IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT COURT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS, *et al.*,	)	
	)	No. 26-cv-321
Plaintiffs,	)	
	)	Hon. Sara L. Ellis,
v.	)	District Judge
	)	
	)	
DEPARTMENT OF HOMELAND SECURITY, *et al.*,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

"For several reasons," Plaintiffs failed to plausibly allege standing to challenge the Sensitive Locations Policy. Doc. 44 at 13-16; *see* Doc. 62 at 8-9. The D.C. Circuit's decision in *Mennonite Church USA v. DHS*, No. 25-5209, 2026 WL 3132807 (D.C. Cir. Oct. 20, 2026), does not provide a reason to conclude otherwise. First and foremost, that case is factually distinguishable. The plaintiffs in that case are "Judeo-Christian organizations" who claim a violation of their religious liberties. *See Mennonite Church USA*, 2026 WL 3132807, at *7. Plaintiffs in this case are a state and city without a cognizable injury. *See* Doc. 44 at 13-15. Among other questions, standing asks whether the plaintiff is "a proper party to request an adjudication of a particular issue." *Flast v. Cohen*, 392 U.S. 83, 100 (1968). And when it comes to the Sensitive Locations Policy, Plaintiffs here are not.

For that reason alone, *Mennonite Church USA* does not move the needle. And it is otherwise unpersuasive. As we have explained, one reason Plaintiffs lack standing is because redressability does not exist. The Supreme Court has made clear that "redressability requires that

the court be able to afford relief through the exercise of its power, not through the persuasive or even awe-inspiring effect of the opinion explaining the exercise of its power." *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) (alteration adopted and emphasis omitted); *see United States v. Texas*, 599 U.S. 670, 691 (2023) (Gorsuch, J., concurring in the judgment). Thus, only when the Court's "judgment" provides relief to a plaintiff will redressability exist. *Haaland*, 599 U.S. at 294.

Applying that principle here, and as this Court correctly suggested at oral argument on September 2, 2026, Plaintiffs lack standing because vacatur of the Sensitive Locations Policy would not limit Defendants' discretion to enforce immigration law. Tr. at 98: 8-14 ("[T]he 2021 policy, it doesn't preclude immigration officials from enforcing the law in sensitive locations" and therefore questioning "what the vacatur [of DHS current policy] accomplishes"); *id.* at 106: 9-22 (expressing same reservation about redressability). Other courts have similarly recognized that DHS's enforcement discretion—which, in any instance, is not subject to judicial management, *see United States v. Texas*, 599 U.S. at 677-78 (majority op.)—remains the same regardless of whether the Sensitive Locations Policy or the 2021 Guidance it replaced (the Mayorkas Memo) is on the books. *See, e.g.*, *Fridley Pub. Sch. Dist., Indep. Sch. Dist. 14 v. Mullin*, No. 26-CV-1023 (LMP/LIB), 2026 WL 1244043, at *12 (D. Minn. May 6, 2026) ("[R]estoring the 2021 Guidance . . . would not have the legal effect of preventing any future immigration enforcement at or near schools and school bus stops."); *New England Synod v. Dep't of Homeland Sec.*, 824 F. Supp. 3d 118, 162-63 (D. Mass. 2026) ("[T]he 2021 Policy provided guidance regarding enforcement discretion, but did not purport to limit an agency's or employee's statutory authority." (quotation omitted)).

Respectfully, the majority in *Mennonite Church USA v. DHS* does not properly apply the above principles. According to the majority, reversion to the Mayorkas Memo would likely redress some of the plaintiffs' asserted injury because the Mayorkas Memo imposed "limitations on enforcement actions at houses of worship," and therefore vacatur of the Sensitive Locations Policy would "discourag[e] at least some immigration-enforcement activities at or near their members' houses of worship." 2026 WL 3132807, at *8-9. But, as Judge Rao correctly explained in her dissent, the majority's redressability theory is flatly inconsistent with the Supreme Court's decision in *Haaland* and misunderstands the Mayorkas Memo. The requested remedy in *Mennonite Church USA*, like the requested remedy here, "would simply reinstate a guidance document that leaves in place both legal authorities and enforcement discretion." 2026 WL 3132807, at *17 (Rao, J., dissenting). And that means redressability is absent, regardless of whether the reinstatement of the Mayorkas Memo has some sort of persuasive value. *See id.*

Judge Rao also persuasively explained why the majority erred in relying on *Bennett v. Spear*, 520 U.S. 154 (1997), for the proposition that "'non-binding' or 'advisory' administrative materials exert 'a powerful coercive effect' on executive action." *Id.* at *10 (majority opinion). In *Bennett*, the agency guidance "set[] forth how to comply with statutes and regulations on pain of civil and criminal liability." *Id.* at *17 n.5 (Rao, J., dissenting). Here, neither the Mayorkas Memo nor the Sensitive Locations Policy threatens to impose any such liability; both are only internal statements of agency policy. *See* Doc. 44 at 36.

For these reasons, this Court should dismiss Counts Eleven and Twelve—the claims related to the Sensitive Locations Policy—for a lack of standing.[1]

[1] Even if this Court concludes that Plaintiffs plausibly alleged standing, the Sensitive Locations Policy remains unreviewable under the Administrative Procedure Act. *See* Doc. 44 at 35-42.

Dated: November 5, 2026

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

/s/ Brantley T. Mayers
BRANTLEY T. MAYERS (FL#1039996)
Counsel to the Assistant Attorney General

ANDREW WARDEN
Assistant Director
LEE REEVES
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 616-5084
Fax: (202) 616-8470
Andrew.Warden@usdoj.gov

Counsel for Defendants