



# MULLIN V. DOE: BLESSING A RACE-NEUTRAL COVER FOR RACIAL ANIMUS

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The Supreme Court's decision in [Mullin v. Doe](#) is a major setback for TPS holders and a deeply troubling signal about how the Court is willing to treat racialized immigration policy. By allowing the Trump administration to move forward with ending Temporary Protected Status (TPS) for Haitians and Syrians, the Court not only stripped away a critical layer of protection for hundreds of thousands of people, but also dismissed powerful evidence that racial animus infected the decision to terminate Haiti's TPS designation.

The majority opinion, written by Justice Alito, begins with the statute's judicial-review bar. The Court reads 8 U.S.C. §1254a(b)(5)(A) to mean that courts may not review "any determination" by DHS "with respect to the designation, or termination or extension of a designation" of a foreign state. In the Court's view, the word "determination" is broad enough to cover not only the final decision to terminate TPS, but also the entire chain of events leading to it. That reading allows the Court to reach the sweeping conclusion that the statute "squarely bars all of respondents' non-constitutional claims."

That holding is especially significant because it forecloses APA challenges based on process. The district courts had concluded that DHS failed to comply with the Immigration and Nationality Act's mandatory consultation requirements before ending TPS for Haiti and Syria. Justice Kagan's dissent explains the point clearly: the statute requires the Secretary, "after consultation with appropriate agencies of the Government," to review country conditions and determine whether the TPS criteria continue to be met. The mandatory steps are not optional, and the government's scant email exchange with the State Department did not satisfy them. As she puts it, the communications were

about “foreign policy concerns,” not about whether the countries were actually safe for return, and that meant the Secretary did not fulfill the consultation requirement. In her words, “After today, a secretary can announce to the world that she didn’t consult with anyone - more, that she didn’t evaluate country conditions at all - before making, extending, or terminating a TPS designation. And the courts will be powerless to intervene.”

The majority’s reading makes procedural defects far harder to challenge, even where the agency skipped or truncated the very steps Congress prescribed. It also means that if a client’s TPS termination challenge rests on consultation failures, arbitrary review practices, or other process defects, the path to relief is now far narrower.

That reading of the statute is already troubling. But the Court went further. It also rejected the claim that Haiti’s TPS termination was driven by racial animus. The record included repeated disparaging comments by President Trump and former Homeland Security Secretary Kristi Noem about Haitians, immigrants, and TPS recipients. Trump said Haitian immigrants were eating people’s pets and claimed unlawful immigrants are “poisoning the blood of our country” and have “bad genes.” Noem described some immigrants as “leeches,” “entitlement junkies,” and “foreign invaders” who “suck dry our hard-earned tax dollars.” Justice Alito acknowledged that political discourse has become “increasingly couched in terms that would have scandalized the public just a short time ago,” but he still concluded that the statements were not enough to show Haiti’s TPS designation was terminated because of the race of the Haitian people.

That is where the majority’s reasoning becomes most dangerous. It treats racialized hostility as legally irrelevant so long as the government can recast it as general immigration policy. Justice Kagan’s dissent forcefully pushes back. She said the majority was wrong to hold that the courts cannot review whether the Secretary followed the statute’s required procedures. In her view, a secretary cannot skip consultation, terminate TPS, and then claim the decision is insulated from judicial scrutiny. She also said the racial evidence was “plain to see” and that the President’s statements were “so repellent and racially inflected” that the majority would not even repeat them in full. As she put it, “he statements fairly shout, in their racial undertones and overtones alike, that race entered into the president’s resolve to remove Haitians from this country.” Justices Sotomayor and Jackson joined her dissent.

Justice Kagan's dissent is also candid and persuasive. She explains that the equal protection framework is [Arlington Heights](#), under which plaintiffs need only show that race was "a motivating factor" in the decision, not the only or even the primary one. She emphasizes that courts must consider historical background, sequence of events, and contemporary statements by decisionmakers. She then quotes the President's statements at length, and the force of her language is striking. Haitians, she writes, were described as "eating the dogs," "eating the cats," and "eating the pets of the people that live ." Haitians in the United States "probably have AIDS." Haiti was called a "shithole country," "filthy, dirty, disgusting." Haitian immigration was said to be "like a death wish for our country," and Haitians were accused of "poisoning the blood" of the country. She notes the contrast with the desire for people from "Norway" and "Sweden." Her point is direct: "Haitians are Black. (Norwegians and Swedes not so much.)" The references to filth, disease, and primitiveness are, in her words, "shot through with racial stereotypes and tropes." She concludes that "he statements fairly shout, in their racial undertones and overtones alike, that race entered into the President's resolve to remove Haitians from this country."

The dissent makes clear that discriminatory purpose can be inferred from context, not just explicit racial slurs. That is particularly important in immigration cases, where coded language, historical animus, and repeated disparagement often substitute for direct racial labels. Justice Kagan also explains that the majority's "race-neutral explanation" does not defeat the claim. Under [Arlington Heights](#), the question is not whether race was the sole cause. It is enough if race was one motivating factor among others. In her view, if race entered the decision at all, the Haiti TPS termination is "irretrievably tainted."

That is why the majority's treatment of the record is so troubling. It does not deny the ugly rhetoric. It simply says the statements are not "overtly racial" and can be understood as policy views about immigration and TPS. It sends the message that a president and his administration can use racially loaded language about Haitians and other immigrants from poorer countries, then shield the resulting policy decision behind a facially neutral administrative rationale.

Justice Thomas's concurrence makes the implications even broader. He would hold that the TPS statute's "no judicial review" language bars constitutional

claims too. In his view, Congress's intent to preclude judicial review is clear, and there is no constitutional obstacle to stripping federal courts of jurisdiction over these claims. He goes further and argues that "aliens have no equal protection rights against the federal government." He says the Constitution's Equal Protection Clause applies to the states, not the federal government, and he criticizes the Court's recognition of an equal protection component in the Fifth Amendment's Due Process Clause. He also maintains that even if the Due Process Clause contains some nondiscrimination principle, it would not apply here because TPS is a government-created privilege, not a protected right.

Thomas's concurrence is notable because it points toward an even more restrictive future in which not only APA claims, but also constitutional claims, could be barred entirely in TPS litigation. That position is not the law of the majority opinion, but it underscores how fragile judicial review has become in this area.

The practical consequences of the decision are immediate and severe. It could affect roughly [350,000 Haitians and 6,100 Syrians](#) who hold TPS, and it could also reverberate for hundreds of thousands of other TPS holders from more than a dozen countries whose status has been terminated. The government's ability to expel people quickly will depend in part on whether they already have deportation orders pending. In many instances, TPS holders do not have such orders, which may give them some ability to contest removal from the country as well as seek relief either before or in removal proceedings. But where removal orders are already in place, the government may be able to move more quickly.

That distinction matters in practice. TPS holders are not abstract legal categories. They are clients, coworkers, students, caregivers, parents, and long-time residents who have lived lawfully in the United States and built lives here. Many have succeeded in college, advanced in their careers, supported U.S. citizen family members, and contributed to their communities. The decision is especially cruel because it strips away protection while minimizing the legal significance of the rhetoric that helped produce the policy in the first place.

Our earlier [blog](#) captured this same pattern months before the Supreme Court ruled. That post explained how Trump and J.D. Vance used baseless claims about Haitian immigrants in Springfield, Ohio, and why such rhetoric had real-world consequences for Haitian TPS holders. It also linked those comments to

the broader Trump-era effort to terminate TPS protections for Haitians and other non-white immigrant communities. *Mullin v. Doe* now reflects the same dynamic at the highest judicial level: the Court has accepted a legal framework that makes it easier to separate poisonous rhetoric from policy consequences, even when the two are plainly connected.

The administration celebrated the ruling as a win for temporary status and administrative discretion. White House spokesperson Abigail Jackson called it “a tremendous win,” and DHS general counsel James Percival said, “The T in TPS stands for TEMPORARY.” But that framing misses the central issue. The case is not only about whether TPS is temporary. It is about whether the government can use racially charged rhetoric against Haitians and other immigrant communities, terminate their protection through procedures lower courts found defective, and avoid meaningful judicial review. In *Mullin v. Doe*, the Court’s majority unfortunately said yes.

Congress can still protect vulnerable TPS recipients by passing a bill that could legalize their status notwithstanding the Supreme Court decision. There would need to be a supermajority vote of 60 in the Senate even if the House passes a bill with a simple majority. While this may seem daunting given that the GOP has a majority in both chambers of Congress, the composition and control of both chambers might change after the midterms in November 2026! While the Trump administration may be taking a victory lap, history will not be too kind to it and this Supreme Court. This case that condoned Trump’s despicable racism towards Haitians will be relegated to history’s dustbin like *Dred Scott* and *Korematsu*.