No. 25-1103

IN THE

Supreme Court of the United States

U.S. DOGE SERVICE, ET AL.,

Petitioners,

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENT CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON

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QUESTIONS PRESENTED

This case concerns a Freedom of Information Act (FOIA) request submitted to the U.S. DOGE Service (USDS)—an entity located within the Executive Office of the President (EOP). FOIA applies to any "establishment in the executive branch of the Government (including the Executive Office of the President)," 5 U.S.C. § 552(f)(1), although courts have carved out an exception for EOP entities that solely advise and assist the President and do not exercise substantial independent authority.

The district court found that USDS likely exercised substantial independent authority and thus is subject to FOIA. After the government sought summary judgment, the court ordered modest discovery to resolve factual disputes the government raised. The government sought mandamus, which the D.C. Circuit denied. This Court vacated and remanded, specifying that "[t]he portions" of the "discovery order" regarding "intra-Executive Branch USDS recommendations" and "whether those recommendations were followed" were "not appropriately tailored." Pet. App. 1a. On remand, Respondent withdrew all discovery requests regarding "intra-Executive Branch USDS recommendations." In an unpublished decision, the D.C. Circuit denied mandamus in relevant part.

The questions presented are:

1. Whether the D.C. Circuit abused its discretion in denying the extraordinary remedy of mandamus.

2. Whether narrow discovery can ever be appropriate to determine whether an EOP entity exercises substantial independent authority.

CORPORATE DISCLOSURE STATEMENT

Respondent Citizens for Responsibility and Ethics in Washington has no parent corporations, and no publicly held company owns 10% or more of its stock. Respondent has no stock ticker symbol.

PARTIES TO THE PROCEEDINGS

Petitioners here, defendants in the district court and petitioners in the court of appeals, are the U.S. DOGE Service; Amy Gleason in her purported official capacity as Acting Administrator of the U.S. DOGE Service; Elon R. Musk, in his official capacity; the Office of Management and Budget; Russel Vought in his official capacity as Director, Office of Management and Budget; the National Archives and Records Administration; and the Archivist of the United States.

The United States District Court for the District of Columbia is a Respondent in this Court. Citizens for Responsibility and Ethics in Washington was the plaintiff in the district court, was the real party in interest in the court of appeals, and is a Respondent in this Court.

ADDITIONAL RELATED PROCEEDINGS

In addition to the related proceedings identified in the petition, Respondent identifies the following related proceedings:

United States District Court (D.D.C.):

Citizens for Responsibility & Ethics in Washington v. *U.S. DOGE Serv.*, No. 25-cv-511 (Mar. 10, 2025) (granting in part preliminary injunction)

Citizens for Responsibility & Ethics in Washington v. *U.S. DOGE Serv.*, No. 25-cv-511 (Mar. 19, 2025) (denying reconsideration)

Supreme Court of the United States:

U.S. DOGE Serv. v. *Citizens for Responsibility & Ethics in Washington*, No. 24A1122 (June 6, 2025) (granting stay and certiorari, vacating, and remanding)

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INTRODUCTION

Shortly after the 2024 election, then-President-elect Trump announced the creation of a new "Department of Government Efficiency" (DOGE), led by billionare Elon Musk. Immediately upon entering into office, President Trump signed an executive order that established the "United States DOGE Service" (USDS); created the "U.S. DOGE Service Temporary Organization" within USDS; installed "DOGE Teams" at every agency in the federal government; and tasked them to work in concert to "implement the President's DOGE agenda." USDS tore through the federal government, terminating billions of dollars in contracts and programs, shuttering agencies, and firing tens of thousands of public servants.

Respondent Citizens for Responsibility and Ethics in Washington (CREW) submitted a Freedom of Information Act (FOIA) request to USDS in early 2025. In this litigation, the government has asserted that FOIA does not apply to USDS. By its terms, FOIA applies to all "establishment[s] in the executive branch of the Government," "including the Executive Office of the President" (EOP), in which USDS is housed. 5 U.S.C. § 552(f)(1). But under *Soucie* v. *David*, 448 F.2d 1067 (D.C. Cir. 1971), and its progeny, courts exempt from FOIA those entities within EOP that do not exercise substantial independent authority, and instead solely advise and assist the President. The government claimed that USDS was such an entity.

At the preliminary-injunction stage, the district court agreed that USDS likely wields substantial independent authority, and is thus subject to FOIA. The text of the executive orders establishing USDS indicated as much. Undisputed facts in the public record—including the President's statements—confirmed that USDS was wielding enormous independent authority across the federal government. The district court found that the other preliminary-injunction factors also supported an order directing USDS to process CREW's FOIA request on an expedited basis.

The government did not appeal. Instead, it moved for summary judgment, reasserting that USDS is not subject to FOIA. The government supported its motion with a declaration from USDS's Acting Administrator. In her telling, contrary to publicly available information, DOGE Teams were controlled by each respective agency, and USDS was a separate advisory entity within EOP with no authority. In light of the factual disputes raised by her assertions, the district court authorized limited discovery into USDS's structure and authority.

The government sought mandamus to halt discovery, which the D.C. Circuit denied in an unpublished order. The government then filed a stay application in this Court. The application advanced numerous arguments, including that discovery is never appropriate to determine whether FOIA applies to entities in the EOP. This Court did not accept the government's sweeping theories. Instead, the Court issued a targeted order explaining that "[t]he *portions* of the District Court's * * * discovery order that require the Government to disclose the content of intra-Executive Branch USDS *recommendations* and whether those *recommendations* were followed" were "not appropriately tailored." Pet. App. 1a (emphasis added). In explaining why it reached that conclusion, the Court said that "[a]ny inquiry" into whether an entity is covered by FOIA "cannot turn on the entity's ability to persuade," and it stated that "separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications." *Id.* (citing *Cheney* v. *U.S. Dist. Ct. for D.C.*, 542 U.S. 367 (2004)). The Court ordered the D.C. Circuit to take "appropriate action" to "narrow" the district court's discovery order "consistent with" this Court's order. Pet. App. 2a.

On remand, rather than contest what discovery into USDS's intra-executive branch recommendations might remain appropriate, CREW withdrew all requests on that topic. The D.C. Circuit then granted mandamus as to those withdrawn requests and otherwise denied mandamus.

This Court should deny the government's certiorari petition requesting review of the D.C. Circuit's unpublished order denying the extraordinary remedy of mandamus. The petition principally pleads for summary reversal or certiorari on the scope of the discovery order that remains after remand. But the D.C. Circuit followed this Court's instructions on that fact-intensive question to the letter. The government attempts to transform this Court's carefully crafted stay-stage order into a sweeping ruling that *Cheney* effectively forecloses discovery in this case. That is not what this Court said, and, especially after remand, this case looks nothing like *Cheney*. Because the government does not even *argue* that the D.C. Circuit's unpublished order conflicts with any other decisions of this Court or another court of appeals, this Court's review is plainly not warranted. And the government forfeited or waived many of its fact-bound objections to discrete aspects of discovery, sometimes several times over.

The government fares no better in requesting certiorari so this Court can change FOIA law by prohibiting all discovery—in *every* case—into the nature of an EOP entity's authority. Significantly, the government points to no decision of this Court or any other court of appeals with which the D.C. Circuit's unpublished ruling on that question conflicts. The government's proposed rule is impossible to square with statutory text, and it would be ripe for abuse. Indeed, it would allow the executive to establish hugely consequential entities like USDS, while sidestepping an important sunshine law, simply by placing those entities in EOP and obscuring the precise nature of their delegated authority. This case, moreover, is a poor vehicle with which to approach that question. The government agreed below that discovery was permissible to determine whether EOP entities are subject to FOIA. And the procedural posture would prevent the Court from squarely addressing the legal question presented, because the mandamus standard requires the government to prove it is indisputably correct.

Two final points underscore why review is unwarranted. First, the entire petition rests on the government's repeated assertion—which courts have found to be false—that USDS exercised no authority through DOGE Teams. This Court should be especially wary of taking a case built on that shaky premise. Second, the equities strongly counsel against review. When this case previously came to the Court in May 2025, the government asserted that any inquiry into DOGE at that time would hamstring a new administration. Over a year later, other cases have already produced considerable discovery into USDS, and indeed confirm USDS's substantial independent authority. As a result, the government cannot claim any meaningful concerns with reproducing modest information about USDS's structure and authority, particularly when the people have a right—which Congress enshrined in law—to know how USDS overhauled the government in 2025.

The Court should deny the petition.

STATEMENT

A. Legal Background

FOIA generally "requires federal agencies to make Government records available to the public." *Milner* v. *Dep't of Navy*, 562 U.S. 562, 564 (2011). Congress enacted FOIA "to ensure an informed citizenry, vital to the functioning of a democratic society." *John Doe Agency* v. *John Doe Corp.*, 493 U.S. 146, 152 (1989) (citation omitted). "[T]he Act is broadly conceived," *id.* (same), and exceptions to its scope are narrowly construed, *Milner*, 562 U.S. at 565.

This case involves the application of FOIA to an entity located within the Executive Office of the President. The EOP formally houses various components, from the Office of Management and Budget (OMB) to the Executive Residence. Today, FOIA's text expressly applies to the "Executive Office of the President." 5 U.S.C. § 552(f)(1). But when enacted in 1966, FOIA did not speak to the EOP. Instead, FOIA incorporated the Administrative Procedure Act (APA)'s general definition of an agency, *i.e.*, "any 'authority of the Government of the United States.'" *Soucie*, 448 F.2d at 1073 (quoting 5 U.S.C. § 551(1)).

In *Soucie*, the D.C. Circuit confronted the question of whether FOIA applied to the Office of Science and Technology (OST), located within the EOP. *Soucie* held that the APA's definition of an agency includes, and by extension FOIA applied to, any "administrative unit with substantial independent authority in the exercise of specific functions." *Id.* In *Soucie*, the court of appeals concluded that OST was subject to FOIA because OST performed specific functions previously assigned to an agency. In particular, OST "evaluat[ed] federal programs," with a purpose of providing information to Congress. *Id.* at 1075. As a result, OST did not have the "sole function" to "advise and assist the President," and FOIA applied to it. *Id.*

In 1974, Congress amended FOIA to expressly apply to any "establishment in the executive branch of the Government (including the Executive Office of the

President)." 5 U.S.C. § 552(f)(1). In *Kissinger* v. *Reporters Committee for Freedom of the Press*, this Court read this language to "render the 'Executive Office of the President' an agency subject to the Act." 445 U.S. 136, 156 (1980) (citation omitted). But relying on the "legislative history" of the 1974 amendment, the Court narrowed FOIA's plain text to exempt certain EOP entities from the statute's reach. *Id.* In the legislative history, Congress indicated that it intended to codify *Soucie*, and that FOIA's new definition did not apply to "the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President." *Id.*

As a result, *Soucie*'s framework still governs whether FOIA applies to an entity located within the EOP. To determine whether an entity exercises substantial independent authority, courts examine: (1) "how close operationally the group is to the President," (2) "what the nature of its delegation from the President is," and (3) "whether it has a self-contained structure." *Meyer* v. *Bush*, 981 F.2d 1288, 1293 (D.C. Cir. 1993). "[D]iscovery" is often necessary to determine the extent of an EOP entity's "authority and operations." *Citizens for Resp. & Ethics in Washington* v. *Off. of Admin.*, 566 F.3d 219, 225 (D.C. Cir. 2009).

B. Factual Background

Shortly after his reelection in November 2024, then-President-elect Trump announced that he would form a new "Department of Government Efficiency." *See Citizens for Resp. & Ethics in Washington* v. *U.S. DOGE Serv.*, 769 F. Supp. 3d 8, 12 (D.D.C. 2025) (*CREW I*). The department's purpose, in the President-elect's words, was "to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies." *Id.* (citation omitted). The President-Elect announced that Elon Musk would head the department. *Id.*[1]

On January 20, 2025, President Trump signed an executive order establishing "the Department of Government Efficiency to implement the President's DOGE Agenda." Exec. Order No. 14158, 90 Fed. Reg. 8441 (Jan. 20, 2025). The executive order established the "United States DOGE Service," headed by an Administrator and housed within the EOP. *Id.* The order separately established, within USDS, a "temporary organization" called the "U.S. DOGE Service Temporary Organization." *Id.* This temporary organization expires July 4, 2026. Finally, the order established so-called "DOGE Teams" for every agency, and required each "DOGE Team Lead" to "coordinate their work with USDS." *Id.*

USDS began directing massive changes across the federal government. Among other things, Musk announced the termination of numerous government contracts worth billions of dollars. *CREW I*, 769 F. Supp. 3d at 14. USDS also "obtained unprecedented access to sensitive personal and classified data and payment systems"—in at least one case over the objection of the agency's security director, "who was later removed." *Id.* at 14-15.

C. Procedural Background

1. Respondent CREW is a non-partisan, non-profit government watchdog organization.

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[1] Musk was originally slated to co-lead the new department alongside Vivek Ramaswamy, who left immediately after inauguration. *See id.* at 12.

In January 2025, CREW submitted FOIA requests to OMB and USDS seeking information about USDS, such as organizational charts and financial disclosures. The government agreed to process the OMB request, but has refused to process the USDS request, arguing that USDS is not subject to FOIA. *CREW I*, 769 F. Supp. 3d at 11.

In this lawsuit, CREW seeks a declaration that USDS is subject to FOIA and an order requiring USDS to process the outstanding FOIA request. *See* D. Ct. Dkt. 1, at 34. The district court granted CREW a preliminary injunction in part, ordering USDS to process the FOIA request on an expedited basis. The district court declined, however, to set a specific date by which CREW must receive the documents. *CREW I*, 769 F. Supp. 3d at 18-19.

Particularly relevant here, the district court concluded—without discovery—that "CREW will likely succeed in demonstrating that USDS wields the requisite substantial independent authority" for USDS to be subject to FOIA. *Id.* at 23. Indeed, USDS was "likely exercising substantial independent authority much greater than other EOP components held to be covered by FOIA." *Id.* at 25.

"[T]he relevant executive orders" alone "appear[ed] to endow USDS with substantial authority independent of the President." *Id.* at 23. The "initial executive order" establishing USDS provided it "authority to 'implement' the DOGE Agenda, not just to advise the President in doing so." *Id.* at 23-24 (quoting 90 Fed. Reg. at 8441). A second executive order further granted "the USDS Team Lead the power to keep vacant career positions open unless an agency overrides their decision. And the order appear[ed] to contemplate that this authority will be exercised independent of the President." *Id.* at 24. In other words, based solely on the language of the executive orders, USDS fell within the scope of FOIA under the *Soucie* framework.

Additional facts confirmed USDS was exercising substantial independent authority. For one, "Musk and the President's public statements indicate[d] that USDS is in fact exercising substantial independent authority." *Id.* Meanwhile, USDS's actions "demonstrate[d] its substantial authority over vast swathes of the federal government." *Id.*

Finally, the district court noted that "USDS has a defined staff: the USDS Administrator, a temporary organization operating within USDS, and DOGE teams that are embedded outside USDS within each executive branch agency." *Id.* Such a "self-contained structure" is yet another indication that an EOP entity exercises substantial independent authority, rather than solely advises the President. *Id.* (citation omitted).

2. The government did not appeal. Instead, it moved for reconsideration and submitted, for the first time, a declaration by Amy Gleason, whom it identified as the Acting Administrator of USDS. *See* D. Ct. Dkt. 20-2. In her declaration, Gleason asserted that USDS has no control over DOGE Teams, and summarized the executive orders that applied to USDS. *Id.* at 1-4.

The district court denied reconsideration. It explained that Gleason's declaration raised "factual disputes that may provide a basis for CREW to seek discovery." *Citizens for Resp. & Ethics in Washington* v. *U.S. DOGE Serv.*, No. 25-cv-511, 2025 WL 863947, at

*5 (D.D.C. Mar. 19, 2025) (*CREW II*). For example, Gleason stated that each DOGE Team Lead reports to agency personnel, but that statement was at odds with the fact that USDS "has taken numerous actions without any apparent advanced approval by agency leadership." *Id.* (citation omitted).

3. The government sought summary judgment based on a similar declaration from Gleason. The government argued that USDS was a purely advisory entity that does not exercise substantial independent authority.

In response, CREW moved for discovery under Federal Rule of Civil Procedure 56(d). CREW sought three depositions and narrowly tailored document discovery in five discrete categories. *See* D. Ct. Dkt. 27-1.

First, CREW sought information about USDS's structure. *Id.* at 7, 12, 14. *Second*, CREW sought information about (i) contracts, grants, and leases that USDS had directed federal agencies to cancel, and (ii) federal employees whom USDS had directed be terminated. *Id.* at 7-8. *Third*, CREW sought information about USDS recommendations regarding contracts to be canceled and employees to be terminated. *Id.* at 8, 10. *Fourth*, CREW sought information about specific instances indicating that USDS exercised substantial authority, such as when officials threatened to call law enforcement to enter a federal building. *Id.* at 9. *Fifth*, CREW sought information regarding violations of federal record-retention laws. *Id.* at 9, 13-14. Out of an abundance of caution, the discovery requests excluded "the President" and any "direct communications with the President." *Id.* at 4.

The district court agreed that "limited discovery" was necessary. Pet. App. 15a. The court explained that fully understanding the "structure of USDS and the scope of its authority [is] critical" in this case, but "those questions are unclear from the record." Pet. App. 19a. The court rejected the government's argument that the executive orders resolve those questions in its favor, explaining that the executive orders indicate instead that USDS exercises "substantial independent authority." Pet. App. 19a-20a. Moreover, the court explained, "USDS's focus on its charter documents ignore[d] evidence in the public record that USDS [wa]s exercising substantial authority across vast areas of the federal government." Pet. App. 20a.

The district court narrowed the proposed discovery in several respects. With respect to CREW's request to depose three USDS officials, the court limited CREW to a single Rule 30(b)(6) witness. But if the government declined to select Gleason as the Rule 30(b)(6) witness, the court said that Gleason could still be deposed because her declaration was "the only factual evidence offered in support of USDS's summary judgment motion." Pet. App. 22a. The court also struck some of CREW's requests for documents, including discovery into USDS's "record-keeping practices." Pet. App. 23a-27a.

4. The government filed a mandamus petition in the D.C. Circuit. Mandamus is an extraordinary remedy, appropriate "only when the petitioner can show that (1) it has no other adequate means to attain the relief it desires, (2) its right to the writ is clear and indisputable, and (3) issuance of the writ is appropriate under the circumstances." Pet. App. 8a. The court of appeals found that the government did not meet its heavy burden and denied the petition in an unpublished decision. *Id*.

For the first time, the government argued in its mandamus petition that the district court's narrow discovery order conflicted with the separation-of-powers principles articulated in this Court's decision in *Cheney* v. *U.S. District Court for D.C.*, 542 U.S. 367 (2004). In *Cheney*, a district court had ordered discovery of the Vice President to determine whether the National Energy Policy Development Group was subject to the Federal Advisory Committee Act. The court of appeals had declined to grant a mandamus petition. This Court vacated and remanded for the lower court to reevaluate the petition. The Court stressed that, in evaluating "a mandamus petition involving the President or the Vice President," a court of appeals must take into account "separation-of-powers considerations." 452 U.S. at 382.

In this case, the D.C. Circuit rejected the government's argument that the district court's discovery order violated the principles articulated in *Cheney*. The court first explained that the government had forfeited its *Cheney* argument. At "no point during the summary judgment briefing, or in opposing CREW's discovery motion, did the government argue that the requested discovery posed a separation-of-powers issue or risked intruding into the core functions of the presidency." Pet. App. 9a. The court then explained why, even if it overlooked the government's forfeiture, mandamus was not warranted.

First, the court determined that the government had not shown it "has no other adequate means of relief," explaining that the government "retains" every "conventional tool to raise privilege objections" on a "question-by-question basis." Pet. App. 9a-10a. In reaching this conclusion, the court explained that *Cheney* "is distinguishable in numerous respects." Pet. App. 9a. There, "the Vice President himself was subject to a wide-ranging third-party subpoena and the asserted intrusion implicated the mental processes of the President's advisers." *Id.* By contrast, "the discovery here is modest in scope and does not target the President or any close adviser." *Id.* In short, this case presented "a far cry from the sweeping discovery at issue in *Cheney*." *Id.*

Second, the D.C. Circuit explained that the government had not shown "a clear and indisputable right" to forgo discovery. Pet. App. 10a. To warrant mandamus relief, the government had to show that the discovery order was a "clear abuse of discretion," and "point to cases in which a federal court has held that relief is warranted in a matter involving like issues and comparable circumstances." *Id.* (citation and quotation marks omitted). The government could not meet that high bar. The D.C. Circuit had "previously endorsed limited discovery to determine agency status under FOIA"; "limited discovery can be used to follow up on factual questions put at issue by the government's declarations"; and even the government had conceded "that such discovery is sometimes appropriate." Pet. App. 10a-11a. The court added that there was "no reason, in considering the totality of the circumstances, to issue the writ." Pet. App. 11a.

5. The government sought a stay from this Court. Pet. App. 1a. The Court treated the stay application as a petition for certiorari, granted the petition, vacated the judgment, and remanded to the D.C. Circuit. Justices Sotomayor, Kagan, and Jackson would have denied the application. Pet. App. 2a.

This Court's order was narrow. It stated that "[t]he *portions* of the District Court's April 15 discovery order that require the Government to disclose the content of intra-Executive Branch USDS *recommendations* and whether those *recommendations* were followed are not appropriately tailored." Pet. App. 1a. (emphasis added). The Court then explained why it was necessary to narrow discovery into USDS's recommendations. First, the Court explained that the "inquiry into whether an entity is an agency for the purposes of [FOIA] cannot turn on the entity's ability to persuade." *Id.* Second, citing *Cheney*, the Court explained that "separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications." *Id.* The Court directed the D.C. Circuit to "take appropriate action to narrow the April 15 discovery order consistent with" its "order" and stayed discovery pending resolution of any future petition for certiorari. Pet. App. 2a.

At the stay stage, the government had raised sweeping arguments that this Court did not adopt. For example, the government had suggested—as it does in its petition—that discovery is never appropriate in FOIA cases involving EOP components. *See, e.g.*, Appl. 14-15 (No. 24A1122). This Court disagreed, requiring only that the district court's discovery order be "narrow[ed]." Pet. App. 2a. The government likewise objected to discovery into the structure of USDS and the relationship between USDS and DOGE Teams. Appl. 28-29 (No. 24A1122). But this Court's order stated that discovery was improperly tailored only with respect to "recommendations."

6. On remand in the D.C. Circuit, CREW chose not to contest the extent to which some discovery into recommendations made by USDS might remain appropriate in light of the Court's order. Instead, CREW withdrew *all* "discovery requests that pertain to 'recommendations' made by U.S. DOGE Service employees and others." Pet. App. 4a. That left CREW seeking discovery on the structure of USDS, USDS directives to cancel contracts and fire workers, and discrete examples of USDS exercising substantial independent authority.

The D.C. Circuit issued a second unpublished order that granted the mandamus petition as to the discovery requests that CREW withdrew and otherwise denied the petition. The court emphasized that CREW's withdrawal of its requests for discovery regarding USDS's recommendations to other agencies "narrow[ed] the district court's April 15 discovery order consistent with the Supreme Court's order," which had expressed concern only with respect to discovery into intra-executive branch recommendations. *Id.*

The government sought en banc review. After no active judge called for a vote, the D.C. Circuit denied review. Pet. App. 29a. The government's certiorari petition followed. *Id.*

REASONS FOR DENYING THE PETITION

The Court should deny the petition. As to the first question presented concerning the scope of the discovery order, the D.C. Circuit followed this Court's targeted instructions in its remand order to the letter. This Court directed the D.C. Circuit to "narrow" a discrete aspect of the discovery, and the D.C. Circuit then eliminated all such discovery, thus fully complying with this Court's order. Contrary to the government's arguments, the D.C. Circuit's decision adhered to the separation-of-powers principles this Court articulated in *Cheney*, and the government has not identified any conflict with other precedent. In addition, the government's fact-bound challenges to discrete aspects of the discovery order fail to establish that the court of appeals abused its discretion in denying mandamus—an extraordinary remedy that can be granted only when stringent requirements are satisfied. For these reasons, and because the government waived or forfeited many of the arguments it now raises, this Court should deny review of the D.C. Circuit's unpublished decision.

The second question presented likewise does not warrant review. The government points to no conflict in the courts of appeals on the question of whether discovery is sometimes permissible to determine if an EOP entity is covered by FOIA, and the government's categorical position has no basis in the statute's text. Moreover, it would be highly problematic to radically reshape the law regarding when FOIA applies within the EOP, and the D.C. Circuit's unpublished order is a particularly poor vehicle with which to do so.

I. THE FIRST QUESTION PRESENTED DOES NOT WARRANT REVIEW.

The first question presented rests on the fiction that the D.C. Circuit failed to apply the "instructions" in this Court's prior order and disregarded the principles articulated in *Cheney*. Pet. i. The government asks for summary reversal or plenary review. Neither is warranted.

"Summary reversals of courts of appeals are unusual under any circumstances." *Off. of Pers. Mgmt.* v. *Richmond*, 496 U.S. 414, 422 (1990). It is an "extraordinary remedy," *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 512 (2001) (Stevens, J., dissenting), reserved for when "the lower court result is" "clearly erroneous." Stephen M. Shapiro et al., *Supreme Court Practice* Ch. 5, § 5.12(a) (11th ed. 2019). Meanwhile, plenary review is generally appropriate only to resolve conflicts with this Court's precedents or disagreement among lower appellate courts, except in the highly unusual circumstance where a lower court has "so far departed from the accepted and usual course of judicial proceedings" that an exercise of this Court's "supervisory power" is warranted. S. Ct. R. 10. The government comes nowhere close to satisfying the stringent standards for certiorari, much less summary reversal.

A. The D.C. Circuit Faithfully Followed This Court's Remand Order.

The D.C. Circuit followed "this Court's instructions" to a tee. Pet. i. In the only substantive paragraph of its remand order, this Court held that "[t]he *portions* of the * * * discovery order that require the Government to disclose the content of intra-Executive Branch USDS *recommendations* and whether those *recommendations* were followed" were "not appropriately tailored." Pet. App. 1a (emphasis added). The Court then explained why: FOIA's applicability to an entity does not "turn on the entity's ability to persuade," and "separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications." *Id.* This Court thus issued a targeted directive focused on discovery into intra-executive branch "recommendations."

On remand, rather than litigate whether some tailored discovery into USDS's recommendations might still be possible, CREW voluntarily withdrew *all* discovery requests regarding *all* recommendations. *See* Pet. App. 4a. Consistent with this Court's order, the D.C. Circuit then granted mandamus with respect to the withdrawn discovery, but otherwise denied mandamus, thereby excising *all* portions of the discovery order this Court highlighted for further review. *See id*. There was no error, let alone "abuse[]" of "discretion." *Cheney*, 542 U.S. at 391 ("[T]he issuance of the writ is a matter vested in the discretion of the court to which [the] petition is made."); *see Will* v. *United States*, 389 U.S. 90, 96 n.4 (1967).

It is the government, not the D.C. Circuit, that does not "fair[ly] read[]" this Court's prior order. Pet. 18. The government highlights the second and third sentences of the order's lone substantive paragraph to suggest that *all* discovery implicates supposedly grave separation-of-powers concerns. But that argument ignores the critical first sentence identifying the upshot of this Court's analysis: "The *portions* of the District Court's April 15 discovery order that require the Government to disclose the content of intra-Executive Branch USDS *recommendations* and whether those *recommendations* were followed are not appropriately tailored." Pet. App. 1a. (emphasis added). The two sentences that follow merely explain why "[t]he portions" of the discovery order regarding recommendations were not sufficiently tailored. *Id*. Tellingly, this Court identified no *other* "portions" of the discovery order that were problematic.

Shifting gears, the government attempts to divine a hidden meaning from the fact that the Court remanded to the D.C. Circuit rather than "excise[]" the offending discovery requests "itself." Pet. 19. But this Court did not definitively state that all discovery into recommendations was categorically barred, and left open the possibility that the D.C. Circuit could have potentially permitted some such discovery on remand. Moreover, both because this is a "court of review, not of first view," *McLane Co.* v. *EEOC*, 581 U.S. 72, 85 (2017), and because the "issuance of the writ" lay within the D.C. Circuit's "discretion," *Cheney*, 542 U.S. at 391, it is unsurprising that the Court articulated its concerns and left the D.C. Circuit to apply the order on remand.

Finally, the government tries (Pet. 19) to paint the D.C. Circuit as defiant because the court of appeals stated that the government's arguments in favor of mandamus as to the discovery that was not withdrawn "d[id] not otherwise alter th[e] court's" prior "conclusions." Pet. App. 4a. But the government had repeated arguments on remand that had nothing to do with this Court's remand order. *See, e.g.*, Gov't C.A. Mandamus Pet. 11-12. That the D.C. Circuit adhered to its prior decision on matters not implicated by this Court's instructions was entirely appropriate.

B. The D.C. Circuit's Decision Is Consistent With *Cheney*.

Contrary to the government's argument, the decision below also fully adhered to the legal principles set forth in this Court's decision in *Cheney*. For that reason, and because the government does not argue that the court of appeals' unpublished ruling conflicts with any other appellate precedent, this Court should deny review of the government's fact-bound challenges to the scope of the discovery order.

1. *The narrowed discovery order fully comports with* Cheney.

Cheney emphasized that mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes." 542 U.S. at 380 (cleaned up). "[O]nly exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion will justify the invocation of this extraordinary remedy." *Id.* (cleaned up). Three conditions "must be satisfied." *Id.* First, the petitioner "must have no other adequate means to attain the relief he desires." *Id.* (cleaned up). Second, the petitioner must show he has a "clear and indisputable" right to the writ. *Id.* at 381 (cleaned up). Third, the court of appeals, "in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.*

Cheney reversed a lower court's denial of mandamus with respect to a discovery order directed to the "Vice President and other senior Government officials" responsible for "advi[sing]" the President. 542 U.S. at 385. The court of appeals had not taken account of the "separation-of-powers considerations" that must inform the analysis of a "mandamus petition involving the President or Vice President." *Id.* at 382, 390-391. The court of appeals in that case had recognized that the discovery requests were "overbroad" and "ask[ed] for everything under the sky," rendering them "anything but appropriate." *Id.* at 383, 386-388. But the court nonetheless permitted discovery to proceed, "labor[ing] under the mistaken assumption that the assertion of executive privilege is a necessary precondition to the Government's separation-of-powers objections." *Id.* at 391. This Court explained that the court of appeals should have instead "explore[d] other avenues," such as "narrow[ing] * * * the scope" of discovery "to allow the Executive to consider whether to invoke executive privilege with respect to a possibly smaller number of documents." *Id.* at 390 (cleaned up).

Here, the D.C. Circuit closely adhered to the principles articulated in *Cheney*. The court of appeals explained that the extraordinary remedy of mandamus is not warranted because the government failed to show it "ha[d] no other adequate means of relief" or a "clear and indisputable right" to the writ, adding that the "totality of the circumstances" also did not justify that relief. Pet. App. 9a-11a (initial decision); Pet. App. 4a (incorporating initial decision with respect to narrowed discovery order). The court of appeals reasoned that, unlike in *Cheney*, where "the Vice President himself was subject to a wide-ranging third-party subpoena and the asserted intrusion implicated the mental processes of the President's advisers," the discovery here is "modest in scope and does not target the President or any close adviser." Pet. App. 9a. The court emphasized that the government retains the ability to "raise privilege objections" to specific discovery requests "on a narrow and discrete ground." *Id.* at 10a. Because the discovery here is "a far cry from the sweeping discovery at issue in *Cheney*," and because "limited discovery" is appropriate "to determine agency status under FOIA," Pet. App. 10a-11a, the court properly denied the writ.

Resisting this straightforward application of *Cheney*, the government claims that the discovery order in this case is "sprawling," "intrusive," or "large." Pet. 2, 4, 8, 14. But the narrowed discovery order is instead modest—and by no means a "judicial usurpation of power." *Cheney*, 542 U.S. at 390 (citation omitted). The discovery is appropriately geared toward understanding what USDS was and what authority it had, which is necessary to evaluate whether it exercised substantial independent authority under the *Soucie* framework.

In particular, as this case now comes to the Court, the government must respond to nine interrogatories regarding USDS's structure, specific instances in which USDS exercised substantial independent authority (such as by gaining access to information systems over the objections of agency employees), and USDS's directives to cancel contracts and fire employees. *See* Pet. App. 42a-45a. The government must also answer six related requests for admission and provide limited documents, primarily (i) formal agreements between USDS and agencies, (ii) certain invoices and timekeeping records that shed light on USDS's structure, (iii) "final directives" sent to agencies regarding terminated contracts and employees, (iv) USDS "entity-wide final directives" sent by USDS's Administrator, and (v) documents formalizing USDS's structure and authority. Pet. App. 46a-50a. The government must also submit a Rule 30(b)(6) witness and allow CREW to depose the government's declarant, Acting Administrator Gleason. Pet. App. 51a-52a.

The government exaggerates the scope of discovery to suggest a parallel to *Cheney*. For example, the government asserts that CREW seeks "*any* alleged 'directives' to federal agencies." Pet. 3 (emphasis added). That is incorrect. CREW seeks information about directives regarding the highly publicized termination of contracts, grants, and leases, together with equally publicized employee terminations. Pet. App. 43a; Pet. 15a. CREW also did not seek "*all* internal directives to employees" at USDS, Pet. 20 (emphasis added), but instead sought only a carefully targeted category of "*entity-wide* final directives" by the Administrator, Pet. App. 48a (emphasis added). This discovery targets tailored information about USDS's powers and structure that is relevant to the *Soucie* framework—unlike the "overbroad" and "unbounded" discovery in *Cheney*, 542 U.S. at 383, 388.

Contrary to the government's assertion (Pet. 25), this case is unlike *Cheney* in another significant respect that negates any conceivable conflict warranting review. Pet. App. 10a. In *Cheney*, had the litigants prevailed in proving the Federal Advisory Committee Act applied to the task force in question, the Act would have entitled them to receive a limited set of documents. *In re Cheney*, 334 F.3d 1096, 1106 (D.C. Cir. 2003). As a result, the broad discovery that had been authorized in that case would have provided the litigants far more information than they could have ever received under the Act itself. *Cheney*, 542 U.S. at 377. This Court emphasized that, "[i]n these circumstances," the executive branch need not "bear the onus of critiquing the unacceptable discovery requests line by line." *Id*. at 388.

By contrast, this lawsuit seeks a declaration that USDS is subject to FOIA—an Act designed to provide transparency to the American people about how our government operates. *See John Doe Agency*, 493 U.S. at 152. If CREW prevails in this case, CREW will be able to file additional FOIA requests about USDS's sweeping efforts to reshape the government. As a result, unlike in *Cheney*, CREW will "be entitled" to more information should it "prevail on the merits." *Id*. at 388.

The facts of this case underscore how FOIA sweeps more broadly than the discovery CREW seeks. CREW's FOIA request seeks "ethics pledges or waivers executed by USDS personnel," "financial disclosures of USDS personnel," and information about "performance evaluation of employees of USDS." D. Ct. Dkt. 2-6, at 2-3. None of that information will be uncovered by the narrow discovery into USDS's directives and structure.

2. The government's fact-bound challenges to discrete types of discovery are meritless and do not establish a conflict with Cheney.

In a final effort to cast doubt on the court of appeals' decision upholding the scope of the discovery order, the government quibbles with discrete aspects of the discovery. But, unlike in *Cheney*, each category of discovery is tailored to the question at issue under the *Soucie* framework. Moreover, the government's arguments must be refracted through the lens of the demanding mandamus standards, coupled with deferential abuse-of-discretion review—standards the government comes nowhere close to meeting. *See Cheney*, 542 U.S. at 380-381, 388.[2] Finally, if the Court were to take up these discrete fact-bound issues, it would need to grapple with the numerous instances of waiver and forfeiture on the government's part. Certiorari is unwarranted.[3]

USDS's directives. To suggest that discovery will sweep in everything under the sun like in *Cheney*, the government elides two issues: (i) the *recommendations* USDS may have made to other executive branch agencies to persuade them to cancel contracts and fire

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[2] In addition, again, none of the challenged discovery concerns USDS "recommendations," and thus none is called into question by this Court's prior remand order, for all the reasons just discussed.

[3] Indeed, the government failed to raise its *Cheney* argument in the district court, Pet. App. 9a, which is reason enough to deny the petition.

employees; and (ii) the discrete *directives* USDS issued to agencies regarding the same topics. *See* Pet. 20.

But these two categories of discovery are *not* the same. *Recommendations* purport to "persuade," need not be followed, and were excised from the district court's discovery order. Pet. App. 2a. By contrast, final *directives* are not advisory and must be followed. Their issuance is therefore highly relevant to determining whether USDS exercised substantial independent authority.

Quoting the district court, the government now says the "line between a recommendation and [a] directive is a blurry one." Pet. 20 (quoting Pet. App. 25a-26a). But the district court recited that observation early in the case as a ground for permitting the *now-withdrawn* discovery into intra-executive branch recommendations to determine if agencies actually treated USDS's recommendations "as purely advisory." Pet. App. 25a. CREW is no longer pressing that line of inquiry. Full stop.

Moreover, in its brief on remand, the government suggested that it "could respond to" "requests" regarding directives. Gov't C.A. Resp. to Mtn. for Summ. Disp. 14. Elsewhere, the government stated that it can provide information regarding USDS's directives to agencies. *See, e.g.*, D. Ct. Dkt. 34 at 15-16; Gov't C.A. Mandamus Pet. 31. Having made those representations, the government can hardly argue that the D.C. Circuit abused its discretion when it denied the extraordinary writ of mandamus on remand.

Ability to override agencies. The government resists discovery concerning how USDS accessed certain systems, such as classified systems and social security databases, at times over the objection of agency officials. *See* Pet. App. 43a-44a. The government argues that this information would somehow reveal "predecisional and deliberative information," or implicate "the confidentiality of advice within the Executive Branch." Pet. 21 (cleaned up).

But discovery on the factual question of whether DOGE members muscled their way into agency systems, including over the objections of agency staff, *see CREW I*, 769 F. Supp. 3d at 14, does not seek information on advice given within the executive branch. If established, however, evidence of DOGE's access to such systems would be a telling indication that USDS exercised substantial independent authority to override agencies. Regardless, the government forfeited this separation-of-powers argument in its brief on remand, which raised only generic objections about relevancy and the burden of collecting information about USDS's access to databases and systems. *See* Gov't C.A. Mandamus Pet. 13, 18.

Moreover, to the extent there could be legitimate concerns here or with other aspects of the highly tailored discovery, the government can assert discrete privilege objections in the district court as necessary. Pet. App. 10a. And make no mistake: Asking the government to identify a privilege in discrete circumstances involving narrow discovery is not the same as what the court of appeals had required in *Cheney*, where "the Executive Branch" instead bore "the onus of critiquing" "overly broad" "discovery requests line by line." *Cheney*, 542 U.S. at 386, 388.

USDS's structure. The government similarly faults (Pet. 24) the D.C. Circuit for permitting inquiry into USDS's structure, including modest discovery that will establish the relationship between USDS and the DOGE Teams.[4] But, unlike the unnecessary discovery in *Cheney*, discovery on how USDS operated is essential to determining whether USDS is subject to FOIA. *See Armstrong* v. *Exec. Off. of the President*, 90 F.3d 553, 559 (D.C. Cir. 1996); *Meyer*, 981 F.2d at 1293.

Throughout this litigation, the government has made the dubious assertion that DOGE Teams are really controlled by agencies, not USDS, to suggest that USDS did not exercise substantial independent authority. But that statement was "at odds" with undisputed facts in the public record, which showed that USDS and DOGE Teams took "numerous actions without any apparent advanced approval by agency leadership." *CREW II*, 2025 WL 863947, at *5 (citation omitted).

For example, USDS "surprised agency officials by executing cuts to billions of dollars of funding from the National Institutes of Health and terminating personnel at the Department of Agriculture and the Department of Energy, National Nuclear Security Administration." *Id.* (cleaned up). Indeed, just last month, a district court found that the government's

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[4] The government is wrong to equate the discovery here with the broad and unnecessary request in *Cheney* for "all documents identifying any staff." Pet. 24 (cleaned up). Most discovery requests in this case are interrogatories, which minimize the burden on the government by allowing the government to formulate its response. *See* Pet. App. 42a. And no request for documents seeks information remotely similar to the request the government highlights in *Cheney*. *See, e.g.*, Pet. App. 49a (requesting documents that "formaliz[e] DOGE's organization, structure, reporting lines, operational units or divisions, or authority with respect to federal agencies").

representations about DOGE have been inaccurate, and that DOGE Teams did *not* report to agencies. In that case, an agency head "had no meaningful control over the fate of the grants. The ultimate decision whether to continue or terminate funding for previously awarded grants rested, not with him or with anyone else at [the agency], but with DOGE." *Am. Council of Learned Soc'ys* v. *Nat'l Endowment for the Humans.*, No. 25-cv-3657, 2026 WL 1256545, at *14 (S.D.N.Y. May 7, 2026). "DOGE personnel were the ultimate decisionmakers." *Id.* "DOGE was calling the shots." *Id.* at *40. So long as the government argues to the contrary, limited discovery is not simply appropriate, but imperative under *Cheney*.

Deposition. Finally, the government suggests (Pet. 22) that there is some conflict with *Cheney* because the court of appeals permitted the deposition of Acting Administrator Gleason. Not so.

To suggest that a deposition of Gleason will be intrusive, the government elides the scope of any deposition of Gleason with the topics to be covered by the Rule 30(b)(6) witness, Pet. 22, who it *agrees* can be called, Pet. 24. But the district court made clear that USDS need not have Gleason testify as the Rule 30(b)(6) witness; the government can pick someone else. Pet App. 22a, 51a. Gleason's deposition remains necessary in this case, however, because the government, in moving for summary judgment, introduced Gleason's declaration, which the district court found inconsistent with facts in the record. *CREW II*, 2025

WL 863947, at *4. Only Gleason can testify about the personal knowledge underlying her assertions.[5]

It would permit all kinds of mischief if the government can affirmatively rely on a declarant like Gleason and then object to her deposition after the fact. *See* Pet. App. 22a. Indeed, the government's preferred precedent confirms that when a declaration raises questions of fact, the declarant is "logically suited to clearing up lingering questions regarding her own [declarations]." *In re Cheney*, 544 F.3d 311, 314 (D.C. Cir. 2008) (per curiam) (preventing Vice President's Chief of Staff from being deposed but suggesting it was appropriate to depose Deputy Chief of Staff who had submitted affidavits in litigation).[6] Wherever Gleason falls on an organizational chart within EOP, probing the factual assertions in her declaration by no means raises the same concerns as discovery targeting the Vice President personally, as was at issue in *Cheney*. And, of course, the government may still assert specific objections to the scope of Gleason's testimony, including privilege-based objections. *See Cheney*, 542 U.S. at 381.

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In short, the D.C. Circuit fully complied with this Court's remand instructions when it denied the

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[5] The government's suggestion (Pet. 23) that Gleason's declaration was immaterial ignores the fact that her declaration is the only factual evidence the government introduced for key assertions, including that Elon Musk did "not work at USDS," that DOGE Teams "report to the agency heads," and that USDS exercises no authority. D. Ct. Dkt. 24-2 at 1-2.

[6] This case is entirely unlike *In re Musk*, 169 F.4th 445, 447 (4th Cir. 2026), *see* Pet. 23, because here the government injected Gleason's testimony into the litigation.

extraordinary remedy of mandamus. In addition, the government has not come close to showing that it satisfied the demanding standard for obtaining mandamus with respect to the remaining targeted discovery, much less that the court of appeals abused its discretion in denying that exceptional relief. There is no conflict with *Cheney* or any other appellate precedent that warrants this Court's review.

II. THE SECOND QUESTION PRESENTED DOES NOT WARRANT REVIEW.

The Court should likewise decline review of the second question presented, which seeks to revise the *Soucie* framework by prohibiting *all* discovery into whether EOP entities are covered by FOIA in *every* case. The government made the same argument in its stay application filed with this Court (Appl. 14-15, 18-19 (No. 24A1122)), but this Court did not accept it, instead remanding so that the district court's discovery order could be "narrow[ed]," not vacated. Pet. App. 2a. Moreover, the government points to *no* decision of this Court or another court of appeals that conflicts with the D.C. Circuit's sound determination that discovery is sometimes appropriate to determine FOIA's applicability to an EOP entity. Certiorari is wholly unwarranted.

Under the *Soucie* framework, targeted discovery "is critical for determining whether [an EOP entity] is subject to FOIA" because it "shed[s] light on [the EOP entity's] authority and operations." *Off. of Admin.*, 566 F.3d at 225. Thus, for example, the D.C. Circuit relied on documentary evidence and depositions to understand what functions the National Security Council performed, and to conclude it is not subject to FOIA. *See Armstrong*, 90 F.3d at 559; *cf. Sweetland*

v. *Walters*, 60 F.3d 852, 854 (D.C. Cir. 1995) (relying on factual description of how the Executive Residence operates). The Office of Legal Counsel has likewise looked to practical realities of how EOP entities operate when advising the executive branch on FOIA. *See Whether the Off. of Admin. is an "Agency" for Purposes of the Freedom of Info. Act*, 31 O.L.C. 200, 204 (2007) (explaining that the Office of Administration is not proximate to the President because the President "rarely if ever works in direct contact with or directly supervises the [office] director") (cleaned up). Below, even the government admitted that "discovery is sometimes appropriate." Pet. App. 11a; *see* Gov't C.A. Mandamus Pet. 22-23. There is no need to demolish the settled and sensible *Soucie* framework.[7]

The government's no-discovery rule, in contrast, is unworkable and ripe for abuse. In many cases, discovery will be necessary to evaluate important factors, such as "how close operationally the group is to the President," and "whether [the entity] has a self-contained structure." *Meyer*, 981 F.2d at 1293. Under the government's proposed test, a President wishing to evade FOIA could simply "informally delegat[e] authority" to an entity within the EOP by non-public memorandum, or draft intentionally ambiguous executive orders. *Id*. at 1296.

The government has the chutzpah to suggest its approach is derived from "FOIA's text." Pet. 29. Quite the opposite. FOIA's plain language applies to all "establishment[s] in the executive branch of the

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[7] The government relegates *Armstrong* and *Office of Administration* to a footnote (Pet. 31 n.2), but those decisions make clear the importance of discovery. The government notably cannot identify any circuit decision foreclosing discovery in this context.

Government," including the "Executive Office of the President." 5 U.S.C. § 552(f)(1). In *Kissinger*, this Court concluded that this language makes "the 'Executive Office of the President' an agency subject to the Act." 445 U.S. at 156. The *Soucie* framework is an extratextual gloss on an otherwise unambiguous statute—a gloss derived from legislative history. *Id*. The government's attempt to further narrow FOIA—to exclude any EOP entity wielding substantial independent authority as a result of a non-public delegation—has no basis in the statute.

The government's petition also swings at a strawman. No one is arguing that "advisory bodies become FOIA agencies if their advice has practical *influence*." Pet. 26 (emphasis added). Rather, the question is whether USDS had "substantial independent *authority*." *Meyer*, 981 F.2d at 1292 (cleaned up). The problem is that USDS was not advisory, no matter how many times the government asserts otherwise. USDS was independently directing massive change across the federal government. *See Am. Council of Learned Soc'ys*, 2026 WL 1256545, at *14. ("DOGE was calling the shots."). Exempting USDS from FOIA's reach would frustrate Congress's intent that the people understand how they are being governed by all "establishment[s] in the executive branch of the Government," including the "Executive Office of the President." 5 U.S.C. § 552(f)(1).

Nor is there any meaningful risk that FOIA will "toggle on or off" with respect to an EOP entity "depending on an amorphous inquiry." Pet. 31. The government points to no instance in which such toggling has happened, nor is such a result likely under the straightforward *Soucie* test. A change in FOIA status will occur only if the executive branch radically transforms an EOP entity.

The decision below is also unpublished and, contrary to the government's assertions, in no way "creates a blueprint for litigants to weaponize FOIA discovery against presidential advisory bodies." Pet. 34. The decision simply allowed modest discovery in this one *sui generis* matter—which is replete with unusual facts—to test the veracity of the government's assertions regarding the authority wielded by USDS.

Moreover, even if the Court were inclined to revise FOIA precedent (to be clear: it should not), this case is an extremely poor vehicle for undertaking that task. The government never argued in the district court that separation-of-powers principles preclude discovery in FOIA cases like this one, thus forfeiting that contention. *See* Pet. App. 11a. Because the case comes up on mandamus, moreover, the government would need to prove that it is clearly and indisputably correct that discovery is categorically inappropriate—an impossible task given existing precedent "endors[ing] limited discovery." *Id.*; *see, e.g.*, *In re Al Baluchi*, 952 F.3d 363, 369 (D.C. Cir. 2020) (explaining that mandamus petitioners must "point to 'cases in which a federal court has held that' relief is warranted 'in a matter involving like issues and comparable circumstances'" (citation omitted)). The government has also made questionable representations about USDS—underscoring why modest discovery is essential—which the Court would likely end up confronting head-on in a messy merits proceeding.

At the end of all that, even if the government prevailed, it would likely make little difference. As the district court explained in granting a preliminary injunction, the "relevant executive orders appear to endow USDS with substantial authority independent of the President." *CREW I*, 769 F. Supp. 3d at 18; *see* Pet. App. 19a ("[T]he language of the President's USDS-related executive orders * * * suggests that USDS is exercising substantial independent authority."). This is not a case that warrants review.

III. THE EQUITIES MILITATE AGAINST REVIEW.

Finally, the equities counsel against granting review. This Court initially considered the stay application in May and June of 2025, just months after the administration took office. At that time, the government claimed that subjecting DOGE to scrutiny would stymie the new administration's "high-priority policy initiatives." Appl. 32 (No. 24A1122). But now, there is no appreciable risk that further litigation will prevent a recently inaugurated President from achieving his agenda. The discovery, moreover, represents a targeted backward-looking inquiry into DOGE's past operations.

Meanwhile, courts have ordered the government to provide other discovery about DOGE in a range of matters, and the government has not sought appellate review. *See, e.g.*, *Am. Council of Learned Soc'ys*, 2026 WL 1256545, at *14; *AFL-CIO* v. *Dep't of Lab.*, 349 F.R.D. 243, 247 (D.D.C. 2025); *see also, e.g.*, *AFL-CIO* v. *Dep't of Lab.*, No. 25-cv-339, 2026 WL 1470287, at *5 (D.D.C. May 26, 2026). Given those developments, there is neither any meaningful harm to the executive branch nor a pressing reason for this Court to take this case.

CONCLUSION

The Court should deny the Petition.

Respectfully submitted,

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