciliation Association (“NTRA” or “Association”) provides this memo to prospective counsel to explore grounds for bringing suit against the Kingdom of Saudi Arabia (the “Kingdom” or “KSA”) on behalf of the American Muslim Community. Possible causes of action, applicable law, and other such factors should be considered prior to drafting the litigation plan.

Between 2002 and present, thousands of victims’ family members, individuals who were physically injured, and commercial victims of the 9/11 terrorist attacks have filed action against the Kingdom for their injuries and sustained losses as a result of the attacks. The evidence submitted included dozens of declassified U.S. and foreign government intelligence reports.

In support of those claims, the plaintiffs presented facts and evidence that the KSA’s Ministry of “Islamic” Affairs and related components of Saudi Arabia’s vast government apparatus established to proselytize the anarchic political doctrine called “Wahhabism”<sup>2</sup>

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<sup>1</sup> Whitehouse.gov Statements & Releases.

<sup>2</sup> See definition and history in section IV.

*(also referred hereafter as the Kharijite Doctrine, the historical name assigned to the political ideology)* knowingly channeled extensive funds and material support to extremist, through the da'wa organizations and other government platforms under their control, which led to the attack. The Kingdom's proselytizing activities have taken additional significance recently in establishing some "reasonable connection" between defendant's actions and plaintiffs' injuries, a requirement in the newly amended ATA's civil liability provisions.<sup>3</sup> (See new exception to sovereign immunity in Section IV)

### **Key Points Established in This Memorandum:**

The Kingdom's proselytizing activities serve as the core argument used in over twenty claims filed against the Saudi Government. The primary source of evidence used to assert claims against the Kingdom include the 28 pages of the Congressional Joint Inquiry ("CJI") Report; the investigative memo of the 9/11 Commission concerning Saudi government involvement in the attacks known as "Document 17," and other declassified U.S. government investigative records. The Kingdom propagates the political ideology practiced by Khawaraj (Arabic "Defector") worldwide through subtle and nefarious means, spending billions in the construction of "mosques", faith centers/organizations, and schools.

In the United States, the Kingdom promotes these endeavors by financing numerous "Islamic" organizations at the local and national level. The Kingdom frequently uses religion as a front to engage in nationwide astroturing activities—exploiting U.S. laws originally meant to guard citizens' rights (e.g. freedom of religion) to prevent scrutiny or charges for their activity. The unprecedented foreign influence campaign conducted through faith based front organizations has made it difficult for many to identify the ideological distinctions between the Saudi sponsored anarchic political doctrine (representing approximately 3%) and mainstream Islam—Sunni branch (80-85%) and the Shia branch (12-15%) respectively. This has resulted in the mainstream American Muslim community at large to be blamed for the activities of Saudi allied extremist.

Available evidence indicates that the goal of the Kingdom's nationally coordinated astroturing offensive is to (a) shield the Kingdom from any inquiry into the involvement of its agents in supporting violence and extremism—the American faith community have experienced an increase in hate crime and scrutiny as a result; (b) to distribute Saudi literature and other information material with statements promoting the Saudi Government— according to the U.S. State Department, "the government considers its legitimacy to rest in part on its custodianship of the two Holy Mosques in Mecca and

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<sup>3</sup> JASTA §3(a) (enacting 28 U.S.C. §1605B(b)(2)).

Medina”; (c) manufacture the false appearance of a spontaneous grassroots religious movement (within mainstream Orthodox Islam) to delude Americans into adopting the Saudi sponsored political ideology; (d) to assert its self-appointed role as the *sole representative* of all Islamic communities, by adopting the self-styled vicar reserved for Islam’s *ELECTED* spiritual authority. Section II-III provides background information in support of Plaintiffs’ assertion. Key point on Kingdom’s nationwide propaganda apparatus include the following:

- The Kingdom frequently uses religion as a front to engage in political activity without repercussion— the proselytizing activities are explicit violations of federal statutes regulating the actions and dissemination of information by foreign agents/entities.
- The Kingdom’s state-sponsored political ideology (“Violent Salafism” / “Wahabism” / “Violent Hanbalism”) has been the leading cause of extremism for nearly a quarter century, accounting for the indiscriminate massacre of hundreds of thousands of innocent people worldwide- including the United States (by Al-Qaeda, the Taliban, Da’ish aka “Islamic” “State”, and their derivative cells/groups). Muslims are the most numerous victims of Kharijite violence globally, accounting for up to 97 per cent of all terrorism-related fatalities: according to the US National Counterterrorism Center.
- US State Department estimates Riyadh has invested more than \$10bn into charitable foundations—in an attempt to replace mainstream Sunni Islam with Kharijite Political Ideology.
- The Kingdom’s radical political movement has resulted in failed States and anarchy throughout the world, most recently in Iraq, Syria, Yemen, Afghanistan, Pakistan, Libya, Nigeria, Sudan, as well as violence in Egypt and the Philippines.

## Questions & Alleged Violations

There are numerous questions/issues that require extensive discussion and in-depth research (as further detailed in Section II-III). The first thing that needs to be resolved is circumventing the KSA's claim to immunity from civil liability/charges. This list is not exhaustive, further research into other charges/tort claims should also be conducted.

- (1) Provided that the Kingdom's proselytizing activities have targeted millions of American Muslim's through faith-based organizations; the question presented here is whether the Foreign Agent Registration Act (FARA) applies to U.S. faith-based organizations engaged in distributing information material (Propaganda) sponsored by a foreign government. If the registration requirement applies here as a general matter, a second question is whether the Organization's "religious" claim implicates the "ecclesiastical abstention doctrine," such that, the abstention doctrine defeats the court's subject matter jurisdiction over FARA violation claims.
- (2) Does KSA's use of faith-based organizations to circumvent FARA registration requirements (in order to shield the Kingdom and engage in political activity without repercussion) constitutes aiding, abetting, and conspiracy to commit violations of FARA, in violation of 18 U.S.C. § 2 ("Principals") and 18 U.S.C § 371. If so, would this provide grounds for action brought under the newly amended the ATA's civil liability provisions to "recognize the substantive causes of action for aiding and abetting and conspiracy liability".
- (3) Provided that the evidence summarized above and set forth with particularity below reflects a willful intent to injure, and a conscious indifference to the safety and rights of another or their property (*i.e. gross negligence, conspiracy to injure*), please provide feedback on whether the alleged violations can overcome the discretionary function exception and satisfy the eighth textual requirements of 1605(a)(5). See also, Unjust Enrichment<sup>4</sup>, N.Y. Civ. Rights Law §50 (McKinney 2013)<sup>5</sup> in Section IV

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<sup>4</sup> Savage v. Walker, 2009 VT 8, 8, 185 VT. 603, 969 A.2d 121 (mem.)(quotation omitted).

<sup>5</sup> White v. Samsung Electronics Am., 971 F.2d 1395, 1399 (9th Cir. Cal. 1992).

# NATIONAL TRUTH & RECONCILIATION ASSOCIATION

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## PARTIES

**Plaintiff(s):** National Truth and Reconciliation Association (“NTRA”) on behalf of the members of the HEJAZ INTERNATIONAL JUSTICE REPARATIONS COMMISSION , Affiliates/co-Plaintiffs, & Counsel.

The NTRA sees itself as an association that will consist of individuals, nongovernmental, nonprofit, nonpartisan entities, committed to CVE messengers by advocating for the strict enforcement of: (i) filing and labeling of foreign political propaganda, and; (ii) tracking all direct or indirect foreign political influence and financial contributions made to U.S. faith based religious institutions. Plaintiff intends to form one or more entities (the “Associations”) to serve as the prospective Settlement Class Representative, individually and on behalf of a proposed settlement class. It is anticipated that the Association will be a U.S. not-for-profit organization held by U.S. persons through a newly-formed entity.

The US Madinah Mission seeks 95,900,000 pounds (0.25663 oz fine gold ea.) in damages as well as sanctions, other terms to be disclosed, and financial compensation for victims globally.

**Defendant(s):** “Kingdom” of Saudi Arabia (“KSA”)- includes the Al-Saud Family collectively, and the Deputy Crown Prince individually; More research should be devoted to filing suit against parties involved in aiding terrorism/ selling advanced weapons systems to Saudi Arabia;

*U.S. Organizations Affiliated with the Kingdoms:* Given that the premise of our initial argument — that the Kingdom’s actions as an unregistered foreign agent has endangered American citizens, the possibility of extending claims against various organizations with direct or indirect financial or ideological connections with the “Kingdom” seems plausible. We noticed with astonishment that organizations previously listed on the U.S. Government’s Unindicted Co-conspirator list (“UCC”) failed to inform affiliated members of the proceedings—potentially endangering hundreds of communities across the nation. There can be no doubt that these various organizations receive thousands—if not millions—in funding directly or indirectly from the Kingdom. These organizations are known for promoting LGBTQ agendas, a departure from all tenants of the Islamic Criterion, and further evidence of their fraudulent religious assertions.

RE: HR 5665 — <https://www.congress.gov/117/bills/hr5665/BILLS-117hr5665rfs.pdf>

Note: all terms used to identify “defendant(s)” such as “noble” titles attached to the name of a party, union, and/or a person (corporeal and/or incorporeal) does NOT imply recognition of “title” and/or claim, such titles are used for identification purposes only.

## I. BACKGROUND

The modern Saudi state is a product of a pact forged in the 18th century between Muhammad ibn al-Saud, the head of the al Saud tribe in Arabia, and Muhammad ibn Abd al-Wahhab, a preacher from the Najd region of Arabia. Ibn Abd al-Wahhab's ideas and teachings form the basis of the codified ethical values known as "Wahhabism" in the U.S. and "Khawarij" by Muslim's, which includes other derivative movements/ideologies such as "Violent Salafism." These radical ideologies are the foundational basis for virtually all extremist group's, both militant (e.g. Al-Qaeda, ISIS) and political (e.g. The Muslim Brotherhood).

Pursuant to the compact between the House of Saud and the Saudi Ulema (Kharajite scholars and clerics), the Ulema provide religious legitimacy for the House of Saud's political rule. In exchange, the House of Saud provides the Ulema with government platforms and resources to promote their codified ethical values. In this regard, the Kingdom's Basic Law of Governance expressly provides that "[t]he State shall...undertake its duty regarding the propagation of ideology ("Wahhabism") (Da'wah)." The undertaking also furthers the interests of their Western Allies (i.e. energy and arms sales).

The Saudi Deputy Crown Prince ("MBS") announcement that the Kingdom aims to promote a "moderate Islam," is seen by many as an attempt to build immunity to claims filed against the Kingdom under the newly amended exception to foreign sovereign immunity. The statement neglects the damage and injuries sustained by victims (both Muslim and Non-Muslim alike) as a result of the Kingdoms proselytizing apparatus. *Please refer to Historical Background attachment for more detail*

As a Political Doctrine, Saudi Arabia's General Law applies the "Rules of Construction" introduced by Muhammad ibn Abd al-Wahhab. In contrast, the Organic Law applied by the Orthodox Muslim Community includes the Medina Charter, Farewell Address, Hadith, and Quran. Moreover, the Orthodox Community applies up to seven methods of construction to interpret/ extract legal rulings from scripture. (See attached Historical Overview for more information)

### **Grassroots Response to Violations**

The NTRA was founded by American citizens with an earnest desire to arrive at a settlement, and address outstanding questions posed by Saudi Arabia's encroachment on American civil liberties, privacy, and security through misinformation and criminal practices.

The starting point centers on the Kingdom's proselytizing activities, which serves to establish some "reasonable connection" between defendant's actions and plaintiffs' injuries. Furthermore, millions of American Muslims feel targeted by what is viewed as an unprecedented foreign



influence campaign on behalf of the Kingdom, therefore representing the largest prospective settlement class.

### **The Kingdom's Nationally Coordinated Astroturfing Activities**

No expense has been spared in the Kingdom's unparalleled campaign to build a nationwide propaganda apparatus in an attempt to replace mainstream Orthodox Sunni Islam with the Kharijite Political Philosophy.

U.S. Muslims targeted by this Saudi initiative are responsible for coming forward and informing local officials. The Kingdoms underlying activity, and material disseminated by the Kingdom's foreign agents aim to deceive Americans into serving as unwitting advocates for the Saudi government, a circumstance that itself indicates widespread violations of FARA.

According to documents written by Freedom House, Saudi influence has been found through material gathered from a selection of more than a dozen mosques and Islamic centers in American cities, including Los Angeles, Oakland, Dallas, Houston, Chicago, Washington, and New York. In most cases, these sources are the most prominent and well-established mosques in their areas. They have libraries and publication racks for mosque-goers. Some have full-or part-time schools and, as the 9/11 Commission Report observed, such "Saudi-funded Wahhabi schools are often the only "Islamic" schools."

All the documents analyzed present some connection to the government of Saudi Arabia. In some instances, they have five connections. The publications under study each have at least two of the following links to Saudi Arabia. They are: (1) official publications of a government ministry; (2) distributed by the Saudi embassy; (3) comprised of religious pronouncements and commentary by religious; (4) authorities appointed to state positions by the Saudi crown; (5) representative of the established Wahhabi ideology of Saudi Arabia; and/or (6) disseminated through a mosque or center supported by the Saudi crown.

## II. JURISDICTION & TORT OVERVIEW

### Jurisdiction Pursuant to 1605(B)

In satisfaction of JASTA's first and second elements, plaintiffs' potential suit present claims for money damages for sustained losses as a result of the Kharijite terrorist attacks between 2001 to present, resulting in a spike in hate crimes and public scrutiny.

First, plaintiffs plausibly allege (and offer facts and evidence found in reports and incorporated by reference) that several Saudi government da'wa organizations and its foreign agents have targeted U.S. Citizens nationwide through a campaign that aims to: (a) use faith-based organizations as a cover for circumspect political activity, while claiming to be an authoritative voice for the faith community to delude Americans into adopting an anarchic political doctrine; (b) manufacture the false appearance of a spontaneous grassroots religious movement (within mainstream Orthodox Islam) causing mainstream Muslims at large to be blamed for the activities of the Saudi-Wahhabist ideology.

The earliest public demonstration of the KSA's coordinated effort to manufacture a false appearance as the legitimate representative of the Mainstream Orthodox Islamic Faith community began shortly after the Islamic Revolution toppled the secular monarch in Iran. During a October 2017 interview with the Guardian, Mohammed bin Salman stated "After the Iranian revolution in 1979, people wanted to copy this model in different countries, one of them is Saudi Arabia. We didn't know how to deal with it. And the problem spread all over the world."

As early as 1986, King Fahd unilaterally adopted the official title "Custodian of the Two Holy Mosque's", the title came to be regarded as the "Commander and Defender of the Faithful", an insidious Saudi-Wahhabi claim considering Muslims are the most numerous victims of Wahhabi violence globally. The unilateral move breaks from the Orthodox practice requiring all decisions made by and for the Islamic community be done through a representative body, a practice held since the seventh century as a basis for consulting all parties that may be affected by a decision. Saudi Foreign Policy Adviser Adel al-Jubeir publicly stated that "the role of Saudi Arabia in the Muslim world is similar to the role of the Vatican." Even as the Saudi state asserts that it strives to keep the faith "pure" and free of innovation, it invents a new role for itself as the only legitimate authority on Islam. To date, the two largest branches of Islam (est. 97% of the faithful community) have rejected both the Kharijite philosophy and the Saudi Arabia's unilateral claim to speak on behalf of the community.<sup>1</sup>

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<sup>1</sup> Aluqail, Dr. Sulaiman bin Abd Alrahman. *Patriotism and its Requirements in Light of Islamic Teachings*. Riyadh: Press Ministry, 1993. Collected from Richardson Mosque, Dallas, TX, 12/07/03.

One aspect of this propaganda is its aim to replace traditional and moderate interpretations of Islam with Saudi extremism. Over the past few decades, the Saudi Crown has worked to remove all memory of Islamic history, as a key strategy for replacing Islam with the Kharijite Political philosophy (aka “Wahhabism”). The Islamic Heritage Research Foundation in London estimates that the Saudi regime has destroyed 98% of the historical and religious sites since 1985. In an article published by Time Magazine, Ali Al-Ahmed stated he believes the Saudi-Wahhabist “wanted to wipe out history.”

When these concerns were expressed to the United Nations Special Rapporteur on Freedom of Religion and 2017, Saudi Foreign Minister Adel al-Jubeir responded by stating “Demands to internationalize the holy sites is aggressive and a declaration of war against the kingdom.” The destruction of heritage sites, while also preventing the establishment of an international representative body to manage the affairs of the faith community violates the treaty signed at Serves on 10 August 1920: “In view of the sacred charter attributed by Moslems of all countries to the cities and the Holy Places of Mecca and Medina, His Majesty the King of the Hedjaz undertakes to assure free and easy access thereto to Moslems of every country who desire to go there on pilgrimage or for any other religious object, and to respect and ensure respect for the pious foundations which are or may be established there by Moslems of any countries in accordance with the precepts of the law of the Koran.”<sup>2</sup>

## **Jurisdiction Pursuant to 1605(A)**

Provided that the evidence summarized above and set forth with particularity below reflects a willful intent to injure, and a conscious indifference to the safety and rights of another or his property, plaintiffs seek input on whether the alleged violation can overcome the discretionary function exception and satisfy the eighth textual requirements of 1605(a)(5).

Plaintiffs plausibly allege (and offer facts and evidence) that the assertions summarized below aim to conceal the ideological distinction between a faith of roughly 1.6 billion and the anarchic Wahhabist fringe (est. 3% of the faith community), in order to; (a) shield the Kingdom from any inquiry into the involvement of its agents in promoting violence and extremism and; (b) spread misinformation through a state of the art and nationwide lobbying and propaganda apparatus for the purpose of influencing U.S. policy and legislation in favor of the KSA’s financial and political interests. This is done at the expense of all citizens by threatening American national security, and creating hostile environment towards mainstream and other faith communities.

Foreign government lobbying and propaganda efforts can be especially pernicious where, as here, registered agents include former senior U.S. officials and media organizations. Given their

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<sup>2</sup> Treaty Series No. 11 1920 - Article 99.

unique access to senior policymakers and agencies, misinformation in the form adopting pseudonyms used by U.S. and European government officials such as Islamism, Islamist, Radical Islamic, etc., tend to associate Islam with Kharajite political ideology. Their statements are aired in the media often portrayed as independent opinion pieces or re-cycled by different authors in multiple major newspapers throughout the country. *The coordinated efforts aim to shield the KSA from any inquiry into the involvement of its agents in supporting violence and extremism, causing mainstream Orthodox Muslims at large to be blamed for the activities of Kharajite extremists.*

Abdallah Al Obeid, the former dean of the Islamic University of Medina and member of the Saudi Consultative Council, explains, “Wahhabism” is a “political trend” that has been “adopted for power-sharing purposes”. It is not a religion or an offshoot of Islam and cannot be called a sect because “It has no special practices, nor special rites.” Al Obeid finishes his statement by asserting the Wahhabis’ do not have a “special interpretation of religion that differ from the main body of Sunni Islam”, a false assertion and perhaps the most evasive strategy used by the Saudi governments to conceal the ideological distinctions between a faith of roughly 1.6 billion and the Wahhabi anarchic militant fringe.

The idea that so called “Wahhabism” does not differ from the mainstream Orthodox Islam contradicts statements made by Saudi Arabia’s crown prince during an interview with the Guardian, “We are simply reverting to what we followed – a moderate Islam open to the world and all religions.” It is ironic that Saudi Arabia itself has publicly announced the security need to update religious educational materials at home (albeit it remains to be verified whether such reform is carried out and to what extent), yet the unreformed textbooks and Kharajite publications remain among the main religious resources for American Muslims. The problem is compounded when some American public libraries and schools rely on Kharajite religio-political centers and institutions for their own acquisitions and course curriculum, and while still a minority ideology, becomes seen as the norm within Islam by non-Muslims.

According to studies by Tony Blair Institute, “there is a clear divergence from the mainstream in extremists’ use of scripture and religious concepts. Only eight per cent of the 50 most quoted Quranic verses in Salafi -jihadi material were prevalent in mainstream texts. And while 86 per cent of Salafi -jihadis’ main conceptual references were extreme in their interpretation, seven per cent of mainstream key themes had the potential to be interpreted through a violent lens”. The political-tinged interpretation of religious doctrine exploits undefined terms, by assigning a meaning that is out of harmony or inconsistent with the Religious Principals practiced by Orthodox Islam for over a millennium.

## **Tortious Acts of the Kingdom's Da'wa Organizations in Support of Deceptive Practices Attributable to Saudi Arabian Government**

The tortious acts of the Saudi da'wa organizations in support of Deceptive practices are attributable to the KSA on three separate grounds: (1) the da'wa organizations perform core functions of the Saudi state; (2) the da'wa organizations are agents of the KSA; and (3) the Saudi government dominates and controls the da'wa organizations, making them alter-egos of the Saudi government as well.

Saudi Arabia's Basic Law of Governance expressly provides that "[t]he State shall ... undertake its duty regarding the propagation of Islam (Da'wa)," thus confirming that the propagation of religio-political ideology globally is both a core function and duty of the Saudi government.<sup>3</sup>

In a speech on the issuance on the Basic Law of Governance in 1992, then-King Fahd bin Abdulaziz identified the nine bases for the foundation of the modern Saudi state, including "the undertaking of the Propagation of Islam (Da'wa) and its dissemination."

### **III. ENUMERATION of MISCELLANEOUS TORTS, ACCUSATIONS & RELIEF**

#### **False Representations to Consumers: Usage of "Custodian of the Two Holy Mosque's"**

The phrase is found on embassy material, official websites, official U.S. Government websites, literature distributed throughout U.S. mosques and faith organizations including: English translated Quran's, books, articles, and academic publications. This is one example of how Saudi Arabia asserts its self-appointed role as the sole authoritative interpreter of Islam within the Muslim world is its use of the self-styled vicar reserved for the legitimate Islamic Suzerain appointed by representative of the faith community.

In addition to using the Two Holiest symbols of Islam to make deceptive claims, a study reported by the *New York Post* estimates the Saudi government funds up to 80% of U.S. mosques, at least in part. When factoring the political Quran translations, the self-styled vicar, sermons given by Kharijite clerics, coupled with the media onslaught, the Defendant has cemented the false appearance of a spontaneous grassroots religious movement within mainstream Orthodox Islam. As such, once a fringe sect in a remote part of the Arabian peninsula, the Anglo Sponsored Kharijite doctrine has been given global reach through Saudi government sponsorship and money, particularly over the past quarter century.

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<sup>3</sup> See Affirmation of Evan Francois Kohlmann ¶ 16, n. 2 (ECF No. 2927-9) ("Kohlmann Affirmation").

### **Deceptive Acts**

NTRA seeks to bring suit under Section 13(b), 15 U.S.C §53(b), to obtain injunctive relief against Defendants to prevent them from engaging in unfair and deceptive acts or practices in violation of Section 5(a) of 15 U.S. Code § 45(a), and obtain other relief, including rescission, restitution and disgorgement, as is necessary to redress injury to consumer and the public interest resulting from Defendant's violations.

### **Deceptive Representation & Violation of Privacy**

Alleged violation under N.Y. Civ. Rights Law §50 (McKinney 2013): a Person's "portrait or picture" is not restricted to photographs; thus it violates the complaining individual's right of privacy if it includes representations which are recognizable as the likeness of the person. When a person's identity is exploited for its commercial value, whether or not their likeness is used, under the right of publicity the court looks to the advertisement of the person's identity.<sup>4</sup>

### **Violation of Civil Liberties**

See *Lynch v Donnelly*, 465 U.S. 668.

### **Unjust Enrichment**

Equitable Claim for Payment: In evaluating plaintiff's unjust enrichment claim, court must determine "whether in light of the totality of the circumstances, it is against equity and good conscience to allow defendant to retain what is sought to be recovered."<sup>5</sup>

### **Violations of the Foreign Agents Registration Act**

The widespread criminal violations of the Foreign Agents Registration Act ("FARA") by KSA foreign agents to conduct an unprecedented foreign influence campaign on behalf of the KSA.

Based on reports prepared in response to U.S. Commission on International Religious Freedom and records filed with the Department of Justice on 27 March 2017 requesting a National Security Investigation into potential criminal violations of the Foreign Agents Registration Act by Agents of the Saudi Arabian Government, plaintiffs believe that the potential criminal violations of FARA by agents working on the Saudi government's behalf may include:

- (1) the complete failure by persons working on behalf of the Saudi government to register as foreign agents in violation of 22 U.S.C. §612;
- (2) failures to include any label or disclosure on informational materials and political propaganda distributed on behalf of the Saudi government indicating that those materials were being

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<sup>4</sup> *White v. Samsung Electronics Am.*, 971 F.2d 1395, 1399 (9th Cir. Cal. 1992).

<sup>5</sup> *Savage v. Walker*, 2009 VT 8, 8, 185 VT. 603, 969 A.2d 121 (mem.)(quotation omitted).

distributed by a foreign agent on behalf of the Saudi government, in violation of 22 U.S.C. §614(b);

(3) failures to provide statements to the Department of Justice of all things of value spent, disbursed, or disposed of on behalf of the Saudi government, in violation of 22 U.S.C. §612(a)(5) and (8);

(4) failures to submit comprehensive and detailed statements of the activities and proposed activities undertaken on behalf of the Saudi government, in violation of 22 U.S.C. §612(a)(4);

(5) failures to file informational materials and political propaganda distributed on behalf of the Saudi government with the Department of Justice, in violation of 22 U.S.C. §614(a);

(6) failures to include a statement on materials prepared for submission to members of Congress and the U.S. government disclosing that those materials were prepared by a foreign agent of the Saudi government, in violation of 22 U.S.C. §614(e);

(7) failures to file documents as necessary to make registration statements and other materials submitted to the Department of Justice not misleading, in violation of 22 U.S.C. §612(a)(11);

(8) failures on the part of the officers and directors of entities acting as foreign agents for the Saudi government to fulfill their independent individual obligations to ensure that those entities complied with the requirements of FARA, in violation of 22 U.S.C. §617;

(9) aiding and abetting of violations of FARA by persons directing and supervising the Saudi influence campaign, in violation of 18 U.S.C. §2 (“Principals”); and

(10) conspiring to commit violations of FARA and related offences against the United States, in violation of 18 U.S.C. § 371 (“Conspiracy to commit offence or to defraud United States”).

## **IV. CHALLENGES & ARGUMENTS**

### **Foreign Sovereign Immunities Act & Justice Against Sponsors of Terrorism Act**

Can suit be brought against the KSA given the immunity enjoyed by foreign states under the Foreign Sovereign Immunities Act (“FSIA”)? The answer is YES.

On 28 September 2016, Congress enacted JASTA, which offers exception to foreign sovereign immunity when a plaintiff presents plausible allegations satisfying the following elements: (1) the suit seeks monetary damages for a physical injury to person, property, or death occurring in

the United States; (2) caused by an act of international terrorism occurring in the United States; and (3) caused by a tortious act or acts of the foreign state defendant, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, regardless of where the tortious act or acts of the foreign state occurred; provided that (4) the claim does not rest on allegations of “mere negligence.”<sup>6</sup>

Prior to JASTA, Plaintiffs then relied mainly on the FSIA’s non-commercial-tort exception to foreign sovereign immunity,<sup>7</sup> but their allegations could not overcome the discretionary function exception to the tortious acts exception.<sup>8</sup> However, through JASTA, Congress established an additional exception to foreign sovereign immunity for cases against foreign states arising from acts of international terrorism occurring in the United States, supplementing the jurisdictional grant provided by the non-commercial tort exception, which continues to provide an independent basis of jurisdiction for such cases as well.<sup>9</sup> In addition, JASTA made foreign sovereigns subject to Anti-Terrorism Act (“ATA”) claims,<sup>10</sup> and amended the ATA’s civil liability provisions to “recognize the substantive causes of action for aiding and abetting and conspiracy liability.”<sup>11</sup>

JASTA provides civil litigants “with the broadest possible basis ... consistent with the Constitution ... , to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.”<sup>12</sup>

To that end, JASTA removed non-textual judicial limitations on federal courts’ jurisdiction over foreign sovereigns under the FSIA for acts of international terrorism occurring in the United States, and eliminated judicial constrictions on ATA claims, in order to ensure the rights of victims of terrorism in the United States to “pursue civil claims against ... countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.”<sup>13</sup>

Amongst other features, JASTA’s exception to foreign sovereign immunity confirms that jurisdiction can be based on a sovereign entity’s actions undertaken abroad (not just in the

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<sup>6</sup> 28 U.S.C. §1605B

<sup>7</sup> 28 U.S.C. §1605(a)(5)

<sup>8</sup> Terrorist Attacks I, 349 F. Supp. 2d at 803 (Saudi Arabia); see Terrorist Attacks II, 392 F. Supp. 2d at 555 (same for SHC).

<sup>9</sup> JASTA §3(a) (enacting 28 U.S.C. §1605B).

<sup>10</sup> *Id.* §3(a) (enacting 28 U.S.C. §1605B(c)).

<sup>11</sup> *Id.* §2(a)(4); see *id.* §4(a) (enacting 18 U.S.C. §2333(d)).

<sup>12</sup> JASTA, §2(b).

<sup>13</sup> JASTA, §2(a)(7).



United States), and predicated on acts undertaken by a sovereign entity's agent (not just an employee, official, or alter-ego).<sup>14</sup>

Through these and other provisions, JASTA “incorporates traditional principles of vicarious liability and attribution, including doctrines such as respondent superior, agency and secondary liability,”<sup>15</sup> thus confirming that a foreign state is subject to jurisdiction and liability for tortious acts of employees and agents at every level acting within the scope of their employment or agency.

JASTA also confirms that there is no “discretionary function” limitation on jurisdiction for claims against a foreign state arising from an act of international terrorism occurring in the United States, and that the “caused by” language of the new exception to sovereign immunity, codified at 28 U.S.C. §1605B, requires only some “reasonable connection” between defendant's actions and plaintiffs' injuries,<sup>16</sup> a flexible standard that may be met based on a showing of “tortious act or acts” attributable to the defendant.<sup>17</sup>

## **Ecclesiastical Abstention Doctrine**

*“Since not every dispute within a church is fundamentally religious, courts are not precluded from resolving certain church disputes using neutral principles of law. A neutral property or contract issue may not necessarily impermissibly intrude on the First Amendment”.*<sup>18</sup>

Pursuant to actions filed against the Kingdom under the newly amended exception to foreign sovereign immunity, the Kingdom announced that it aims to revert – “to a moderate Islam open to the world and all religions.” The ironic announcement is remarkable in that, the Deputy Crown Prince acknowledges that (1) Saudi Arabia does not practice mainstream Orthodox Islam; (2) the global network of Saudi “Khawarij” preachers must “follow suit or face falling on the wrong side of Orthodoxy” (2) the ideology sponsored by the Kingdom directly correlates to the Crown's financial and geopolitical interests, as opposed to conviction; (3) the security need to undergo dramatic changes in the Kingdom's radical sociopolitical ideology; It should be noted, though Khawarij define their practices as “theology,” the codified ethical values resemble a pseudo political-religious ideology at best more than a coherent religious doctrine given the historical and practical circumstances.

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<sup>14</sup> JASTA §3(a) (enacting 28 U.S.C. §1605B(b)(2)).

<sup>15</sup> 162 Cong. Rec. at S2845 (May 17, 2016) (Sen. Cornyn).

<sup>16</sup> 162 Cong. Rec. at S2845 (May 17, 2016) (Sen. Cornyn) (citing case law affirming “reasonable connection” standard).

<sup>17</sup> JASTA §3(a) (enacting 28 U.S.C. §1605B(b)(2)).

<sup>18</sup> See “Wrestling with The Ecclesiastical Abstention Doctrine: How *Puskar V. Krco* Further Complicated The Heavily Litigated History Of The Serbian Orthodox Church In America,” by Dan Knudsen.

The Kingdom might regard their actions as protected by the freedom of speech/the press. However, there is overwhelming evidence to show that because their actions and dissemination of their ideology, media, and literature qualifies as propaganda—extremist propaganda at that—along with attempts to lobby and influence US lawmakers, The KSA is acting as an unregistered foreign agent under US law, and their immunity to prosecution and tort claims would not stand.<sup>19</sup>

The Kingdom may defend their actions as protected by the freedom of religion and the establishment clause. The reluctance of US courts to adjudicated in matters of religion has also developed into the “ecclesiastical abstention doctrine.” The ecclesiastical abstention doctrine is a long-held constitutional principle that prohibits a court from resolving a dispute that is inherently religious in nature. The ecclesiastical abstention doctrine’s practical application requires a court to either abstain from fact-finding issues that are based on religious doctrine or church governance or defer to the decisions handed down by the church leadership or a hierarchical authority. An implicit concept within the ecclesiastical abstention doctrine is the necessity for there to be an interchurch dispute—namely, one that is confined to a local church body or a hierarchically structured religious organization.

## **V. CONCLUSION**

Despite the fact that the KSA hides behind various layers of immunity, using JASTA and FARA to pierce their immunity seems to be a viable strategy for litigation. Further research is required, but input from counsel is needed before proceeding further.

**-THANK YOU-**

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<sup>19</sup> For further reading on this subject, see attached “FARA Complaint to the US Attorney General *re* 9/11 Families’ Request for National Security Investigation into Potential Criminal Violations of the Foreign Agents Registration Act by Agents of the Saudi Arabian Government.”

Passage of interest: “... the Kingdom went on a foreign agent spending spree, hiring (directly or through sub-agent arrangements) more than 100 foreign agents to work on its behalf to wage an assault on JASTA. No expense has been spared in the Kingdom’s unparalleled campaign to build a state of the art and nationwide lobbying and propaganda apparatus for the sole purpose of bending U.S. legislative process to its will”.

*Whereas, Almighty God hath created the mind free;*

*That all attempts to influence it by temporal punishments or burthens, or by civil incapacitations tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy author of our religion, who being Lord, both of body and mind yet chose not to propagate it by coercions on either, as was in his Almighty power to do,*

*That the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical;*

*That even the forcing him to support this or that teacher of his own religious persuasion is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the Ministry those temporary rewards, which, proceeding from an approbation of their personal conduct are an additional incitement to earnest and unremitting labours for the instruction of mankind;*

*That our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry, that therefore the proscribing any citizen as unworthy the public confidence, by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages, to which, in common with his fellow citizens, he has a natural right, that it tends only to corrupt the principles of that very Religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments those who will externally profess and conform to it;*

*That though indeed, these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty because he being of course judge of that tendency will make his opinions the rule of judgment and approve or condemn the sentiments of others only as they shall square with or differ from his own;*

*That it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that Truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:*

*Be it enacted by General Assembly that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess, and by argument to maintain, their opinions in matters of Religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.*

*And though we well know that this Assembly elected by the people for the ordinary purposes of Legislation only, have no power to restrain the acts of succeeding Assemblies constituted with powers equal to our own, and that therefore to declare this act irrevocable would be of no effect in law; yet we are free to declare, and do declare that the rights hereby asserted, are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.*

THOMAS JEFFERSON