No. 20-307

IN THE

Supreme Court of the United States

SHAHROKH MIRESKANDARI,

Petitioner,

v.

BARRINGTON MAYNE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE SOCIETY OF BLACK LAWYERS IN SUPPORT OF PETITIONER

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October 9, 2020

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF THE SOCIETY OF BLACK LAWYERS IN SUPPORT OF PETITIONER

The Society of Black Lawyers, a nonprofit organization based in the United Kingdom, hereby respectfully moves for leave to file the attached brief as *amicus curiae* in this case. All counsel of record were timely notified of the Society's intent to file this brief. Consent was obtained from counsel for Petitioner, and from counsel for all Respondents with an interest in disposition of the Petition (Richard Hegarty, Malcolm Lees, Barrington Mayne, David Middleton, Antony Townsend, the Law Society of England and Wales and the Solicitors Regulation Authority) and for Respondents Patrick Rohrbach and Paul Baxendale Walker. One party, Mansur Rahnema, is not represented by counsel. His claims were dismissed on grounds entirely unrelated to the questions presented in the Petition for Writ of Certiorari in this case, and he has no interest whatsoever in the outcome of the Petition. Counsel for two of the parties to the first appeal, Associated Newspapers Limited and David Gardner, were timely contacted but stated that "our clients are no longer involved in this case, and as the Petition indicates, it does not involve the prior proceedings concerning our clients. We have no position with respect to your application."

This case raises the issue of whether two of the Respondents in this case, the Law Society of England and Wales ("LSE") and the regulatory arm of the LSE, the Solicitors Regulation Authority ("SRA"), are "organs" of the Government of the United Kingdom for purposes of the Foreign Sovereign Immunities Act, 28 U.S.C. §1603(b). The Society of Black Lawyers ("SBL") is a nonprofit organization in the United Kingdom that

advocates for the interests of Black and ethnic minority solicitors and barristers and works to combat racial discrimination within the legal profession and in the country's criminal justice system. Formed in 1973, the SBL is the oldest organization of African, Asian and Caribbean lawyers in the U.K. In pursuit of its objective, the SBL has lobbied Parliament, provided representatives to serve on task forces and commissions, engaged in public education by providing speakers for conferences, lectures and media interviews, and instituted litigation and filed friend of the court briefs in the U.K..

The SBL has long taken a leading role in publicly raising the issue of discriminatory treatment of minority solicitors by the LSE and SRA and in advocating for reforms. The SBL played a leading role in having the issue of discriminatory treatment raised in the House of Commons, which led the SRA to commission a major investigation of the subject and to then commit itself to instituting reforms.

The SBL has from the outset taken an interest in the disciplinary proceedings instituted by the SRA against the Petitioner in this case, Shahrokh Mireskandari, viewing those proceedings as a prime example of the discriminatory treatment of minority lawyers. The SBL has a strong interest in preventing the SRA from exporting its racially discriminatory conduct to other nations. It has an interest in preventing the SRA from trying to shield itself, through invocation of foreign sovereign immunity, from accountability for unlawful actions taken against U.K. lawyers in those other nations.

As an organization of U.K. lawyers regulated by the LSE and SRA, as an organization that has closely monitored the activities and operation of the SRA, the

SBL has intimate knowledge of the history, nature and structure of those entities, from the perspective of members of the U.K. Bar.

For these reasons the SBL has a special interest in and knowledge of the issues raised in the Petition. The SBL respectfully requests that this Court grant it leave to file the attached amicus brief in support of the Petition for Writ of Certiorari.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*[1]

The Society of Black Lawyers ("SBL") is a nonprofit organization in the United Kingdom that advocates for the interests of ethnic minority solicitors and barristers and works to combat racial discrimination within the legal profession and in the country's criminal justice system. Formed in 1973, the SBL is the oldest organization of African, Asian and Caribbean lawyers in the U.K. In pursuit of its objectives, the SBL has lobbied Parliament, provided representatives to serve on task forces and commissions, engaged in public education by providing speakers for conferences, lectures and media interviews, and instituted litigation and filed friend of the court briefs in the U.K.

The SBL has long taken a leading role in publicly raising the issue of discriminatory treatment of minority solicitors by two of the Respondents in this case, the Law Society of England and Wales ("LSE") and the regulatory arm of the LSE, the Solicitors Regulation

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[1] Pursuant to Sup. Ct. R. 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and no person or entity other than amicus made a monetary contribution intended to fund the preparation or submission of this brief. All counsel of record were timely notified of the intent to file this brief. One party, Mansur Rahnema, is not represented by counsel. His claims were dismissed on grounds entirely unrelated to the questions presented in the Petition for Writ of Certiorari in this case, and he has no interest whatsoever in the outcome of the Petition. Counsel for two of the parties to the first appeal, Associated Newspapers Limited and David Gardner, were timely contacted but stated that "our clients are no longer involved in this case, and as the Petition indicates, it does not involve the prior proceedings concerning our clients. We have no position with respect to your application." Counsel for the Petitioner and for the remaining Respondents provided written consent to the filing of this Brief.

Authority ("SRA"). The SBL was instrumental in having the issue of discriminatory treatment raised in the House of Commons, which led the SRA to commission a major investigation of the subject and to then commit itself to instituting reforms. Those reforms have largely proven ineffective.

The SBL has long taken an interest in the disciplinary proceedings instituted by the SRA against the Petitioner in this case, Shahrokh Mireskandari, viewing those proceedings as a prime example of the discriminatory treatment of minority lawyers. Mireskandari was one of the most successful ethnic minority lawyers in the United Kingdom. He regularly did pro bono discrimination work for the community, most notably for members of the National Black Police Association. The SBL has a strong interest in preventing the SRA from exporting its racially discriminatory conduct to other nations. It has an interest in preventing the SRA from trying to shield itself, through invocation of foreign sovereign immunity, from accountability for unlawful actions taken against U.K. lawyers in those other nations. The SBL is concerned as well about the prospect that bar regulatory agencies from authoritarian countries could, with impunity, harass, threaten or take other illegal actions against lawyers from those countries who are present in the U.S., under the guise of investigating those lawyers for purposes of disciplinary proceedings.

As an organization of U.K. lawyers regulated by the LSE and SRA, the SBL has intimate knowledge of those entities from the perspective of members of the U.K. Bar. For these reasons the SBL has a special interest in and knowledge of the issues raised in the Petition.

SUMMARY OF ARGUMENT

The sovereign immunity issue in this case arises from the racially discriminatory conduct of two entities–Respondents Law Society of England ("LSE") and the Solicitors Regulation Authority ("SRA")—entities that have been widely criticized in their home country, the U.K., for engaging in a pattern of such conduct. In this case, however, they extended those activities across the Atlantic into the U.S. The formulation applied by the Ninth Circuit in analyzing sovereign immunity failed to capture the true nature of those entities and glossed over crucial differences between the locus of authority for attorney discipline and regulation in the United States and the United Kingdom.

In the United States, the authority for attorney regulation and discipline belongs to each State's highest court and is imposed either by agencies of the court or by a bar association delegated authority directly by that court. The attorney disciplinary function is reserved to and treated as part of the judiciary.

By contrast, in the U.K., neither the LSE nor the SRA is part of any branch of the U.K. Government. The LSE is not overseen or controlled by any government agency. The U.K. Government itself has taken the position in legal proceedings that the LSE is a private entity and is not part of that Government. The SRA is the regulatory arm of the LSE, with power to investigate and close down solicitors' practices, and to prosecute cases before the separate tribunal that has the power to suspend and disbar. The LSE and SRA are accountable to and overseen by the Legal Services Board, the authorizing statute for which explicitly provides that the Board "is not to be regarded (a) as the servant or agent of the Crown, or (b) as enjoying any status, immunity or privilege of the Crown."

The Ninth Circuit's decision to confer foreign sovereign immunity on the acts of the LSE and SRA is especially troublesome because of a history and pattern of racially discriminatory practices by these entities, inflicted on Black and ethnic minority solicitors in the U.K. A major report issued in 2008 confirmed this pattern, which has continued to the present day and is not only demonstrated by statistical patterns, but illustrated by recent examples of egregious treatment of minority solicitors. In this case, the SRA exported its discriminatory targeting of minority solicitors beyond the borders of the U.K., into the United States. Allowing these private, nongovernmental entities, the LSE and SRA, to escape accountability for their discriminatory acts in the U.S. based on foreign sovereign immunity would inhibit the continuing effort to combat the pattern and practice of discrimination against minority lawyers in the U.K., and would open the door in the U.S. for authoritarian regimes to use bar disciplinary proceedings to harass and attack lawyers from those countries who reside or work in the U.S. and who have advocated for human rights in ways that offended powerful interests in those countries.

ARGUMENT

This case involves racially discriminatory conduct by two private, foreign entities- Respondents Law Society of England ("LSE") and the Solicitors Regulation Authority ("SRA"). *Amicus* Society of Black Lawyers has for many years worked to expose a pattern of racially discriminatory conduct by these entities and has pressed for reforms. This case stands out not merely because a discriminatory investigation crossed the borders of the U.K. and the ocean to reach into the United States, where SRA agents engaged in tortious

and illegal acts. The case also stands out because the Ninth Circuit immunized the LSE and SRA, and their individual officials, from liability by applying a fundamentally mistaken approach to foreign sovereign immunity. Neither the LSE nor the SRA is a government agency, entity or organ of the U.K. Government. The Ninth Circuit erred in treating them as part of the U.K. Government under the Foreign Sovereign Immunities Act, when the U.K. Government itself does not treat them as such.

I. THE LSE AND SRA DO NOT ACT "ON BEHALF OF" THE GOVERNMENT OF THE UNITED KINGDOM

As the Petition explains, the Courts of Appeal have adopted various multi-factor tests for determining whether an entity will be considered an "organ" of a foreign state for purposes of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1603(b). Petition for a Writ of Certiorari ("Petition") 18-22. Applying a gloss on top of those tests, the Ninth Circuit has held that an entity will be considered an "organ" of a foreign state if it engages "in a public activity on behalf of the foreign government." *California Dep't of Water Resources v. Powerex Corp*., 533 F.3d 1087, 1098 (9th Cir. 2008). Applying that test in this case, in the first appeal, the Ninth Circuit found that, because the LSE and SRA are accountable to the Legal Services Board and must act "in a manner compatible" with statutorily-defined objectives, the LSE and SRA engage in a public activity "'on behalf of a foreign government.'" Petition Appendix ("Pet. App.") 89a (quoting *Powerex*, 533 F.3d at 1098). In its decision in the second appeal, the Ninth Circuit then found that individual officials of the SRA were entitled to common-law foreign sovereign immunity because they "acted to further the

objectives of foreign government entities," the LSE and SRA. *Id*. 2a.[2]

In reaching that result, the Ninth Circuit did not consider whether the U.K. Government recognizes the LSE and SRA as governmental entities or as part of the U.K. Government. It does not. The Ninth Circuit did not inquire whether the U.K. Government formed the LSE or SRA in the first instance. It did not. The Ninth Circuit thus failed to address the sorts of issues that, in other circuits would have helped determine whether the LSE and SRA are part of the U.K. Government. Instead, the Ninth Circuit applied a formulation that, from the perspective of the Society of Black Lawyers, whose members are subject to regulation by the LSE and SRA, fails to capture the real nature of these entities and glosses over crucial differences between the locus of authority for attorney discipline in the United States and in the United Kingdom.

In the United States, the authority for attorney regulation and discipline belongs to each State's highest court and is imposed either by agencies of the court or by a bar association delegated authority directly by that court. These entities are clearly "acting on behalf of" the state government, specifically, its judicial branch.

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[2] Apart from the issue of whether the SRA is an organ of a foreign government, the individual officials did not comport themselves as representatives of a government agency. One traveled on a police visa despite not being a police officer. Pet. App. 26a. Neither registered as an agent of a foreign government as required by 18 U.S.C. § 951 ("Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required [under Department of Justice regulations] shall be fined under this title or imprisoned not more than ten years or both").

By contrast, in the United Kingdom, the LSE and SRA are not exercising any authority on behalf of any agency of the Government of the U.K. The agency to which the LSE and SRA are accountable, the Legal Services Board, is itself not a government entity and is not controlled by the judiciary or any other arm of the Government. The LSE and SRA do not act "on behalf of" the Government of the U.K.

In the U.S., "'in most states, if not all, the state's supreme court is the ultimate arbiter of attorney regulation and discipline." Judith McMorrow, *Judicial Attitudes Toward Confronting Attorney Misconduct: A View from the Reported Decisions*, 32 Hofstra L. Rev. 1425, 1456 (2004). "In most jurisdictions, the entire disciplinary system is premised on rules of professional conduct promulgated by a state's highest court. Rules enforcement is managed by the delegation of power from a state's highest court to a disciplinary authority, granting judges supervisory power over disciplinary controls." Eli Wald, *Should Judges Regulate Lawyers,?* 42 McGeorge L. Rev.149, 154-55 (2010).

In most states of this nation, regardless of whether or not the state bar is "unified" or voluntary, the attorney disciplinary function is reserved to and treated as part of the judiciary. In many states, the entity that administers attorney disciplinary proceedings is an agency or arm of the court itself. For example, in New York, investigations of professional misconduct are conducted by committees appointed by the Departments of the Appellate Division of the Supreme Court; if the committee finds probable cause that an attorney engaged in misconduct, a proceeding is conducted by the Appellate Division, which determines whether to impose discipline. 22 NYCRR §§ 1240.4, 1240.7, 1240.8 (2018). In Massachusetts, the Board of Bar

Overseers is an arm of the Supreme Judicial Court, the members of which are appointed by the Court and the authority of which is set forth in Court rules. See Mass. Supreme Judicial Court Rule 4:01, § 5. "The Board is an official body subject to the supervision of the Supreme Judicial Court." Mass. Board of Bar Overseers, https://www.massbbo.org/Who_We_Are_BBO_OGC#BBO (last visited Oct. 5, 2020).

In California, the State Bar is a public corporation recognized by the State Constitution within the judicial article. Cal. Const. Art VI, § 9. The State Bar functions as "an integral part of the judicial function," *In re Rose*, 22 Cal.4th 430, 438, 993 P.2d 956, 961 (2000) and "'an administrative arm of this [California Supreme] court for the purpose of assisting in matters of admission and discipline of attorneys.'" *In re Attorney Discipline System*, 19 Cal.4th 582, 599-600, 967 P.2d 49, 59 (1998)(quoting *Lebbos v. State Bar*, 53 Cal.3d 37, 47-48, 806 P.2d 317, 323 (1991)(internal quotations omitted).

Even where the bar association is an entity separate from the state's highest court, rules of professional conduct are generally issued or must be approved by the court and the court directly delegates authority to administer discipline. For example, in Arizona, the state bar is a separate entity and only a minority of the State Bar's Board of Governors is appointed by the Court. Rule 32(a) of the Rules of the Supreme Court of Arizona, however, provides that, "[t]he Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona." As this Court recognized, the Arizona Supreme Court "is the ultimate body wielding the State's power over the practice of law," and a rule of professional conduct issued by the Court is "'compelled

by the direction of the State acting as a sovereign.'" *Bates v. State Bar of Arizona*, 433 U.S. 350, 360 (1977) (quoting *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 791 (1975)). "Although the State Bar plays a part in the enforcement of the rules, its role is completely defined by the court; the [State Bar] acts as the agent for the court under its continuous supervision." *Id*. at 361.

By contrast, the administration of attorney discipline in the U.K. has not been a function of the Crown (the Government). The LSE and SRA are not part of, and do not act on behalf of, any government entity. The LSE was formed in 1823, and given a Royal Charter in 1845 (essentially, recognition as a private corporate body). *See* The Charter of the Society 1845. The LSE's governing body is and has been elected by its members. Royal Charter, Clause VIII. The Government plays no role. "We're the independent professional body for solicitors in England and Wales. We're run by and for our members." LSE Website, About Us, https://www.lawsociety.org.uk/about-us/ (last visited October 2, 2020).

Indeed the Government of the United Kingdom itself does not view the LSE as part of the Government. In a case before the European Commission of Human Rights challenging the Law Society's restriction on attorney advertising, the Government of the United Kingdom argued that the European Convention on Human Rights, which binds only governments, did not apply to the Law Society. *X v. United Kingdom (Solicitors' Advertising)*, 4 E.H.R.R. 350 (1982). The Commission summarized the Government's position as follows:

> The legal profession, including its professional body, was, in accordance with the general principles of free society, independent

> of government. Accordingly, the respondent Government could not be held responsible for the acts of the Law Society.
>
> The Council of the Law Society was not appointed by the Government but elected by the profession. The Council did not, in the performance of their duties, act as servants or agents of the State.
>
> No Minister of the Government exercised control over the professional jurisdiction of the Law Society over solicitors. The Law Society had none of the immunities or privileges of the Crown: its servants were not civil servants, and its property was not Crown property. The Law Society was not an organ or part of the State.

4 E.H.R.R. at 353.

The SRA was created in January 2007 "as the independent regulatory body of the Law Society." Solicitors Regulatory Authority, *Annual Report* 2009-2010 at 9 (2010). Its powers are conferred by the governing body of the LSE, the LSE Council. Cordery on Legal Services Issue 63 [151] at D51 (2011). The SRA has its own Board, established by the LSE Council. The SRA, a private body acting under authority of the LSE, another private body, exercises statutory authority to establish rules of professional conduct, intervene in (that is, close down) solicitors' law practices, and take other disciplinary measures. *Id*. The SRA can close down a solicitor's practice without any approval by any court or other authority. Solicitors Act 1974, § 35 & Sched. 1.

The SRA does not, however, actually suspend or disbar attorneys. That power belongs to a separate

entity, the Solicitors Disciplinary Tribunal ("SDT"), established by the Solicitors Act 1974 as a statutory tribunal. Solicitors Act 1974 ch. 47 § 46. The Legal Services Act 2007 made the SDT completely independent from the LSE. Legal Services Act 2007 ch. 29, Sch. 16 ¶48. The SRA institutes and prosecutes cases before the SDT.

The Legal Services Act 2007 then established the Legal Services Board "(LSB") as the "the overarching regulator of legal services." Cordery on Legal Services Issue 67 at B-1 [1] (2015). That law designated an approved regulator for each class of legal professionals, with the LSE recognized an "approved regulator" of solicitors. Legal Services Act 2007 ch. 29, Sch. 4 Part 1. As an approved regulator, the LSE is subject to oversight and control by the Legal Services Board, including imposition of fines on the Society and making remedial orders. *Id*. §§ 38-41. Thus, as the Ninth Circuit correctly recognized, the LSE and SRA "are accountable to the statutorily-created Legal Services Board." Pet. App. 89a.

The Legal Services Board itself, however, is *not* part of the Government nor is it in any way accountable to the Government, as the Ninth Circuit suggested. While the Lord Chancellor, a Government official, appoints the members of the Board, the Lord Chancellor exercises no authority over the operation of the LSB. To the contrary, the LSB's authorizing statute, the Legal Services Act 2007, provides that:

> (1) The Board is not to be regarded—
>
> (a) as the servant or agent of the Crown, or
>
> (b) as enjoying any status, immunity or privilege of the Crown.

(2) Accordingly—

(a) The Board's property is not to be regarded as property of or held on behalf of the Crown, and

(b) The Board's staff are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity of privilege of the Crown.

Legal Services Act 2007, Sch. 1 ¶26. As the Legal Services Board itself explains:

> *The LSB is independent both of government and the profession*. Our Board has a lay Chairman and a lay majority, meaning that its membership brings to the table the perspective of non-lawyers. *While the LSB is part of the public sector, it operates independently of government.* This was important as maintenance of the rule of law was thought to depend on the regulation of lawyers being handled independently of government.

Legal Services Board Website, About Us, https://www.legalservicesboard.org.uk/about-us/who-we-are (last visited Oct. 2, 2020)(emphasis added).

Thus, unlike the entities and agencies regulating and administering discipline of lawyers in the U.S., the LSE and SRA, while performing functions authorized by statute, are manifestly not "acting on behalf of" the Government of the U.K. The Ninth Circuit in the instant case clearly erred in conferring foreign sovereign immunity.

This Court has already recognized the importance of this issue. In *Powerex*, the Court granted review to address the Ninth Circuit's test. The Court was

unable to reach that issue, however, because it found lack of appellate jurisdiction. *Powerex Corp. v. Reliant Energy Servs., Inc*., 551 U.S. 224 (2007). In the instant case, this Court has the opportunity to address the issue that it was unable to address in *Powerex* for jurisdictional reasons. The Petition should be granted to overturn the Ninth Circuit's approach and restore uniformity on this important issue.

II. SOVEREIGN IMMUNITY SHOULD NOT BE EXTENDED TO PROTECT PRIVATE ACTS OF RACIAL DISCRIMINATION

The extension of foreign sovereign immunity by the Ninth Circuit to the acts of the LSE and SRA is especially troublesome because of the history and pattern of racially discriminatory practices by these entities--a subject which has long been the focus of attention by *amicus*, the Society of Black Lawyers. As noted, the LSE and SRA are not treated as part of the Government by U.K. law or by the Government itself. Their acts are not protected under U.K. law as those of the sovereign (the Crown). It would be illogical and problematic to allow the LSE and SRA effectively to export their discriminatory practices to the United States –as in this case– and enjoy in this country protection from the consequences of their acts that these organizations would not enjoy in their home country, the U.K.

The SBL believes that the treatment of the Petitioner, Mr. Mireskandari, by the SRA, including in particular the extraordinary repeated dispatch of SRA investigators overseas, to the U.S., to investigate Mr. Mireskandari's background, was undertaken in retaliation for Mr. Mireskandari's role in raising the issues of discriminatory practices by the SRA and within the U.K.'s law enforcement agencies. That

treatment was itself an act of discrimination against Mr. Mireskandari, exemplifying the very problem he was trying to expose and publicize.

In 2006, the Law Society published a report concluding that the activities of its disciplinary arm, the predecessor to the SRA, had a disproportionate impact on minority solicitors. The Law Society, *The Impact of Regulatory Decisions of the Investigations and Enforcement Unit on Black and Minority Ethnic Solicitors* (2006). Society statistics revealed continued discrimination, and there followed calls for reform from the SBL and other groups, and communications with Parliament, eventually leading to a Parliamentary inquiry. *See* Petition at 7. As noted, in January 2007, the regulatory and disciplinary functions of the LSE were assumed by the SRA. The SRA formed a working group, and then asked Lord Herman Ouseley to conduct an independent review of the problem.

A report of the results of that review was issued in July 2008. Solicitors Regulation Authority, *Independent Review Into Disproportionate Regulatory Outcomes for Black and Minority Ethnic Solicitors* (2008)("Ouseley Report"). The Ouseley Report concluded that Black and ethnic minority solicitors were significantly overrepresented in the group of solicitors against which the SRA had taken serious disciplinary actions, including practice shutdowns (interventions), forensic investigations and referrals to the Solicitors Disciplinary Tribunal. Ouseley Report 34-48. For example, while Asian and Black solicitors accounted for 7.1% of all solicitors in 2007, they accounted for 33% of all practice shutdowns. *Id*. at 41. Similarly, "[f]or black solicitors, SDT [Solicitors Disciplinary Tribunal] referrals are consistently and significantly higher than their representation in the profession." *Id*. at 43.

The Ouseley Report also analyzed conduct of SRA personnel, underrepresentation of minorities among the staff and other factors, and concluded that "outcomes, from enrolment [bar admissions] through regulation, through intervention . . . are adversely disproportionate for BME [Black Minority Ethnic] solicitors" and that if the "outcomes are always disproportionate and the conditions for operational application of policies, procedures and practices are as described herein, then the SRA leaves itself open to the potential charge of institutional racism." *Id*. at 50-51. The Report made a number of recommendations with regard to organizational culture and personnel practices, and urged that "[e]quality and diversity should be included as one of the key principles in the SRA's decision-making." *Id*. at 63.

The issuance of the Ouseley Report occurred shortly after Mr. Mireskandari filed his own racial discrimination claim against the LSE/SRA and in the midst of the SRA's investigation of Mr. Mireskandari. The SRA investigators were secretly conducting their investigation in the U.S. in the summer of 2008 (and, in fact, before then); the SRA would intervene in (that is, close down) Mr. Mireskandari's own law practice at the end of that year. *See* Petition at 8-11.

Six years after the Ouseley Report, yet another report on the problem of racial discrimination was commissioned by the SRA. Gus John, *Independent Comparative Case Review—The Solicitors Regulation Authority* (2014) ("John Report"). Although the John Report, controversially, declined to make any finding as to institutional racism, the report found a clear continuation of the pattern of discriminatory outcomes. Between 2009 and 2012 (the very period during which Mr. Mireskandari's disciplinary proceed-

ing took place), Black and ethnic minority solicitors made up 13% of the entire solicitor population but represented 25 percent of "new conduct investigations" and 33% of the cases referred to the Solicitors Disciplinary Tribunal. John Report ¶1.18 at 10. "Our analysis . . . showed that BME [Black Minority Ethnic] solicitors and firms also comprised a higher percentage of those against whom action was taken and were also subjected to more severe sanctions than their White counterparts." *Id*. ¶1.17 at 10. The Report made yet another set of recommendations for reforms of the SRA's operations.

As damning as the Ouseley Report was with respect to racially discriminatory conduct of the LSE/SRA, it could not fully convey the real impact of discriminatory conduct on the lives of minority lawyers. The year before the Report was issued, Rannee Bassi, a solicitor and mother of three, was accused by the U.K. Legal Services Commission of financial fraud in connection with receipt of fees for representation of indigent clients. The agency ultimately cleared her of any wrongdoing, but in the meantime, distraught over the blow to her reputation and integrity, she committed suicide. "Solicitor haunted by fraud case is driven to suicide," The Standard (June 24, 2007), www.standard.co.uk/news/solicitor-haunted-by-fraud-case-is-drive-to-suicide-6592859.html#comments (last visited Oct. 4, 2020).

Despite the cycles of investigations, reports, recommendations and supposed reforms, the SRA's pattern of racially discriminatory conduct has continued. Several recent examples illustrate the persistence and scope of the problem.

In one case, the SRA investigated and prosecuted an Asian-Anglo solicitor, Pritpal Chahal, before the

Solicitors Disciplinary Tribunal, accusing him of financial improprieties and conflicts of interest. SDT, *In the Matter of the Solicitors Act 1974 Between Heer Manak Solicitors, et al*., Case No. 11165-2013, Memorandum of Application to Strike Out the Applicant's Case (June 23, 2015) ("SDT Chahal Decision"). After a first SRA investigation, Mr. Chahal was arrested and criminally charged in November 2011; the court directed a verdict of acquittal in March 2013. SDT Chahal Decision ¶20 at 11. In the meantime the SRA conducted another investigation, leading to the disciplinary proceeding before the SDT. *Id*. ¶¶21-22.

Mr. Chahal moved to dismiss the proceeding for failure to state a case and for abuse of process by the SRA. The SDT determined that an earlier decision by an SRA administrative judge ("Adjudicator"), finding no basis for referral of Chahal to the SDT, had been improperly withheld from Mr. Chahal, and should have barred the proceeding altogether. *Id*. ¶¶338-342 at 98-100. The Tribunal then ruled that the SRA's case against this ethnic minority solicitor was not "properly pleaded" or "supported by adequate and coherent evidence." *Id*. ¶347 at 101. It further held that the case against Mr. Chahal should be dismissed for abuse of process, given the "impossibility of holding a fair trial" (*id*. ¶348 at 101), based on the way the investigation had been conducted by SRA investigators as well as the way it had been presented (*id*. ¶349 at 102); and that "a significant part of the case against [Chahal] should not, in the opinion of the Tribunal, ever have been brought . . . ." *Id*. ¶348 at 102.

More recently, in 2017, the SRA shut down the law practice of another ethic minority solicitor, Nabeel Sheikh, accusing him of overcharging a client in a criminal case. The SRA prosecuted a disciplinary

proceeding before the Solicitors Disciplinary Tribunal, which found that "manner in which the [SRA] had brought the proceedings before the Tribunal was inadequate, wrong and represented a shambolic approach to very serious underlying issues." Solicitors Disciplinary Tribunal, *In the Matter of Solicitors Act 1974 between SRA and Nabeel Amer Sheikh*, Case No. 11821-2018, Judgment ¶124.13 at 64. (Nov. 15, 2019). The Tribunal further found that "the lack of independent investigation undertaken by the [SRA] . . . was deficient and inadequate on the part of the regulatory body." *Id*. ¶124.12. The Tribunal awarded Sheikh his costs of defending the proceeding.

Just this past spring, in an echo of Mr. Mireskandari's own efforts thirteen years ago and perhaps a sign of how little has changed, a minority solicitor, Naim Lone, brought a case against the SRA in the U.K. Employment Tribunal, alleging that he had been discriminated, harassed and victimized by the SRA through disciplinary proceedings prosecuted over the course of four years. Mr. Lone alleges that the SRA "has demonstrated 'deep entrenched racism' in the way he has been treated, particularly in comparison with white individuals involved in the investigation." John Hyde, "Solicitor issues unprecedented proceedings against SRA," *The Law Society Gazette* (March 2, 2020).

As noted above, *amicus* SBL believes that the treatment of the Petitioner, Mr. Mireskandari, by the SRA was itself an act of racial discrimination against Mr. Mireskandari. And as the various reports have documented, that was but one of many such instances occurring as part of a longstanding pattern of discriminatory conduct by the LSE and SRA. What made Mr. Mireskandari's case exceptional, however, was that

the SRA carried out activity that was a critical part of this discriminatory conduct, in the United States.

The SBL is unaware of any other instance in which U.K. bar organizations have investigated, and committed racially discriminatory and unlawful acts against, a U.S. citizen on U.S. soil. It would make no sense, and would offend basic notions of justice, to extend to these non-governmental entities, the LSE and SRA, the protections of foreign sovereign immunity for racially discriminatory conduct. It would be especially senseless to treat them as governmental, and immunize their conduct here, when their own sovereign in their own country does not claim them as part of itself and indeed regards them as private entities that lack immunity.

The goals of achieving equal and fair treatment for Black and ethnic minority lawyers in the U.K. would be significantly impeded by shielding the LSE and SRA from the consequences of their discriminatory and illegal conduct in the U.S. in this case. And with respect to the policy interests of the United States, there are hundreds of U.S. lawyers residing in and licensed to practice as solicitors in the U.K., including many members of minority groups. Those attorneys, if mistreated by the SRA, would have no recourse in the U.S. courts if the SRA is afforded sovereign immunity. Further, conferring sovereign immunity on acts undertaken, within the United States, against foreign lawyers by foreign nongovernmental bar authorities, would appear to open the door to campaigns of harassment or worse against lawyers residing in the U.S. who hail from countries with authoritarian regimes, and whose advocacy of civil and human rights in their home countries has offended powerful interests in those countries.

The LSE and SRA do not act on behalf of the U.K. Government. Their actions challenged by the Petitioner in this case were part of a pattern of racially discriminatory conduct repugnant to the values of the democratic societies of both the U.S. and the U.K. Those actions do not warrant or merit protection under the Foreign Sovereign Immunities Act.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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October 9, 2020