Nos. 25-1083 and 25-1084

In the Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

DAHLIA DOE, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

FRITZ EMMANUEL LESLY MIOT, ET AL.

ON WRITS OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURTS OF APPEALS FOR THE SECOND AND DISTRICT OF COLUMBIA CIRCUITS

PETITIONERS' RESPONSE TO *MIOT* RESPONDENTS' MOTION TO DISMISS THE PETITION AS IMPROVIDENTLY GRANTED

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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More than six weeks after the Court heard oral argument in this case, *Miot* respondents (respondents) ask the Court to dismiss the petition as improvidently granted. Respondents ground their request in documents obtained in ongoing discovery in another case that purportedly support respondents' Administrative Procedure Act (APA) and equal-protection claims because the documents are "[e]vidence that the [Haiti Temporary Protected Status (TPS)] termination was in-

deed a predetermined outcome" and "the full extent of such evidence remains unknown." Mot. 11.

The Court should reject respondents' eleventh-hour effort to avoid this Court's review. The new documents on which respondents rely are irrelevant to the government's principal argument that the TPS statute's judicial-review bar, 8 U.S.C. 1254a(b)(5)(A), precludes judicial review of respondents' APA claims. In any event, the purported new evidence does not involve the agency action at issue here and the inferences respondents draw from the documents are erroneous.

ARGUMENT

1. Respondents acknowledge that their motion relates only to the merits of their APA and equal-protection claims. See, *e.g.*, Mot. 12. It is therefore irrelevant to the government's principal contention, *i.e.*, that the TPS statute bars judicial review of respondents' APA claims. See Gov't Br. 18-35. As the government has explained, 8 U.S.C. 1254a(b)(5)(A) "unambiguously bars judicial review of claims that attack the Secretary's TPS determinations, including the procedures and analysis underlying those determinations." Gov't Br. 18. That includes respondents' claim that the Haiti TPS termination "was a preordained outcome," Mot. 13, and the remainder of respondents' APA claims, see Gov't Br. 25-27. Indeed, respondents' motion illustrates the wisdom of Congress's decision to bar judicial review over APA claims like respondents'—which invite far-reaching, invasive discovery into sensitive, foreign-policy laden deliberations and determinations—and instead to leave quintessential Executive Branch decisions to the Executive Branch.

2. Even setting aside the judicial-review bar, the documents respondents cite do not support their APA

claims. As an initial matter, respondents acknowledge (Mot. 2) that those documents do not concern the action at issue here—the November 2025 termination of Haiti's TPS designation. Instead, they involve then-Secretary Noem's attempt to terminate Haiti's TPS designation, published in July 2025, following a partial vacatur of an extension. That action was set aside, and the Secretary proceeded to engage in a new process. Gov't Br. 12. The action at issue here must be judged on the basis of its own administrative record—not the record of a prior action that is now superseded. Cf. *DHS* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (observing that an agency may elect to "deal with the problem afresh by taking *new* agency action" and is "not limited to its prior reasons" in justifying its decision) (internal quotation marks omitted).

Regardless, respondents misconstrue the documents. They assert (Mot. 8-9) that the documents show the Haiti termination was predetermined because political appointees made substantive changes that resulted in a recommendation to terminate Haiti's TPS designation rather than extend it. But the involvement of political appointees who may overrule subordinates does not show predetermination or pretext. Gov't Br. 43-45; Gov't Reply Br. 18-19.

Respondents further contend (Mot. 9-10) that emails show that there was no consultation before the Secretary's July termination. But the emails show that DHS reached out to State for its views repeatedly over email and by phone. Mot. App. 35a. As the government explained, the act of seeking State's input suffices to qualify as consultation; the Secretary cannot control whether State responds. Tr. of Oral Arg. 37-38. Regardless, for the November 2025 termination at issue in this case,

State provided its view that there would be no foreign-policy concerns with terminating Haiti's TPS designation. Gov't Br. 37.

Respondents finally assert (Mot. 11) that the documents are relevant because they show that relying on the TPS statute's national-interest criterion was unprecedented. But, as the government has explained (Reply Br. 17-18), the fact that the Secretary had not previously determined that the national interest warranted a termination does not indicate that relying on the national interest is improper.

3. Respondents likewise fail to show that the new documents support their equal-protection claim. Mot. 13-14. The documents are irrelevant under *Trump* v. *Hawaii*, 585 U.S. 667 (2018), because they do not undermine the facially legitimate justifications for the termination. Gov't Br. 47-48. Even under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977), the asserted departure from past decisionmaking procedures would be relevant only if it is linked to a discriminatory motive, see *ibid*. The cited documents raise no such inference here. Instead, the documents indicate that any change in process resulted from a change in Administration and the accompanying change in immigration policy preferences and view of the national interest.

4. Respondents' dismissal request hinges on the fact that "discovery is ongoing" and "the relevant record is still being developed even today." Mot. 14. But those circumstances frequently exist when this Court grants certiorari to review a preliminary injunction, and the Court was aware of the interlocutory nature of this case at the time it granted review. In opposing the government's application, respondents argued that certiorari

before judgment was unwarranted and that "[g]iven their importance and complexity, the issues raised * * * are best resolved in the ordinary course." 25A999 Br. in Opp. 2; see *id.* at 40 (same). Moreover, in their separate "conditional petition for a writ of certiorari," respondents even contended that the record in this case provided a reason for *granting* review—specifically, that this case was "a better vehicle than *Doe* for addressing the questions presented should certiorari be granted," *id.* at 2 n.3, in part because "in this case, unlike *Doe*, the administrative record has been produced, which will enable a more informed analysis of the merits," Pet. 2, *Miot* v. *Trump*, No. 25-1077 (filed Mar. 10, 2026). This Court should not indulge respondents' late-breaking request to dismiss the case based on a purported vehicle problem that was both called to the Court's attention at the certiorari stage and even alternatively urged as a factor that favored granting certiorari.

Even if the Court were persuaded by respondents' argument that ongoing discovery in this case is a changed circumstance warranting dismissal of the petition, this Court should stay the district court's order postponing the termination of Haiti's TPS designation. In addition to the government's likelihood of success on the merits, the equitable factors continue to weigh decisively against postponement. See 25A999 Gov't Appl. 31-37.

CONCLUSION

Miot respondents' motion to dismiss the petition as improvidently granted should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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