STEPHEN W MANNING, OSB No. 013373
stephen@innovationlawlab.org,
smanning@ilgrp.com
TESS HELLGREN, OSB No. 191622
tess@innovationlawlab.org
RACHEL LANDRY, Mass. No. 713320*
rachel@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB No. 223308
nelly@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Plaintiffs
**Admitted pro hac vice*
Additional counsel on signature page

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

PINEROS Y CAMPESINOS UNIDOS DEL NOROESTE; AUGUSTANA LUTHERAN CHURCH; OUR LADY OF GUADALUPE PARISH; SAN FRANCISCO INTERFAITH COUNCIL; WESTMINSTER PRESBYTERIAN CHURCH; NATIONAL EDUCATION ASSOCIATION; AMERICAN FEDERATION OF TEACHERS; AMY LOMANTO; HANNA MAE ANDERSON; LAUREN FONG; and CAROLINE KEATING MEDEIROS,

Plaintiffs,

v.

KRISTI NOEM, et al,

Defendants.

Case No. 6:25-cv-699-AA

PLAINTIFFS' SUR-REPLY IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

Plaintiffs submit this targeted sur-reply to address Defendants' reliance on the newly issued decision in *New England Synod, Evangelical Lutheran Church in America v. Dep't of Homeland Security* ("*New England Synod*"), No. 4:25-cv-40102, ECF No. 74 at 51–52 (D. Mass. Feb. 13, 2026).[1] *See* Defendants' Reply in Support of Motion to Dismiss Amended Complaint ("Reply"), ECF No. 136 at 6.

ARGUMENT

Plaintiffs demonstrated in their Opposition that the Huffman Memorandum is a final agency action that produced a definitive and legally consequential break from the government's longstanding "protections directing ICE and CBP to refrain from immigration enforcement actions in or near sensitive locations," such that "[p]rior to 2025, there were protected areas that individuals could visit without fear of encountering immigration enforcement." Plaintiffs' Opposition to Defendants' Motion to Dismiss ("Pls.' Opp."), ECF No. 53 at 20. Rather than engage with (or even acknowledge) the arguments in Plaintiffs' Opposition, Pls.' Opp. at 19-22, Defendants rely exclusively on a block quote from the district court decision in *New England Synod* to make their claim that the 2025 Huffman Memorandum does not determine any rights or obligations and is not an action from which legal consequences flow. Reply at 6. This decision is legally incorrect, and it does not change the analysis of whether the Huffman Memorandum is a final agency action under the second prong of the Supreme Court's framework in *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

[1] While the *New England Synod* decision also resolved other issues relevant to Defendants' motion, Plaintiffs submit this sur-reply to address only those arguments for which Defendants rely on this authority in their Reply. Plaintiffs have agreed not to oppose Defendants' sur-sur-reply of the same scope.

Under the second prong of the *Bennett* test, agency action is final where it "alter[s] the legal regime to which the action agency is subject." *Bennett*, 520 U.S. at 178. The Huffman Memorandum does just that: because the Huffman Memorandum changes the obligations for Defendants' agents in exercising their discretion to carry out immigration enforcement at sensitive locations, it is a final agency action from which "legal consequences will flow." *Id.* This is precisely what the *Philadelphia Yearly Meeting* court rightly held. *Philadelphia Yearly Meeting of the Religious Society of Friends ("Philadelphia Yearly")*, No. 25-0243-TDC, ECF 92 at 9-10 (D. Md., Feb. 3, 2026) ("[T]he issuance of the Huffman Memorandum was necessarily also a final agency action because it materially redetermined the rights and obligations of immigration offices by removing the restrictions and limitations of the 2021 Policy" and because "it withdrew the effective safe harbor provided in the 2021 [Mayorkas Memo]"). Neither Defendants nor the *New England Synod* court attempted to analyze the substantive requirements and limitations consistently imposed on ICE and CBP on their authority and discretion for three decades leading up to their abrupt removal in 2025.

The Huffman Memorandum also effectively annuls the right of Plaintiffs or anyone else to report a "violation" of the prior "protected areas policy" through publicly available mechanisms on the CBP website. *See* U.S. Customs & Border Protection, DHS Protected Areas FAQs (last modified Mar. 14, 2025), https://www.cbp.gov/border-security/dhs-protected-areas-faqs [https://perma.cc/23HKSQ63]. *New England Synod* fails to consider that the rescission had the consequence of effectively eliminating the ability to report, which is evidence that the Mayorkas Memorandum had legal consequences that the Huffman Memorandum removed, rather than the general policy statement.

Additionally, *New England Synod*'s conclusion that the 2021 Mayorkas Memorandum itself "did not entirely prevent immigration-enforcement actions at sensitive places," No. 4:25-cv-40102, ECF No. 74 at 52, is beside the point: Plaintiffs' argument about Defendants' historical policy of nonenforcement at sensitive locations is not that enforcement was categorically barred, but that there were substantial guardrails, limitations, obligations, and procedures in place which have now been eliminated. The policy's rescission markedly "alters the legal regime" within which Defendants' officers must operate and creates the possible "legal consequence of civil immigration arrests" for individuals who wish to visit a sensitive location. Pls.' Opp. at 20. Moreover, Plaintiffs do not merely challenge the shift from the 2021 to 2025 policies. [2] Measured against Defendants' multi-decade nonenforcement policy at sensitive locations, the Huffman Memorandum definitively produces legal consequences sufficient to meet the "pragmatic and flexible" standard for determining finality of an agency action. *Or. Natural Res. Council v. Harrell*, 52 F.3d 1499, 1504 (9th Cir.1995). With respect to these arguments, *New England Synod* is of no help to Defendants, who otherwise fail to respond to Plaintiffs' argument that the 2025 Huffman Memorandum is final agency action. This Court should decline to adopt a holding that fails even to consider the arguments that Plaintiffs raised and to which Defendants failed to reply.

[2] While this Court need not determine whether the 2021 Mayorkas Memo was a final agency action with "legal consequences" in order to rule in Plaintiffs' favor, the answer to that question is "yes." *Contra* Reply at 6 (quoting *New England Synod*, No. 4:25-cv-40102, ECF No. 74 at 52). The Mayorkas Memo did not make a vague or generalized reference to limited enforcement at sensitive locations; it contained a clear directive to avoid enforcement actions in locations "that would restrain people's access to essential services or engagement in essential activities." Mayorkas Memo, ECF 52-4 at 1; *see also Philadelphia Yearly*, No. 25-0243-TDC, ECF 92 at 9-10 (finding the Mayorkas Memo was final agency action).

CONCLUSION

For the foregoing reasons, and for the reasons stated in Plaintiffs' Opposition at ECF No. 63, the Court should deny Defendants' Motion to Dismiss.

Dated: February 20, 2026.

Respectfully submitted,

/s/ Nelly Garcia Orjuela

ESTHER H SUNG, Cal. No. 255962*
esther.sung@justiceactioncenter.org
KAREN C TUMLIN, Cal. No. 234961*
karen.tumlin@justiceactioncenter.org
HILLARY LI, Ga. No. 898375*
hillary.li@justiceactioncenter.org
LAURA FLORES-PERILLA, Cal No. 355645*
laura.flores-perilla@justiceactioncenter.org
BRANDON GALLI-GRAVES, Tx No. 24132050*
brandon.galli-graves@justiceactioncenter.org
EMILY SATIFKA, Nj. No. 330452020*
emily.satifka@justiceactioncenter.org
JUSTICE ACTION CENTER
PO Box 27280
Los Angeles, CA 90027
Telephone: +1 323-450-7272

Attorneys for Plaintiffs

LUBNA A. ALAM, DC No. 982169*
lalam@nea.org
KATHERINE E. LAMM, DC No. 1006319*
klamm@nea.org
NATIONAL EDUCATION ASSOCIATION
1201 16th Street NW
Washington, DC 20036
(202) 822-7035

Attorneys for Plaintiff National Education Association

NELLY GARCIA ORJUELA, OSB No. 223308
nelly@innovationlawlab.org
TESS HELLGREN, OSB No. 191622
tess@innovationlawlab.org
STEPHEN W MANNING, OSB No. 013373
stephen@innovationlawlab.org,
smanning@ilgrp.com
RACHEL LANDRY, Mass. No. 713320*
rachel@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

STANLEY YOUNG, CA No. 121180*
syoung@cov.com
JEHAN A. PATTERSON, D.C. No. 1012119*
jpatterson@cov.com
SABRINA MCGRAW, CA No. 334120*
smcgraw@cov.com
AMBER LOWERY, D.C. No. 1780982*
alowery@cov.com
ANALESE BRIDGES, D.C. No. 90029992*
abridges@cov.com
EVAN CHIACCHIARO, D.C. No. 90037819*
echiacchiaro@cov.com
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
Telephone: +1-202-662-5129

Attorneys for Plaintiffs

Admitted pro hac vice
****Pro hac vice application forthcoming*

DANIEL MCNEIL, D.C. No. 455712**
dmcneil@aft.org
CHANNING COOPER, Md. No. 1212110182*
ccooper@aft.org
AMERICAN FEDERATION OF TEACHERS
555 New Jersey Avenue, N.W.
Washington, D.C. 20001
Telephone: +1 202-879-4400

Attorneys for Plaintiff American Federation of Teachers