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' REPLY IN SUPPORT OF MOTION TO DISMISS THE PETITION AS IMPROVIDENTLY GRANTED

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The government's opposition to respondents' motion to dismiss the writ ignores, misstates, and misinterprets the emerging evidence.

REASONS TO DISMISS THE WRIT

I. THE DHS DOCUMENTS OBTAINED SINCE CERTIORARI WAS GRANTED SUPPORT RESPONDENTS' APA CLAIMS.

1. The government argues that the documents presented by respondents "do not support their APA claims" because "those documents do not concern the action at issue here—the November 2025 termination of Haiti's TPS designation." Opp. 3. The government is wrong; the documents are relevant to respondents' APA claims.[1]

a. As an initial matter, the documents previously lodged by respondents—documents that the government simply ignores—are directly related to the November 28 termination notice. They contain, moreover, clear evidence that the November 28 termination notice rests on pretextual grounds.

The November 28 termination notice justifies termination of Haiti's TPS designation on the ground that it "may generate a significant pull factor for illegal immigration." 90 Fed. Reg. 54733, 54737 n. 36 (Nov. 28, 2025). But a September 2025 DHS document lodged by respondents acknowledges that the claim is "without empirical support" and was inserted on "command" over the relevant staffer's protest. NTPSA2_009741.

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[1] The government notes that the newly obtained documents do not relate to the government's jurisdictional argument. Opp. 2. Respondents never asserted otherwise. As respondents state in their motion, the documents go to the merits of their claims.

The November 28 termination notice also justifies termination of Haiti's TPS designation based on the threat supposedly posed by Haitian "terrorist organizations" "within our borders." 90 Fed. Reg. at 54738. But an October 2025 DHS document lodged by respondents states that no Haitian TPS holders "were associated with Known or Suspected Terrorist records" and that a supervisor "removed" this fact from USCIS's country-conditions analysis "because he did not feel that a null result supported the termination argument." NTPSA2_009742.

These documents squarely support respondents' claim that the termination of Haiti's TPS designation was a preordained outcome justified on pretextual grounds.

b. The internal documents generated in connection with the July 1 termination notice also support respondents' APA claims.

According to the government, the documents related to the July 1 termination notice are irrelevant because the November 28 notice at issue was the product of "a new process." Opp. 3. Not so.

The administrative record and newly obtained DHS documentsshow that the decision memo underlying the November 28 notice is nothing more than an "addendum to the decision memo" underlying the July 1 notice. Mot. Supp. App. 9a (addendum prepared because "it seems odd to circulate a totally new [decision memo]" "given that we just got the [decision memo] signed on 6/4 and [Federal Register Notice] published on 7/1"); see also Mot. Supp. App. 7a ("Haiti Decision Memo Addendum" that was supplied to the Secretary in connection with the November 28 notice "refers back to the original"); Mot. Supp. App. 12a (transmitting "Haiti TPS [country-of-origin

information] report of March 2025" and "a brief, bulleted Haiti TPS COI Addendum"); Mot. Supp. App. 1a (draft decision memo "re-presenting a recommendation of 'termination' of Temporary Protected Status for Haiti" in "a truncated addendum format"). Indeed, the document ultimately provided the Secretary in connection with the November 28 termination notice was entitled "Haiti: Temporary Protected Status (TPS) Country of Origin Information (COI) Considerations *Addendum*." Mot. Supp. App. 10a (emphasis added); accord ECF 78-5 at 144, *Miot* v. *Trump*, No. 25-cv-2471. Simply put, the July 1 and November 28 termination notices were—contrary to the government's assertion—part of the same administrative process.[2]

2. The newly disclosed documents prepared in connection with the July 1 termination notice show that the notice rested on unexplained departures from past practices; political intervention; and a false statement.

a. The documents evidence two distinct departures from past practice. First, they confirm that terminating Haiti's TPS designation based on national interest was unprecedented. See Mot. App. 6a ("Haiti is the first one."); cf. Resp. Br. 36. Second, they confirm that, in contrast to the practice of every previous administration, the Secretary "elected to terminate Haiti without country conditions from [the State Department]." Mot. App. 3a; cf. Resp. Br. 34. The termination notice does not acknowledge let alone

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[2] The newly obtained documents cited in this paragraph were not included in the appendix to respondents' motion because respondents did not anticipate the government falsely claiming that the November 28 notice was the product of "a new process." These documents are included in the supplemental appendix to this reply.

explain these departures from past practice—a failure that constitutes arbitrary and capricious action in violation of the APA. See *ABM Onsite Servs.-W., Inc.* v. *NLRB*, 849 F.3d 1137, 1142 (D.C. Cir. 2017) ("an agency's unexplained departure from precedent is arbitrary and capricious"); see also *Encino Motorcars, LLC* v. *Navarro*, 579 U.S. 211, 221 (2016) (agencies may change their policies "as long as they provide a reasoned explanation for the change"); cf. 5 U.S.C. 706(2)(A).

b. The newly obtained documents also reveal political intervention in the review process. Rather than deny this, the government argues that "the involvement of political appointees who may overrule subordinates does not show predetermination or pretext." Opp. 3. But while the mere involvement of political appointees in an administrative process is not by itself dispositive evidence of predetermination, political interference is evidence of predetermination when, as here, the political intervention results in a last-minute, 180-degree reversal of what is supposed to be a fact-based conclusion in order to align the conclusion with the President's stated intention to revoke Haiti's TPS designation. Cf. J.A. 796. The evidence of predetermination is particularly strong when, as here, the intervention results in the deletion of factual findings that were made by the agency's subject-matter experts but are adverse to the President's preferred conclusion. Cf. Mot. App. 12a-13a (redline showing deletion of, for example, reference to fact that "all individuals in Haiti are at risk" of "indiscriminate" violence"). Indeed, the inference of predetermination is especially strong when, as here, one of the political appointees involved, Robert Law, was found by a federal court to have rewritten a 2017 decision memo "to fully support

termination" of Haiti's TPS designation during the first Trump administration because that was "the conclusion" that the administration was "looking for." *Saget* v. *Trump*, 375 F. Supp. 3d 280, 351 (E.D.N.Y. 2019) (Law "instruct[ed]" a DHS staffer to "[b]e creative" when looking for data "to bolster the recommendation to terminate").

c. In addition to showing departures from past practice and political intervention, the newly obtained DHS documents also show that the July 1 termination notice rests on a false statement about a central legal issue.

By statute, the Secretary may not terminate a TPS designation without having consulted with "appropriate agencies of government." 8 U.S.C. 1254a(b)(3)(A). The term "appropriate agencies of government" has historically been interpreted as a reference to the State Department, which has in turn traditionally supplied DHS with a detailed report on conditions in the designated country. *Saget*, 375 F. Supp. 3d at 298-300; accord U.S. Gov't Accountability Off., GAO 20-134, Temporary Protected Status 15-28 (2020), https://gao.gov/assets/gao-20-134.pdf (cited at Gov't Br. 7).

The July 1 termination notice states that the Secretary determined that Haiti's TPS designation should be terminated "after consulting with appropriate U.S. Government agencies." 90 Fed. Reg. 28760, 28762 (July 1, 2025). The agency's associated press release was even more direct, claiming 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). But a newly

obtained DHS email establishes that, in fact, the Secretary "elected to terminate Haiti *without* country conditions from DOS." Mot. App. 3a (emphasis added).

The government argues that the Secretary nevertheless satisfied her duty to consult because "DHS reached out to State for its views repeatedly" and "the act of seeking State's input suffices to qualify as consultation." Opp. 3. But the government's made-for-litigation theory of consultation is flatly contradicted by the newly obtained documents, which reflect DHS's contemporaneous understanding that consultation within the meaning of 8 U.S.C. 1254a(b)(3)(A) requires the Secretary to not only request but also receive "country conditions" information from the State Department. See Mot. App. 22a; Mot. App. 19a. Indeed, as the government admitted in its merits brief, South Sudan's TPS designation was automatically extended in May 2025—the month before the Secretary decided to terminate Haiti's designation—precisely "because the Secretary 'only had a non-current record from [the] Department of State' regarding the country conditions." Gov't Br. at 45 (quoting 90 Fed. Reg. 19217, 19218 (May 6, 2025)). The Secretary eventually terminated South Sudan's designation, but "[o]nly *after receiving* and considering" such information. *Ibid.* (citing 90 Fed. Reg. 50484 (Nov. 6, 2025)) (emphasis added). Thus, the newly disclosed DHS documents support respondents' claim that the Secretary, in violation of the APA, acted "without observance of procedure required by law." 5 U.S.C. 706(2)(D); cf. J.A. 857.

II. THE DHS DOCUMENTS OBTAINED SINCE CERTIORARI WAS GRANTED SUPPORT RESPONDENTS' EQUAL-PROTECTION CLAIM.

According to the government, the newly obtained DHS documents do not support respondents' equal-protection claim. The government argues that the documents do not support the claim if it is analyzed under *Trump* v. *Hawaii*, 585 U.S. 667 (2018), "because they do not undermine the facially legitimate justifications for the termination," and do not support the claim if it is analyzed under *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977), because they "raise no . . . inference" of "a discriminatory intent." Opp. 4. The government is wrong on both counts.

To start, the newly disclosed DHS documents directly contradict the proffered justifications for terminating Haiti's TPS designation. The documents make clear that the termination rests on an assertion "without empirical support" (NTPSA2_009741) and on the suppression of data contrary to the administration's preferred outcome (see NTPSA2_009742).

It is, moreover, immaterial that the documents, standing alone, supposedly raise no inference of discriminatory intent. Cf. Opp. 4. The documents are evidence of *how* the administration reached the preordained outcome, not why it did so. Respondents offer other evidence to establish discriminatory intent—the President's words, the Secretary's words, and the administration's differential treatment of white and nonwhite immigrants. See Resp. Br. 46-50. The government does not dispute that, under *Arlington Heights*, discriminatory intent can be inferred from "[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." 429 U.S. at 266-68. The newly obtained documents speak to each of these factors. See Mot. 13-14.

III. DISMISSAL OF THE WRIT IS APPROPRIATE.

The government contends that the writ should not be dismissed because the "purported vehicle problem . . . was called to the Court's attention at the certiorari stage and even alternatively urged as a factor that favored granting certiorari." Opp. 5. The government's contention is misleading.

Contrary to what the government contends, respondents never argued that ongoing discovery was a reason to grant certiorari. As the government concedes (Opp. 4-5), respondents *opposed* certiorari. See Resp. Opp. to Stay App. & Pet. for a Writ of Cert., *Trump* v. *Miot*, No. 25A999 (Mar. 16, 2026). Respondents' petition was *conditional*: They sought certiorari if, but only if, the Court granted review in *Dahlia Doe*. Moreover, while noting that the record in this case "is more developed" than that in *Dahlia Doe*, respondents argued that the Court should deny review in both cases in their "current posture" and instead allow them "to play out in the ordinary course so that the Court has the benefit of an appellate decision based upon a complete record before deciding the issues presented." Conditional Pet. for a Writ. of Cert. Before Judgment at 27, *Miot* v. *Trump*, No. 25-1077 (Mar. 10, 2026).

The steady disclosure of relevant DHS documents underscores the wisdom of that approach. Any decision now on the merits of respondents' claims would rest on a precarious factual foundation. According to the

government, this risk of new evidence exists anytime the Court grants review of interim relief. Opp. 5. But that is one reason why such review is rare. This case—in which the government sought review only three months after the operative complaint was filed—presents an extreme example. As the newly obtained DHS documents indicate, there likely are many relevant facts yet to be discovered, and those that have already been discovered raise serious doubt about the government's assertions. It would be inappropriate for the Court to rule on the merits of respondents' claims before discovery is complete.

Insinuating that respondents deliberately waited before bringing their motion to dismiss, the government denigrates the motion as an "eleventh-hour" gambit. Opp. at 2; see also id. at 5. But respondents moved as expeditiously as possible after receiving the documents in question. It is the government, not respondents, who bears responsibility for the timing of respondents' motion. The record would have been settled—and the motion would have been unnecessary—had the government not sought certiorari before judgment just three months after the operative complaint was filed. The government cannot now complain about a situation of its own making.

IV. THE DISTRICT COURT ORDER SHOULD NOT BE STAYED.

The government urges this Court to stay the district court's order in the event that it dismisses the writ. Opp. 5. But for the reasons respondents explained when opposing the government's stay application, the government has not carried its burden of establishing its entitlement to a stay. Resp. Opp. to Stay App. & Pet. for a Writ of Cert. at 17-40, *Trump* v. *Miot*, No. 25A999 (Mar. 16, 2026); see also Br. of Haitian TPS

Holders as *Amici Curiae* in Opp. to App. to Stay at 5-25, *Mullin* v. *Dahlia Doe*, No. 25A952 (Mar. 10, 2026).

CONCLUSION

Respondents' motion to dismiss the writ should be granted, and the government's stay application should be denied.

Respectfully submitted,

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