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March 13, 2023

Via Electronic Filing and Hand Delivery

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

Re: *Hope v. Harris*, No. 21-1065 – Response to Letter from Respondents.

Dear Mr. Harris,

Petitioner submits this letter in response to Respondents' letter dated June 8, 2022.

I. One week after the petition for certiorari was filed in this case, Mr. Hope was moved from solitary confinement into a less-restrictive "transition program." Respondents' letter explains that subsequently, one week before this case was conferenced, Mr. Hope was moved into general population. Respondents do not explain why, after 27 years in solitary confinement, Mr. Hope was moved to a less isolated setting one week after the petition for certiorari was filed and then removed from isolation altogether one week before this case was conferenced for a vote.

To the extent Respondents' update is intended to bolster their suggestion of mootness, the timing of Mr. Hope's transfer and the lack of any explanation for that timing mean that Respondents cannot carry their "heavy burden" of making "absolutely clear" that the "allegedly wrongful behavior could not reasonably be expected to recur." See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 n.1 (2017). This Court's cases handed down since the reply in support of certiorari was filed only confirm that a defendant who voluntarily ceases a course of conduct bears a heavy burden to prove mootness. See, e.g., *West Virginia v. Env'tl. Prot. Agency*, 142 S. Ct. 2587, 2607 (2022). In any event, Respondents have conceded that this Court's Article III jurisdiction is secure because Mr. Hope's damages claim is not moot. BIO.14. As Petitioner's reply in support of certiorari explained, this Court's usual course, should it choose to hear such a case, would be to resolve the question presented, then remand for the district court to determine whether Respondents can meet their burden of showing that an injunctive-relief

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claim is moot. Reply.8-9; *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 210-12 (2000) (Scalia, J., dissenting).

II. Respondents' letter also corrected various misrepresentations from Respondents' brief in opposition regarding the nature of Petitioner's crime and the conditions of his confinement. Petitioner appreciates the corrections.

Respectfully submitted,

/s/ Easha Anand

Easha Anand
Counsel of Record for Petitioner

Cc: Judd E. Stone II, Solicitor General, *Counsel of Record for Respondent* (via e-mail)