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Via First Class Mail and Electronic Filing

Mr. Scott S. Harris
Clerk of the Court
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Re: *Fowler v. Irish*
No.:20-1392

Dear Mr. Harris:

On behalf of the Respondents, I am submitting a brief response to the Petitioners' letter commenting on the First Circuit's recent decision in *Welch v. City of Biddeford Police Dep't.*, 2021 WL 3828367 (1st Cir. Aug. 27, 2021). The Petitioners' highly selective citation to single words of *dicta* from that case adds nothing to their pending Petition for Writ of Certiorari. The First Circuit remanded *Welch* because the trial court had erroneously held that under the state-created danger doctrine an affirmative act must "greatly" enhance the danger to the plaintiffs, rather than simply "enhance" the danger. *Id.* at *4. The dissent in *Welch* stated further that "the whole point of *Irish II* was that the law regarding the state-created danger doctrine was already so 'clearly established' that qualified immunity was inapplicable." *Id.* at *8. Also, the First Circuit has previously and repeatedly concluded that whether law enforcement violated existing police procedure is relevant to the "clearly established" analysis. *See, e.g., Jennings v. Jones*, 499 F.3d 2, 20 (1st Cir. 2007); *Raiche v. Pietroski*, 623 F.3d 30, 37 (1st Cir. 2010); *Fernandez-Salicrup v. Figuera-Sancha*, 790 F.3d 312, 327 (1st Cir. 2015).

Thank you for the opportunity to provide this response.

Sincerely,

/s/ Scott J. Lynch
Scott J. Lynch, Esq.
Counsel of Record

cc: Christopher C. Taub, AAG (Via First Class Mail and Electronic Filing)