NO. 22-5258

In the
United States Court of Appeals for the District of Columbia Circuit

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SALINE PARENTS, an unincorporated association, *et al.*,
Plaintiffs-Appellants

v.

MERRICK B. GARLAND, in his official capacity as Attorney General of the United States of America,
Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
HONORABLE DABNEY L. FRIEDRICH
CASE NO. 1:21-cv-2775-DLF

APPELLANTS' PETITION FOR REHEARING EN BANC

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GLOSSARY OF TERMS

Term	Abbreviation
Attorney General of the United States	AG
Federal Bureau of Investigation	FBI
First Amended Complaint	FAC
Joint Appendix	JA
National School Boards Association	NSBA
Supplemental Joint Appendix	SJA

INTRODUCTION AND RULE 35 STATEMENT

With great public fanfare, the Attorney General of the United States ("AG") announced on October 4, 2021, that the Department of Justice would be employing its vast law enforcement resources to investigate parents who protest in opposition to the "progressive" policies being implemented and enforced by various school boards across the country (referred to as the "AG Policy"). Plaintiffs are parents and a parent organization that are at the epicenter of these protests in Saline, Michigan and Loudoun County, Virginia.

The AG considers these parent protestors to be "threats," and his "Department of Justice 'is committed to using its authority and resources to *discourage* these threats . . . and *other forms of intimidation and harassment*.'" (JA-20, R-8, First Am. Compl. ["FAC"] ¶ 71 [emphasis added]). As the AG notes, the focus of his law enforcement efforts is not limited to "true threats"; it is much broader, and it includes the very protests engaged in by Plaintiffs (protests deemed intimidating and harassing, yet protected by the First Amendment and thus the reason why Plaintiffs are alleging that these investigative efforts are unlawful).[1]

[1] The AG Policy never uses the term "*true* threats"; it is purposefully much broader. "True threats," which are not constitutionally protected, are narrowly defined to "encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Va. v. Black*, 538 U.S. 343, 359 (2003). Here, the AG is not focused on investigating "*true* threats"—he is focused on targeting certain viewpoints. Indeed, he is focused on speech that some might

Pursuant to the challenged policy, the AG directed the FBI's *Criminal* Investigation Division and *Counterterrorism* Division to create specific "threat tags" for the investigations authorized by the directive. (AG's Br. at 6; SJA-4, 5).

The AG Policy is the direct result of *collusion* between the Biden administration and the "progressive" members of the National School Boards Association ("NSBA"), which submitted a letter to the White House on which the AG relied in creating the policy directive. The Biden administration (with the AG) orchestrated the creation of this letter in order to develop and adopt the AG Policy. (JA-20, R-8, FAC ¶ 73). That is, the NSBA letter was drafted *in cooperation and conjunction* with the Biden administration in order *to create the pretext for the policy directive*. (JA-20, 21, R-8, FAC ¶¶ 73-81). The NSBA letter was the *sole*

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consider "intimidating" or "harassing" at contentious school board meetings—the target of the policy directive. Consequently, it is error to conclude, as the panel does (Op. at 11), that the AG Policy does not reach constitutionally protected conduct. Speech that might be deemed "intimidating" or "harassing" is protected by the First Amendment. *See Watts v. United States*, 394 U.S. 705, 708 (1969) (noting that only contextually *credible* threats to engage in acts of violence may be proscribed and confirming that "debate on public issues should be uninhibited, robust, and wide open, and that it may include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials"); *Bradenburg v. Ohio*, 395 U.S. 444, 447 (1969) ("[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."); *NAACP v. Clairborne Hardware Company*, 458 U.S. 886, 928 (1982) ("Strong and effective extemporaneous rhetoric cannot be nicely channeled into dulcet phrases. An advocate must be free to stimulate [] his audience . . . ."); *McCullen v. Coakley*, 573 U.S. 464, 491 n.8 (2014) (noting the "term 'harassment' [must be] authoritatively construed to avoid vagueness and overbreadth . . . .").

basis for the AG Policy and for the issuance of the infamous October 4 memorandum. (JA-21, R-8, FAC ¶ 76).

The NSBA letter referred to the parent protestors as "domestic terrorists"—the jurisdictional hook for the AG.[2] And the only reasonable inference one could draw from the fact that the investigations were being conducted by the FBI's *Criminal* Division and *Counterterrorism* Division was that the AG agreed that these parents were criminal threats and domestic terrorists. This fact was so plainly and patently obvious to the general public (but apparently not the panel) that the *New York Post* wrote that the AG "owe[s] America's 'domestic terrorist' parents an apology."[3] As reported by *The Federalist*, "AG Merrick Garland admitted that the basis for targeting parents concerned about what their children are learning in schools was a letter from the NSBA."[4] And the *Washington Examiner* published an article titled, "House GOP calls on Garland to withdraw DOJ schools memo after NSBA apologized for 'domestic terrorism' letter."[5] The article states, in relevant part, "Because the NSBA letter was the basis for your

[2] If the AG does not consider these parent protestors to be "domestic terrorists," then how is it that the federal government has <u>*any*</u> jurisdiction for meddling in local school board matters? The panel seemed to care little about this important fact.

[3] https://nypost.com/2021/10/25/ag-merrick-garland-white-house-owe-americas-domestic-terrorist-parents-an-apology-and-an-explanation/.

[4] https://thefederalist.com/2021/10/21/ag-merrick-garland-admits-federal-war-on-parentssprang-from-school-boards-letter-not-evidence.

[5] https://www.washingtonexaminer.com/news/house-gop-calls-on-garland-to-withdraw-doj-schools-memo-after-nsba-apologized-for-domestic-terrorism-letter.

memorandum and *given that your memorandum has been and will continue to be read as threatening parents and chilling their protected First Amendment rights*, the only responsible course of action is for you to fully and unequivocally withdraw your memorandum immediately." *Id*. (emphasis added); (Reply Br. at 9 n.4, 19 n.9 [citing articles]). All of this is amply supported by the factual allegations in the FAC. Yet, the panel affirmed the dismissal of the case on standing and ripeness grounds. (Op. at 8-17). The panel's decision not only ignores the factual allegations in the FAC and thus violates the appropriate standard of review, it conflicts with Supreme Court precedent and the precedent of this and other United States Courts of Appeals. "[C]onsideration by the full court is[, therefore,] necessary to secure and maintain uniformity of the court's decisions." Fed. R. App. P. 35(b)(1)(a). Accordingly, Plaintiffs ask the Court to rehear this "exceptional[ly] important" case. *Id*. at 35(b)(1)(B).

I. THE OPINION CONTRADICTS SUPREME COURT AND CIRCUIT COURT PRECEDENT.

A. The Panel Failed to Apply the Proper Standard of Review.

"Because the district court dismissed this case at the complaint stage, [Plaintiffs] need only make a plausible allegation of facts establishing each element of standing." *Cutler v. United States HHS*, 797 F.3d 1173, 1179-80 (D.C. Cir. 2015). And when evaluating Plaintiffs' standing at this juncture of the litigation, the Court "must assume that [Plaintiffs are] correct on the legal merits of [their]

claim[s], that a decision on the merits would be favorable[,] and that the requested relief would be granted." *Id*. (internal citation and quotations omitted).

As stated by this Court in *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 93 (D.C. Cir. 2002), "where the defendant contests only the legal sufficiency of plaintiff's jurisdictional claims, the standard is similar to that of Rule 12(b)(6), under which dismissal is warranted if no plausible inferences can be drawn from the facts alleged that, if proven, would provide grounds for relief." This standard "do[es] not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007). And "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). It is not a "probability requirement." *Id*.

Moreover, just because the panel does not believe a fact to be true does not then convert the fact into a "threadbare recital" or "conclusory statement" that can or must be ignored.[6] The Federal Rules do not permit dismissal based on the

[6] A particularly egregious example is the panel's false assertion that "Appellants even go so far as to declare that the Attorney General issued the Memorandum for personal gain, but they offer nothing to support this accusation." (Op. at 11). As set forth in the FAC, the AG "has a family financial conflict of interest as he directs the FBI to investigate parents and other private citizens who are protesting

panel's disbelief of the factual allegations or a belief that Plaintiffs' ultimate success in this litigation is remote or unlikely. *See Nietzke v. Williams*, 490 U.S. 319, 327 (1989) ("Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations."); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (stating that a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely").[7]

The factual allegations and all reasonable inferences drawn from those allegations in Plaintiffs' favor demonstrate that the AG has directed the use of federal law enforcement resources to target parents (specifically including Plaintiffs) as criminal threats and domestic terrorists for expressing dissident viewpoints at school board meetings. Plaintiffs have standing to advance this challenge, which is ripe for review.

B. Courts Have Long Held that Government Investigations and Surveillance Chill First Amendment Rights.

By threatening intrusive and coercive investigations and surveillance of private citizens, such as Plaintiffs, on account of their political and religious views,

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against the use of public schools to indoctrinate children in CRT and other 'progressive' Left dogma. The conflict stems from the fact that the Attorney General's son-in-law, Alexander 'Xan' Tanner, the co-founder and president of Panorama Education, has a lucrative business promoting some of the objectional indoctrination materials—materials purchased by public school districts throughout the country." (JA-27, R-8, FAC ¶ 100).

[7] *Nietzke* and *Scheuer* were both cited favorably by the Court in *Twombly*. *See Twombly,* 550 U.S. at 555.

the AG has chilled the exercise of Plaintiffs' First Amendment rights. The Supreme Court has repeatedly affirmed the constitutional infirmities associated with government investigations and surveillance that threaten to dampen the exercise of First Amendment rights. *DeGregory v. N.H. Atty. Gen*., 383 U.S. 825, 829 (1966) ("Investigation is a part of lawmaking and the First Amendment, as well as the Fifth, stands as a barrier to state intrusion of privacy."); *Gibson v. Fla. Legislative Comm.*, 372 U.S. 539, 560-61 (1963) ("We deal here with the authority of a State to investigate people, their ideas, their activities. . . . When the State or Federal Government is prohibited from dealing with a subject, it has no constitutional privilege to investigate it.") (Douglas, J., concurring); *Barenblatt v. United States*, 360 U.S. 109, 126 (1959) ("The provisions of the First Amendment . . . of course reach and limit . . . investigations."); *Socialist Workers Party v. Att'y Gen.*, 419 U.S. 1314, 1319 (1974) (noting the dangers inherent in investigative activity that "threatens to dampen the exercise of First Amendment rights").

This Court similarly recognizes the chilling effect of government investigations on First Amendment rights. *See Clark v. Library of Congress*, 750 F.2d 89, 94 (D.C. Cir. 1984) ("Exacting scrutiny is especially appropriate where the government action is motivated solely by an individual's lawful beliefs or associations, for government action so predicated is imbued with the potential for

subtle coercion of the individual to abandon his controversial beliefs or associations.”).

Ninth Circuit precedent also makes clear that Plaintiffs have standing to advance this challenge, which is ripe for review. In *Presbyterian Church v. United States*, 870 F.2d 518 (9th Cir. 1989), the plaintiff churches brought an action against federal officials for violating their constitutional rights by conducting covert surveillance on members of their congregations. The Ninth Circuit allowed the case to proceed, stating, in relevant part:

> When congregants are chilled from participating in worship activities, when they refuse to attend church services because they fear the government is spying on them and taping their every utterance, all as alleged in the complaint, we think a church suffers organizational injury because its ability to carry out its ministries has been impaired. . . . A judicial determination that the INS surveillance of the churches' religious services violated the First Amendment would reassure members that they could freely participate in the services without having their religious expression being recorded by the government and becoming part of official records.

Id. at 522-23; (*see also* JA-28, FAC ¶ 107).

As Plaintiffs argued throughout, and as set forth further below, this case is not *Laird v. Tatum*, 408 U.S. 1 (1972), as the challenged policy has caused a chilling effect on the right to freedom of speech *and* reputational harm. As noted by the Sixth Circuit, “where claims of a chilling effect are accompanied by concrete allegations of reputational harm, the plaintiff has shown injury in fact.” *Parsons v. United States DOJ*, 801 F.3d 701, 711-12 (6th Cir. 2015) (citing *Meese*

v. Keene, 481 U.S. 465 (1987), and distinguishing *Laird v. Tatum*, which "reject[ed the] argument that the plaintiffs' First Amendment rights were being 'chilled by the mere existence, *without more*, of [the Army's] investigative and data-gathering activity'").

C. The Challenged Policy Directive Has Caused a Chilling Effect on Free Speech and Reputational Harm.

Like the challenger in *Meese v. Keene*, 481 U.S. 465 (1987), Plaintiffs face a "Hobson's choice" between forgoing protected activity (speaking out at school board meetings in opposition to certain policies and curricula—the very activity the AG claims is threatening, harassing, and intimidating) and suffering not only injury to reputation as they are now deemed "domestic terrorists" and criminal "threats" for engaging in such activity, but also subjecting themselves to federal investigation, surveillance, and record keeping on account of this activity.

In *Meese*, the challenger (Keene) simply wanted to exhibit films that the government labeled as "political propaganda." No one was forcing him to show the films. No one was preventing him from showing the films. No one was subjecting him to federal investigation and surveillance for showing the films. And the "political propaganda" label was, as the Supreme Court ultimately concluded, rather innocuous.[8] Consequently, there was nothing in *Meese* that was

[8] Because the Court believed that the term "political propaganda" was "neutral," "evenhanded," and without any "pejorative connotation," it concluded that the act

"regulatory, proscriptive, or compulsory in nature." (*Compare* Op. at 9-10). There was nothing that Keene intended to do (showing the films at issue) that was "proscribed" by any law (and thus no imminent arrest, prosecution, or enforcement action). *Nothing*. Yet, the Supreme Court found that Keene had standing to advance his challenge (despite ultimately ruling against him on the merits). *Meese*, 481 U.S. at 472-77.

Keene chose to enter into the rough and tumble world of politics where labels such as "political propaganda" are prevalent. In comparison, Plaintiffs are simply concerned parents who care about their children and who now find themselves in the cross-hairs of the AG and his Department of Justice because of it. The panel's decision cannot square with *Meese*.

Moreover, as noted previously, courts readily find standing when a challenger is subject to law enforcement actions such as investigations and surveillance that dampen free speech rights even though the actions are not *per se* "regulatory, proscriptive, or compulsory." Being the target of government law enforcement actions such as investigations and surveillance on account of protected speech activity is in fact compulsory by its very nature. *See Clark*, 750 F.2d at 94; *Presbyterian Church*, 870 F.2d 518; *Minneapolis Star & Tribune Co.*

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placed "no burden on protected expression" and was thus constitutional. *Meese*, 481 U.S. at 480. The same cannot be said about being designated a "criminal threat" or "domestic terrorist."

v. Minn. Comm'r of Revenue, 460 U.S. 575, 592 (1983) ("[The Supreme Court has] long recognized that even regulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment."); *Bates v. Little Rock*, 361 U.S. 516, 523 (1960) ("Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference."); *NAACP v. Ala.*, 357 U.S. 449, 460-61 (1958) ("[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.").

Plaintiffs are not simply private citizens observing government action with which they disagree. In other words, this is not an abstract or theoretical disagreement; Plaintiffs are the very targets of the government action they are challenging. *Compare Laird,* 408 U.S. 1; *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 482-83 (1982) (stating that "standing [is] not satisfied by the abstract injury in nonobservance of the Constitution asserted by . . . citizens" in general) (internal quotations and citation omitted).

The chilling effect of the AG Policy on Plaintiffs' constitutional rights causes an injury in fact that is redressable by a court order. Plaintiffs need not wait for an actual arrest or prosecution to occur to be injured by government action that deters protected speech. *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23

F.3d 1071, 1076 (6th Cir. 1994) (recognizing that "a chilling effect on one's constitutional rights constitutes a present injury in fact"); *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965) ("The threat of sanctions may deter . . . almost as potently as the actual application of sanctions."); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) ("[I]t is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights."); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) ("[W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat.").

In addition to the injury to Plaintiffs' right to freedom speech, Plaintiffs have alleged reputational harm. "As a matter of law, reputational harm is a cognizable injury in fact." *NCAA v. Governor of N.J.*, 730 F.3d 208, 220 (3d Cir. 2013) (citing *Meese*).

In *Foretich v. United States*, 351 F.3d 1198, 1213 (D.C. Cir. 2003), this Court, in an opinion written by Circuit Judge Edwards, the author of the opinion in this case, stated that "[c]ase law is clear that where reputational injury derives directly from an unexpired and unretracted government action, that injury satisfies the requirements of Article III standing to challenge that action." In *Foretich*, the challenge was to the Elizabeth Morgan Act. This Court found that the challenger,

Dr. Foretich, had standing to advance his claims based on reputational harm even though the Act did not expressly name him nor did it expressly assert that he engaged in any criminal acts. The Court cited the Act and stated that "it is clear from the terms of subsection (b) that 'the party' to whom the Act refers is Dr. Foretich and 'the child' is his daughter Hilary." *Id*. at 1204. Citing *Meese*, this Court agreed that the Act "directly damages [Dr. Foretich's] reputation and standing in the community by effectively branding him a child abuser and an unfit parent." *Id*. at 1214. Here, the AG is "effectively" branding Plaintiffs "domestic terrorists" and criminal "threats"—in addition to subjecting them to law enforcement action. *Parsons*, 801 F.3d at 712 ("Stigmatization also constitutes an injury in fact for standing purposes.").

As the facts and all reasonable inferences drawn from those facts show, the AG has labeled (or designated, identified, declared, adjudged, *etc*.—choose the verb as they all convey the same message to the public) Plaintiffs as criminal "threats" and "domestic terrorists." Why else would the FBI's Criminal Investigation Division and Counterterrorism Division be involved? Indeed, why is the AG involved at all if this has nothing to do with federal crimes, including domestic terrorism? To claim that there is no reputational harm here is false. And this harm is sufficient to establish Plaintiffs' standing. *See supra; see also Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 139 (1951) (holding that

charitable organizations designated as "Communist" by the Attorney General had standing to challenge their designations because of, *inter alia*, "damage [to] the reputation of those organizations in their respective communities").

In sum, Plaintiffs are currently suffering a cognizable injury in fact. As stated by this Court:

> "[S]uits for declaratory and injunctive relief against the threatened invasion of a constitutional right do not ordinarily require proof of any injury other than the threatened constitutional deprivation itself." *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998). Thus, "[a]lthough a plaintiff seeking equitable relief must show a threat of substantial and immediate irreparable injury, a prospective violation of a constitutional right constitutes irreparable injury for these purposes." *Id*. (internal citation omitted).

Gordon v. Holder, 721 F.3d 638, 653 (D.C. Cir. 2013).

II. THIS CHALLENGE IS RIPE.

The doctrines of ripeness and standing "originate" from the same Article III limitation. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014). Quite often, Article III standing and ripeness issues "boil down to the same question." *MedImmune, Inc.*, 549 U.S. at 128 n.8. For the reasons that Plaintiffs have standing in this case, the ripeness requirement is satisfied as well.

The basic rationale of the ripeness doctrine "is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Thomas v. Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 580 (1985) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). "The problem is best seen in

a twofold aspect, requiring [the courts] to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs.*, 387 U.S. at 149. We begin with the hardship prong.

As *Meese, et al.,* make plain, the injury to Plaintiffs' reputations has already occurred, and it will continue without relief from this Court. Moreover, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Gordon*, 721 F.3d at 653 ("Although a plaintiff seeking equitable relief must show a threat of substantial and immediate irreparable injury, a prospective violation of a constitutional right constitutes irreparable injury for these purposes.") (internal quotations, brackets, and citation omitted). The hardship prong is met.

This case is also fit for judicial review. "In considering the fitness of an issue for judicial review, the court must ensure that a record adequate to support an informed decision exists when the case is heard." *NRA of Am. v. Magaw*, 132 F.3d 272, 290 (6th Cir. 1997). Given the posture of this case (motion to dismiss at the pleading stage), the record, as set forth in the detailed FAC, is more than sufficient for the Court to render an informed decision on standing and ripeness.

Finally, justiciability requirements are properly relaxed in the First Amendment context. *Cheffer v. Reno*, 55 F.3d 1517, 1523 n.12 (11th Cir. 1995) ("We note that the doctrine of ripeness is more loosely applied in the First

Amendment context."); *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020, 1033 n.18 (5th Cir. 1981) (relaxing the injury-in-fact requirement for standing in First Amendment challenges); *Berner v. Delahanty*, 129 F.3d 20, 24 (1st Cir. 1997) (same).

CONCLUSION

The Court should grant *en banc* review, reverse the panel's decision, and remand the case so it may proceed to the merits.

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Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 35(b)(2)(A), the foregoing petition is proportionally spaced, has a typeface of 14 points Times New Roman, and contains 3,899 words, excluding those sections identified in Fed. R. App. P. 32(f).

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

Counsel for Plaintiffs-Appellants

ADDENDUM

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 22, 2023 Decided December 15, 2023

No. 22-5258

SALINE PARENTS, AN UNINCORPORATED ASSOCIATION, ET AL.,
APPELLANTS

v.

MERRICK B. GARLAND, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE UNITED STATES,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:21-cv-02775)

Robert J. Muise argued the cause for appellants. With him on the briefs was *David Yerushalmi*.

Mark R. Freeman, Attorney, U.S. Department of Justice, argued the cause for appellee. With him on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, and *Mark B. Stern* and *John S. Koppel*, Attorneys.

Before: RAO and PAN, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge* EDWARDS.

EDWARDS, *Senior Circuit Judge*: On October 4, 2021, the Attorney General of the United States, Merrick Garland, issued a one-page memorandum ("Memorandum") to various units in the Department of Justice ("DOJ" or "Government"), expressing concern over a spike in reported incidents involving harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff. The Memorandum indicated that "[w]hile spirited debate about policy matters is protected under our Constitution, that protection does not extend to threats of violence or efforts to intimidate individuals based on their views." Supplemental Joint Appendix ("S.J.A.") 2. The Memorandum instructed DOJ staff to investigate the problem and discuss strategies for addressing the issue. The Federal Bureau of Investigation ("FBI") subsequently sent an email ("FBI Email") advising its agents that it had created an internal mechanism to track investigations and threat assessments relating to the issues raised in the Memorandum.

Appellants in this case include an unincorporated association ("Saline Parents") and six individuals who reside in Saline, Michigan and Loudoun County, Virginia. They filed suit in the District Court against the Attorney General, claiming that the foregoing actions by the Government are unlawful because they are intended to silence Appellants and others who oppose "progressive" curricula and policies in public schools. Appellants say that they strongly and publicly voice opposition to "the divisive, harmful, immoral, destructive, and racist agenda of the 'progressive' Left." First Amended Complaint ("Compl.") ¶ 106, Joint Appendix ("J.A.") 28. And they contend that, because their protest activities include only constitutionally protected conduct and never threats of criminal

violence, they have been impermissibly targeted by what they term the "AG Policy." Appellants allege the AG Policy directs the Government "to use federal law enforcement resources to silence parents and other private citizens" who object to the "progressive" agenda. *Id.* ¶ 2, J.A. 6. Appellants seek a declaration that the purported AG Policy is unlawful, along with an injunction barring both the alleged policy and any actions taken to enforce it.

The Government has acknowledged, both before the District Court and this court, that the professed activities cited by Appellants in their Complaint fall outside the scope of the Memorandum and are fully protected by the Constitution. The Government has also consistently maintained that Appellants are not targets of any purported AG Policy.

The District Court dismissed the case for lack of standing, holding that Appellants failed to demonstrate injury in fact from the contested Government actions. *See Saline Parents v. Garland*, 630 F. Supp. 3d 201, 205 (D.D.C. 2022). We agree that Appellants lack standing to pursue this action. *See Laird v. Tatum*, 408 U.S. 1, 11 (1972). In addition, we agree with the Government that Appellants' lawsuit is not ripe for adjudication. *See Trump v. New York*, 141 S. Ct. 530, 536 (2020) (per curiam) ("At the end of the day, the standing and ripeness inquiries both lead to the conclusion that judicial resolution of this dispute is premature.").

I. BACKGROUND

A. Factual Background

As noted above, on October 4, 2021, Attorney General Garland sent a one-page Memorandum to various DOJ units, noting "a disturbing spike in harassment, intimidation, and

threats of violence against school administrators, board members, teachers, and staff who . . . run[] our nation's public schools." S.J.A. 2. The Memorandum acknowledged that "[w]hile spirited debate about policy matters is protected under our Constitution, that protection does not extend to threats of violence or efforts to intimidate individuals based on their views." *Id.* The Memorandum stated that "[t]hreats against public servants are . . . illegal," and "[t]hose who dedicate their time and energy" to running schools should "be able to do their work without fear for their safety." *Id.* The Memorandum stated further that, "[i]n the coming days," the DOJ would "announce a series of measures designed to address the rise in criminal conduct directed toward school personnel." *Id.* And the Memorandum instructed the FBI, working with each United States Attorney, to "convene meetings" in order to "facilitate the discussion of strategies for addressing threats," and to "open dedicated lines of communication for threat reporting, assessment, and response." *Id.*

The FBI Criminal Investigative Division and Counterterrorism Division subsequently sent a joint internal email to its agents stating that it had created what it called a "threat tag" for internal tracking of "investigations and assessments of threats" directed against school personnel. S.J.A. 4. The FBI Email explained that the tag would "help scope this threat" and "provide an opportunity for comprehensive analysis of the threat picture for effective engagement with law enforcement partners." *Id.* Importantly, neither the Memorandum nor the FBI Email announced any new regulations or enforcement policies, or purported to issue any directives outside of the DOJ. And neither the Memorandum nor the FBI Email mentioned or even obliquely alluded to Appellants in this case.

Appellants are Saline Parents, an unincorporated association of parents and "concerned private citizens" in Saline, Michigan, along with six individual parents who reside in Saline, Michigan and Loudoun County, Virginia. Appellants describe themselves as "law-abiding citizens who want to speak in defense of their children and against the divisive, harmful, immoral, destructive, and racist agenda of the 'progressive' Left." Compl. ¶ 106, J.A. 28. Appellants claim they are targeted by the DOJ because they strongly and publicly oppose these "progressive" policies adopted by school boards. They argue that as a direct result of the Government's actions, their exercise of fundamental rights has been chilled and their reputations impugned. However, Appellants point to no concrete facts to support these claims.

According to Appellants, their advocacy includes: making their opposition known publicly at school board meetings, *id.* ¶ 12, J.A. 8; maintaining the website content of Saline Parents, *id.* ¶ 14, J.A. 8; passionately addressing the school board, *id.* ¶ 27, J.A. 10; seeking to recall school board members by collecting signatures, writing letters, and attending press conferences, *id.* ¶ 30, J.A. 11; writing a scathing editorial, *id.*; clapping instead of using jazz hands, *id.* ¶ 32, J.A. 11; leading meeting attendees in singing the National Anthem, *id.* ¶ 33, J.A. 11; initiating a student walk out as well as a rally, *id.* ¶ 34, J.A. 12; posting on social media, *id.* ¶ 35, J.A. 12; and organizing a shoe drop protest, where hundreds of shoes were left in front of school administrative offices to represent the mass exodus of students from public schools, *id.* ¶ 36, J.A. 13. Appellants assert that their conduct at school board meetings did not include making threats of criminal violence. *Id.* ¶ 65, J.A. 18. Appellants also declare that they intend only to engage in constitutionally protected conduct. *Id.* ¶ 39, J.A. 13. The Government agrees that the activities detailed by Appellants in their Complaint are constitutionally protected.

Appellants claim that, after their advocacy, the National School Boards Association submitted a letter to President Biden, alleging that public school educators increasingly faced threats of violence and acts of intimidation. The letter stated that "acts of malice, violence, and threats against public school officials" were "a form of domestic terrorism." *See Saline Parents*, 630 F. Supp. 3d at 208. Appellants assert that this letter was drafted in conjunction with the Biden administration "to create the pretext for the AG Policy," Compl. ¶¶ 75-77, J.A. 21, and that the letter was the sole basis for the Memorandum published on October 4, *id.* ¶ 76, J.A. 21.

Appellants allege nothing to suggest that they have ever been hampered in their protest activities by any local or federal law enforcement agencies or actions, prosecutions, civil suits, or official notices of any sort. And they make no claims to suggest that the DOJ generally or the FBI specifically have done anything directed at them to foreclose their rights to express their views.

B. Procedural History

On October 19, 2021, Appellants filed an action in the District Court against Attorney General Garland in his official capacity. As outlined above, the Complaint contends that the Government adopted an unlawful policy – i.e., the so-called "AG Policy" – to silence those who oppose the "progressive" agenda being implemented in public schools. *Id.* ¶ 2, J.A. 6. Appellants believe they are the "very targets" of this alleged AG Policy. *Id.* ¶ 74, J.A. 20. The Complaint recounts that school board members have complained about parents "attacking the board" by calling into question the board's integrity and morals. *Id.* ¶ 89, J.A. 24. The Complaint also references a photo of one marked Homeland Security vehicle

outside a school board meeting held in Fairfax, Virginia, *id.* ¶ 87, J.A. 23, although Appellants do not say they personally were present at that meeting. Finally, the Complaint contends that the Attorney General is personally and ideologically vested in silencing opposition to critical race theory and other "progressive" curricula and policies promoted by local school boards, and that he is directing the power and resources of the DOJ to do just that. *Id.* ¶ 101, J.A. 27.

The Complaint pleads causes of action based on the First Amendment, equal protection under the Fifth Amendment, protection of parental rights under the Fifth Amendment, and the Religious Freedom Restoration Act. *Id.* ¶¶ 108-40, J.A. 28-32. It seeks a declaration that the purported AG Policy is unlawful, as well as an injunction barring the policy and any federal actions taken pursuant to it. *Id.* ¶¶ 2-3, J.A. 6.

The District Court dismissed the case for lack of standing. *See Saline Parents*, 630 F. Supp. 3d at 205. It held that Appellants failed to allege facts sufficient to show cognizable injuries from either a threat of enforcement or reputational harm. *Id.* Finding an absence of jurisdiction for want of standing, the District Court had no occasion to consider the parties' other arguments and granted the Government's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1). Appellants now appeal that dismissal.

II. ANALYSIS

A. Standard of Review

We review *de novo* a dismissal for lack of subject matter jurisdiction. *Fla. Health Scis. Ctr., Inc. v. Sec'y of Health & Hum. Servs.*, 830 F.3d 515, 518 (D.C. Cir. 2016). On review of a motion to dismiss, we must "accept the well-pleaded factual

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allegations as true and draw all reasonable inferences from those allegations in [Appellants'] favor." *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). However, "[t]hreadbare recitals" and "mere conclusory statements" do not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). We do not accept inferences unsupported by the facts set out in the complaint. *Arpaio*, 797 F.3d at 19 (citing *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 732 (D.C. Cir. 2007)). Nor do we assume the truth of legal conclusions. *Id.* (citing *Iqbal*, 556 U.S. at 678).

B. Standing

The "irreducible constitutional minimum of [Article III] standing" consists of three elements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The plaintiff "must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). As the party invoking the court's subject matter jurisdiction, the plaintiff bears the burden of establishing the elements of standing. *Id.* at 2207. "Since [the standing elements] are not mere pleading requirements but rather an indispensable part of the plaintiff's case, *each element* must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561 (first emphasis added). Failure to establish any one element requires dismissal of the action. *See, e.g.*, *TransUnion*, 141 S. Ct. at 2214 (dismissing for lack of standing claims in which plaintiffs failed to show injury in fact).

"This case concerns the injury-in-fact requirement, which helps to ensure that the plaintiff has a 'personal stake in the outcome of the controversy.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Before this court, the Government contends that Appellants lack standing to pursue this action because they have failed to allege adequate facts to show any injury from either the threat of enforcement or reputational harm. The Government argues that:

> Plaintiffs allege that their peaceful speech objecting to school policies is chilled by a purported Department of Justice policy that in some way targets them based on their viewpoint. The alleged AG Policy does not "arguably proscribe[]" plaintiffs' conduct, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 162 (2014) (quotation marks omitted), because it is not "regulatory, proscriptive, or compulsory in nature," *Laird v. Tatum*, 408 U.S. 1, 11 (1972). And even if it were, the policy does not apply to plaintiffs' constitutionally protected conduct. . . . For similar reasons plaintiffs have not demonstrated standing to pursue a claim of reputational injury.

Brief for Appellee 15-17.

As to Appellants' alleged threat-of-enforcement injury, the Government's reliance on *Laird v. Tatum*, 408 U.S. 1 (1972), is on the mark. In *Laird*, the Supreme Court made it clear that a cognizable chilling injury cannot "arise merely from the individual's knowledge that a governmental agency was engaged in certain [investigative and data-gathering] activities or from the individual's concomitant fear that, armed with the fruits of those activities, the agency might in the future take some . . . action detrimental to that individual." *Id.* at 11.

Rather, the Government's exercise of power must be "regulatory, proscriptive, or compulsory." *Id.* Accordingly, the Court in *Laird* declined to entertain a suit alleging that an Army program to gather intelligence on peaceful, civilian political activity chilled plaintiffs' lawful exercise of their First Amendment rights. *Id.* at 2-3. As in *Laird*, Appellants here claim only that their lawful activities are being chilled by the mere existence of governmental investigation, and at most indicate a fear that the Government, armed with the fruits of their data gathering, may take action against them in the future. This is insufficient to show injury in support of standing.

The principal Supreme Court cases cited by Appellants to counter *Laird* are inapposite, because the plaintiffs bringing pre-enforcement challenges in those cases proffered factual allegations that supported concrete threats of enforcement. *See, e.g.*, *Susan B. Anthony List*, 573 U.S. at 166 (finding a credible threat of enforcement where petitioners "alleged an intent to engage in the same speech that was the subject of a prior enforcement proceeding"); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-30, 137 (2007) (exercising jurisdiction over a dispute regarding payment obligations, despite challenger making required payments under protest, because cessation of payment would expose challenger to liability); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (holding petitioner's alleged threats of prosecution not speculative, because he had "been told by the police" that "he will likely be prosecuted" if he continued handbilling); *Dombrowski v. Pfister*, 380 U.S. 479, 487-88 (1965) (finding sufficient injury from chilling effect where appellant and intervenors had previously been arrested and charged with violations of the two statutes being challenged).

Here, Appellants fail to demonstrate that the Government has in any way threatened imminent, rather than hypothetical,

enforcement action against them. *See Lujan*, 504 U.S. at 560. Indeed, Appellants declare they are peaceful, law-abiding citizens; nothing in the Memorandum suggests otherwise. Appellants assert they engage only in constitutionally protected speech; the Memorandum clearly states that the DOJ has no issue with speech protected by the Constitution. The Memorandum, which announces initial plans by the DOJ to investigate and strategize internally, does not threaten imminent legal action against anyone, and certainly not against Appellants.

What is telling here is that Appellants' allegations simply do not plausibly support the belief that they are targets of the DOJ. For example, they allege that school board members have complained about parents "attacking the board," but they do not claim that the DOJ took or threatened to take legal action against Appellants in response. Appellants also offer a photo of a marked Homeland Security vehicle parked outside a school board meeting, held in a city that is neither Saline nor in Loudoun County. Appellants do not allege they attended this meeting, nor that any enforcement proceeding was threatened against those who did. Finally, Appellants assert that the Attorney General is personally and ideologically vested in broadly silencing all opposition to "progressive" curricula. Appellants even go so far as to declare that the Attorney General issued the Memorandum for personal gain, but they offer nothing to support this accusation. In sum, Appellants have not come close to demonstrating that the Government is focused on them or their peaceful activities.

Appellants' theory of reputational injury suffers similar deficiencies. Appellants allege that the contested Government actions have impugned their public reputations by designating them as "criminal threats" and "domestic terrorists." However, even on a generous reading of the factual allegations in the

Complaint, there is nothing to indicate that the DOJ has designated Appellants as "criminal threats" or "domestic terrorists," as they claim. The contents of the Memorandum and the FBI Email do not pertain to Appellants' professed activities. Appellants assert, and the Government does not dispute, that all their alleged activities are constitutionally protected. As such, Appellants fail to offer any specific action that would deem them a "criminal threat." And there is nothing in the contested DOJ documents that even refer to a "domestic terrorism" threat. Rather, this term comes from a letter sent to the White House by a private organization, the National School Boards Association. Appellants claim the letter was drafted in collusion with the Biden administration, and that it served as the sole basis for the Memorandum. Nothing supports these conclusory statements of collusion. A letter from a private entity unaffiliated with the Government, which contains the only reference in the record to "domestic terrorism," cannot plausibly be attributed to the Attorney General. In fact, neither the Memorandum nor the FBI Email even alludes to the letter. Ultimately, Appellants have not offered anything to show that the Government labeled them in any way, let alone impugned their reputations. Any reputational injury Appellants believe they have suffered is therefore insufficient to satisfy Article III. *See Arpaio*, 797 F.3d at 19 (noting courts may not "accept inferences that are unsupported by the facts set out in the complaint" (quoting *Islamic Am. Relief Agency*, 477 F.3d at 732)).

In addition, the pre-enforcement claim in this case is not ripe for adjudication. Indeed, the factors discussed above that undermine Appellants' claim to standing serve to confirm that "this case is riddled with contingencies and speculation that impede judicial review." *Trump*, 141 S. Ct. at 535. "At the end of the day, the standing and ripeness inquiries both lead to the

conclusion that judicial resolution of this dispute is premature." *Id*. at 536.

C. Ripeness

We have made clear that "[t]he ripeness doctrine, even in its prudential aspect, is a threshold inquiry that does not involve adjudication on the merits and which may be addressed prior to consideration of other Article III justiciability doctrines." *In re Aiken Cnty*., 645 F.3d 428, 434 (D.C. Cir. 2011) (citing *Toca Producers v. FERC*, 411 F.3d 262, 265 n.* (D.C. Cir. 2005)). As the Supreme Court has explained:

> Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction, but, even in a case raising only prudential concerns, the question of ripeness may be considered on a court's own motion.

Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807-08 (2003) (citations and quotations omitted).

A claim is premature and therefore unripe for judicial review if it depends on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Trump*, 141 S. Ct. at 535 (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). An unripe claim must be dismissed. *Cause of*

Action Inst. v. Dep't of Just., 999 F.3d 696, 704 (D.C. Cir. 2021). To determine whether a dispute is ripe for adjudication, we evaluate "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *Nat'l Park Hosp. Ass'n*, 538 U.S. at 808.

There can be little doubt here that the pre-enforcement issues raised in this case are not fit for adjudication. As noted above, Appellants' Complaint is "riddled with contingencies and speculation that impede judicial review." *Trump*, 141 S. Ct. at 535. Neither the Memorandum nor the FBI Email threatens imminent enforcement action generally, much less against Appellants specifically. The contested DOJ documents do not establish any regulatory actions or even purport to offer viable policy statements. The Memorandum simply announces the Attorney General's concerns about "a disturbing spike in harassment, intimidation, and threats of violence" against school personnel. S.J.A. 2. It proposes nothing more than some measures to "facilitate the discussion of strategies for addressing threats," and to "open dedicated lines of communication for threat reporting, assessment, and response." *Id.* Likewise, the FBI Email creates a "threat tag" only for the purpose of "scop[ing] this threat" and "provid[ing] an opportunity for comprehensive analysis." S.J.A. 4. Apart from announcing plans to gather information for discussions, the Government has not yet directed its agents to take any concrete action. These initial plans to investigate a matter of potential concern and to strategize internally are routine functions of the Government.

Nevertheless, Appellants invite this court to give credence to their surmise that the Government will not only decide to take enforcement action at some point, but that it will take action against Appellants in particular. We decline the invitation because this would be anathema to the judicial

function. A justiciable controversy may not ask a court to "advis[e] what the law would be upon a hypothetical state of facts," but rather must "admit[] of specific relief through a decree of a conclusive character." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937). Absent a concrete factual context, determination of the scope and constitutionality of a purported government policy "in advance of its immediate adverse effect . . . involves too remote and abstract an inquiry for the proper exercise of the judicial function." *Int'l Longshoremen's & Warehousemen's Union v. Boyd*, 347 U.S. 222, 224 (1954). "[J]udicial appraisal [of the issue] is likely to stand on a much surer footing in the context of a specific application of [agency policy] than could be the case in the framework of [a] generalized challenge." *Cause of Action*, 999 F.3d at 705 (alterations in original) (quoting *Am. Tort Reform Ass'n v. OSHA*, 738 F.3d 387, 396 (D.C. Cir. 2013)).

Clearly, in the present case, it is much "too speculative whether the problem [Appellants] present[] will ever need solving." *Texas v. United States*, 523 U.S. at 302. Appellants believe they are targets of the DOJ. But, as detailed above, there is nothing in the contested Memorandum or in the FBI Email to support this claim. Whether Appellants will ever become the subjects of an FBI investigation or enforcement proceeding remains to be seen. By their own account, Appellants are not presently threatened with any enforcement proceeding against them. Indeed, the Memorandum expressly assures that the Constitution protects "spirited debate," S.J.A. 2, and Appellants assert they only "intend to engage in constitutionally protected conduct," Compl. ¶ 39, J.A. 13, never threats of criminal violence, *id.* ¶ 65, J.A. 18. The Government agrees with Appellants that the activities alleged in their Complaint comport with the exercise of constitutional rights, and it confirms that those activities fall outside the scope of the Memorandum. In short, Appellants' Complaint contains

no factual allegations that could plausibly lead to the conclusion that their advocacy fits within the ambit of the "disturbing" conduct at issue in the Memorandum.

Finally, our disposition of this pre-enforcement challenge will not subject Appellants to any legally cognizable "hardship." *Nat'l Park Hosp. Ass'n*, 538 U.S. at 808. Appellants have not lost any First Amendment rights. The Memorandum and the FBI Email impose no obligations outside of the DOJ. Neither document proscribes any activity. Appellant "is not required to engage in, or to refrain from, any conduct" as a result of the challenged DOJ documents. *Texas v. United States*, 523 U.S. at 301. Although Appellants complain of a chilling effect on their speech, the Government has not in any way restricted or regulated Appellants' activities. Therefore, Appellants have not suffered any "immediate and significant" hardship sufficient to "outweigh institutional interests in the deferral of review." *Action All. of Senior Citizens v. Heckler*, 789 F.2d 931, 940 (D.C. Cir. 1986).

At bottom, Appellants' pre-enforcement claim rests on hypotheticals that are too remote, speculative, and abstract for judicial review. The Supreme Court has been clear, time and again, that a case is unripe for review when "[a]ny prediction how the [Government] might eventually implement . . . [a] policy is 'no more than conjecture.'" *Trump*, 141 S. Ct. at 535 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 108 (1983)). For us to embrace Appellants' argument that the Government will target peaceful protests of school policies, despite the Memorandum expressly promising otherwise, would require this court to depart from the land of record evidence and venture into the thickets of fanciful speculation. "We do not have sufficient confidence in our powers of imagination[.]" *Texas v. United States*, 523 U.S. at 301. Given the uncertainty with how events may play out, the matter raised by Appellants

is not currently fit for our review, and withholding consideration will not impose hardship on Appellants.

III. CONCLUSION

For the reasons set forth above, we affirm the dismissal of Appellants' action for lack of Article III standing and want of ripeness.

So ordered.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5258 **September Term, 2023**

FILED ON: DECEMBER 15, 2023

SALINE PARENTS, AN UNINCORPORATED ASSOCIATION, ET AL.,
APPELLANTS

v.

MERRICK B. GARLAND, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,
APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:21-cv-02775)

Before: RAO and PAN, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the dismissal of Appellants' action be affirmed for lack of Article III standing and want of ripeness, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: December 15, 2023

Opinion for the court filed by Senior Circuit Judge Edwards.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SALINE PARENTS, an unincorporated association, et al., Plaintiffs/Appellants -v- MERRICK B. GARLAND, in his official capacity as Attorney General of the United States of America, Defendant/Appellee	Appeal No. 22-5258

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Plaintiffs/Appellants hereby submit the following certificate pursuant to Circuit Rules 12 and 28(a)(1):

1. Parties and Amici.

The following list includes all parties, intervenors, and amici who have appeared before the district court, and all persons who are parties, intervenors, or amici in this court.

Plaintiffs-Appellants:

Saline Parents, Raelyn Davis, Xi Van Fleet, Joseph Carey Mobley, Michael Rivera, Shawntel Cooper, and Elicia Brand.

Defendant-Appellee:

Merrick B. Garland, Attorney General of the United States.

2. Rulings Under Review.

Plaintiffs/Appellants appealed from the order and supporting memorandum opinion of U.S. District Court Judge Dabney L. Friedrich entered on September 23, 2022, granting Defendant/Appellee's motion to dismiss, dismissing the First Amended Complaint, and closing the case. The order and supporting memorandum opinion appear on the district court's docket at entries 15 and 16, respectively. This order was appealed and affirmed by the panel. The panel's opinion appears in the Addendum.

3. Related Cases.

There are no known related cases.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

/s/ *David Yerushalmi*
David Yerushalmi, Esq.

Counsel for Plaintiffs-Appellants