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March 5, 2020

Via ECF

Maria R. Hamilton
Clerk of Court
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Products Company, LLC, et al.*, No. 19-1818
Plaintiff-Appellee's Response to Defendants-Appellant's Rule 28(j) Letter

Dear Ms. Hamilton,

The State writes to respond to Defendant-Appellant's letter citing *Latiolais v. Huntington Ingalls, Inc.*, 2020 WL 878930 (5th Cir. Feb. 24, 2020) (en banc). The case is inapposite for multiple reasons.

First, other Circuits continue to apply the "causal nexus" test for federal-officer removal, as should this Court. *See e.g., Cabalce v. Thomas E. Blanchard & Assocs., Inc.*, 797 F.3d 720, 727 (9th Cir. 2015); *Betzner v. Boeing Co.*, 910 F.3d 1010, 1015 (7th Cir. 2018); *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1144 (11th Cir. 2017).

Second, Appellants here were not "acting under" federal officials at all. Defendants' campaign of deception did not "involve an effort to *assist*, or to help *carry out*, the duties or tasks of [a] federal superior," under the government's "subjection, guidance, or control," as required by §1442. *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 151–52 (2007). The various federal contracts to which Appellants point likewise did not require (but merely allowed) oil extraction for the companies' own commercial benefit, as opposed to at government behest. *See* Appellee's Response Brief at 12–17. The absence of either is fatal to Defendants' arguments.

Third, Defendants have not satisfied *Latiolais*. As the Fourth Circuit explained in *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017), on which *Latiolais* relied, the "or relating to" language in §1442(a)(1) requires a "sufficient 'connection or association'" between the conduct complained of and federal direction or control. The court held that the removing defendant's alleged failure to warn of dangers from asbestos was connected to acts under government guidance based on evidence

that the Navy was aware of the dangers of asbestos; that it required the use of asbestos in boilers for which it contracted with Foster Wheeler to manufacture; that it provided for a comprehensive set of warnings, but not all possible warnings; and that Foster Wheeler complied with the Navy's requirements.

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Id. Defendants have proffered no similar evidence here, nor could they, for the same reasons that they cannot show they “acted under” a federal superior. Federal officer removal jurisdiction remains improper.

Respectfully submitted,

/s/ Victor M. Sher
Victor M. Sher
Sher Edling LLP

Counsel for Appellee
State of Rhode Island

cc: All Counsel of Record (via ECF)