

**Nomination of Anuraag Hari Singhal to the United States District Court for the  
Southern District of Florida  
Questions for the Record  
Submitted September 18, 2019**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. In 2018, you ruled against a female school counselor who had been subjected to inappropriate behavior from a school principal. For example, after the counselor declined a kiss, the principal responded that he would not ask her permission in the future and instead “would just do it.”

You held that the principal’s conduct was not “sufficiently pervasive” to give rise to a sexual harassment claim. A state appeals court disagreed with you and reversed your decision. (*Branch-McKenzie v. Broward Co. School Bd.*, 254 So.3d 1007 (Fla. 4<sup>th</sup> Dist. Ct. App. 2018))

**After being presented with evidence of over twenty incidents of inappropriate conduct that took place over two years, why did you conclude that this woman’s claims were not “sufficiently pervasive” to support her sexual harassment complaint?**

In responding to this question, I would begin by noting that this case is currently set before me for trial. The issues presented came before me on a Motion for Summary Judgment as to five counts. After hearing well-presented argument from each side, I took the matter under advisement and considered the stipulated facts and the law. I granted the Motion on all five counts, and the Florida Fourth District Court of Appeal reversed as to count one but affirmed on counts two through five. The appellate court found count one should have been resolved by a jury, not the court.

My reasoning was particularly based upon two federal Eleventh Circuit cases, *Henderson v. Wafflehouse, Inc.*, 238 F. App’x 499, 503 (11th Cir. 2007) and *Mendoza v. Borden, Inc.*, 195 F.3d 1238 (11th Cir. 2007).

2. In a 2018 case, you criticized Supreme Court doctrine that is vital to agencies’ ability to implement federal laws. You characterized this doctrine – which requires judges to defer to agency interpretations of regulations – as “the United States Supreme Court’s long-standing abdication of judicial responsibility by punting important decisions to administrative agencies.” (*Terwilliger v. City of Pompano Beach*, Case No. CACE18-023333 (21) (Fla. Cir. Ct. 2018))

**a. Please explain how the Supreme Court has abdicated judicial responsibility by preserving agencies’ power to issue rules and regulations.**

In the *Terwilliger* case, cited above, I was confronted with a City Charter that contained competing definitions of a residency requirement. Recognizing the interpretation of city officials, and Florida’s then existing deference standards, I

followed the law. I believe it is the duty of Congress to pass laws and that the judicial branch should defer to those laws passed by Congress.

If confirmed, I am committed to following the law as I always have. I would apply those principles enunciated in controlling United States Supreme Court decisions including *Auer v. Robbins*, 519 U.S. 452 (1997); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945).

**b. Do you believe it is Congress's role to pass laws that set specific particle standards for what constitute clean air or safe levels of ozone?**

As a judicial nominee, it would not be appropriate for me to opine the extent of Congress's and agencies' powers and how those bodies should exercise their powers.

**c. When it comes to complex technical issues – like fuel economy standards – Congress creates a framework, which allows agencies some flexibility. Do you expect Congress to pass laws with such specificity that there can't be updated rules based on advancements in science and technology?**

See my response to question 2.b.

**d. If there are advancements in medicine, science, or technology, can those be considered by agencies?**

See my response to question 2.b.

**3. Please respond with your views on the proper application of precedent by judges.**

**a. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?**

It is never appropriate for lower courts to depart from Supreme Court precedent.

**b. Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?**

Generally no. All Supreme Court precedent is binding on lower court judges unless and until the Supreme Court overrules them. In some cases, when explaining a ruling, and particularly where the parties have raised arguments that precedential cases do not apply, it may be helpful and proper for a trial court to respectfully note ambiguities, inconsistencies and disagreements with applicable law. It is helpful, in my opinion, to write opinions in a way in which not only the lawyers, but also the litigants and public can understand the court's reasoning and

constraints. Nevertheless, a district court judge must always follow the applicable law.

**c. When, in your view, is it appropriate for a district court to overturn its own precedent?**

In *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011), the court quoted Moore's Federal Practice as follows: "A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." 18 J. Moore et al., Moore's Federal Practice § 134.02[1] [d], p. 134–26 (3d ed. 2011).

**d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?**

The Supreme Court has struggled with the issue of when to overturn its own precedent and this issue comes before the Court regularly. *Gamble v. United States*, 139 S. Ct. 1960 (2019); *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018). If confirmed, I will fully and faithfully apply all Supreme Court precedent.

4. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

**a. Do you agree that *Roe v. Wade* is "super-stare decisis"? Do you agree it is "superprecedent"?**

*Roe* is binding Supreme Court precedent. If confirmed, I will fully and faithfully apply *Roe v. Wade* and all other Supreme Court precedent.

**b. Is it settled law?**

Yes.

5. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes. If confirmed, I will fully and faithfully apply *Obergefell v. Hodges* and all other Supreme Court precedent.

6. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

**a. Do you agree with Justice Stevens? Why or why not?**

I cannot express my opinion on his dissent as that would be inappropriate. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6). If confirmed, I will fully and faithfully apply *District of Columbia v. Heller* and all other Supreme Court precedent.

**b. Did *Heller* leave room for common-sense gun regulation?**

In *Heller*, the Supreme Court stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. 570, 626-27 (2008). The Court also recognized "the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Id.* at 627.

**c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?**

The majority opinion in *Heller* stated that the Court was resolving an issue previously unresolved by the courts. "We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens." *Heller*, 554 U.S. 570, 625 (2008).

7. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

- a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?**

The Supreme Court has held that “First Amendment protection extends to corporations.” *Citizens United v. Fed. Elections Comm’n*, 558 U.S. 310, 342 (2010). I believe the Canons do not permit me to provide an answer as to my personal belief. *See* Code of Judicial Conduct for United States Judges, Canon 3(A)(6). I will fully and faithfully apply the *Citizens United* precedent if confirmed.

- b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?**

Please see response to question 7.a.

- c. Do you believe corporations also have a right to freedom of religion under the First Amendment?**

In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the Supreme Court held that corporations are entitled to protection under the Religious Freedom Restoration Act. I believe the Canons do not permit me to provide an answer as to my personal belief. *See* Code of Judicial Conduct for United States Judges, Canon 3(A)(6). I will fully and faithfully apply the *Burwell* precedent if confirmed.

8. You indicated on your Senate Questionnaire that you have been a member of the Federalist Society since 2011. You also indicated that you are a member of its Madison Club and were a member of the Wake Forest University Student Chapter in 1988. The Federalist Society’s “About Us” webpage explains the purpose of the organization as follows: “Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.” It says that the Federalist Society seeks to “reorder[] priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law. It also requires restoring the recognition of the importance of these norms among lawyers, judges, law students and professors. In working to achieve these goals, the Society has created a conservative and libertarian intellectual network that extends to all levels of the legal community.”

- a. Could you please elaborate on the “form of orthodox liberal ideology which advocates a centralized and uniform society” that the Federalist Society claims dominates law schools?**

I did not make the statement referenced and it is not familiar to me. I have not heard that statement at any Federalist Society event I have attended. I have always found the events I attended to include speakers from different walks of life, with different viewpoints, with the central purpose of each event to be debate and discussion of important legal issues.

- b. How exactly does the Federalist Society seek to “reorder priorities within the legal system”?**

Please see my response to question 8.a.

- c. What “traditional values” does the Federalist society seek to place a premium on?**

Please see my response to question 8.a.

- d. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court?**

No. I have not had contact regarding my nomination.

- e. What does your role as member of the Madison Club entail?**

I have no duties as a Madison Club member.

- f. How much did you contribute to become a Madison Club member?**

Membership in the Madison Club requires a \$1,000 contribution. I believe I became a member in 2016.

9. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration’s interview process for judicial nominees. He said: “On the judicial piece ... one of the things we interview on is their views on administrative law. And what you’re seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years...”

- a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

No. I did not have any such conversations.

- b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your “views on administrative law”? If so, by whom, what was asked, and what was your response?**

No. I did not have any such conversations.

**c. What are your “views on administrative law”?**

Please see my response to question 2.a. If confirmed, I am committed to following the law as I always have. I would apply those principles enunciated in controlling United States Supreme Court decisions including *Auer v. Robbins*, 519 U.S. 452 (1997); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945).

10. Do you believe that human activity is contributing to or causing climate change?

The Canons do not permit me to provide an answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

11. When is it appropriate for judges to consider legislative history in construing a statute?

In *Exxon Mobil Corp. v. Allapattah Servs. Inc.*, 545 U.S. 546, 568 (2005), Justice Kennedy wrote “[a]s we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms.” Recognizing dangers of considering legislative history, the Supreme Court opined that it may be considered when the text of a statute is ambiguous.

12. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No. I did not have any such conversations.

13. Please describe with particularity the process by which you answered these questions.

I read the questions, reviewed my Senate Judiciary Questionnaire and attachments, and reviewed other legal sources. I submitted draft responses to the Office of Legal Policy at the Department of Justice (DOJ) and upon considering comments, authorized DOJ to file my answers.

**Written Questions for Anuraag Hari “Raag” Singhal**  
**Submitted by Senator Patrick Leahy**  
**September 18, 2019**

1. In a 2018 case, a higher court reversed your decision to grant summary judgment to a school board defending a school principal accused of sexual harassment. The young woman in that case had experienced twenty instances of harassment over a two-year period, including unwanted touching, requests to be kissed, and even threats to kiss her without her permission. That woman stopped attending meetings, turned down promotion opportunities that would have required additional contact with the principal, and made a pact with a co-worker not to be left alone with the principal. You said that because there wasn't a 21st or 22nd instance of harassment after she complained to the school board, the “claims made by the [Employee] . . . are not the type that are sufficiently pervasive so as to constitute a hostile work environment.”

**(a) Do you stand by this assessment? Is it your opinion that sexual harassment that eventually stops cannot be pervasive enough to constitute a hostile work environment?**

In responding to this question, I would begin by noting that this case is currently set before me for trial. The issues presented came before me on a Motion for Summary Judgment as to five counts. After hearing well-presented argument from each side, I took the matter under advisement and considered the stipulated facts and the law. I granted the Motion on all five counts, and the Florida Fourth District Court of Appeal reversed as to count one but affirmed on counts two through five. The appellate court found count one should have been resolved by a jury, not the court.

My reasoning was particularly based upon two federal Eleventh Circuit cases, *Henderson v. Wafflehouse, Inc.*, 238 F. App'x 499, 503 (11th Cir. 2007) and *Mendoza v. Borden, Inc.*, 195 F.3d 1238 (11th Cir. 2007).

2. In an interview with Florida's Judicial Nominating Commission, you told Commission members that you support the death penalty. You went on to explain that “if lawmakers reviewed and reformed the arbitrary way in which the death penalty is applied in Florida, they could save the state Supreme Court lots of time hearing appeals.”

**(a) Do you still support the death penalty?**

I would fully and faithfully follow the law in the jurisdiction where I serve and if confirmed, would serve. In the case of the death penalty, as a criminal defense attorney who handled more than thirty (30) death penalty cases, I advocated against imposition of the death penalty in each. I personally felt as if I failed if I could not convince the prosecutor to waive death or the jury to recommend life. As a State court judge for the past eight years, I followed the law and applied the law as it was written in death penalty cases.

**(b) Is your primary concern with an arbitrary death penalty the amount of time it takes for courts to process appeals?**

No. My primary concern with an arbitrary death penalty is fairness.

3. Chief Justice Roberts wrote in *King v. Burwell* that

**“oftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’ So when deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’ Our duty, after all, is ‘to construe statutes, not isolated provisions.’”**

**Do you agree with the Chief Justice? Will you adhere to that rule of statutory interpretation – that is, to examine the entire statute rather than immediately reaching for a dictionary?**

Yes. Determining the meaning of an ambiguous statute involves a series of steps. In addition to examining the text of the statute, it is important to consider the words in question within the context of the whole statute. It is important to read related statutes in pari materia and to harmonize statutes that require construction together. A judge should give meaning to the words the legislature chose. *See, e.g. Sturgeon v. Frost*, 139 S. Ct. 1066, 1084 (2019); *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1010 (2017).

4. President Trump has issued several attacks on the independent judiciary. Justice Gorsuch called them “disheartening” and “demoralizing.”

**(a) Does that kind of rhetoric from a President – that a judge who rules against him is a “so-called judge” – erode respect for the rule of law?**

Article III of the Constitution sets forth certain protections to allow for judicial independence, including provisions regarding tenure and compensation in office. The purpose of these protections is to enable judges to make decisions that are based in law rather than public debate and commentary. As to the specific comments referenced, I believe the Canons do not permit me to provide an answer regarding my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

- (b) **While anyone can criticize the merits of a court’s decision, do you believe that it is ever appropriate to criticize the legitimacy of a judge or court?**

Please see my response to question 4(a).

5. President Trump praised one of his advisers after that adviser stated during a television interview that “the powers of the president to protect our country are very substantial *and will not be questioned.*” (Emphasis added.)

- (a) **Is there any constitutional provision or Supreme Court precedent precluding judicial review of national security decisions?**

The Supreme Court has found decisions of the President reviewable in situations involving national security. *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

6. Many are concerned that the White House’s denouncement of “judicial supremacy” was an attempt to signal that the President can ignore judicial orders. And after the President’s first attempted Muslim ban, there were reports of Federal officials refusing to comply with court orders.

- (a) **If this President or any other executive branch official refuses to comply with a court order, how should the courts respond?**

I believe the Canons do not permit me to provide an answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5. Should such an issue come before me, I would fully and faithfully apply all applicable precedent.

7. In *Hamdan v. Rumsfeld*, the Supreme Court recognized that the President “may not disregard limitations the Congress has, in the proper exercise of its own war powers, placed on his powers.”

- (a) **Do you agree that the Constitution provides Congress with its own war powers and Congress may exercise these powers to restrict the President – even in a time of war?**

Please see my response to question 5(a). The Constitution assigns powers over foreign affairs and war to the President and Congress. If confirmed, I will fully and faithfully apply Supreme Court precedent.

Justice O’Connor famously wrote in her majority opinion in *Hamdi v. Rumsfeld* that: “We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens.”

- (b) **In a time of war, do you believe that the President has a “Commander-**

**in-Chief” override to authorize violations of laws passed by Congress or to immunize violators from prosecution? Is there any circumstance in which the President could ignore a statute passed by Congress and authorize torture or warrantless surveillance?**

Please see my response to question 7(a). In addition, I believe the Canons do not permit me to provide an answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

**8. How should courts balance the President’s expertise in national security matters with the judicial branch’s constitutional duty to prevent abuse of power?**

The Supreme Court held in *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 177 (1803) that it is “the province and duties of the judicial department to say what the law is.” Judges must fully and faithfully apply applicable precedent in resolving any such issues.

9. In a 2011 interview, Justice Scalia argued that the Equal Protection Clause does not extend to women.

**(a) Do you agree with that view? Does the Constitution permit discrimination against women?**

Supreme Court precedent is that the Equal Protection Clause of the Fourteenth Amendment applies to laws that make distinctions based upon gender, and that the government must demonstrate an “exceedingly persuasive justification” for any such gender-based classifications. *United States v. Virginia*, 518 U.S. 515, 531 (1996). If confirmed, I will fully and faithfully follow all Supreme Court precedent.

**10. Do you agree with Justice Scalia’s characterization of the Voting Rights Act as a “perpetuation of racial entitlement?”**

No. First, Justice Scalia’s characterization is not Supreme Court precedent. Second, if confirmed, I will fully and faithfully follow all Supreme Court precedent.

**11. What does the Constitution say about what a President must do if he or she wishes to receive a foreign emolument?**

“No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.” U.S. Const., Art. I, Sec. 9.

12. In *Shelby County v. Holder*, a narrow majority of the Supreme Court struck down a key provision of the Voting Rights Act. Soon after, several states rushed to exploit that decision by enacting laws making it harder for minorities to vote. The need for this law

was revealed through 20 hearings, over 90 witnesses, and more than 15,000 pages of testimony in the House and Senate Judiciary Committees. We found that barriers to voting persist in our country. And yet, a divided Supreme Court disregarded Congress's findings in reaching its decision. As Justice Ginsburg's dissent in *Shelby County* noted, the record supporting the 2006 reauthorization was "extraordinary" and the Court erred "egregiously by overriding Congress' decision."

**(a) When is it appropriate for the Supreme Court to substitute its own factual findings for those made by Congress or the lower courts?**

The Supreme Court considers the briefs and arguments presented by counsel as well as the historical facts developed below.

**13. How would you describe Congress's authority to enact laws to counteract racial discrimination under the Thirteenth, Fourteenth, and Fifteenth Amendments, which some scholars have described as our Nation's "Second Founding"?**

The Thirteenth, Fourteenth, and Fifteenth Amendments each provide that Congress has the power to enforce them, and thereby counteract racial discrimination, "by appropriate legislation." U.S. Const., art. XIII, §2; U.S. Const., art. XIV, §5; U.S. Const., art. XV, §2.

14. Justice Kennedy spoke for the Supreme Court in *Lawrence v. Texas* when he wrote: "liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct," and that "in our tradition, the State is not omnipresent in the home."

**(a) Do you believe the Constitution protects that personal autonomy as a fundamental right?**

In *Lawrence v. Texas* and cases that have followed it, the Supreme Court has addressed and established a fundamental right to personal autonomy. If confirmed, I will fully and faithfully apply all Supreme Court precedent. I believe the Canons do not permit me to provide an answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

15. In the confirmation hearing for Justice Gorsuch, there was extensive discussion of the extent to which judges and Justices are bound to follow previous court decisions by the doctrine of stare decisis.

**(a) In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? Does the commitment to stare decisis vary depending on the court? Does the commitment vary depending on whether the question is one of statutory or constitutional interpretation?**

Supreme Court precedent is binding on lower courts and it is never appropriate for lower courts to "overrule" the decision of a higher court. The Supreme Court has stated that "the doctrine of stare decisis is of fundamental importance to the rule of law." *Hilton v. South Carolina Public Ry. Comm'n.*, 502 U.S. 197, 202 (1991) (citation omitted). It is important for lawyers and litigants to have predictability in the law. If

confirmed, I will fully and faithfully follow the law of the Eleventh Circuit and the Supreme Court.

16. Generally, federal judges have great discretion when possible conflicts of interest are raised to make their own decisions whether or not to sit on a case, so it is important that judicial nominees have a well-thought out view of when recusal is appropriate. Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard for recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety.

- (a) **How do you interpret the recusal standard for federal judges, and in what types of cases do you plan to recuse yourself? I'm interested in specific examples, not just a statement that you'll follow applicable law.**

Consistent with my response to question 24.b. of the Senate Judiciary Questionnaire, in terms of categories of litigation, as with any State Circuit Court judge, there is always potential that a federal habeas case, under 28 U.S.C. §2254, will be assigned in which I was the trial judge. In such a situation, the case would need to be reassigned. I would follow any procedure currently in place for reassignment.

With regard to Motions for Disqualification or cases in which there might be a question as to impartiality or its appearance, I would refer to and follow the requirements of 28 U.S.C. §455. I would also be guided by the Code of Conduct for United States Judges, particularly canons two and three, and all other practices and procedures applicable to such situations.

17. It is important for me to try to determine for any judicial nominee whether he or she has a sufficient understanding the role of the courts and their responsibility to protect the constitutional rights of individuals, especially the less powerful and especially where the political system has not. The Supreme Court defined the special role for the courts in stepping in where the political process fails to police itself in the famous footnote 4 in *United States v. Carolene Products*. In that footnote, the Supreme Court held that “legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation.”

- (a) **Can you discuss the importance of the courts' responsibility under the *Carolene Products* footnote to intervene to ensure that all citizens have fair and effective representation and the consequences that would result if it failed to do so?**

The job of a United States District Court judge is, among other things, to treat lawyers and litigants fairly and with patience, to afford them due process, to be prepared, and to follow the law. If confirmed I will conscientiously do the job of district court judge, just as I have done the jobs of civil litigator, prosecutor, criminal defense attorney and State Court judge in my thirty years as a member of the Florida Bar.

18. Both Congress and the courts must act as a check on abuses of power. Congressional

oversight serves as a check on the Executive, in cases like Iran-Contra or warrantless spying on American citizens and politically motivated hiring and firing at the Justice Department during the Bush administration. It can also serve as a self-check on abuses of Congressional power. When Congress looks into ethical violations or corruption, including inquiring into the Trump administration's conflicts of interest and the events discussed in the Mueller report we make sure that we exercise our own power properly.

**(a) Do you agree that Congressional oversight is an important means for creating accountability in all branches of government?**

Yes.

**19. Do you believe there are any discernible limits on a president's pardon power? For example, President Trump claims he has an "absolute right" to pardon himself. Do you agree?**

I believe the Canons do not permit me to provide an answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

**20. What is your understanding of the scope of congressional power under Article I of the Constitution, in particular the Commerce Clause, and under Section 5 of the Fourteenth Amendment?**

The federal government enjoys specifically enumerated powers as conferred by the U.S. Constitution. These powers include those under Article I, Section 8 of the Constitution, in particular the Commerce Clause, and under Section 5 of the Fourteenth Amendment. If confirmed, I will fully and faithfully apply Supreme Court precedent relating to the scope of congressional powers under the sections outlined above. *See, e.g. City of Boerne v. Flores*, 521 U.S. 507 (1997); *United States v. Lopez*, 514 U.S. 549 (1995).

**21. In *Trump v. Hawaii*, the Supreme Court allowed President Trump's Muslim ban to go forward on the grounds that Proclamation No. 9645 was facially neutral and asserted that the ban was in the national interest. The Court chose to accept the findings of the Proclamation without question, despite significant evidence that the President's reason for the ban was animus towards Muslims. Chief Justice Roberts' opinion stated that "the Executive's evaluation of the underlying facts is entitled to appropriate weight" on issues of foreign affairs and national security.**

**(a) What do you believe is the "appropriate weight" that executive factual findings are entitled to on immigration issues? Does that weight shift when additional constitutional issues are presented, as in the Establishment Clause claims of *Trump v. Hawaii*? Is there any point at which evidence of unlawful pretext overrides a facially neutral justification of immigration policy?**

The decision in *Trump v. Hawaii* is binding Supreme Court precedent. There, the Court held that review into "the persuasiveness of the President's justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere." The Court further held that because the Proclamation in question was thoroughly descriptive in terms of "process, agency evaluations, and

recommendations underlying the President’s chosen restrictions,” the plaintiff’s attacks on the sufficiency of the President’s findings could not be sustained. 138 S. Ct. 2392, 2409 (2018). I would fully and faithfully apply all Supreme Court precedent. I believe the Canons do not permit me to provide an answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

**22. How would you describe the meaning and extent of the “undue burden” standard established by *Planned Parenthood v. Casey* for women seeking to have an abortion? I am interested in specific examples of what you believe would and would not be an undue burden on the ability to choose.**

The Supreme Court in *Whole Women’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016) held that “unnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on that right.” This holding, along with *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) represent Supreme Court precedent which I would fully and faithfully apply, if confirmed. I believe the Canons do not permit me to provide a further answer as to my personal views. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

23. Federal courts have used the doctrine of qualified immunity in increasingly broad ways, shielding police officers in particular whenever possible. In order to even get into court, a victim of police violence or other official abuse must show that an officer knowingly violated a clearly established constitutional right as specifically applied to the facts and that no reasonable officer would have acted that way. Qualified immunity has been used to protect a social worker who strip searched a four-year-old, a police officer who went to the wrong house, without even a search warrant for the correct house, and killed the homeowner, and many similar cases.

**(a) Do you think that the qualified immunity doctrine should be reined in? Has the “qualified” aspect of this doctrine ceased to have any practical meaning? Should there be rights without remedies?**

I believe the Canons do not permit me to provide an answer as to my personal views. This particular issue will certainly come before any United States District Court Judge. Litigants must be assured that they will receive a fair and full hearing based upon the facts of their individual case, and applicable law. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

24. The Supreme Court, in *Carpenter v. U.S.* (2018), ruled that the Fourth Amendment generally requires the government to get a warrant to obtain geolocation information through cell-site location information. The Court, in a 5-4 opinion written by Roberts, held that the third-party doctrine should not be applied to cellphone geolocation technology. The Court noted “seismic shifts in digital technology”, such as the “exhaustive chronicle of location information casually collected by wireless carriers today.”

- (a) In light of *Carpenter* do you believe that there comes a point at which collection of data about a person becomes so pervasive that a warrant would be required? Even if collection of one bit of the same data would not?**

I would fully and faithfully apply all Supreme Court precedent to the facts of any case that came before me. In my career I have handled as a lawyer or a judge, hundreds of Fourth Amendment issues. The Supreme Court has recently addressed issues of concern in *Carpenter v. United States*, 138 S. Ct. 2206 (2018) and *Riley v. California*, 573 U.S. 373 (2014). I believe the Canons do not permit me to provide an answer as to my personal views. This particular issue will certainly come before any United States District Court Judge. Litigants must be assured that they will receive a fair and full hearing based upon the facts of their individual case, and applicable law. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

25. Earlier this year, President Trump declared a national emergency in order to redirect funding toward the proposed border wall after Congress appropriated less money than requested for that purpose. This raised serious separation-of-powers concerns because the Executive Branch bypassed the congressional approval generally needed for appropriations. As a member of the Appropriations Committee, I take seriously Congress's constitutional duty to decide how the government spends money.

- (a) With the understanding that you cannot comment on pending cases, are there situations when you believe a president can legitimately allocate funds for a purpose previously rejected by Congress?**

I believe the Canons do not permit me to provide an answer on such hypotheticals. *See* Code of Judicial Conduct for United States Judges, Canons 2, 3(A)(6) and 5.

26. During Justice Kavanaugh's confirmation hearing, he used partisan language to align himself with Senate Republicans. For instance, he accused Senate Democrats of exacting "revenge on behalf of the Clintons" and warned that "what goes around comes around." The judiciary often considers questions that have a profound impact on different political groups. The Framers sought to address the potential danger of politically-minded judges making these decisions by including constitutional protections such as judicial appointments and life terms for Article III judges.

- (a) Do you agree that the Constitution contemplates an independent judiciary? Can you discuss the importance of judges being free from political influence?**

Yes, the Constitution contemplates an independent judiciary. The job of a trial judge is, among other things, to treat lawyers and litigants fairly

and with patience, to afford them due process, to be prepared, and to follow the law. If confirmed I will conscientiously do the job of district court judge, just as I have done the jobs of civil litigator, prosecutor, criminal defense attorney and State Court judge in my thirty years as a member of the Florida Bar.

**Nomination of Anuraag Hari Singhal  
to the United States District Court for the Southern District of Florida  
Questions for the Record  
Submitted September 18, 2019**

**QUESTIONS FROM SENATOR WHITEHOUSE**

1. Your questionnaire indicates that you joined the Federalist Society since 1988 and were a member for one year, as a law student. Your questionnaire indicates that you then joined the Federalist Society's South Florida Lawyers Chapter in 2011.

- a. What has your level of involvement with the Federalist Society been over the last 31 years?

I have attended many Federalist Society events and have participated in organizing several events and presentations. I have always found the events I attended to include speakers from different walks of life, with different viewpoints, with the central purpose of each event to be debate and discussion of important legal issues.

- b. Were you involved in the Federalist Society between 1989 and 2011?

No.

- c. If confirmed, do you plan to remain an active participant in the Federalist Society?

Yes.

- d. If confirmed, do you plan to donate money to the Federalist Society?

Membership dues are nominal. Unless prohibited, I would continue to pay dues to organizations such as The Federalist Society, The American Bar Association, The Florida Bar and the Broward County Bar Association.

- e. Have you had contacts with representatives of the Federalist Society, in either their official or unofficial capacity, in preparation for your confirmation hearing? Please specify.

No. I have had no such contact.

2. A Washington Post report from May 21, 2019 ("A conservative activist's behind-the-scenes campaign to remake the nation's courts") documented that Federalist Society Executive Vice President Leonard Leo raised \$250 million, much of it contributed anonymously, to influence the selection and confirmation of judges to the U.S. Supreme Court, lower federal courts, and state courts. If you haven't already read that story and listened to recording of Mr. Leo published by the Washington Post, I request that you do so in order to fully respond to the following questions.

- a. Have you read the Washington Post story and listened to the associated recordings of Mr. Leo?

Yes.

- b. Do you believe that anonymous or opaque spending related to judicial nominations of the sort described in that story risk corrupting the integrity of the federal judiciary? Please explain your answer.

As a judicial nominee, it would not be appropriate for me to comment on political matters relating to the confirmation of federal judges.

- c. Mr. Leo was recorded as saying: “We’re going to have to understand that judicial confirmations these days are more like political campaigns.” Is that a view you share? Do you believe that the judicial selection process would benefit from the same kinds of spending disclosures that are required for spending on federal elections? If not, why not?

See my answer to Question 2(b).

- d. Do you have any knowledge of Leonard Leo, the Federalist Society, or any of the entities identified in that story taking a position on, or otherwise advocating for or against, your judicial nomination? If you do, please describe the circumstances of that advocacy.

No. I have no knowledge of Leonard Leo, the Federalist Society or any of the entities identified in the story above advocating for or against my nomination.

- e. As part of this story, the Washington Post published an audio recording of Leonard Leo stating that he believes we “stand at the threshold of an exciting moment” marked by a “newfound embrace of limited constitutional government in our country [that hasn’t happened] since before the New Deal.” Do you share the beliefs espoused by Mr. Leo in that recording?

See my answer to Question 2(b).

3. During his confirmation hearing, Chief Justice Roberts likened the judicial role to that of a baseball umpire, saying “[m]y job is to call balls and strikes and not to pitch or bat.”
- a. Do you agree with Justice Roberts’ metaphor? Why or why not?

I agree that the role of a judge is to be an impartial arbiter.

- b. What role, if any, should the practical consequences of a particular ruling play in a judge’s rendering of a decision?

If the law compels a judge to consider the practical consequences of a ruling, the judge should consider those consequences.

4. Federal Rule of Civil Procedure 56 provides that a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact” in a case. Do you agree that determining whether there is a “genuine dispute as to any material fact” in a case requires a trial judge to make a subjective determination?

No.

5. During Justice Sotomayor’s confirmation proceedings, President Obama expressed his view that a judge benefits from having a sense of empathy, for instance “to recognize what it’s like to be a

young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old.”

- a. What role, if any, should empathy play in a judge’s decision-making process?

Empathy is in essence the ability to understand what another is feeling. It is important for a judge to recognize what others have gone through in order to more effectively manage his courtroom. This does not mean that a judge should consider empathic feelings in making a decision. It is important, however, to treat all people appearing in court with respect.

- b. What role, if any, should a judge’s personal life experience play in his or her decision-making process?

Please see my response to question 5.a. above.

6. In your view, is it ever appropriate for a judge to ignore, disregard, refuse to implement, or issue an order that is contrary to an order from a superior court?

No.

7. The Seventh Amendment ensures the right to a jury “in suits at common law.”

- a. What role does the jury play in our constitutional system?

The Seventh Amendment states “the right of trial by jury shall be preserved” and provides this fundamental guarantee to the people. Juries are the judges of the facts and play a critical role in our constitutional system.

- b. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of mandatory pre-dispute arbitration clauses?

Judges should always be concerned with preserving the concepts codified in the Bill of Rights. With regard to issues such as the enforceability of mandatory pre-dispute arbitration clauses, judges must balance the facts and consider the arguments presented. If confirmed I will fully and faithfully follow and apply the law and precedent with respect to the Seventh Amendment.

- c. Should an individual’s Seventh Amendment rights be a concern to judges when adjudicating issues surrounding the scope and application of the Federal Arbitration Act?

Please see my response to question 7.b.

8. What deference do congressional fact-findings merit when they support legislation expanding or limiting individual rights?

The Supreme Court has confronted this issue in many cases. If confirmed, I will fully and faithfully follow the precedent established by the Supreme Court.

9. The Federal Judiciary’s Committee on the Codes of Conduct recently issued “Advisory Opinion 116: Participation in Educational Seminars Sponsored by Research Institutes, Think Tanks, Associations, Public Interest Groups, or Other Organizations Engaged in Public Policy Debates.” I request that before you complete these questions you review that Advisory Opinion.

a. Have you read Advisory Opinion #116?

Yes.

b. Prior to participating in any educational seminars covered by that opinion will you commit to doing the following?

i. Determining whether the seminar or conference specifically targets judges or judicial employees.

Before participating in any educational seminars, I will ensure that my participation meets all ethical requirements.

ii. Determining whether the seminar is supported by private or otherwise anonymous sources.

See my response to Question 9(b)(i).

iii. Determining whether any of the funding sources for the seminar are engaged in litigation or political advocacy.

See my response to Question 9(b)(i).

iv. Determining whether the seminar targets a narrow audience of incoming or current judicial employees or judges.

See my response to Question 9(b)(i).

v. Determining whether the seminar is viewpoint-specific training program that will only benefit a specific constituency, as opposed to the legal system as a whole.

See my response to Question 9(b)(i).

c. Do you commit to not participate in any educational program that might cause a neutral observer to question whether the sponsoring organization is trying to gain influence with participating judges?

See my response to Question 9(b)(i).

**Nomination of Anuraag Singhal, to be United States District Court Judge  
for the Southern District of Florida  
Questions for the Record  
Submitted September 18, 2019**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?

The Supreme Court has set forth a framework to be used in determining whether a right is fundamental and protected under the Fourteenth Amendment. These cases include *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) and *Washington v. Glucksberg*, 521 U.S. 702 (1997). I would look to such decisions as well as any applicable precedent from the Eleventh Circuit Court of Appeals.

- a. Would you consider whether the right is expressly enumerated in the Constitution?

Yes.

- b. Would you consider whether the right is deeply rooted in this nation's history and tradition? If so, what types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?

Yes. Please see my response to question 1, and particularly the analysis in *Washington v. Glucksberg*, 521 U.S. 702 (1997).

- c. Would you consider whether the right has previously been recognized by Supreme Court or circuit precedent? What about the precedent of a court of appeals?

Yes. Please see my response to question 1.

- d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent? What about whether a similar right had been recognized by Supreme Court or circuit precedent?

Yes.

- e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? See *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).

I would fully and faithfully apply all Supreme Court and Eleventh Circuit precedent, including *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) and *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992).

- f. What other factors would you consider?

I would fully and faithfully apply all Supreme Court and Eleventh Circuit precedent and consider any factors deemed relevant by those courts.

2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?

The Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment applies to both race-based and gender-based classifications. *United States v. Virginia*, 518 U.S. 515 (1996); *Craig v. Boren*, 429 U.S. 190 (1976).

- a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?

The argument would fail because the Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment applies to both race-based and gender-based classifications. *United States v. Virginia*, 518 U.S. 515 (1996); *Craig v. Boren*, 429 U.S. 190 (1976). This precedent is binding.

- b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?

I am unaware whether the arguments in *United States v. Virginia* were effectively raised in cases prior to the 1996 decision, and if so, why they did not reach the Supreme Court.

- c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?

Yes. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015), the Supreme Court found the Fourteenth Amendment affords same-sex couples the right to marry "on the same terms as accorded to couples of the opposite sex."

- d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?

This issue has not yet been decided by the Supreme Court, and is currently being litigated. As a judicial nominee, I believe the Canons prohibit me from further answering. See Code of Conduct for United States Judges, Canons 2(A), 3(A)(6), and 5(C).

3. Do you agree that there is a constitutional right to privacy that protects a woman’s right to use contraceptives?

The Supreme Court recognized a right to privacy in an applicable context in *Eisenstadt v. Baird*, 405 U.S. 438 (1972) and *Griswold v. Connecticut*, 381 U.S. 479 (1965).

- a. Do you agree that there is a constitutional right to privacy that protects a woman’s right to obtain an abortion?

The Supreme Court has addressed this issue and established a constitutional right to privacy protecting a woman’s right to obtain an abortion in *Roe v. Wade*, 410 U.S. 113 (1973). See also, *Whole Women’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

- b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

The Supreme Court has addressed this issue and established a constitutional right to privacy protecting intimate relations between two consenting adults, regardless of their sexes or genders in *Lawrence v. Texas*, 539 U.S. 558 (2003). See also, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.

Please see responses above.

4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, “[h]igher education at the time was considered dangerous for women,” a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, “As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser.” This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.
  - a. When is it appropriate to consider evidence that sheds light on our changing understanding of society?

A number of Supreme Court cases such as *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) have considered, in ruling, changing understandings of society. I would consider such evidence when appropriate in accordance with Supreme Court precedent.

- b. What is the role of sociology, scientific evidence, and data in judicial analysis?

Sociology, scientific evidence, and data play a role in judicial analysis when presented in court if reliable and relevant. Rule 702, Fed. R. Evid.; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *General Elec. Co. v. Joiner*, 522 U.S. 136 (1997); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

5. In the Supreme Court’s *Obergefell* opinion, Justice Kennedy explained, “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians.”

- a. Do you agree that after *Obergefell*, history and tradition should not limit the rights afforded to LGBT individuals?

*Obergefell* is binding Supreme Court precedent that I would faithfully apply.

- b. When is it appropriate to apply Justice Kennedy’s formulation of substantive due process?

If confirmed I will fully and faithfully apply all Supreme Court precedent such as *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

6. You are a member of the Federalist Society, a group whose members often advocate an “originalist” interpretation of the Constitution.

- a. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93. Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?

Racial discrimination is abhorrent and *Brown v. Board of Education*, 347 U.S. 483 (1954) is settled law. There is much scholarship on the topic of the *Brown* decision and whether it is consistent with originalism. As a lawyer, I spoke in support of the *Brown* decision and the fact that de jure racial segregation has no place in our society. As a district court judge, if confirmed, I would fully and faithfully apply the *Brown* decision.

- b. How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ ‘equal protection,’ and ‘due process of law’ are not precise or self-defining”?
- Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited Sept. 18, 2019).

A judge’s job is to give meaning and purpose to the words the legislature chose in writing laws. I am aware of many theories of interpretation and criticisms and accolades for each. If confirmed, I would fully and faithfully apply the laws and precedents of the Supreme Court and the Eleventh Circuit.

- c. Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?

At the district court level in Florida, decisions of the Supreme Court and the Eleventh Circuit are dispositive in addressing an issue such as this one. If confirmed, I would fully and faithfully apply the laws and precedents of the Supreme Court and the Eleventh Circuit.

- d. Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?

Please see my response to question 6.c.

- e. What sources would you employ to discern the contours of a constitutional provision?

I would begin with the text of the constitutional provision. I would also look at the context of the provision in question, and look to other provisions that employ the same words. If confirmed, I would fully and faithfully apply the laws and precedents of the Supreme Court and the Eleventh Circuit.

**Questions for Anuraag Singhal  
From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

- a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

No.

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?**

No.

**Nomination of Anuraag Hari Singhal**  
**United States District Court for the Southern District of Florida**  
**Questions for the Record**  
**Submitted September 18, 2019**

**QUESTIONS FROM SENATOR BOOKER**

1. In March 2019, you gave a presentation outlining Florida law on firearms and domestic violence injunctions. During your presentation, you noted that “[d]omestic abusers with guns pose a severe and deadly threat to their intimate partners” and that women in the United States are “16x more likely to be killed with a gun than in peer countries.”
  - a. Is it fair to say that when you made those comments that you believe that there are loopholes in federal law—like the boyfriend loophole—that allow domestic abusers to possess firearms when they should otherwise be prohibited from possessing a gun?

As a judicial nominee, it would not be appropriate for me to comment on whether the laws relating to firearms should be modified.

2. In a 2013 article you stated, “I think affirmative action causes a lot of problems. I think that if you put somebody who is in a position because they’re a minority and then they fail, it makes it harder for qualified minorities who have gotten that position and for others to get that position later.”<sup>1</sup>
  - a. What statistical evidence were you relying on in stating that “affirmative action causes a lot of problems”?

In that interview, I was answering questions about my own experience as the first Asian-American judge in Broward County, and how people might perceive me and my appointment; I was not stating general opinions about affirmative action.

- b. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes. I have advocated for this goal for years and continue to mentor young lawyers to seek pathways to the judicial branch.

3. You reportedly told members of the Florida’s Judicial Nominating Commission that you support the death penalty but believed that “if lawmakers reviewed and reformed the arbitrary way in which the death penalty is applied in Florida, they could save the state Supreme Court lots of time hearing appeals.”<sup>2</sup>

- a. Is it accurate that you told members of the Florida’s Judicial Nominating Commission that you support the death penalty?

Yes.

- b. In the past, you have criticized Florida's application of the death penalty in certain criminal cases. For instance, you said that there "isn't uniformity in how [the death penalty] is applied or on who it's sought."<sup>3</sup> Given your concerns that the

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<sup>1</sup> Carlos Harrison, *Singhal Went against Grain, and Never Gave Up*, BROWARD DAILY BUSINESS REVIEW (Feb. 11, 2013) (SJQ Attachment 12(e) at p. 874).

<sup>2</sup> Jordana Mishory, *Attacks on Homeless Men Propel Lawyer into an Unusual Role*, BROWARD DAILY BUSINESS REVIEW (SJQ Attachment 12(e) at p. 942).

<sup>3</sup> Harris Meyer, *The Monday Page*, BROWARD DAILY BUSINESS REVIEW (SJQ Attachment 12(e) at p. 944).

death penalty is often not applied uniformly, why do you still support capital punishment?

As a criminal defense lawyer for eighteen years, with more than thirty death penalty trials, I advocated against the death penalty for my clients. As a State court judge, I was required to follow the law as written including on death penalty cases. As a federal judicial nominee, it would be inappropriate of me to offer my personal opinions about what the law should be.

4. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

I believe originalism refers to the theory of statutory interpretation where there is an identifiable original meaning, contemporaneous with the passage of the law that then governs future interpretation. Please also see my response to question 5 below.

5. Do you consider yourself a textualist? If so, what do you understand textualism to mean

I believe textualism refers to the theory of statutory interpretation where words in a law are given their plain and ordinary meaning as that meaning existed when the law was passed, and that governs interpretation. While I do not enjoy labels, I tend to follow a textualist approach to statutory interpretation.

6. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress's intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

I would follow all Supreme Court precedent. In *Exxon Mobil Corp. v. Allapattah Servs. Inc.*, 545 U.S. 546, 568 (2005), Justice Kennedy wrote “[a]s we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms.” Recognizing dangers of considering legislative history, the Supreme Court opined that it may be considered when the text of a statute is ambiguous.

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

Please see response to question 6.a. above.

7. Do you believe that judicial restraint is an important value for a district judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes. I believe judicial restraint refers to the judicial principle that Congress enacts the laws and the judiciary defers to Congress. It is not for the judiciary to say what the law should be.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>4</sup> Was that decision guided by the principle of judicial restraint?

The majority opinion in *Heller* stated that the Court was resolving an issue previously unresolved by the courts. "We conclude that nothing in our precedents forecloses our adoption of the original understanding of the Second Amendment. It should be unsurprising that such a significant matter has been for so long judicially unresolved. For most of our history, the Bill of Rights was not thought applicable to the States, and the Federal Government did not significantly regulate the possession of firearms by law-abiding citizens." *Heller*, 554 U.S. 570, 625 (2008). As a judicial nominee, it is not appropriate for me to state my agreement or disagreement with Supreme Court precedent.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>5</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it is not appropriate for me to state my agreement or disagreement with Supreme Court precedent.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>6</sup> Was that decision guided by the principle of judicial restraint?

As a judicial nominee, it is not appropriate for me to state my agreement or disagreement with Supreme Court precedent.

8. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study

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<sup>4</sup> 554 U.S. 570 (2008).

<sup>5</sup> 558 U.S. 310 (2010).

<sup>6</sup> 570 U.S. 529 (2013).

after study has demonstrated, however, that widespread voter fraud is a myth.<sup>7</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>8</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

It would be inappropriate for me to offer an opinion on this question because of my status as a federal judicial nominee. *See* Canons 2, 3(A)(6) & 5, Code of Conduct for United States Judges. I believe an issue similar to this is likely to come before the courts and is currently before the courts.

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

It would be inappropriate for me to offer an opinion on this question because of my status as a federal judicial nominee. *See* Canons 2, 3(A)(6) & 5, Code of Conduct for United States Judges. I believe an issue similar to this is likely to come before the courts and is currently before the courts.

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

It would be inappropriate for me to offer an opinion on this question because of my status as a federal judicial nominee. *See* Canons 2, 3(A)(6) & 5, Code of Conduct for United States Judges. I believe an issue similar to this is likely to come before the courts and is currently before the courts.

9. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>9</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>10</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>11</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>12</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

Yes.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Yes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in

our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

Yes. I have read numerous articles and studies on implicit bias in our criminal justice system. In addition, I am the Judicial Diversity Chair for my Circuit and have helped coordinate seminars in October, 2017 and April, 2019 on Diversity and Bias issues.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>13</sup> Why do you think that is the case?

I do not have an adequate basis or fund of knowledge to accurately and adequately respond to this question.

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<sup>7</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>8</sup> *Id.*

<sup>9</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>10</sup> *Id.*

<sup>11</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>12</sup> *Id.*

<sup>13</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>14</sup> Why do you think that is the case?

Please see my response to question 9.d. above.

- f. What role do you think federal district judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

There is overt bias and there is implicit bias. Judges must be aware of the existence of implicit bias and take steps to monitor their own sentencing practices. There are also training opportunities available that in our State court system are mandatory for judges.

10. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>15</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1 percent.<sup>16</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I do not have an adequate basis or fund of knowledge to accurately and adequately respond to this question.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

I do not have an adequate basis or fund of knowledge to accurately and adequately respond to this question.

11. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

12. Do you believe that *Brown v. Board of Education*<sup>17</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes. I spoke about this case as a lawyer in 2004. Racial discrimination is abhorrent.

13. Do you believe that *Plessy v. Ferguson*<sup>18</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No. I do not believe *Plessy* was correctly decided. It is no longer good law. *Brown v. Board of Education*, 347 U.S. 483 (1954).

14. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

No. However Justices Kagan and Ginsburg suggested this at their confirmation hearings.

15. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was

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<sup>14</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

<sup>15</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

<sup>16</sup> *Id.*

<sup>17</sup> 347 U.S. 483 (1954).

<sup>18</sup> 163 U.S. 537 (1896).

“of Mexican heritage.”<sup>19</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

I do not believe a judge’s race or ethnicity can be the basis for recusal or disqualification.

16. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>20</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

In *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) the Supreme Court held “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, temporary, or permanent.” If confirmed, I will fully and faithfully apply all Supreme Court precedent.

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<sup>19</sup> Brent Kendall, *Trump Says Judge's Mexican Heritage Presents 'Absolute Conflict,'* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>20</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

**Questions for the Record from Senator Kamala D. Harris  
Submitted September 18, 2019  
For the Nomination of**

**Anuraag Singhal, to the U.S. District Court for the Southern District of Florida**

1. District court judges have great discretion when it comes to sentencing defendants. It is important that we understand your views on sentencing, with the appreciation that each case would be evaluated on its specific facts and circumstances.

- a. **What is the process you would follow before you sentenced a defendant?**

18 U.S.C. § 3553 lists seven factors to be considered in determining an appropriate sentence. I would ensure the applicable advisory Sentencing Guidelines range is correctly calculated. I would consider the specific facts and circumstances of the case, review all applicable statutes and the presentence report. I would consider any testimony or statements from victims, witnesses, and the defendant's family. I would consider the defendant's allocution. I would hear arguments from counsel.

I would be mindful of the statutory mandate that “[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes” designated by Congress for sentencing, including “the need for the sentence imposed; to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553.

- b. **As a new judge, how do you plan to determine what constitutes a fair and proportional sentence?**

I have sentenced numerous defendants in my career, keeping track of each sentence in an effort to be fair and proportional. I have taught courses on sentencing and am currently the Diversity Chair in my Circuit. In addition to my response to question 1, I would seek advice and guidance from my new colleagues should I be fortunate enough to be confirmed.

- c. **When is it appropriate to depart from the Sentencing Guidelines?**

In accordance with Supreme Court and Eleventh Circuit precedent, the Sentencing Guidelines are not binding.

- d. Judge Danny Reeves of the Eastern District of Kentucky—who also serves on the U.S. Sentencing Commission—has stated that he believes mandatory minimum sentences are more likely to deter certain types of crime than discretionary or

indeterminate sentencing.<sup>1</sup>

**i. Do you agree with Judge Reeves?**

I have no knowledge of statistics to support or refute Judge Reeves' position. If confirmed, I would apply such sentencing laws as enacted regardless of my personal views as to the mandatory minimum. As a judicial nominee, it would not be appropriate for me to comment on whether I agree with legislatures' decisions to create mandatory minimum sentences.

**ii. Do you believe that mandatory minimum sentences have provided for a more equitable criminal justice system?**

Please see my response to question 1.d.i. above.

**iii. Please identify instances where you thought a mandatory minimum sentence was unjustly applied to a defendant.**

Please see my response to question 1.d.i. above.

**iv. Former-Judge John Gleeson has criticized mandatory minimums in various opinions he has authored, and has taken proactive efforts to remedy unjust sentences that result from mandatory minimums.<sup>2</sup> If confirmed, and you are required to impose an unjust and disproportionate sentence, would you commit to taking proactive efforts to address the injustice, including:**

**1. Describing the injustice in your opinions?**

Yes, but without offering personal criticisms of Congressional policy decisions that resulted in such mandatory minimums.

**2. Reaching out to the U.S. Attorney and other federal prosecutors to discuss their charging policies?**

No, unless involving sanctionable conduct such as lack of professionalism, prosecutorial misconduct or ethical impropriety.

**3. Reaching out to the U.S. Attorney and other federal prosecutors to discuss considerations of clemency?**

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<sup>1</sup> <https://www.judiciary.senate.gov/imo/media/doc/Reeves%20Responses%20to%20QFRs1.pdf>

<sup>2</sup> See, e.g., "Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose," NY Times, July 28, 2014, <https://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

While the clemency power is reserved to the Executive Branch, I believe a judge may, in an appropriate case, state on the record that he or she would not have imposed a certain sentence but for the statutory requirement to do so. This would allow Executive Branch officials to be aware of the sentencing judge's views for the purpose of considering clemency.

- e. 28 U.S.C. Section 994(j) directs that alternatives to incarceration are “generally appropriate for first offenders not convicted of a violent or otherwise serious offense.” **If confirmed as a judge, would you commit to taking into account alternatives to incarceration?**

Yes.

2. Judges are one of the cornerstones of our justice system. If confirmed, you will be in a position to decide whether individuals receive fairness, justice, and due process.

- a. **Does a judge have a role in ensuring that our justice system is a fair and equitable one?**

Yes.

- b. **Do you believe there are racial disparities in our criminal justice system? If so, please provide specific examples. If not, please explain why not.**

Yes. At various levels of the criminal process, from stop to arrest to incarceration, racial minorities are statistically more likely to be involved.

3. If confirmed as a federal judge, you will be in a position to hire staff and law clerks.

- a. **Do you believe it is important to have a diverse staff and law clerks?**

Yes.

- b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

Yes.