No. 25-1084

IN THE
Supreme Court of the United States

DONALD J. TRUMP, *et al.*,
Petitioners,

v.

FRITZ EMMANUEL LESLEY MIOT,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

RESPONDENTS' MOTION TO DISMISS THE PETITION AS IMPROVIDENTLY GRANTED

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Pursuant to Supreme Court Rule 21, respondents move to dismiss the petition as improvidently granted.

INTRODUCTION

This case reached the Court in an interim posture. The government sought certiorari before judgment just three months after the operative complaint was filed. The government sought review with such haste that new facts continue to emerge even as the Court considers the merits.

The new facts go to the heart of respondents' claims. They are evidence that, as respondents allege, the termination of Haiti's TPS designation was a preordained outcome motivated by discriminatory animus.

The termination of Haiti's TPS designation has proceeded in three steps. On February 24, 2025, the Secretary issued a "partial vacatur" that purported to accelerate the designation's expiration date by six months to August 3, 2025. On July 1, 2025, the day that the partial vacatur was set aside as unlawful in unrelated litigation, the Secretary gave notice of a June 4, 2025, determination terminating Haiti's TPS designation effective September 2, 2025. On November 28, 2025, after respondents had sued, challenging the July 1 notice on statutory and constitutional grounds, the Secretary issued a superseding termination notice terminating Haiti's designation effective February 3, 2026.

Internal DHS documents previously lodged with the Court—documents that respondents obtained only after the government's petition was granted—confirm that the November 28 termination notice rests on "claims without empirical support" that staffers were "forc[ed]" to include.

Respondents have now obtained additional DHS documents. These newly disclosed documents reveal that the July 1 termination notice, the immediate precursor to the action at issue here, relied on a knowingly false statement—namely, the assertion that the Secretary had consulted with the Department of State when in fact she had not. The documents also reveal that the July 1 termination notice was based on an unprecedented rationale and published only after a political appointee issued an unusual eleventh-hour verbal directive instructing career officials to abandon their recommendation that Haiti's TPS designation be extended.

These newly discovered facts bear directly on the merits of respondents' claims. The facts are relevant not only to respondents' APA claim but also their equal-protection claim, because, under *Arlington Heights*, departures from established procedures and the sequence of events can be evidence of intentional discrimination. Discovery is still ongoing and there is good reason to believe that yet other relevant facts will be uncovered as it proceeds.

"The Court has not hesitated to dismiss a writ even at this advanced stage where it appears on further deliberation, induced by new considerations, that the case is not appropriate for adjudication." *Rice* v. *Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 79 (1955). Here, the still-developing factual record makes this case an inappropriate vehicle for deciding whether respondents are likely to succeed on the merits of their claims. The prudent course is to dismiss the writ as improvidently granted and to permit the lower courts

to resolve the claims on a full record after discovery has been completed.[1]

BACKGROUND

A. The TPS statute

A TPS designation is for a "period . . . of . . . not more than 18 months." 8 U.S.C. 1254a(b)(2); *see also id.* 1254a(b)(3)(A), (C).

TPS designations are subject to periodic review. At least 60 days before a designation is set to expire, the Secretary, "after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state . . . and shall determine whether the conditions for such designation . . . continue to be met." 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions are met, the designation is extended. *Ibid.* Conversely, if the Secretary determines that the conditions for designation are not met, the designation must be terminated. *Id.* 1254a(b)(3)(B). Regardless which, "notice of . . . such determination" and its "basis" must be published "in the Federal Register." 8 U.S.C. 1254a(b)(3)(A). If the Secretary fails to make the mandated determination within the prescribed period, the designation is automatically extended. *Id.* 1254a(b)(3)(C).

Thus, the only circumstance under which a designation may be lawfully terminated is if, after consultation with other agencies of government, the Secretary affirmatively determines that a foreign state "no longer continues to meet the conditions for designation under [8 U.S.C. 1254a(b)(1)]" and then

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[1] The government has informed respondents that it opposes this motion.

gives notice of "the basis for the determination." *Id.* 1254a(b)(3)(A)-(B).

B. The administration's repeated attempts to terminate Haiti's TPS designation and the resulting litigation

Haiti was first designated for TPS in 2010. 75 Fed. Reg. 3476 (Jan. 21, 2010). It has been designated ever since. See 76 Fed. Reg. 29000 (May 19, 2011); 77 Fed. Reg. 59943 (Oct. 1, 2012); 79 Fed. Reg. 11808 (Mar. 3, 2014); 80 Fed. Reg. 51582 (Aug. 25, 2015); 86 Fed. Reg. 41863 (Aug. 3, 2021); 88 Fed. Reg. 5022 (Jan. 26, 2023); 89 Fed. Reg. 54484 (July 1, 2024).

The November 28, 2025, termination notice at issue here is the fourth attempt by a Trump administration—and the third attempt by this administration—to end Haiti's TPS designation.

The first Trump administration attempted to terminate Haiti's TPS designation in 2018. 83 Fed. Reg. 2648 (Jan. 18, 2018). Two courts enjoined that termination as "preordained," "pretextual," and "motivated by discriminatory animus." *Saget* v. *Trump*, 375 F. Supp. 3d 280, 346, 368 (E.D.N.Y. 2019); accord *Ramos* v. *Nielsen*, 336 F. Supp. 3d 1075, 1108 (N.D. Cal. 2018), vacated and remanded sub nom., *Ramos* v. *Wolf*, 975 F.3d 872 (9th Cir. 2020), reh'g en banc granted, opinion vacated, 59 F.4th 1010 (9th Cir. 2023), appeal dismissed sub nom., *Ramos* v. *Mayorkas*, 2023 WL 4363667 (9th Cir.).

The attempted termination never took effect and Haiti's TPS designation was reinstated—and subsequently extended—by the next administration. 86 Fed. Reg. 41863 (Aug. 3, 2021); 88 Fed. Reg. 5022 (Jan. 26, 2023); 89 Fed. Reg. 54484 (July 1, 2024). When the previous administration left office, Haiti's

TPS designation was scheduled to expire on February 3, 2026. 89 Fed. Reg. at 54487.

Shortly before the most recent election, President Trump promised to "revoke" Haiti's TPS designation if he were returned to power. J.A. 544; J.A. 796. He has kept that promise.

On February 24, 2025, the then-Secretary of Homeland Security, Kristi Noem, issued a "partial vacatur" purporting to accelerate the expiration of Haiti's TPS designation by six months, so that it would expire "on August 3, 2025, instead of February 3, 2026," as originally scheduled. 90 Fed. Reg. 10511 (Feb. 24, 2025). Concluding that the Secretary did "not have statutory or inherent authority to partially vacate a country's TPS designation," lower courts held the partial vacatur "unlawful," and set it aside under 5 U.S.C. § 706. *Haitian Evangelical Clergy Ass'n* v. *Trump*, 789 F. Supp. 3d 255, 273 (E.D.N.Y. 2025); accord *National TPS All.* v. *Noem,* 798 F. Supp. 3d 1108, 1153 (N.D. Cal. 2025), aff'd, 166 F.4th 739, 767 (9th Cir. 2026)

On July 1, 2025, the same day that the partial vacatur was first held unlawful, Secretary Noem issued a termination notice that purported to conclusively end Haiti's TPS designation effective sixty days later, on September 2, 2025. The July 1 termination notice stated that, "after consulting with appropriate U.S. Government agencies," the Secretary had "determined that termination of TPS for Haiti is required because it is contrary to the national interest to permit Haitian nationals . . . to remain temporarily in the United States." 90 Fed. Reg. 28760, 28762 (July 1, 2025). Respondents sued, alleging that the termination was a procedurally defective preordained outcome motivated by racial animus.

On November 28, 2025, before the legality of the July 1 termination notice could be litigated, the Secretary issued a superseding termination notice. 90 Fed. Reg. 54733 (Nov. 28, 2025). On December 19, 2025, respondents filed an amended complaint, the now-operative complaint, alleging that the November 28 notice, like the July 1 notice, was a procedurally defective preordained outcome motivated by racial animus. J.A. 769-860.

On February 2, 2026, the day before the termination was to take effect, the district court granted respondents interim relief under 5 U.S.C. § 705, finding that respondents were likely to succeed on the merits of their statutory and constitutional claims. J.A. 632-714. On March 16, this Court granted the government's petition for a writ of certiorari before judgment. One of the questions presented is whether respondents are likely to succeed on the merits of their equal-protection claim; another is whether they are likely to succeed on the merits of their APA claim. The Court heard oral argument on April 29.

The Court did not stay the proceedings below and discovery is ongoing.

C. The newly disclosed documents

Respondents have continued to obtain DHS documents since certiorari was granted. Those documents substantiate respondents' allegations and raise serious concerns about the government's representations in official documents.

Respondents have already lodged several of those documents with the Court. Dkt. 25-1083 (Apr. 13, 2026). In one of those documents, a DHS staffer reported that her supervisor was "forcing" her "to include a section" in "the Haiti country considerations report" "on how TPS is a pull factor" for unlawful

migration even though the assertion was "without empirical support." NTPSA2_009741.[2] In another of those documents, the staffer reported that "there are no [Known or Suspected Terrorist] hits for Haiti" in the databases that she had searched but that her supervisor had "removed" that fact from USCIS's country-conditions analysis because the supervisor "did not feel that a null result supported the termination argument." NTPSA2_009742.

More recently obtained DHS documents—documents generated in connection with the July 1 termination notice—contain further evidence that the termination of Haiti's TPS designation was a preordained outcome.

Although notice was not published until July 1, the Secretary's decision to terminate Haiti's TPS designation was made on June 4. ECF 78-5 at 192,

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[2] The documents already lodged—and those included in the appendix to this motion—were produced in the *NTPSA* litigation. Discovery in that case also is still ongoing but farther along than in this case. In any event, respondents expect the newly discovered *NTPSA* documents to be produced in this case too. And although the documents are marked "confidential," the applicable protective order—submitted with respondents' previous lodging proposal—allows respondents to disclose them here. Emails between counsel for the *NTPSA* plaintiffs and counsel for the government, which have been provided to the Clerk, confirm that the documents included in the appendix to this motion "are not confidential as long as the [personal identification information] is redacted," as it has been.

Miot v. Trump, No. 25-cv-02471 (D.D.C.).[3] Newly obtained DHS documents show that as late as May 29 DHS career staff recommended that the Secretary allow an "[a]utomatic [e]xtension" of Haiti's designation under 8 U.S.C. 1254a(b)(3)(C). Mot. App. 26a. That recommendation, incorporated in a draft decision memo, was based on the "recent escalation of violence" and "the rapidly evolving nature of the security environment," which made it "premature to commit to any permanent policy decision at [that] time," and on the lack of a State Department "assessment of conditions . . . to inform the consulation requirement." Mot. App. 26a-27a. The recommendation to extend Haiti's designation was endorsed by the TPS and country conditions experts within USCIS. Mot. App. 25a.

Another newly obtained document, however, reveals that on May 30 a political appointee—Joseph Edlow, who is now the USCIS director—rejected the draft decision memo and that USCIS staff was instructed to "address edits given verbally." Mot. App. 7a.[4] Within

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[3] DHS officials felt that the Secretary had to act by that date because the periodic review of a TPS designation must be completed at least 60 days before the designation's expiration date (8 U.S.C. 1254a(b)(3)(A)) and the partial vacatur had, in the officials' minds, moved the expiration of Haiti's designation to August 3, 2025. 90 Fed. Reg. at 10511.

[4] Edlow was confirmed as director on July 15, 2025—more than a month after the relevant events. It is unclear in what capacity he was operating when he reviewed the draft decision memo. U.S. Citizenship & Immigration Servs., *Joseph B. Edlow, Director U.S. Citizenship and Immigration Services*, https://www.uscis.gov/about-

hours, those edits resulted in significant substantive changes. In contrast to the earlier draft, which had recommended that Haiti's TPS designation be extended, the new draft recommended that it be "[t]erminated." Mot. App. 10a.[5]

Newly obtained contemporaneous emails among DHS officials confirm the last-minute, 180-degree reversal. One DHS official recognized that the agency's "posture changed late last week" (Mot. App. 35a), while another acknowledged that "the switch happened quickly" (Mot. App. 42a).

By statute, the Secretary may terminate a TPS designation only "after consultation with appropriate agencies of the Government." 8 U.S.C. 1254a(b)(3)(A). Consistent with that statutory requirement, the July 1 termination notice says that the Secretary determined that Haiti's TPS designation should be terminated "after consulting with appropriate U.S. Government agencies." 90 Fed. Reg. at 28762. It has been longstanding practice for the Secretary to fulfill the consultation requirement by seeking and receiving detailed information from the State Department on conditions in the designated state. See *Saget*, 375 F. Supp. 3d at 298-300; accord U.S. Gov't Accountability

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us/organization/leadership/joseph-b-edlow-director-us-citizenship-and-immigration-services (last visited June 11, 2026).

[5] Another recently disclosed DHS document (Mot. App. 40a) shows that late edits were also made by Robert Law, a political appointee who a district court judge found to have been "proactively mad-libbing official documents" in order to justify termination of Haiti's TPS designation during the first Trump administration. *Saget*, 375 F. Supp. 3d at 372; see also id. at 351-52.

Off., GAO 20-134, Temporary Protected Status 15-28 (2020), https://gao.gov/assets/gao-20-134.pdf (cited at Gov't Br. 7); see also *Amicus* Br. of Former Senior Gov't Officials. Indeed, newly obtained DHS documents show that—contrary to the position that the government has taken in this court (cf. Transcript of Oral Argument at 37:20–38:15, *Mullin v. Dahlia Doe*, 25-1083 (Apr. 29, 2026))—DHS understood that satisfaction of the statutory consultation requirement requires the Secretary to receive "[c]ountry conditions and recommendation" from the State Department. Mot. App. 22a; accord Mot. App. 19a; see also Mot. App. 27a (given the lack of a State Department "assessment of conditions," USCIS did "not believe" that Haiti's TPS designation was "ripe" for review); Gov't Br. 45 (acknowledging that in May 2025 South Sudan's TPS was automatically extended because the Secretary had not received a current record "regarding country conditions" from the State Department).

But newly obtained DHS emails make clear that there was no such consultation before the Secretary's June 4 decision to terminate Haiti's TPS designation. On June 2, one DHS official told other DHS officials that the "State recommendation for Haiti TPS has not come in." Mot. App. 35a. A later email—in which one USCIS official told another that the Secretary "elected to terminate Haiti without" receiving any information regarding "country conditions from DOS"—confirms that the Secretary's June 4 termination decision departed from established practice, and that the July 1 termination notice misrepresented whether the State Department had been consulted. Mot. App. 3a. Confirming that the misrepresentation was deliberate rather than inadvertent, the DHS press release announcing the termination likewise stated that "[t]he Secretary's decision" was made "in consultation with

the Department of State." DHS, *DHS Terminates Haiti TPS, Encourages Haitians to Obtain Lawful Status*, https://www.dhs.gov/news/2025/06/27/dhs-terminates-haiti-tps-encourages-haitians-obtain-lawful-status (last visited June 15, 2026).

Recently obtained DHS documents also show that agency officials knew that the Secretary's stated reason for terminating Haiti's TPS designation—U.S. national interest—was unprecedented. Confirming that no TPS designation had ever before been terminated based on U.S. national interest, one official told another that "Haiti is the first one." Mot. App. 6a.

REASONS FOR DISMISSING THE WRIT OF CERTIORARI

Asserting claims under the APA and the Fifth Amendment, respondents allege that the November 28, 2025, termination of Haiti's TPS designation was a preordained outcome motivated by racial animus or a bare dislike for Haitians in particular. The Court has been asked to decide whether respondents are likely to succeed on the merits of those claims. Evidence that the termination was indeed a predetermined outcome is clearly relevant to that inquiry. Recently disclosed DHS documents contain such evidence, and yet-to-be disclosed documents likely do too. But because discovery is still ongoing, the full extent of such evidence remains unknown. Until discovery is complete, the Court lacks a firm factual foundation on which to judge the merits of respondents' claims.

The continuing disclosure of relevant evidence even after oral argument suggests that the "circumstances" of this case "were not fully apprehended at the time certiorari was granted." *The Monrosa* v. *Carbon Black Exp., Inc.*, 359 U.S. 180, 183 (1959). It is therefore

appropriate to dismiss the writ of certiorari as improvidently granted.

I. DISMISSAL OF THE WRIT IS APPROPRIATE BECAUSE ONGOING DISCOVERY IS REVEALING FACTS THAT BEAR ON THE MERITS OF RESPONDENTS' CLAIMS.

Since certiorari was granted—indeed, since oral argument was held—respondents have obtained DHS documents that substantiate their APA and equal-protection claims. See *supra* at 6-11. These recently obtained documents show that:

- the November 28 termination notice rests on assertions "without empirical support" (NTPSA2_009741);
- the November 28 termination notice omits data that an administration official "did not feel . . . supported the termination argument" (NTPSA2_009742);
- DHS staff had recommended that Haiti's TPS designation be extended but then reversed that recommendation at the direction of a political appointee (Mot. App. 7a; Mot. App. 10a; Mot. App. 24a; Mot. App. 26a);
- the USCIS decision memo was edited by Robert Law, a political appointee found by a federal court to have manipulated data to justify the termination of Haiti's TPS designation during the first Trump administration (Mot. App. 40a);
- DHS officials recognized that the termination of a country's TPS designation based on assertions of national interest was unprecedented and that Haiti's TPS designation "is the first one" to have been terminated based on this ground (Mot. App. 6a);

- DHS understood that consultation within the meaning of 8 U.S.C. § 1254a(b)(3)(A) requires the Secretary's receipt of information regarding "country conditions" from the State Department (Mot. App. 22a; Mot. App. 19a); and,
- the July 1 termination notice and associated press release falsely state that the Secretary consulted with the State Department when in fact the Secretary "elected to terminate Haiti without country conditions from DOS" (Mot. App. 3a).

These facts bear directly on the merits of respondents' claims. Specifically, they support respondents' contention that the termination of Haiti's TPS designation was a preordained outcome rather than a product of the statutorily prescribed periodic review process.

The recently disclosed documents—including those previously lodged with the Court—are relevant to respondents' equal-protection claim as well as their APA claim. When, as here, intentional discrimination is alleged, courts must conduct a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977). Relevant factors include "[t]he historical background of the [challenged] decision"; "[t]he specific sequence of events leading up to the challenged decision"; and "[d]epartures from the normal procedural sequence." Id. at 266-68. Here, the newly obtained DHS documents speak to each of these factors: They show that the November 28 termination notice, the administration's third attempt to terminate Haiti's TPS designation, was—like the July 1 termination notice and the partial vacatur that preceded it—characterized by departures from

established practice after pressure from political appointees.

Until discovery is complete, it is impossible to know what other facts will be revealed. But even at this early stage in the proceedings, it is apparent that additional evidence is likely to be uncovered.

The government has asked the Court to decide whether respondents are likely to succeed on the merits of their claims. Respondents' likelihood of success depends on the evidence. Because certiorari was granted before judgment and discovery is ongoing, the nature and extent of that evidence is not yet known. It is therefore currently impossible for the Court to reliably opine on respondents' likelihood of success on the merits. Simply put, "the record relevant to" respondents' claims "is insufficient to permit decision of those claims." *Johnson* v. *Massachusetts*, 390 U.S. 511, 511 (1968) (dismissing writ as improvidently granted).

Because the relevant record is still being developed even today, the "circumstances" of this case "were not fully apprehended"—indeed, could not have been fully apprehended—"at the time certiorari was granted." *The Monrosa*, 359 U.S. at 183 (dismissing writ as improvidently granted). The prudent and appropriate course is to dismiss the writ and allow the case to be decided below on a complete factual record.

CONCLUSION

The writ of certiorari should be dismissed.

Respectfully submitted,

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